



MIKISEW CREE FIRST NATION
Government and Industry Relations
206 – 9401 Franklin Ave.
Fort McMurray, AB T9H 3Z7
Phone (780) 714-6500 Fax (780) 715-4098

September 12, 2014

Stacey Smythe
Senior Manager, Engagement and Relationships
Aboriginal Engagement and Planning
Stewardship Branch
Environment and Sustainable Resource Development
3rd fl Great West Life Building
9920 - 108 Street
Edmonton, AB
T5K 2M4

Sent by email: [Stacey.smythe@gov.ab.ca]

Re: Mikisew's preliminary comments on Alberta's presentation of concepts for the development of the Biodiversity Management Framework

Dear Ms. Smythe:

Attached to this letter are two appendices that provide Mikisew's preliminary comments on the materials that Alberta has presented to set out its approach for developing the Biodiversity Management Framework (BMF).

As set out in both appendices, Mikisew has serious concerns with the approach that Alberta has outlined for developing the BMF in the initial framework materials. Mikisew had looked forward to participating in the development of the BMF because a failure by Alberta to credibly address the already severe impacts to biodiversity in the Lower Athabasca Region and protect that biodiversity will have fundamentally adverse impacts to the exercise our aboriginal and treaty rights.

However, it is clear from the workshop and the materials provided that Alberta's current approach for developing the BMF will not address these failures. The materials Alberta has provided barely mention First Nations, let alone consider and incorporate what is necessary to protect of our Aboriginal and Treaty rights, including the cultural aspect of those rights. From our review of the materials you have provided, there are a number of missed opportunities to give meaningful consideration to what is necessary to ensure biodiversity in the Lower Athabasca Region is protected in a manner that supports Mikisew's aboriginal and treaty rights now and into the future.

As described in the attached appendices, we are concerned that Alberta's approach to the BMF:

- ❖ Fails to include rights-based thresholds, despite Mikisew having requested such thresholds repeatedly during the last 5 years of engagement regarding LARP;
- ❖ Fails to include rights-based indicators, despite Mikisew having requested that Aboriginal Rights/Traditional Land Uses be used as an indicator of ecosystem health more than five years ago in Mikisew's comments on the Terrestrial Ecosystem Management Framework;
- ❖ Lacks credible management responses, despite Mikisew identifying this as a concern during engagement regarding the development of LARP;
- ❖ Fails to incorporate indigenous knowledge;
- ❖ Fails to incorporate the information we have already provided to Alberta during the development of LARP;
- ❖ Appears to rely on baselines that are premised on future expansion of development rather than what is needed to support biodiversity and the exercise of our Aboriginal and Treaty rights in relation to that biodiversity;
- ❖ Fails to provide underlying data that Alberta intends to rely on when developing the BMF or any other relevant, credible and sufficient information necessary for us to engage effectively during the development of the BMF;
- ❖ Fails to demonstrate that Alberta is properly informing itself of the biodiversity-related conditions required for the exercise of Mikisew's Aboriginal and Treaty rights or incorporating that information into establishing effective, rights-based thresholds, indicators and management responses. In this regard, we note that many of the questions we raised with Alberta during the development of LARP in a May 16, 2011 letter are relevant to the BMF and we ask that you provide answers to those questions (attached to this letter) in the context of the BMF;
- ❖ Fails to identify any process for providing Mikisew with feedback – to this end we note that, based on the notes that Alberta prepared of the August 19, 2014 meeting, it appears that Alberta is once again limiting feedback to the creation of "what we heard" documents that provide no insight or transparency into what Alberta is doing with the information and views shared by First Nations and Metis groups;
- ❖ Fails to identify a process for meaningfully consulting Mikisew;
- ❖ Fails to ensure that Mikisew is provided with adequate technical and financial resources that will allow us to meaningfully consult; and

- ❖ Appears to fail to seriously consider and substantially address and accommodate Mikisew's representations and input relating to biodiversity needs, with a specific focus on potential adverse impacts to constitutionally-protected section 35 rights.

As we have done in submissions in other land use planning and regulatory contexts, we note that much of the data that is necessary to provide a good understanding of what information and measures are necessary to protect our Section 35 Rights and culture would be best obtained through the development of a Traditional Land and Resource Use Management Plan ("TLRUMP"). Mikisew has sent Alberta the TLRUMP proposal many times since it was prepared five years ago and refer you again to that proposal.

Given the concerns articulated in the attached appendices, it is our view that Alberta's approach to the BMF is fundamentally inconsistent with Outcome 7 of LARP, which specifically promises to involve First Nations in developing a biodiversity management framework that includes consideration of "[h]ow First Nations' exercise of constitutionally protected rights to hunt, fish and trap for food can continue to occur within reasonable proximity of First Nations' main population centres."

While we will be writing a separate letter in respect of our expectations for meaningful consultation on the BMF, for now we wish to make it clear that meaningful consultation is more than just a series of powerpoint presentations, print-outs of answers to frequently asked questions and limited opportunities to comment on powerpoint presentation, a 3-page survey and a draft report.

The following description of consultation by the Supreme Court of Canada from the Haida case is instructive:

Meaningful consultation may oblige the Crown to make changes to its proposed action based on information obtained through consultations. The New Zealand Ministry of Justice's Guide for Consultation with Māori (1997) provides insight (at pp. 21 and 31):

Consultation is not just a process of exchanging information. It also entails testing and being prepared to amend policy proposals in the light of information received, and providing feedback. Consultation therefore becomes a process which should ensure both parties are better informed

. . .

. . . genuine consultation means a process that involves . . . :

- gathering information to test policy proposals
- putting forward proposals that are not yet finalised
- seeking Māori opinion on those proposals
- informing Māori of all relevant information upon which those proposals are based
- not promoting but listening with an open mind to what Māori have to say
- being prepared to alter the original proposal

- providing feedback both during the consultation process and after the decision-process.

It is also worth mentioning that the level of infringement that could be incurred through a BMF that is not supported by rights-based thresholds, appropriate baseline and other necessary information or effective management responses is very high. This means that the requirements of consultation go beyond the two opportunities for Mikisew to provide comments on the BMF before it is finalized that Alberta has contemplated to date.

Lastly, we reiterate that we are providing this initial feedback in good faith and with the expectation that we will see our comments incorporated into the planning process for the Framework and that ESRD will work with us to develop a significantly revised description of proposed indicators, threshold values and management responses. We stress that this is only our initial feedback, as Mikisew requests a more integrated role in developing the Framework. We also request that Alberta provide sufficient funding and time to allow our science and technical team to participate in the development of the Biodiversity Framework.

Sincerely,



Sebastien Fekete, Consultation Coordinator, MCFN GIR

Cc: Chief and Council
Melody Lepine, Director, MCFN GIR
Chris Hopkins, Operations Manager, MCFN GIR
Mark Gustafson, Legal Counsel, JFK Law
Scott Duguid, Director, ESRD Stewardship Branch
Joshua Mackintosh, Engagement and Stewardship Advisor, ESRD Stewardship Branch

Appendix A - Mikisew Comments on Biodiversity Framework Workshop Materials

In this appendix, we provide specific comments on the workshop materials that Alberta presented to Mikisew.

Comments on Alberta's Biodiversity Management Framework Objectives

We understand the proposed objectives to be:

- Biodiversity and healthy functioning ecosystems *continue* to provide a range of benefits to communities in the region and all Albertans;
- Species at risk are recovered;
- No new species require at risk designation; and
- Long-term regional ecosystem health and resiliency are sustained. (emphasis added)

The Workshop Materials' proposed objectives for the Framework make no mention of incorporating consideration of Section 35 Rights into the Framework, or addressing First Nations' concerns and perspectives at all.

It is a glaring omission that Alberta's proposed objectives ignore aboriginal and treaty rights altogether from each and every Objective and that Aboriginal and Treaty Rights were not used as a criteria for selecting objectives.

Generally speaking, we are unclear as to how the Framework will be able to achieve the goals of a diverse and healthy ecosystem while also achieving the goal of considerable expansion of oil sands development in the Lower Athabasca Region.

We are concerned that the first objective implies that the ecosystem in the Lower Athabasca Region is presently healthy and diverse and that maintaining the status quo is acceptable or sufficient for supporting the continued exercise of Mikisew's Aboriginal and Treaty Rights. This is deeply concerning given the current state of industrial development in the Lower Athabasca Region and the impact this development has already had on our Section 35 Rights and culture. If the Framework is truly intended to ensure the Lower Athabasca Region supports a healthy and diverse ecosystem now and in the future, it must acknowledge the cumulative impacts from industry to date and commit to setting thresholds and selecting indicators for monitoring that reflect this. The proposed objectives should be revised with this in mind. We note that this may be difficult given that LARP also sets a policy goal of considerably expanding oil sands development in the Lower Athabasca Region.

The objective of recovering species at risk, while important, does not address concerns that species relied on for the exercise of Section 35 rights or for the protection of Mikisew culture are stressed or inaccessible.

It is inadequate to zero-in on species at risk designations (whether the goal is to recover those already so designated or to prevent new species from being designated) as the thresholds for at risk

designations are far higher than those that would indicate a species relied on for the exercise of Section 35 Rights and culture is in trouble or no longer able to support the exercise of our Aboriginal and Treaty Rights. In addition, the objective of preventing further species at risk designations ignores that the methodology for identifying species at risk excludes important traditional knowledge and excludes critical information such as whether preferred species are accessible and healthy for Section 35 Rights purposes. In addition, considerations such as cultural importance, the role of a resource to maintaining our way of life (ie, the core of our Treaty rights) are excluded from the determination of whether a species is at risk.

The Objectives must be revised to reflect must acknowledge the cumulative impacts from industry to date and commit to setting thresholds and selecting indicators that pertain to the exercise of Aboriginal and Treaty rights.

Comments on Indicator Selection

Since the indicators selected for the purposes of monitoring the status of biodiversity in the Lower Athabasca Region will form the foundation of *what* is measured and monitored, and therefore what is ultimately subject to management responses, it is critical that the indicators are selected with regard to Mikisew's Section 35 Rights and culture. The proposed indicators do not reflect this in any way.

First, the criteria used to select the proposed biodiversity indicator make no mention or consideration of the types of resources necessary for the exercise and protection of Mikisew's Section 35 Rights and culture. This is particularly troubling given that we have been requesting that Aboriginal Rights/Traditional Land Uses be used as an indicator of ecosystem health for more than five years, including in our March, 2009 submission on the Terrestrial Ecosystem Management Framework.

Second, we are disappointed that traditional knowledge was not a part of the criteria for selecting indicators. Unless the criteria explicitly draws from traditional knowledge and incorporates elements related to Section 35 Rights and our Aboriginal Perspective, it has been our experience that our knowledge, our rights and our perspective will be ignored and, since monitoring is focused on the indicators selected based on this criteria, the elements relevant to Section 35 Rights and culture will be overlooked. This is likely to put our members and our Aboriginal and Treaty rights at a greater risk of adverse impacts.

Third, we are concerned about the pyramid structure approach for the indicators. The proposed indicators for levels 1 and 2 do not reflect criteria relevant to Section 35 Rights and culture. And, while it appears indicators for level 3 may incorporate indicators of importance to First Nations, they will not be monitored and reported on as frequently as those in levels 1 and 2. They will also not be associated with threshold values such that they would trigger a management response in a timely manner. This approach may miss impacts to indicators of biodiversity related to Section 35 Rights and culture until it is too late for an effective management response or action.

We also note that Mikisew members are not akin to other “key groups and stakeholders” but hold constitutionally protected aboriginal and treaty rights, which should be treated as such and not lumped in together with other stakeholder interests.

Specific Concerns: Level 1 Indicators - Terrestrial and Aquatic Native Land Cover

As a practical example, while the composite indicator of amount of terrestrial native land cover is important to monitor, the indicator is targeted at monitoring the proportion of undisturbed lands with native vegetation. This ignores the volumes of information that Mikisew has provided demonstrating that there is little to no undisturbed lands left in the Lower Athabasca Region given the volume of activities that Alberta has already approved. It also does not factor in the location of these lands relative to where Mikisew members exercise their rights or engage in cultural practices. Thus, this proposed indicator will not capture what is necessary to support the meaningful exercise of rights. The same observation applies to the approach for the total amount of aquatic native land cover.

Level 2 Indicators

As noted above, Mikisew is concerned that the proposed Level 2 indicators were selected without our input and do not necessarily factor in indicators that support Section 35 Rights. At this early stage, we suggest it is necessary to consider whether additional indicators beyond the two regionally significant indicators are necessary, and/or whether alternative indicators should be selected. The definitions of indicators ultimately chosen must be drafted to ensure they explicitly require the monitoring of elements related to Mikisew’s Section 35 Rights and culture.

With respect to the proposed indicators supporting terrestrial cover, while Mikisew generally supports the monitoring of old forest land cover and undisturbed core habitat, it is critical that this indicator include habitat for species that support the exercise of Section 35 Rights and Mikisew culture. This is important to avoid our recent experience with ESRD during the regulatory process for the Teck Frontier Mine, where ESRD suggested to Teck that it consider project amendments to protect old growth forest even though those changes would likely have severe adverse impacts to the exercise of Mikisew’s Aboriginal and Treaty rights. Mikisew’s input into which species’ habitat this indicator captures must be included.

Similarly, the amount of fen, as a level 2 indicator for the total amount of aquatic native cover should include consideration of *where* the fens are located and which species they support, with specific regard to those species that support Section 35 Rights and culture.

Level 1 Indicators: Terrestrial and Aquatic Species

Level 1 indicators for biodiversity of terrestrial and aquatic species will assess the “intactness” or abundance of certain groups. Again, this approach to monitoring, with a focus on overall abundance of species, offers no consideration of specific species relevant to Mikisew’s Section 35 Rights and culture. For example, general abundance statistics will not take into consideration Mikisew’s preferred species, the health of those species, or Mikisew members’ ability to access and use that species.

Level 2 Indicators

Again, Mikisew remains concerned that the selection of the proposed Level 2 Indicators was made without any our input and does not include indicators that reflect the status of Mikisew members' ability to exercise their Section 35 Rights or sustain our culture. We would like to discuss these indicators and consider whether additional indicators beyond the two regionally significant indicators are necessary, or whether alternative indicators should be selected.

While theoretically we do support the inclusion of Woodland Caribou populations or non-native vascular plant species in the Level 2 Indicators, it is critical that these are monitored in such a way that tracks impacts to our ability to exercise our Section 35 rights and culture. For example, we would like to monitor whether and how invasive plant species have had a specific impact on plant species upon which we rely.

Level 3 and 4 Indicators

Mikisew understands that the Level 3 and 4 indicators have not yet been selected and expects to be consulted on these indicators as they are developed. That said, as noted above, Mikisew believes the overall approach to indicator selection and monitoring is problematic. As currently proposed, the pyramid structures in the BMF will preclude the meaningful monitoring and assessment of biodiversity as it relates to Mikisew's ability to exercise its Section 35 Rights and our culture.

The pyramid structure emphasizes monitoring of those indicators at Levels 1 and 2. Indicators of importance to key groups, including those related to rights to hunt, trap and fish, are to be included in Level 3, which will be subject to less rigorous monitoring and is not linked to threshold values. Mikisew does not agree with this structure and believes that elements of biodiversity that are integral to Mikisew's practice of traditional activities, Section 35 Rights and our culture should be monitored with the same frequency as Level 2 indicators in order to adequately reflect their constitutional significance.

We request that GoA work with Mikisew *now* to identify indicators that should be included in Level 2, rather than wait until some undetermined point in the future, or, worse, until the condition of the relevant indicators has further deteriorated.

Comments on Threshold Values

Mikisew is concerned that the BMF's proposed plan for establishing threshold values for indicators will fail to protect indicators relevant to Mikisew's Section 35 Rights and culture. This is a concern for two main reasons.

First, as noted above, threshold values will only be developed for indicators at levels 1 and 2, which does not include those of importance to Mikisew and have already been developed without our input. Since these thresholds are intended to be the triggers that represent warning signals in the system for decision-makers, excluding indicators important to Mikisew from the threshold system will, at best, result in delayed management responses when indicators related to Section 35 Rights are stressed or

compromised and more likely will exclude management responses specifically related to section 35 rights. We note that the Workshop Materials suggest that “for those indicators that do not have a threshold value, indicators will continue to be monitored for change. *Indicator decline may lead to a management response.*” To Mikisew, this signals that the BMF will not take a proactive approach to indicators relevant to Section 35 Rights and management responses may not occur until it is too late. Actions relating to impacts to our rights cannot be voluntary and ad hoc as proposed by Alberta.

Second, the threshold values are not designed to capture existing cumulative effects of industrial impact. It is proposed that threshold values will be *forward-looking* in so far as they are “not trying to replicate levels of biodiversity found prior to major human settlement.” While there was some mention in the workshop of the possibility of understanding historical trends, the focus of biodiversity management set out in the Workshop Materials is from “today into the future”. Mikisew cannot see how the BMF is to meaningfully monitor cumulative impacts to biodiversity indicators without comparing threshold values to pre-disturbance baseline conditions. We do not believe an understanding of biodiversity within the Lower Athabasca Region is possible without accounting for and understanding cumulative impacts from development. This approach assumes that the current level of biodiversity is acceptable, and, especially where impacts to biodiversity affect Section 35 Rights and culture, this is not the case as Alberta knows given the volumes and volumes of information Mikisew has provided to Alberta in the context of the development of LARP, in the context of numerous regulatory proceedings, in the context of consultation on government policy initiatives, in the context of public statements, in the context of meetings with Crown officials, among other places.

For example, in *Little Salmon*, the SCC made it clear that the effect of a decision could not be looked at in isolation, but had to be assessed in the context of existing developments which may have a detrimental impact on the ability of the First Nation in question to enjoy and exercise their rights:

Trapline #143 was registered to Johnny Sam, a member of the LSCFN. His trapline is in a category administered by the Yukon government, not the First Nation. It helps him to earn a livelihood as well as to provide a training ground for his grandchildren and other First Nation youth in the ways of trapping and living off the land. The trapline covers an area of approximately 21,435 hectares. As noted by the Court of Appeal, the 65 hectares applied for by Mr. Paulsen is approximately one-third of one percent of the trapline. A portion of the trapline had already been damaged by forest fire, which, in the LSCFN view, added to the significance of the loss of a further 65 hectares. The severity of the impact of land grants, whether taken individually or cumulatively, properly constituted an important element of the consultation with LARC and, ultimately, a relevant consideration to be taken into account by the Director in reaching his decision.¹

In *West Moberly*, the British Columbia Court of Appeal noted, in response to an argument that cumulative effects of past, present and future projects are outside of the scope of consultation, that it is

¹ *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103 at 21 [Emphasis added] [Little Salmon].

simply not possible to understand potential impacts of a proposed project without considering past, present and future developments:

I do not understand *Rio Tinto* to be authority for saying that when the “current decision under consideration” will have an adverse impact on a First Nations right, as in this case, that what has gone before is irrelevant. Here, the exploration and sampling projects will have an adverse impact on the petitioners’ treaty right, and the historical context is essential to a proper understanding of the seriousness of the potential impacts on the petitioners’ treaty right to hunt.

The amended permits authorized activity in an area of fragile caribou habitat. Caribou have been an important part of the petitioners’ ancestors’ way of life and cultural identity, and the petitioners’ people would like to preserve them. There remain only 11 animals in the Burnt Pine herd, but experts consider there to be at least the possibility of the herd’s restoration and rehabilitation. The petitioners’ people have done what they could on their own to preserve the herd, by banning their people from hunting caribou for the last 40 years.

To take those matters into consideration as within the scope of the duty to consult, is not to attempt the redress of past wrongs. Rather, it is simply to recognize an existing state of affairs, and to address the consequences of what may result from pursuit of the exploration programs.²

We highlight that similar concerns were noted by a recent joint review panel in the context of a recent environmental impacts assessment:

To conduct a proper cumulative effects assessment on current use of lands and resources for traditional (including cultural) purposes, the Proponent should have assessed how other developments could act cumulatively with Site C on fishing opportunities, hunting and trapping opportunities, and other current uses for traditional purposes, as opposed to assessing the effects on the resource itself.³

...Then, the Proponent should have looked at other projects and activities (past, existing, and future) that may have an impact on these preferred fishing locations. Finally, it should have determined how the effects of these projects and activities combined with the effects of Site C would change fishing opportunities for these Aboriginal groups in the RAA. The same method should have been applied for hunting and trapping opportunities. The Panel believes that the Proponent’s assessment does not provide a clear understanding of cumulative effects on current use as it does not provide information on how the practices and uses of the lands and resources in the RAA have been and would be impacted cumulatively.⁴

For Mikisew, between the Crown’s extensive taking up of lands for agricultural purposes and Crown’s uncoordinated and rapid approval of industrial activities within our traditional territory, the level of

² *West Moberly First Nations v British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247 at paras 117-119 [West Moberly].

³ Report of the Joint Review Panel, Site C Clean Energy Project BC Hydro (May 1, 2014) [JRP Report] at 120.

⁴ *JRP Report* at 120.

cumulative effects adversely impacting biodiversity and our ability to maintain its way of life are staggering – these existing impacts must be properly incorporated into the development of thresholds.

Failing to set threshold values in relation to a pre-disturbance baseline precludes any meaningful monitoring of impacts to general biodiversity indicators, and especially to those specific to Mikisew's Section 35 Rights and culture.

For Mikisew, it is most critical that biodiversity indicators relevant to the exercise of Section 35 Rights are selected and monitored in a manner that captures changes from a pre-industrial disturbance baseline and that prompts a timely management response when biodiversity thresholds relating to the exercise of rights are crossed. This cannot be achieved without addressing the concerns raised above. It also requires that Mikisew traditional knowledge be incorporated into threshold values as they are developed and, as will be discussed below, community involvement in monitoring and decisions regarding management responses.

Comments on Management Responses

Since the BMF's future management responses are triggered by the threshold values, the comments made in the above section are applicable to the proposed management responses.

Our primary concern about the management responses is that, as currently proposed, the threshold or trigger required to actually take mitigative management actions has no bearing on the conditions required for the exercise of our rights. Indeed, there is no mention of thresholds for indicators relevant to aboriginal or treaty rights or culture since these are excluded from levels 1 and 2. The overall management intent table is vague and unclear as to whether thresholds will require specific actions, or simply further research. Without monitoring these indicators or designating appropriate threshold values, it is difficult to see how the GoA will be able to take adequate management action in response to any indicator related to Section 35 Rights. It is important that these concerns are addressed as the management responses are developed.

Mikisew would like further information on the proposed management response structure, as it is generally unclear as to how stress on biodiversity indicators is categorized and at what point stress would warrant a mitigative action. In particular, it is important that a specific analysis for biodiversity indicators relevant to Section 35 Rights be considered and measures targeted at protecting those indicators are developed with Mikisew's input. It is apparent from the Workshop Materials that these issues have not been considered.

With respect to the suite of management tools currently being considered to form part of the BMF, Mikisew notes that it is important management responses do not over-reach such that they adversely impact the exercise of aboriginal and treaty rights in the Lower Athabasca Region. For example, a management proposal that on its face seeks to improve conservation by expanding an area that is closed to hunting, or by reducing access to a certain waterway, may have far-reaching consequences for hunting, fishing and related rights (although we note that LARP allows significant industrial development

to take place in conservation areas where hunting and other traditional practices are curtailed). This is why it is important that any proposed management responses be developed with Mikisew's input.

Mikisew believes that it must be involved throughout the monitoring process in order to ensure biodiversity impacts important to Mikisew are tracked. This would allow Mikisew to rely on and incorporate traditional knowledge in the protection of biodiversity within its territory and throughout the Lower Athabasca Region.

Suggested Alternative: TLRUMP

At this early stage in the development of the BMF, Mikisew does not have the resources to offer specific solutions to the issues we have flagged with the proposed BMF. While we are disappointed that the Workshop Materials do not properly consider what is necessary to sustain our Section 35 Rights and culture, we understand that this is a work-in-progress and look forward to continuing to contribute to this process. Mikisew intends to participate to the best of our ability in developing alternative indicators, thresholds and management responses that reflect our interests and rights.

With that in mind, we note that many of the concerns outlined above could be addressed by the completion of a TLRUMP. Mikisew, together with the Athabasca Chipewyan First Nation, provided the GoA with a proposal to develop a TLRUMP in September 2010, which we again attach here for your review.

In our view, the TLRUMP complements the BMF's proposed objectives and would ensure that the BMF, and decisions flowing from the BMF, adequately incorporates Mikisew traditional knowledge and meaningfully considers impacts to Mikisew's Section 35 Rights and our culture. Indeed, we note that the Joint Review Panel for the Shell Jackpine Mine Expansion Project noted the importance of incorporating indigenous knowledge and activities into frameworks under LARP. We would be pleased to discuss this proposal further.

Appendix B – Technical Review of Biodiversity Framework Workshop Materials

Memo

To: **Sebastien Fekete** File no: **I454**
(sebastien.fekete@mcfngir.ca)
From: Abbie Stewart (abbie.stewart@mSES.ca) cc: **Petr Komers**
Tel: (403) 241-8668
Date: **September 10, 2014**

Subject: Review of the Biodiversity Management Framework Workshop Material

I Introduction

The Mikisew Cree First Nation Government and Industry Relations (hereafter Mikisew Cree) have requested that Management and Solutions in Environmental Science (MSES) participate in the review process for the Lower Athabasca Region (LAR) Biodiversity Management Framework (BMF) which is one of several frameworks under the Lower Athabasca Regional Plan (LARP) for the management of cumulative effects. The Government of Alberta (GoA) presented their initial outline for the BMF in an August workshop and is currently requesting feedback on the workshop presentation material to potentially help guide the future development of the draft BMF. MSES reviewed the workshop material, including a BMF presentation (August 2014) and fact sheet (July 2014), to help develop the following high-level recommendations to the GoA on behalf of the Mikisew Cree. Our review considered the adequacy of the selected biodiversity indicators in meeting the BMF's and First Nation's objectives, assessed the proposed approach for developing and using thresholds, and assessed the proposed approach for monitoring and mitigative management actions. We also considered how the BMF incorporates First Nation traditional resources in the selection of the indicator species and whether the monitoring and management responses proposed will be scientifically rigorous enough to detect changes in biodiversity that could impact the Mikisew Cree's traditional resource use, livelihood, and culture.

2 Overarching Recommendations

The BMF discusses management approaches that the GoA believes contribute toward achieving biodiversity objectives with one of these being, existing and newly established, conservation areas. The GoA correctly acknowledges that managing the rate of disturbance is an action that can have considerable influence on biodiversity. What has not been clearly acknowledged is that conservation areas still undergo disturbance, albeit at a slower rate than unprotected areas. One participant of the August 19, 2014 LAR BMF Workshop¹ commented that "Many of the conservation areas created under LARP still allow for industrial operations and development. By allowing this development to take place, it limits the meaningfulness of a conservation area."

¹ Developing the Lower Athabasca Region Biodiversity Management Framework, Fort McMurray Aboriginal Engagement Session, Summary Notes from August 19, 2014 Workshop, Fort McMurray, Alberta (hosted by AESRD).

Recommendation:

The GoA needs to ensure that conservation areas continue to achieve biodiversity goals, whether this is through ongoing monitoring and adaptive management or through limitations to development practices.

Conservation areas are designed for multipurpose land use. Both LARP and the BMF are silent on how, specifically, traditional resource use, livelihood, and culture will be a part of conservation area planning. Clearly, several allowable uses, such as grazing, exploration, and forestry activities are not compatible with traditional land uses and values. While conservation areas mention traditional land uses as part of their management objectives, and while the definition of such objectives is unclear for conservation areas, the relationship between biodiversity objectives and traditional land use objectives for the region overall is even less clear. There is an urgent need to reconcile biodiversity objectives with traditional resource use, livelihood, and culture. The BMF presents multiple levels of planning but does not provide any guidance on how biodiversity indicators, goals, and thresholds will be reconciled with traditional values at any level. The overall goal of LARP is to strike a balance between economic, environmental, and social, including indigenous communities' goals. For that reason, the BMF cannot be a stand-alone planning tool; rather, it must be explicit as to how the balance between biodiversity goals and traditional values will be achieved. This must be done for all levels and scales of planning.

Recommendation:

The BMF must be explicit on how any given indicator relates to traditional land use with consideration of distribution, quality, and quantity of resources. For example, questions should be asked about how the four categories of indicators (Pyramid Approach, including species performance and habitat performance) indicate the performance of traditional resource use, livelihood, and culture. Performance indicators, in particular thresholds, must relate explicitly to both biodiversity and traditional values. For more clarity, the question must be asked about whether or not any given biodiversity performance indicator also indicates the performance of traditional values.

It is understood that the BMF is only a framework and that concrete definitions and actions will be determined at some later point in time. However, it is unclear when, where and by whom any given concrete action will take place. For example:

- When, where and by whom will outcomes and objective, and complementary and more detailed objectives (Figure 1 “*Illustration of Biodiversity Management Framework*” in presentation) be determined?
- When, where and by whom will thresholds be determined?
- When, where and by whom will the types of management responses be determined?
- When, where and by whom will the success of any mitigation action be determined?

Further to the flow chart in Figure 1 “*Illustration of Biodiversity Management Framework*”, there is a need, for any of the balloons in the chart, to provide milestones, schedules, and the parties involved. Without such information, it is not possible for the Mikisew Cree to monitor the progress and effectiveness of the BMF.

Recommendation:

The BMF must provide clear guidance on the milestones, schedules, and the parties involved in determining the concrete elements for any of the balloons (the steps and themes) in Figure 1 “*Illustration of Biodiversity Management Framework*”. Milestones must

be clearly defined and presented to the Mikisew Cree so as to facilitate the monitoring of the effectiveness of the BMF.

3 Specific Recommendations

The following recommendations are formatted to follow the discussion topics and questions outlined in the August 2014 presentation.

3.1 Indicators

3.1.1 Do you think the suite of level 1 and 2 indicators is representative of regional biodiversity and ecosystem function?

1) Issue: Measuring Indicators

Reference: Fact Sheet, p. 4

Concern: It appears that Level 1 and 2 indicators will be a single measure for the entire Lower Athabasca Region (LAR). The LAR contains a range in the degree of human development and, as such, any single measure for the region as a whole will necessarily be averaged across these varying degrees of development. There is concern that simply using an average measure may not be an accurate representation of regional biodiversity. Little detail is provided as to how or what measures of each indicator will be collected.

Recommendation:

- **We recommend that the GoA use a variety of measures to represent each indicator, including, but not necessarily limited to mean, median, mode, frequency, range, etc. Thresholds associated with each measure must also be provided in order to have a basis for evaluating the state of indicator and determining appropriate management responses.**

2) Issue: Indicator Pyramid Levels

Reference: Fact Sheet, p. 4

Concern: The utility of having a pyramid with multiple levels of biodiversity indicators is not clear; there is no linkage between the various levels of indicators and levels of management action. Moreover, there is no reasoning behind having established thresholds for Level 1 and 2 indicators, but not Level 3 indicators. The fact sheet indicates that “*Level 3 indicators may be moved into Level 2 as part of the adaptive management process*” (Fact Sheet, p. 4). If no thresholds or triggers are to be developed for Level 3 indicators, it is not clear how a management process, to move an indicator from a Level 3 to a Level 2, or a “*management response*” (Fact Sheet, p.4) would be triggered.

Recommendation:

- **We recommend that the GoA provide more detailed justification and explanation as to the utility of the different indicator levels.**
- **We recommend that distinction between the different indicator levels and the use of thresholds be explained in more detail.**
- **We recommend that management actions be explained in light of the multiple levels of indicators. Specifically, explain what type of management response or action would be taken at any given level, for any given indicator.**

3.1.2 How well is the rationale and definition explained for each indicator?

3) Issue: Indicator rationale and definition

Reference: Fact Sheet, p. 9-12

Concern: Terminology used to define and rationalize the proposed indicators needs to be clearly and concretely defined. Definitions are currently inadequate as they leave much room for interpretation.

Recommendation:

- Terrestrial Habitat – Total amount of terrestrial native land cover; Aquatic Habitat – Total amount of aquatic native land cover:
 - **The GoA should define native vs. non-native terrestrial and aquatic land cover.**
 - **The GoA should explain how ephemeral wetlands will be considered within the Aquatic Habitat indicator.**
- Terrestrial Habitat – Amount of old forest land cover:
 - **The GoA should define what is considered “sufficient” old growth forest remaining on the landscape.**
- Terrestrial Habitat – Amount of core habitat (total undisturbed connected habitat or patches):
 - **The GoA should explain under what scenario the different Zones of Influence will be applied.**
 - **The GoA should explain if core habitat will be calculated for multiple species (i.e., what is habitat?)**
- Terrestrial Species – Biodiversity intactness for terrestrial biodiversity; Aquatic Species – Biodiversity intactness for aquatic biodiversity:
 - **The GoA should define intactness and biodiversity groups.**
 - **The GoA should define disturbance.**
 - **The GoA should consider species assemblages that represent Mikisew Cree interests and concerns.**
- Terrestrial Species – Woodland caribou; Aquatic Species – Arctic Grayling:
 - **The GoA should explain how measuring a single species provides insight into biodiversity. How is a single species representative of all sensitive species or representative of overall biodiversity conditions?**
- Terrestrial Species – Non-native vascular (invasive) plant species:
 - **The GoA should explain why it has elected to measure non-native vascular species as opposed to the inverse, native vascular species, which are likely of more interest to Mikisew Cree community members.**
- Aquatic Species – Index of Fish Integrity:
 - **This indicator is designed to track fish species important to local people. The GoA should explain why a similar indicator(s) has not been proposed for terrestrial species.**

3.1.3 What would you include in Level 3 to ensure your interests are represented?

4) Issue: Development of Level 3 Indicators

Reference: N/A

Concern: The basis for the development of a suite of biodiversity indicators is an understanding of what key questions the Mikisew Cree have regarding biodiversity. A key question describes what the Mikisew Cree wants to know about biodiversity. This will define the purpose of the indicator. For example, one LAR BMF Workshop Participant suggested that “You need to look at hunting patterns and preferred areas of hunting and work these into the BMF to truly protect biodiversity from a First Nations and Treaty Rights perspective. If that cannot be an element of this we need to know now”. This provides useful insight into what is important to some First Nation community members and could be the foundation for developing First Nation relevant biodiversity indicators.

Recommendation:

- **We recommend that the GoA give the Mikisew Cree the opportunity to develop their own set of questions about biodiversity and the GoA use these to guide the development of specific biodiversity indicators. For example:**
 - **What is the status of traditionally harvested/trapped wildlife species?**
 - **What is the status of traditionally harvested medicinal plant species?**
 - **What is the status of aquatic furbearers?**

3.2 Thresholds

3.2.1 Do you support the proposed approach to defining/developing thresholds?

5) Issue: Approach to Identify Threshold Values

Reference: Fact Sheet, p. 6

Concern: On p. 6 of the Fact Sheet, it states “*The following describes the proposed approach to identify threshold values.*”

- *A baseline condition for each specific indicator is established. This may be determined, for example, through establishing a reference condition or establishing a natural range of variation.*
- *The indicators condition is monitored over time and compared to the threshold values*
- *If the condition of an indicator exceeds a threshold value, a management response will be initiated. For indicators that do not have a threshold value, indicators will continue to be monitored for changes. Indicator decline may lead to a management response.*
- *Threshold values are set in relation to changes from the baseline condition.”*

This is not an approach to identify threshold values, but rather describes a generic process of adaptive management. This does not adequately explain how threshold values will be set. Threshold values should be set without consideration of current baseline conditions. This is because current baseline conditions for some measurable parameters have likely already exceeded ecologically relevant thresholds. Some targets for recovery should exceed the current state (e.g. caribou populations should recover to levels higher than currently existing). This is corroborated by one LAR BMF Workshop Participant that stated “There are already indications that damage has been done. The period for early warning signs has already passed. First Nations have been providing information for years. Information needs to be integrated, not just considered.” And another who said “You need to look at pre-industry time for baseline, instead of looking at the condition of today.” It is understood that the BMF recognizes the importance of analyzing the changes that occurred in conditions over the past few decades (slide “*Understanding the Past to Help Manage the Future*”). However, the BMF does not recognize that some thresholds have already been surpassed for some indicators (such as occurred for woodland caribou, depicted under the terrestrial species indicators). For that reason, the BMF must serve in re-establishing biodiversity where biodiversity has already been harmed. Using current conditions as a benchmark is not

acceptable because the result would be the maintenance of the status quo, as opposed to the establishment and protection of biodiversity that is representative for the region.

Recommendation:

- **The GoA should define thresholds using ecologically relevant research and literature.**
- **The GoA should attempt to define pre-industrial disturbance conditions where ever possible for the final list of biodiversity indicators. The amount of change must be used to establish ecologically meaningful thresholds, whether they have been exceeded in the past or may be exceeded in the future.**
- **As for the potential for future exceedences, the BMF must be informed by the past rate of change which would indicate a trajectory of future change and help to prepare and prioritize management actions for impending threshold exceedences.**

3.2.2 What concerns you about the proposed threshold approach?

6) Issue: Threshold Approach

Reference: Fact Sheet, p. 6

Concern: On p. 6 of the Fact Sheet, it states “*For indicators that do not have a threshold value, indicators will continue to be monitored for change. Indicator decline may lead to a management response.*” The criteria for triggering a management response are too vague and potentially subjective. This is particularly worrisome for indicators that were not designated with a management threshold for either political reasons or for lack of consensus.

Recommendation:

- **The GoA must determine a trigger for any indicator. There is no reason why this would not be done. There are at least two general approaches to developing triggers:**
 - **A statistically-based trigger for a management response wherever possible. If it is not possible to determine a statistically measurable abrupt change in the trajectory for a particular indicator, a statistically significant change over time could be a trigger for a management response.**
 - **First Nation communities may determine what a threshold is in their view of resource use. Such triggers may reflect cultural and spiritual values. Exceedences may be measured either through western scientific approaches, or community based approaches, or both.**

3.2.3 What is missing from the proposed threshold concept?

7) Issue: Threshold Definition

Reference: Fact Sheet, p. 5

Concern: The Alberta Land and Stewardship Act defines threshold as “*a limit, target, trigger, range, measure, index, or unit of measurement*” (Fact Sheet, p. 5). This appears to be the definition adopted by the BMF. An alternative definition for threshold is “a point at which a resource changes to an

unacceptable condition, with acceptability defined either from an ecological or social perspective.”² This definition allows for the consideration of what the Mikisew Cree consider as acceptable change to a biodiversity indicator. LAR BMF Workshop Participant comments give some insight into some social thresholds:

“We need to protect the wildlife in order to sustain a traditional way of life. Population counts should be done of existing wildlife so that harvests can be sustainable and traditional ways of life can be maintained. There is not enough wildlife out there to sustain a traditional diet 365 days a year.”

"There are community members that will not hunt near the big mines around here; this is why including the hunting areas in the thresholds is important."

It is evident that there are thresholds that First Nations can qualitatively describe. Quantitative measures of biodiversity could be compared with social/cultural information from the Mikisew Cree to evaluate whether some socially-defined thresholds are being approached or have been surpassed.

Recommendation:

- **We recommend the GoA consider ecological and social information in the development of thresholds.**
- **We recommend that GoA use First Nation land and resource use surveys as a component of the biodiversity monitoring program.**

8) Issue: The Rate of Change

Reference: Fact Sheet, p. 5

Concern: The fact sheet states that “*Triggers represent warning signals in the system for decision-makers and for those with activities on the land.*” We do not agree with this understanding of “*Trigger*”. This is because a trigger requires (triggers) an action. As such it is not a warning; rather, it is a call to action. A true warning is a signal that indicates the impending realization of a trigger. For that purpose, the rate of change must be known and the trajectory of change calculated so as to inform decisions about when any given management action might be triggered. A rate of change in the condition of indicators will help to prioritize and to schedule management actions.

Recommendation:

- **We recommend that past and current rates of change in any given indicator be calculated. The trajectories of change, then, should be compared to the triggers (or thresholds). The time remaining to reaching any given trigger should be calculated.**

3.3 Monitoring and Management Response

3.3.1 Please comment on the proposed approach to monitoring and reporting. What role might you/your organization have in supporting monitoring and reporting?

9) Issue: Management Intent

² Salmo Consulting Ltd. Diversified Environmental Services. GAIA Consultants Inc. Forem Technologies Ltd. and AXS Environmental Consulting Ltd. 2003. CEAMF Study Volume 2 Cumulative Effects Indicators, Thresholds and Case Studies. The BC Oil and Gas Commission and The Muskwa Kechika Advisory Board. 83 pp.

Reference: Fact Sheet, Figure I “*Management Response*” and Figure I “*Illustration of Biodiversity Management Framework*”

Concern: The BMF is silent on how the Mikisew Cree will be involved not only in monitoring and reporting, but in the entire process. The recommendations above already highlighted the need for input from the Mikisew Cree throughout the process. Here, we highlight the need for a defined communication protocol that would give the Mikisew Cree a meaningful say in the BMF. This is necessary because the BMF must be informed and its success determined by the Mikisew Cree vision of resource use.

Recommendation:

- **We recommend that a communications protocol be developed to clearly describe a meaningful role of the Mikisew Cree involvement. For tasks relating to monitoring and reporting, the Mikisew Cree must not just be informed by the content of monitoring reports, they must have a meaningful avenue for feedback; particularly related to decisions about actions regarding impending triggers.**

3.3.2 Please comment on the Management Responses process.

10) Issue: Management Intent

Reference: Fact Sheet, Table I

Concern: This table describes management intent as it changes over 4 levels. The level of management intent is dependent on the level of stress on biodiversity indicators. Currently, the level of stress is qualitatively defined with terms such as “*acceptable levels*”, “*some concern*”, “*significant concern*”, and “*at risk*”.

Recommendation:

- **We recommend the GoA clearly define the terminology used to define different levels of management intent.**

3.3.3 Please comment on the suite of key approaches outlined for Proactive Management Actions and what you would add.

11) Issue: Proactive Management Actions

Reference: Fact Sheet, Figure I “*Illustration of Biodiversity Management Framework*”

Concern: The proactive management actions appear to be well intended, but the list here is too general and too vague to specifically comment on. Overall, these actions appear to lack a measure of success. There is currently no way for the Mikisew Cree to evaluate how successful or effective any given action is. It appears that most, if not all, actions are still faced with increasing degradation of biodiversity in spite of these actions being taken. Is success measured in terms of minimizing degradation of the environment or is it measured in terms of achieving an improvement in any potential indicator (whatever this may be at the end)?

Recommendation:

- **We recommend the GoA clearly define the measure of success and effectiveness of any given proactive management action.**

4 Conclusion

Recommendations have been made to the GoA based on the information presented in the LAR BMF Workshop presentation and BMF Fact Sheet. Understanding how these recommendations have been incorporated into the BMF would assist the Mikisew Cree in gauging how their input has been meaningfully considered and whether plans to manage biodiversity will meet their needs and expectations. We hope that future communications will lead to further clarification on details of the BMF.

MCFN Information Requests

Set out below in question form are a number of submissions which MCFN has made throughout the LARP process. It is unclear whether Alberta considered these submissions and/or how Alberta incorporated them into the Draft Plan. Incorporation of these submissions is essential for ensuring that the Draft Plan respects and accommodates MCFN's ability to meaningfully exercise its constitutionally-protected rights now and into the future in the region.

We would appreciate knowing how Alberta has responded to each of the following submissions and how Alberta has incorporated the submissions listed below in the Draft Plan. Where Alberta is of the view that the submission is incorporated in the Draft Plan, could you please also indicate where MCFN can find that material the Draft Plan. Where Alberta has not responded or has declined to incorporate the submission in the Draft Plan, please explain why. MCFN is happy to meet with Alberta to discuss these issues.

MCFN Submission	How MCFN's submission is incorporated or reflected in the Draft Plan	Location of response	Alberta's reason(s) for declining to respond to or incorporate MCFN's submission
CONSULTATION ON LARP			
How did Alberta consider and integrate the consultation proposals submitted by MCFN in consulting and accommodating regarding LARP?			
How were land designations in the Draft Plan determined through consultation with MCFN?			
GENERAL INFORMATION REQUIREMENTS			
How does the Draft Plan establish and adequately fund information collection activities to inform land-use planning, including development of a MCFN Traditional Lands and Resource Use Management Plan?			
How does the Draft Plan require the collection of sufficient data before setting frameworks, particularly in cases where there are identified data gaps (e.g., water quality at Firebag,			

<p>variability at Muskeg River, lack of data for unmonitored elements, temporal resolution, exceedence effects, baseline data for water quality, data on groundwater quality)? In cases where data is missing or uncertain, how does the Draft Plan ensure that land use planning will respect and accommodate the exercise of MCFN's section 35 rights?</p>			
<p>Serious impacts to MCFN's rights have already been experienced by MCFN members as a result of industrial development, government policies, increased population in the region, and other sources.</p> <p>How does the Draft Plan take into account the existing industrial development and disturbance levels within MCFN's traditional territories and the adverse affect it has already had on MCFN's ability to exercise its rights and various environmental indicators?</p>			
<p>How does the Draft Plan take into account the impacts of the grants and tenures throughout MCFN's traditional territories on its ability to exercise its rights?</p>			
<p>Was a full cumulative effects analysis conducted by Alberta to assess impacts to MCFN from oil sands mining and exploration as requested by MCFN? If this was conducted, how was it incorporated in the Draft Plan?</p>			
<p>How does the Draft Plan take into account the cumulative effects and disturbance level analyses contained in MCFN's submissions to Alberta regarding LARP, including, inter alia, MCFN's November 11, 2010 LARP submission, MCFN's materials submitted from the Joslyn North hearing (such as expert reports and witness statements), and MCFN's TEMF review, among others?</p>			

<p>Please describe how MCFN's TEK, including evidence of observed changes, was collected and incorporated in the Draft Plan?</p>			
<p>Please describe how the Draft Plan incorporates the Aboriginal perspective of what is necessary for the meaningful practice of the First Nations' rights.</p>			
<p>How did Alberta consider and incorporate MCFN's evidence regarding the importance of big game and other species for the exercise of their rights when Alberta designated land use areas?</p>			
<p>How did Alberta consider and incorporate the evidence of MCFN land, water, and ice travel routes in the Draft Plan?</p>			
<p>MCFN sent Alberta links to the materials MCFN submitted in connection with the ERCB hearing regarding the Joslyn North Mine so that Alberta would better understand what information was necessary to assess impacts of land-use planning to MCFN's rights:</p> <p>How does the Draft Plan incorporate the following:</p> <ul style="list-style-type: none"> • the need to study MCFN's cultural and traditional land use and to model and assess the impacts of planning assumptions on traditional land use tipping points • the need to identify possible thresholds, and the effects of crossing those thresholds, on traditional use • the socio-economic and cultural impacts that have already been imposed on MCFN in the region • the need to develop appropriate land-use mechanisms, such as timing restraints and access management, in the region 			

<p>How did Alberta consider and incorporate the following information from MCFN's Joslyn North submissions</p> <ul style="list-style-type: none"> • Evidence of how oil sands developments adversely affect the exercise of section 35 rights • Evidence of how the increase in recreational users in the region adversely affects the exercise of section 35 rights • Evidence of how oil sands projects have direct, indirect and cumulative impacts on section 35 rights • Evidence of how the quantity of land already taken up for industrial purposes in the region already constitutes an infringement of MCFN's rights • Evidence from MCFN members, including transcripts and witness statements, regarding current use patterns, current difficulties in exercising their rights because of industrial and other disturbances, current difficulties in maintaining cultural continuity because of industrial and other disturbances • Detailed evidence from MCFN members, including transcripts and witness statements, describing the environmental and geographic requirements for the meaningful exercise of their rights 			
<p>How did the Draft Plan incorporate answers to the questions in MCFN's October 2008 submission regarding the LUF?</p>			
<p>Please describe how Alberta incorporated the materials submitted by MCFN in the LARP process in their totality.</p> <ul style="list-style-type: none"> • If only certain information or submissions were considered and incorporated, please specify which submissions and materials those were. • If Alberta identified gaps in MCFN's submissions, please specify what it identified and how/when Alberta conveyed this information to MCFN. 			

LAND-USE PLANNING APPROACH			
How has the need to ensure the meaningful exercise of MCFN’s section 35 rights now and in the future been incorporated as a purpose of land planning?			
How does the Draft Plan identify and protect the lands and resources that MCFN requires to sustain itself now and in the future? How was information regarding the lands and resources required to sustain MCFN collected?			
Treaty 8 must be a foundation of the Vision for LARP. How does the Vision Statement in the Draft Plan reflect the constitutional requirement to protect section 35 rights? How does the Vision Statement promote outcomes and strategies that adequately protect and accommodate section 35?			
How does the LARP planning process in the Draft Plan take the connectivity of ecosystems in the region into consideration when designating use areas and establishing frameworks?			
How does the Draft Plan avoid a planning process that takes a site- and use-specific approach, rather than an ecosystem approach? If the Draft Plan uses a site- and use-specific approach, please describe how the Draft Plan appropriately considers the impacts of development on or the function of traditional land use?			
Please describe how First Nations’ land uses for traditional livelihood and cultural purposes are treated as a “land use”, just as conservation, recreational, agricultural and oil sands developments are “land uses” in Draft Plan.			
How does the Draft Plan require that when a planning decision adversely impacts section 35 rights an immediate			

<p>“management response” is triggered, the impact is a “driver” for required change (e.g. such as establishing offsets), or land-use decisions can be rescinded or amended?</p>			
<p>How does the Draft Plan create a land-use planning process that can require different scales and paces of bitumen developments in the region, depending on existing and future impacts to section 35 rights?</p>			
<p>How does the Draft Plan employ a planning approach that requires linear disturbances to be prevented and eliminated? Similarly, how does the Draft Plan ensure that contiguous habitats are protected?</p>			
<p>How does the Draft Plan use a planning approach that ensures that there is no net loss of wetland functions?</p>			
<p>How does the Draft Plan ensure that conservation areas are connected by, among other measure, comprehensive river buffers and protected ecosystems?</p>			
<p>How does the Draft Plan require that land-use decision made in the context of project-specific regulatory review processes are made in a way that protects and accommodates the exercise of section 35 rights?</p>			
<p>How does the Draft Plan require that Traditional Land and Resource Use requirements of MCFN are understood before land-use decisions are made? In particular, how does the Draft Plan require decision-makers to conduct or review the following before making land-use decision:</p> <ul style="list-style-type: none"> • comprehensive cultural and social impact assessments for aboriginal peoples; • a comprehensive cumulative impact assessment of livelihood rights for aboriginal peoples; 			

<ul style="list-style-type: none"> • traditional land, resource-use and management plans; • co-management systems to control the pace and scale of development; • aboriginal representation on regulatory decision-making boards 			
MEANINGFUL PRACTICE OF RIGHTS			
<p>How does the Draft Plan ensure that MCFN has sufficient lands and resources for the exercise of their rights? In this regard,</p> <ul style="list-style-type: none"> • How does the Draft Plan use a definition of “sufficient” that refers not only to quantity but quality, but uses the perspective of what is required to fulfill subsistence requirements and cultural needs of the First Nation now and into the future? • How does the Draft Plan use a definition of “sufficient” that encompasses a suite of interconnected tangible and intangible resources that underlie the meaningful practice of practice of rights? These “resources” include, but are not limited to: routes of access and transportation; water quality and quantity; healthy populations of game in preferred harvesting areas; cultural and spiritual relationships with the land; abundant berry crops in preferred harvesting areas; traditional medicines in preferred harvesting areas; the experience of remoteness and solitude on the land; feelings of safety and security; lands and resources accessible within constraints of time and cost; sociocultural institutions for sharing and reciprocity; spiritual sites; etc. 			
<p>How did Alberta consider and incorporate the land qualities used by MCFN members when selecting land for hunting purposes when designated conservation, recreation and mixed</p>			

use zones? In particular, how did Alberta consider and incorporate MCFN's definition of suitable hunting, fishing, gathering and trapping terrain when designating lands?			
What quantitative and qualitative information on current and historical uses of lands for hunting, fishing, trapping, gathering plants and medicines, spiritual and cultural uses, and traditional economic pursuits was incorporated into the Draft Report to ensure that the LARP would result in planning decisions that respect and accommodate section 35 rights?			
How does the Draft Report incorporate the information that would have been collected through the TLRUMP process?			
How does the Draft Plan provide concrete means for how the rights and livelihoods of Aboriginal peoples will be ensured into the future?			
In designating the land-use areas in the Draft Plan, how does the Draft Plan recognize that MCFN's traditional land use has changed over time and how does the Draft Plan take into account that some areas are now used more intensively?			
How does the network of protected areas designated in the Draft Plan take into account the culturally significant and sensitive areas that are integral to the long term ability of MCFN to meaningfully practice their traditional pursuits?			
How does the Draft Plan accommodate any loss of use of areas outside of conservation areas in planning area?			
How does the Draft Plan ensure that the exercise of MCFN's section 35 rights is protected and accommodated in mixed use areas?			

<p>How does the Draft Plan clarify and revise the regulatory scheme regarding access management, conservation areas and mixed use so that the exercise of MCFN's section 35 rights is protected and accommodated in the LARP area? In this regard, how does the Draft Plan establish regulatory backstops to ensure that section 35 rights can be practiced in the LARP area?</p>			
<p>How does the Draft Plan ensure that MCFN members have priority access to sufficient quantity and quality of tangible and intangible resources that underlie the meaningful practice of rights?</p>			
<p>MCFN submitted that a 5km buffer along the Athabasca River is required as part of protecting the meaningful exercise of MCFN's rights. How did Alberta consider and incorporate in the Draft Plan the need for a 5km buffer along the Athabasca River?</p>			
<p>MCFN submitted that a buffer that takes into account TLU features, intact forests, ungulate populations, waterways and other factors within and around the Peace-Athabasca Delta is required as part of protecting the meaningful exercise of MCFN's rights. How did Alberta consider the need for a buffer which takes in the areas of importance to MCFN within and around the Peace-Athabasca Delta?</p>			
<p>MCFN submitted that industrial impacts on all remaining intact landscapes must be eliminated or limited as part of protecting the meaningful exercise of MCFN's rights. How did Alberta consider the need to limit or eliminate industrial impacts on all remaining intact landscapes in the LARP region?</p>			
<p>How does LARP ensure adequate protection for large tracts of</p>			

habitat suitable for moose, bison and woodland caribou that are vital for the meaningful exercise of section 35 rights?			
How did Alberta incorporate MCFN's submission that a buffer one kilometre wide on each side of category 1, 2 and 3 streams throughout MCFN traditional use territory and a buffer one kilometre wide around all lakes are needed?			
How did Alberta incorporate and accommodate the almost 24,000 land and resource use sites and features identified by MCFN? Did Alberta conduct its own statistical and distributional analysis on the MCFN TLU data points? If so, did Alberta identify different factors than MCFN regarding the factors that MCFN members take into account in their definition of terrain favourable for the exercise of their rights and how did Alberta provide feedback to MCFN and incorporate the factors into the LARP?			
How did Alberta determine that leaving 70% of MCFN's TLU sites outside of proposed protected areas was sufficient to ensure the protection of MCFN's rights?			
How did Alberta determine that leaving 86% of MCFN's travel routes outside of proposed protected areas was sufficient to ensure the protection of MCFN's rights?			
The Draft Plan does not designate the Athabasca River as a conservation area, despite numerous submissions regarding the importance of that River, among others, to MCFN's culture and to the exercise of its section 35 rights. Specifically, the Athabasca River is a vital transportation corridor that gives ACFN and MCFN access to a large part of their traditional territories and harvesting sites. The Draft Plan does not			

designate any waterways as conservation areas. Please explain how the Draft Plan adequately protects the exercise of MCFN's section 35 rights on the River and how it adequately protects the exercise of MCFN's rights that depend on the quality and quantity of water in the Athabasca.			
FRAMEWORKS			
How does the Draft Plan include current and future of aboriginal and treaty rights in the frameworks? Please describe how rights-based thresholds are incorporated in the Draft Plan.			
How was MCFN meaningfully involved in establishing local and regional thresholds, triggers and benchmarks for air and water quality, wildlife/wildlife habitat, fish, plants?			
Please describe how the thresholds and frameworks: <ol style="list-style-type: none"> 1. Established objectives that meaningfully and properly take Treaty and Aboriginal rights into account; 2. Determined and established culturally appropriate thresholds for sociocultural and ecological indicators; 3. Identified priority areas and issues for protection and integration into protected areas networks; 4. Provided a basis for cumulative effects assessment on treaty and aboriginal rights 			
Please describe how the frameworks are based on a pre-disturbance baseline concerning the First Nations' use of lands and resources (i.e., 1965). If Alberta only considered "post disturbance" baseline information, please describe how this adequately relates to ensuring the practice of section 35 rights.			
How does the Draft Plan consider the land disturbance levels in relation to what is necessary to sustain ecological integrity			

and to sustain section 35 rights?			
Please describe how the need for a terrestrial ecosystem management framework was incorporated in the Draft Plan.			
<p>The First Nations' Phase 2 Framework Committee report, jointly submitted by the First Nations in July 2010, raises a number of issues and concerns that should have been included in the Draft Plan. In particular, how does the Draft Plan:</p> <ol style="list-style-type: none"> 1. Take the importance of the Athabasca River to the First Nations into account 2. Consider and set the criteria, thresholds and measures that support the meaningful exercise of rights along the river 3. Set frameworks that reflect that the First Nations' rights in the region have already been affected because of water issues 4. Consider and implement the Aboriginal Base Flow (ABF), Aboriginal Extreme Flow (AXF) and Ecosystem Base Flow thresholds (EBF) 5. Consider and implement precautionary thresholds for use in adjudicating future water licence applications 6. Require Alberta to work with First Nations to develop additional thresholds, criteria and measures to assess potential impacts on Treaty and rights using a traditional resource use plan model 7. Require additional studies and other steps to address the scientific and knowledge gaps to determine the appropriate instream flow needs, including the EBF, ABF and AXF, before implementing the LARP? 8. Consider delaying the regional plan until these scientific and knowledge gaps had been identified? 9. Establish an appropriate framework for joint decision making regarding water management once a Phase 2 			

<p>framework is in place?</p> <ol style="list-style-type: none"> 10. Require a TRLUMP consisting of a comprehensive regional planning level study of aboriginal knowledge, use, Treaty and aboriginal rights related to the Athabasca River and adjoining watersheds 11. Require a regional cumulative effects assessment on the aboriginal and treaty rights of the first nations 12. Requiring that frameworks include an adaptive management plan that addresses the actual degree of scientific uncertainty? 			
<p>The First Nations' As Long as the Rivers Flow report, jointly submitted by the First Nations in July 2010, raises a number of issues and concerns that need to be included in the Draft Plan. In particular, how do the frameworks in the Draft Plan:</p> <ol style="list-style-type: none"> 1. Incorporate the information regarding the First Nations' preferred modes of practicing their section 35 rights 2. Incorporate the information on knowledge and use of the Athabasca River which shows how water quality and quantity have changed over time 3. Ensure that rights-based thresholds are implemented 4. Ensure that thresholds and triggers are set at levels that protect what is necessary for the full practice of section 35 rights on the river, in the delta and along adjoining tributaries 5. Incorporate the ABF, AXF framework information and rationale 6. Require rights-based cumulative effects thresholds for the tangible and intangible factors that underlie the exercise of section 35 rights 7. Include First Nations in water management? 			
<p>How is traditional ecological knowledge included in the</p>			

frameworks?			
How do the frameworks address the declining indicators of ecosystem integrity in the region that adversely affects the exercise of section 35 rights?			
How does the Draft Plan require decision-makers to work collaboratively with MCFN to establish, and provide adequate funding for, an MCFN community based monitoring and enforcement program? This program would collect data, and regularly review and report on rights-based performance indicators. The intent of this monitoring would be early identification of, and response to, changes that (a) may affect the use and access of MCFN members within cultural protection areas and (b) may affect wide ranging species relied upon for cultural use.			
CO-MANAGEMENT & ACCESS MANAGEMENT			
How does the Draft Plan adequately protect MCFN's access rights?			
How does the Draft Plan require the establishment of co-management boards, or other cooperative land and resource management arrangements, guided by the principles of shared decision-making and joint stewardship for lands and resources of critical importance to the continued practice of rights?			
How does the Draft Plan include MCFN in shared watershed planning and cumulative effects management?			
How does the Draft Plan require the meaningful involvement of aboriginal peoples in scoping, terms of reference and throughout the process to assess infrastructure, social and economic implications of major projects?			



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Ft. McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5

September 20, 2010

Alberta Environment
Environmental Stewardship
Environmental Relations
111 Twin Atria Building
4999 – 98 Avenue
Edmonton, AB T6B 2X3

Attention: Alvaro Loyola, Senior Advisor, Aboriginal Relations

Canadian Environmental Assessment Agency
61 Airport Road NW
Edmonton, AB T5G 0W6

Attention: Sheila Risbud, Aboriginal Affairs

Dear Mr. Loyola and Ms. Risbud:

Re: Proposal to Develop Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN) Traditional Land and Resource Use Management Plans (TLRUMP)

We are pleased to submit our proposal to develop TLRUMP for our First Nations. The TLRUMP concept builds on the Traditional Resource Use Plan concept that was tabled with Alberta in submission on the Land Use Framework, Lower Athabasca Regional Plan, and in respect to various regulatory applications (namely Shell's Jackpine Mine and Pierre River Mine projects, and Total's Joslyn North project). Our joint proposal provides further detail on the rationale for TLRUMPs and our estimate of the time and resources required to develop a TLRUMP. We look forward to a positive response from your departments. We would be happy to discuss this proposal with you and answer any questions that you might have.

Sincerely,

(original signed)

Lisa King
ACFN IRC, Director

(original signed)

Melody Lepine
MCFN GIR Director

cc: ACFN Chief and Council
MCFN Chief and Council
Dave Bartesko, Land Use Secretariat



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Ft. McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5

Proposal to Develop Athabasca Chipewyan First Nation and Mikisew Cree First Nation Traditional Land and Resources Use Management Plans (TLRUMP)

Submitted to:

Alvaro Loyola, Alberta Environment

Sheila Risbud, Canadian Environmental Assessment Agency

Submitted by:

Lisa King, Athabasca Chipewyan First Nation Industry Relations Corporation

Melody Lepine, Mikisew Cree First Nation Government and Industry Relations

September 20, 2010

1. Introduction

The Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN) are proposing to each individually develop Traditional Land and Resource Use Management Plans (TLRUMP). A TLRUMP would provide information necessary to understand the land and resource uses, interests and rights of the First Nations in Provincial and Federal land and resource management planning, decision-making and consultation processes.

This concept was first first provided to the Government of Alberta (Alberta Sustainable Resources Development) as a “Traditional Resource Use Plan” in the October 31, 2008 joint submission of MCFN and Chipewyan Prairie Dene First Nation (CPFN) on the Land Use Framework. In a letter to Alberta Environment and Shell Canada on December 18, 2009, ACFN asked whether the parties were prepared to work with and fund ACFN, prior to any project approvals on the Jackpine Mine Expansion and Pierre Rive Mine projects, on developing a TLRUMP in order to determine the resources on which ACFN relies to exercise their rights. Subsequent to that letter, Alberta Environment requested more information on the TLRUMP concept, and ACFN provided a brief proposal as an appendix to a letter dated February 1, 2010 to Alberta Environment and Shell Canada.

AENV and CEAA have requested a more detailed proposal from ACFN and MCFN. This proposal for a TLRUMP includes the following:

- Study Purpose and Objectives
- Study Rationale
- Study Methodology
- Study Work plan
- Summary of TLRUMP Deliverables
- Timelines and budget

ACFN and MCFN are presenting this proposal to AENV, CEAA, and potential Industry funders.

2. Study Purpose and Objectives

The purpose of the Traditional Resource Use Plan is to provide scientifically credible and culturally appropriate information on the land and resource requirements of ACFN and MCFN for the meaningful exercise of Treaty 8 rights now and into the future. Specific objectives of the TLRUMP study are to:

- Create an appropriate, culture-group specific vision for what constitutes the conditions for the meaningful practice of Treaty 8 rights currently and into the future;
- Identify the Valued Components (“resources or conditions”), tangible and intangible, that are central to the Aboriginal and Treaty Rights (“rights”) of the First Nations;
- Identify criteria and culturally appropriate indicators that can be used to measure the First Nations’ ability to practice these rights;

- Examine the current nature and extent of the Valued Components in the First Nations' Traditional Lands, and a historical baseline of these components;
- Identify the current and likely pressures, including but not limited to industrial development on the Valued Components;
- Predict the likely future nature and extent of the Valued Components in the First Nations' Traditional Lands;
- Identify broad land and resource management strategies, as well as possible mitigation tools, that can support and improve the continued meaningful exercise of Treaty 8 rights (e.g., key protected or conservation areas; hunting restrictions; setbacks; timing windows; among others);
- Integrate the information into appropriate information and management tool formats (e.g., GIS; planning documents; management objectives for particular use areas or districts; community based monitoring and adaptive management strategies) for use in resource and land use planning, decision-making and consultation processes;

Developing the TLRUMP will require in-depth community consultation, rigorous socio-economic research, and tools for managing, analyzing, and communicating this information as explained in the methods section of this proposal.

3. Study Rationale

Current land and resource use planning and decision-making (including regulatory EA processes) in Alberta do not analyze adequately the direct, indirect and cumulative impacts of development and land use on First Nations land and resource use, Aboriginal and treaty rights and interests. Project-specific approaches to environmental assessment, especially in absence of an appropriate cumulative effects management framework, do not yield a comprehensive understanding of impact to the First Nations. These gaps are compounded by a lack of capacity in First Nations communities to bring forward credible and relevant information to these processes in a timely fashion. The result is often errors in decision-making, misunderstandings, and conflicts due to inadequate information. This is particularly troublesome in the Lower Athabasca Region given the sheer number of operating, proposed and potential oil sands development in the Traditional Lands of the two First Nations.

A TLRUMP is meant to be a tool facilitating more timely and effective integration of ACFN and MCFN information and interests into decision making and planning processes. This will result in greater capacity for each First Nation to provide critical inputs of information at all stages of the EIA/regulatory process, allowing EIA and consultation to proceed substantively at the same time, and establishing earlier in the process how Aboriginal and treaty rights may be impacted. Meaningful and adequate accommodation measures can then be built into the EIA mitigation process. The coherent TLRUMP and supporting studies are expected to increase the First Nations-specific data consistency, timeliness and availability for proponents.

Developing a TLRUMP would have benefits for Crown consultation, land and resource use planning, environmental impact assessment, regulatory stages of approvals, cumulative effects monitoring and management, and other elements of decision-making. Benefits include:

- Timely data that is accessible by project for government and proponents;
- Data consistency;
- A streamlined consultation process; and
- Increased capacity for ACFN and MCFN.

4. Study Methodology

Geographic scope of study

The studies will be limited to impacts on traditional use and practices within ACFN and MCFN traditional lands, as well as mobile resources (e.g., water, air, wildlife) that seasonally reside within or travel through traditional lands that may be impacted by activities outside those lands.

Temporal scope of study

A principle of good EIA practice is that the baseline conditions wherever possible should be those conditions that were present prior to industrial development occurring (in this case, around 1965), or where that data is not available or sparse, an examination of trends in conditions over time somewhere in between “pre-development” and the “present case” should be used. This study will ground the framework as far back in time as possible. Where data gaps are evident and assertions of change are uncertain, these will be identified and noted as limitations of the analysis.

Issues scope

The focus of the TLRUMP differs from that of many other impact assessment studies by focusing on the intersection of impacts on rights and impacts on resources.

The First Nations maintain that each have Treaty and Aboriginal rights protected by section 35 of the *Constitution Act, 1982*. For the purposes of the study, Treaty rights include hunting, fishing, trapping and gathering. This includes incidental rights that support the meaningful practice of the treaty right, including sufficient quality and quantity of required traditional resources within traditional lands. For example, the right to hunt can only be meaningfully practiced when there is adequate amounts of *healthy game* (e.g., within the range of natural variation for the species; healthy as evaluated from the perspective of the harvester) within areas that are accessible to harvesters.

Identification of First Nations-specific limits of acceptable change for key “rights-based resources” is thus central to both EIA and Crown s.35 consultation.

In addition, the practice of these rights may be influenced by a variety of other factors related to environmental impact concerns, such as a lack of faith in the health associated with consuming country foods. Thus, while these underlying Treaty and Aboriginal rights and the resources required to

meaningfully practice these rights are at the foundation of the proposed TLRUMP, the First Nations will take a broader perspective on what the exercise of those rights mean in terms of social, economic, and cultural health and well-being of each First Nation. A community vision concerning the relationship between the land and the people (including health, well-being and culture) is required in order to define this broader perspective. The community vision will provide the basis for an assessment framework for linking impacts to traditional resources to impacts to culture, community health and well-being.

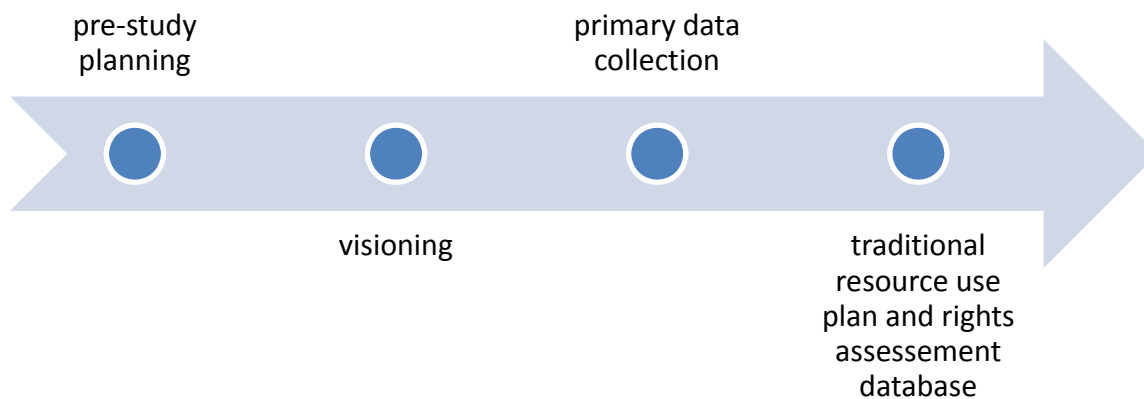
Project capacity and staff

A committee from each Nation will be formed to provide input into key research stages, to work closely with the interdisciplinary research team to understand the key issues of concern, to advise on liaising with the remainder of the community and on the selection of participants for workshops, interviews (and fieldwork).

We anticipate that an interdisciplinary research team consisting of people with social science, landscape ecology, GIS mapping expertise, traditional use practitioners, ecology, land and resource planning and project management expertise would be key to successful completion of the TLRUMP

5. Study Work Plan

The First Nations propose a four phase Work Plan for this study proceeding from high-level planning and visioning, through detailed data collection, to the production of tools and deliverables.



Phase 1: Pre-Study Planning

In this phase, we will build the project team, hold government to government meetings, agree on project methodology, set up data management and communications protocols, define research protocols (e.g., Traditional Knowledge or Ethics Protocols) and finalize the study scope.

Phase 2: Visioning

Phase 2 focuses on developing a community vision for the Traditional Land Use Plan. Sessions in Fort Chipewyan, Fort McMurray, Fort Smith and Edmonton will focus on culture and well-being in relation to traditional resources. For example, what vision do people have for continuing their way of life? What are the key practices, resources and relationships needed for health and well-being to be maintained? The vision that is identified through these sessions will be used to identify the first draft of the core valued components for the TLRUMP.

A research and gaps analysis exercise will be done to surface any existing knowledge and data related to these valued components, the result of which will be a State of Knowledge report. Sources will include:

- Collection and analysis of existing secondary data from environmental assessments. This will involve drawing together all existing completed environmental assessment reports on operating and proposed developments in the region. Analysis of the reports will focus on the core areas of focus, such as traditional use, food security issues, culture and social and economic impacts, with reports and data mainly from consulting companies hired by the oil sands producers.
- Collection and analysis of existing secondary data from internal community sources. This will involve drawing together all the data that has been collected in the past by consultants.

Full-day workshops, open to all First Nation community members, are then envisioned again in Fort Chipewyan, Fort McMurray, Fort Smith and Edmonton. The Project Team will provide short presentations about the valued components, criteria and indicators that have emerged through the vision sessions, and the “State of Knowledge” report.

Community members can provide input on whether these are the culturally relevant and accepted valued components to understand the present and trends in the health of the environment and the associated ability to exercise land-based Aboriginal and Treaty rights. They will then be asked to suggest management objectives and planning tools (e.g., zoning, restricted areas, among others) for each valued component.

These visioning sessions will allow community members to provide input on the accuracy of the State of Knowledge report, to review proposed study scopes, parameters, and methods, and to identify any additional work being conducted (or already completed) by any other stakeholders in the region (e.g., developers, AENV, and CEMA).

The key goal of this phase will be to build a preliminary model for the TLRUMP, to be tested and validated in the next phase.

Phase Three: Primary data collection and analysis

Data will be gathered on selected valued components, criteria and indicators related to the TLRUMP. This will include surveys, interviews, focus groups, TUS and TEK inputs, mapping and modelling exercises. The focus of this work will be to establish the conditions needed for the practice of rights, and gather the data on all the key valued components that were identified in earlier phases.

The focus of the interviews, focus groups and research in this stage will be to establish the geographic scale for resources for practicing rights, the required condition of the resources, and the future strategies that might need to be implemented to protect rights. Research in this phase will:

- Identify why the protection of resources is culturally important to both First Nations, including ACFN and MCFN defined concepts of environmental stewardship;
- Identify what pressures (e.g., road access and habitat fragmentation) have been threats to the meaningful practice of Treaty 8 rights;
- Identify what resources are integral to the meaningful practice of Treaty 8 rights;;
- Integrate the information into an appropriate management tool format (e.g., GIS; planning documents) for use by decision-makers;
- Determine the socio-cultural, ecological and economic conditions (including desired conditions of manageable or acceptable change) that support the meaningful practice of Treaty 8 rights for each identified resource currently;
- Recommend land and resource management strategies, including monitoring, that would ensure the continued meaningful exercise of Treaty 8 rights (e.g., protected or conservation areas; hunting restrictions; setbacks; timing windows; etc.); and,
- Develop Aboriginal and treaty rights enhancement strategies and a suite of mitigation measures for the exercise of rights that are grounded in cultural realities.

Phase Four: Traditional Land and Resource Use Management Plan (TLRUMP)

The purpose of the TLRUMP is to provide credible, sufficient, defensible, and reliable information on the land and resource needs of the First Nations for the meaningful exercise of their Treaty 8 rights within their Traditional Lands now and into the future. At this point, the TLRUMP will be presented to the communities, with a focus on reporting on the current state of the traditional resources. This effort will be twinned with proactive development of strategies and tools for maintaining the health of the traditional resources of the region that people depend on for practice of Aboriginal and treaty rights. A variety of management options will already have been developed, which will then be field tested with the communities, and negotiated in government to government tables, where appropriate. For example, where there is an existing threat to traditional resources, there may need to be both government and community strategies in place for management and mitigation.

6. Summary of TLRUMP Deliverables

The specific outcomes of developing the TLRUMP will include:

- Baseline and trend dataset for valued components related to traditional resources, with qualitative and quantitative components;
- A State of Knowledge report on the valued components that have been community selected, bringing together data and knowledge from disparate sources;
- A pressure-state-response framework from the cultural framework that illustrates pathways of change. This will enable future impact assessments to accurately model their own impact pathways and predict changes;

- Mapping of areas of special sensitivity (confidentiality provisions may apply to external use); and,
- Replicable, community-accepted methods of assessment (thus applicable for both future project-specific and cumulative effects assessments).

The primary deliverable to Government will be a **Traditional Land Resource Use Plan Management and Assessment Framework** that includes the following:

- MCFN and ACFN Guidelines for assessing Traditional Land and Resources. This guidance document will provide clear expectations for proponents regarding the process for accessing traditional land and resource data from MCFN and ACFN, as well as guidelines for quality traditional use, socioeconomic and ecological research;
- Management objectives, criteria and thresholds for traditional lands and resources; and
- Management and mitigation options for traditional lands and resources.

In order to enable implementation of the TLRUMP, it is necessary to develop internal capacity within ACFN and MCFN. This will consist of an internal database, data management procedures and formalizing functional roles within each organization. While this “deliverable” is internal, we can provide a report to our external funders on the structure of this system (the guidance document mentioned above).

7. Timelines and Budget

Provided the required funding is made available, this project will be completed within two years, with the following schedule, deliverables and updates to funders. The cost for each individual First Nation (ACFN and MCFN) to complete a TLRUMP specific to their First Nation is anticipated to be \$1,435,500 (total budget of \$2,871,000).

Project Phase/Step	Estimated Timeline	Deliverables	Consultants	Community engagement	Project Manager	
Phase 1	Month 1	Project team formation	\$10,000	0	\$5,000	
Phase 2	Months 2-4	Vision sessions	\$25,000	\$100,000	\$15,000	
	Months 5-8	State of knowledge report	\$60,000	0	\$15,000	
	Months 8-10	Testing of VCs, criteria and indicators with communities	\$25,000	\$100,000	\$10,000	
	Months 7-16	Design of dataset for VCs, criteria and indicators	\$200,000	\$50,000	\$50,000	
Phase 3	Months 15-19	Community data reports and management systems	\$300,000	\$50,000	\$15,000	
Phase 4	Months 18-24	TLRUMP planning and validation	\$150,000	\$100,000	\$25,000	
		Subtotal of costs	\$770,000	\$400,000	\$135,000	\$1,305,000
		Administration (10%)				\$130,500
		Total project value per First Nation				\$1,435,500
		x 2				\$2,871,000



MIKISEW CREE FIRST NATION
Government and Industry Relations
206 – 9401 Franklin Ave.
Fort McMurray, AB T9H 3Z7
Phone (780) 714-6500 Fax (780) 715-4098

September 12, 2014

Stacey Smythe
Senior Manager, Engagement and Relationships
Aboriginal Engagement and Planning
Stewardship Branch
Environment and Sustainable Resource Development
3rd fl Great West Life Building
9920 - 108 Street
Edmonton, AB
T5K 2M4

Sent by email: [Stacey.smythe@gov.ab.ca]

Re: Funding consultation efforts on the Biodiversity Management Framework

Dear Ms. Smythe:

I am writing as a follow-up to the telephone conversation we had on September 5, 2014 in which we discussed funding to support Mikisew in connection with consultation regarding the Biodiversity Management Framework (BMF). I am also writing to respond to the purchase order that you sent on September 8, 2014.

Background on the importance of consultation regarding the BMF

Before setting out our concerns with the inadequacy of the funding Alberta is offering for Mikisew's engagement in the development of the BMF, I thought it would be useful to provide a few comments on the importance of Alberta meaningfully consulting regarding the BMF.

Mikisew has the right to continue to use its traditional lands in its preferred manner in order to maintain our way of life. As described in Mikisew's numerous submissions to your Government regarding the land use framework and the Lower Athabasca Regional Plan, we are deeply concerned with the declining quantity and quality of resources necessary to sustain our Treaty and Aboriginal Rights as a result of the high level of development in the lower Athabasca Region.

Any plan that will set resource and environmental outcomes and guide future resource decisions in the lower Athabasca region will fundamentally impact our constitutionally protected Treaty and Aboriginal Rights and therefore requires thorough consultation and incorporation of measures to protect the

exercise of our Treaty and Aboriginal Rights. Alberta has failed to incorporate Mikisew's concerns and input into any previous component of the Lower Athabasca Regional Plan. The failure to appropriately protect the health and viability of the biodiversity in the lower Athabasca region in a manner that supports the exercise of our Treaty and Aboriginal Rights will result in yet further impacts to and infringements of our rights. For these reasons, consultation on the BMF is critical.

Mikisew's need for capacity funding from Alberta

Because of the severity of the adverse impacts to Mikisew if the BMF is based on improper baselines, fail to incorporate rights-based thresholds, indicators and management responses, or otherwise be inadequate, consultation on this framework must be thorough and deep. In particular, the BMF must be developed while taking into consideration what is necessary for Mikisew to continue practicing its Aboriginal and Treaty Rights in perpetuity and in a meaningful manner.

The work involved in identifying Mikisew's resource needs from a biodiversity standpoint will require extensive community and technical input. Mikisew does not have the human or financial resources to take on this work without support from Alberta. Capacity funding is a way to ensure that Mikisew can undertake necessary studies, retain qualified support to review the data and assumptions relied upon by Alberta for the purpose of providing informed critiques, meet with Alberta to share views and information, and actively participate in the development of the BMF.

We remind Alberta that Mikisew is not just another stakeholder – in light of our constitutionally protected rights and the relationship between our cultural identity, well-being and traditional lands, our unique rights and interests require additional level of procedural and substantive engagement. This imposes certain positive obligations on Alberta to ensure that Mikisew has the ability to participate effectively in the development of the BMF.

Alberta funding for consultation regarding the BMF is inadequate to support consultation

Alberta has offered to provide a maximum of \$8,000 for Mikisew to participate consultation regarding the development of the BMF. Given the importance of this initiative to Mikisew, the consequences to Mikisew should the BMF be deficient, and considering the amount of work required for us to provide you with meaningful input that is representative of our interests, this funding is wholly inadequate to support Mikisew's participation in the development of the BMF. We elaborate on this below.

Alberta's limited funding effectively excludes MCFN from key steps in the development of the BMF

The cap of \$8,000 in funding has the consequence of limiting our input, which is otherwise necessary if Alberta is to inform itself on the potential impacts of this framework. Among other things, this limited excludes MCFN from the following:

- ❖ Collecting and developing necessary information;
- ❖ Conducting any studies to support the development of the BMF;
- ❖ Reviewing data being relied upon by Alberta;

- ❖ Participating in and reviewing background research;
- ❖ Conducting modeling;
- ❖ Obtaining and discussing Alberta's feedback and addressing any concerns identified through that feedback;
- ❖ Engaging the MCFN community regarding the BMF;
- ❖ Doing the work necessary to identify criteria, measures and conditions required for the exercise of MCFN's rights;
- ❖ Developing and incorporating a traditional land and resource use management plan into the BMF

Alberta's funding is insufficient for even the limited deliverables outlined in Alberta's funding agreement

As I have explained, a review of Alberta's proposed approach to the BMF as described in the slides presented recently from the perspective of western science and the Mikisew community will more than exhaust the \$8,000 given the need to provide clear and reasoned input before Alberta makes any decisions as to the scope, methodology, thresholds, indicators and management responses. As shown in the attached scope of work, the cost for reviewing Alberta's preliminary presentation on the BMF by our western science support is over \$5,000. When you factor in our costs to attend the two BMF stakeholder meetings, there will be little to no funding for Mikisew to complete the second deliverable set out in the funding agreement you provided, namely a review the draft BMF.

Alberta has provided no funding for developing a consultation process

We have previously explained that the first step in any consultation process is to consult on the design of the process by which Alberta will consult with us. In that way, key interests and steps in consultation can be identified at the outset and used to develop an appropriate work plan and budget for consulting effectively. This is particularly important here where there are many variables, information gaps and methodological uncertainties that should be addressed through consultation rather than being unilaterally determined by Alberta. Unfortunately, Alberta's funding agreement excludes discussions on a consultation process from the permissible uses of the funds.

Alberta funding ignores what is needed for meaningful consultation regarding the BMF

In September, 2010 (and many times each year since then), Mikisew outlined what it believes is required to develop a land use plan that is based on consideration of what is required to sustain the exercise of Mikisew's Aboriginal and Treaty Rights through the proposal for a traditional land and resource use management plan. A copy of our proposal is attached hereto.

Much of the work outlined in that proposal is relevant to the development of a biodiversity framework and should be gathered and developed for the BMF. This information has not been gathered or developed because Alberta declined to support the consultation plan developed by Mikisew and consistently declined to support the TLRUMP proposal as well. Unfortunately, in limiting funding to

\$8,000 to be used solely to review materials unilaterally prepared by Alberta, Alberta is taking a “take it or leave it” approach to engagement regarding the BMF that once again excludes the steps described in our proposal.

Comment on the funding agreement provided by Alberta

You have provided a funding agreement that Mikisew must sign to access the \$8,000 discussed above. A signed copy of the funding agreement is attached. In signing and returning the agreement to you, we wish to note clearly that Mikisew’s acceptance of the funds should not be construed as an acknowledgement that the funds are sufficient to adequately support Mikisew to consult regarding the BMF.

We also wish to note that our acceptance of the funding should not be construed as an acknowledgement that the funding is sufficient to complete the deliverables outlined in the funding agreement. As I explained to you prior to your sending the agreement, the \$8,000 is insufficient to fund our review of the BMF.

Concluding remarks

Mikisew wishes to participate fully and effectively with Alberta in the development of a credible, rights-based BMF, but we are concerned that Alberta is making this difficult, if not impossible, by providing inadequate capacity funding. We hope this letter helps you to better understand our concerns about the lack of funding for consultation on the BMF and how that lack of funding will affect us.

Kind Regards,



Sebastien Fekete, Consultation Coordinator, MCFN GIR

Cc: Chief and Council
Melody Lepine, Director, MCFN GIR
Chris Hopkins, Operations Manager, MCFN GIR
Mark Gustafson, Legal Counsel, JFK Law
Scott Duguid, Director, ESRD Stewardship Branch
Joshua Mackintosh, Engagement and Stewardship Advisor, ESRD Stewardship Branch



Mr. Sebastien Fekete
Crown Consultation Coordinator & Government Liaison
Mikisew Cree First Nation, Government and Industry Relations (GIR)
206, 9401 Franklin Avenue
Fort McMurray, AB
T9H 3Z7

2 September 2014

Dear Sebastien:

**Technical Advisory Services Regarding the Biodiversity Management
Framework Workshop Material - Scope of Work**

Thank you very much for the opportunity to participate in the review process for the Biodiversity Management Framework (BMF) which is one of several frameworks under the Lower Athabasca Regional Plan (LARP) for the management of cumulative effects. It is our understanding that the Mikisew Cree First Nation GIR (Mikisew Cree) has recently attended a workshop where the Government of Alberta (GoA) has presented their initial outline for drafting the BMF. The GoA is currently requesting feedback on the presentation material to potentially help guide the future development of the draft BMF. As per your request, Management and Solutions in Environmental Science (MSES) can provide technical advisory services to help develop recommendations to the GoA on behalf of the Mikisew Cree. This scope of work represents the estimated level of effort that we believe would be required to assist the Mikisew Cree in the development of these high-level recommendations. The following documents will be reviewed to gain an understanding of the context of the BMF objectives:

- Biodiversity Management Framework Fact Sheet (July 2014)
- Biodiversity Management Framework Workshop presentation (August 2014)

We propose that MSES participate in a kick-off discussion with Mikisew Cree GIR representatives which would allow us to gain a better understanding of the Mikisew Cree's objectives and concerns with the BMF to date. This will help guide our review and the development of high-level recommendations that may assist the Mikisew Cree in future discussions with the GoA. Dr. Petr Komers and Ms. Abbie Stewart will undertake the overall review and development of the recommendations. We have also included time for potential input from additional disciplines on an as needed basis (e.g. vegetation, aquatics, fisheries).

Our recommendations will consider the adequacy of the selected biodiversity indicators in meeting the BMF's and First Nation's objectives, address the proposed approach for developing and using thresholds for assessing the condition of the selected indicators, and address the

proposed approach for monitoring and mitigative management actions. We will also consider how the BMF incorporates First Nation traditional resources in the selection of the indicator species and whether the monitoring and management responses proposed will be scientifically rigorous enough to detect changes in biodiversity that could impact the Mikisew Cree's traditional land and resource use.

In terms of the schedule, we understand that the GoA is accepting feedback until September 12, 2014 and that this feedback will be used to begin developing the draft BMF. Therefore, pending timely approval of this scope of work, MSES will complete a review of the documents listed above and provide a memo letter consisting of high level recommendations by September 10, 2014.

While our proposed scope of work for the review reflects a reasonable effort in understanding the issues and assessing the potential for data or knowledge gaps, experience shows that new issues are often identified during post-review consultations. Therefore, we encourage the Mikisew Cree to reserve the right to revisit the required depth of the review at a later stage.

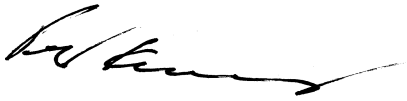
Estimated Budget:

Discipline / Activity	Personnel	Rate	Time (Hours)	Cost (\$)
Development of Recommendations				
Review of Workshop Material and Development of Recommendations	Petr Komers	\$200	10	\$2,000
	Abbie Stewart	\$135	12	\$1,620
Fielding Questions to Discipline Experts (as needed) : Vegetation, Water Quality, Fisheries	Varies	Varies	2 hrs each	\$990
Kick off Meeting with Mikisew Cree GIR Representatives via teleconference to facilitate integration of First Nation concerns	Abbie Stewart	\$135	2	\$270
Administration & Project Management				
Administration & Project Management	Abbie Stewart	\$135	2	\$270
Total Cost Estimate				\$5,150

- The Scope of Work and Cost Estimate are valid for 3 business days after the date submitted to the First Nations. This is to facilitate internal MSES planning activities.
- No ancillary information outside of the Workshop Materials is to be reviewed. Any ancillary information that requires review will require additional scoping and budgeting.
- No in-person meetings and associated expenses have been budgeted (i.e. travel, hotel, etc.). The proposed kick-off meeting would be via teleconference.
- Actual costs may vary by up to 5%; should more work be required as determined by the reviewers. We will notify the client in advance to make necessary adjustments to the work order.
- Progress billings are invoiced monthly to the First Nation, and are based on time spent and expenses incurred to date. Payment is due upon receipt of invoices.
- Unless specifically identified, budgets do not include provisions for the Goods and Services Tax. Any amounts levied with respect to these taxes will be billed as extra to the contract.

Please feel free to contact me at your convenience with any questions or comments you may have. We look forward to the opportunity to work with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Petr Komers', with a long horizontal flourish extending to the right.

Petr Komers, Ph.D., P.Biol.
MSES Inc.

CC. Ms. Abbie Stewart, MSES Inc.



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Ft. McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5

September 20, 2010

Alberta Environment
Environmental Stewardship
Environmental Relations
111 Twin Atria Building
4999 – 98 Avenue
Edmonton, AB T6B 2X3

Attention: Alvaro Loyola, Senior Advisor, Aboriginal Relations

Canadian Environmental Assessment Agency
61 Airport Road NW
Edmonton, AB T5G 0W6

Attention: Sheila Risbud, Aboriginal Affairs

Dear Mr. Loyola and Ms. Risbud:

Re: Proposal to Develop Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN) Traditional Land and Resource Use Management Plans (TLRUMP)

We are pleased to submit our proposal to develop TLRUMP for our First Nations. The TLRUMP concept builds on the Traditional Resource Use Plan concept that was tabled with Alberta in submission on the Land Use Framework, Lower Athabaca Regional Plan, and in respect to various regulatory applications (namely Shell's Jackpine Mine and Pierre River Mine projects, and Total's Joslyn North project). Our joint proposal provides further detail on the rationale for TLRUMPs and our estimate of the time and resources required to develop a TLRUMP. We look forward to a positive response from your departments. We would be happy to discuss this proposal with you and answer any questions that you might have.

Sincerely,

(original signed)

Lisa King
ACFN IRC, Director

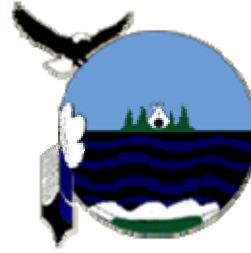
(original signed)

Melody Lepine
MCFN GIR Director

cc: ACFN Chief and Council
MCFN Chief and Council
Dave Bartesko, Land Use Secretariat



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Ft. McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5

Proposal to Develop Athabasca Chipewyan First Nation and Mikisew Cree First Nation Traditional Land and Resources Use Management Plans (TLRUMP)

Submitted to:

Alvaro Loyola, Alberta Environment

Sheila Risbud, Canadian Environmental Assessment Agency

Submitted by:

Lisa King, Athabasca Chipewyan First Nation Industry Relations Corporation

Melody Lepine, Mikisew Cree First Nation Government and Industry Relations

September 20, 2010

1. Introduction

The Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN) are proposing to each individually develop Traditional Land and Resource Use Management Plans (TLRUMP). A TLRUMP would provide information necessary to understand the land and resource uses, interests and rights of the First Nations in Provincial and Federal land and resource management planning, decision-making and consultation processes.

This concept was first first provided to the Government of Alberta (Alberta Sustainable Resources Development) as a “Traditional Resource Use Plan” in the October 31, 2008 joint submission of MCFN and Chipewyan Prairie Dene First Nation (CPFN) on the Land Use Framework. In a letter to Alberta Environment and Shell Canada on December 18, 2009, ACFN asked whether the parties were prepared to work with and fund ACFN, prior to any project approvals on the Jackpine Mine Expansion and Pierre Rive Mine projects, on developing a TLRUMP in order to determine the resources on which ACFN relies to exercise their rights. Subsequent to that letter, Alberta Environment requested more information on the TLRUMP concept, and ACFN provided a brief proposal as an appendix to a letter dated February 1, 2010 to Alberta Environment and Shell Canada.

AENV and CEAA have requested a more detailed proposal from ACFN and MCFN. This proposal for a TLRUMP includes the following:

- Study Purpose and Objectives
- Study Rationale
- Study Methodology
- Study Work plan
- Summary of TLRUMP Deliverables
- Timelines and budget

ACFN and MCFN are presenting this proposal to AENV, CEAA, and potential Industry funders.

2. Study Purpose and Objectives

The purpose of the Traditional Resource Use Plan is to provide scientifically credible and culturally appropriate information on the land and resource requirements of ACFN and MCFN for the meaningful exercise of Treaty 8 rights now and into the future. Specific objectives of the TLRUMP study are to:

- Create an appropriate, culture-group specific vision for what constitutes the conditions for the meaningful practice of Treaty 8 rights currently and into the future;
- Identify the Valued Components (“resources or conditions”), tangible and intangible, that are central to the Aboriginal and Treaty Rights (“rights”) of the First Nations;
- Identify criteria and culturally appropriate indicators that can be used to measure the First Nations’ ability to practice these rights;

- Examine the current nature and extent of the Valued Components in the First Nations' Traditional Lands, and a historical baseline of these components;
- Identify the current and likely pressures, including but not limited to industrial development on the Valued Components;
- Predict the likely future nature and extent of the Valued Components in the First Nations' Traditional Lands;
- Identify broad land and resource management strategies, as well as possible mitigation tools, that can support and improve the continued meaningful exercise of Treaty 8 rights (e.g., key protected or conservation areas; hunting restrictions; setbacks; timing windows; among others);
- Integrate the information into appropriate information and management tool formats (e.g., GIS; planning documents; management objectives for particular use areas or districts; community based monitoring and adaptive management strategies) for use in resource and land use planning, decision-making and consultation processes;

Developing the TLRUMP will require in-depth community consultation, rigorous socio-economic research, and tools for managing, analyzing, and communicating this information as explained in the methods section of this proposal.

3. Study Rationale

Current land and resource use planning and decision-making (including regulatory EA processes) in Alberta do not analyze adequately the direct, indirect and cumulative impacts of development and land use on First Nations land and resource use, Aboriginal and treaty rights and interests. Project-specific approaches to environmental assessment, especially in absence of an appropriate cumulative effects management framework, do not yield a comprehensive understanding of impact to the First Nations. These gaps are compounded by a lack of capacity in First Nations communities to bring forward credible and relevant information to these processes in a timely fashion. The result is often errors in decision-making, misunderstandings, and conflicts due to inadequate information. This is particularly troublesome in the Lower Athabasca Region given the sheer number of operating, proposed and potential oil sands development in the Traditional Lands of the two First Nations.

A TLRUMP is meant to be a tool facilitating more timely and effective integration of ACFN and MCFN information and interests into decision making and planning processes. This will result in greater capacity for each First Nation to provide critical inputs of information at all stages of the EIA/regulatory process, allowing EIA and consultation to proceed substantively at the same time, and establishing earlier in the process how Aboriginal and treaty rights may be impacted. Meaningful and adequate accommodation measures can then be built into the EIA mitigation process. The coherent TLRUMP and supporting studies are expected to increase the First Nations-specific data consistency, timeliness and availability for proponents.

Developing a TLRUMP would have benefits for Crown consultation, land and resource use planning, environmental impact assessment, regulatory stages of approvals, cumulative effects monitoring and management, and other elements of decision-making. Benefits include:

- Timely data that is accessible by project for government and proponents;
- Data consistency;
- A streamlined consultation process; and
- Increased capacity for ACFN and MCFN.

4. Study Methodology

Geographic scope of study

The studies will be limited to impacts on traditional use and practices within ACFN and MCFN traditional lands, as well as mobile resources (e.g., water, air, wildlife) that seasonally reside within or travel through traditional lands that may be impacted by activities outside those lands.

Temporal scope of study

A principle of good EIA practice is that the baseline conditions wherever possible should be those conditions that were present prior to industrial development occurring (in this case, around 1965), or where that data is not available or sparse, an examination of trends in conditions over time somewhere in between “pre-development” and the “present case” should be used. This study will ground the framework as far back in time as possible. Where data gaps are evident and assertions of change are uncertain, these will be identified and noted as limitations of the analysis.

Issues scope

The focus of the TLRUMP differs from that of many other impact assessment studies by focusing on the intersection of impacts on rights and impacts on resources.

The First Nations maintain that each have Treaty and Aboriginal rights protected by section 35 of the *Constitution Act, 1982*. For the purposes of the study, Treaty rights include hunting, fishing, trapping and gathering. This includes incidental rights that support the meaningful practice of the treaty right, including sufficient quality and quantity of required traditional resources within traditional lands. For example, the right to hunt can only be meaningfully practiced when there is adequate amounts of *healthy game* (e.g., within the range of natural variation for the species; healthy as evaluated from the perspective of the harvester) within areas that are accessible to harvesters.

Identification of First Nations-specific limits of acceptable change for key “rights-based resources” is thus central to both EIA and Crown s.35 consultation.

In addition, the practice of these rights may be influenced by a variety of other factors related to environmental impact concerns, such as a lack of faith in the health associated with consuming country foods. Thus, while these underlying Treaty and Aboriginal rights and the resources required to

meaningfully practice these rights are at the foundation of the proposed TLRUMP, the First Nations will take a broader perspective on what the exercise of those rights mean in terms of social, economic, and cultural health and well-being of each First Nation. A community vision concerning the relationship between the land and the people (including health, well-being and culture) is required in order to define this broader perspective. The community vision will provide the basis for an assessment framework for linking impacts to traditional resources to impacts to culture, community health and well-being.

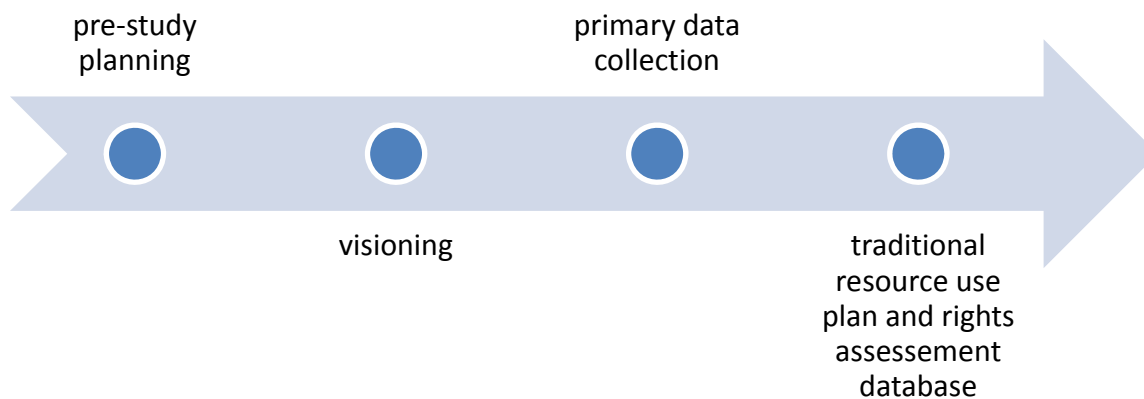
Project capacity and staff

A committee from each Nation will be formed to provide input into key research stages, to work closely with the interdisciplinary research team to understand the key issues of concern, to advise on liaising with the remainder of the community and on the selection of participants for workshops, interviews (and fieldwork).

We anticipate that an interdisciplinary research team consisting of people with social science, landscape ecology, GIS mapping expertise, traditional use practitioners, ecology, land and resource planning and project management expertise would be key to successful completion of the TLRUMP

5. Study Work Plan

The First Nations propose a four phase Work Plan for this study proceeding from high-level planning and visioning, through detailed data collection, to the production of tools and deliverables.



Phase 1: Pre-Study Planning

In this phase, we will build the project team, hold government to government meetings, agree on project methodology, set up data management and communications protocols, define research protocols (e.g., Traditional Knowledge or Ethics Protocols) and finalize the study scope.

Phase 2: Visioning

Phase 2 focuses on developing a community vision for the Traditional Land Use Plan. Sessions in Fort Chipewyan, Fort McMurray, Fort Smith and Edmonton will focus on culture and well-being in relation to traditional resources. For example, what vision do people have for continuing their way of life? What are the key practices, resources and relationships needed for health and well-being to be maintained? The vision that is identified through these sessions will be used to identify the first draft of the core valued components for the TLRUMP.

A research and gaps analysis exercise will be done to surface any existing knowledge and data related to these valued components, the result of which will be a State of Knowledge report. Sources will include:

- Collection and analysis of existing secondary data from environmental assessments. This will involve drawing together all existing completed environmental assessment reports on operating and proposed developments in the region. Analysis of the reports will focus on the core areas of focus, such as traditional use, food security issues, culture and social and economic impacts, with reports and data mainly from consulting companies hired by the oil sands producers.
- Collection and analysis of existing secondary data from internal community sources. This will involve drawing together all the data that has been collected in the past by consultants.

Full-day workshops, open to all First Nation community members, are then envisioned again in Fort Chipewyan, Fort McMurray, Fort Smith and Edmonton. The Project Team will provide short presentations about the valued components, criteria and indicators that have emerged through the vision sessions, and the “State of Knowledge” report.

Community members can provide input on whether these are the culturally relevant and accepted valued components to understand the present and trends in the health of the environment and the associated ability to exercise land-based Aboriginal and Treaty rights. They will then be asked to suggest management objectives and planning tools (e.g., zoning, restricted areas, among others) for each valued component.

These visioning sessions will allow community members to provide input on the accuracy of the State of Knowledge report, to review proposed study scopes, parameters, and methods, and to identify any additional work being conducted (or already completed) by any other stakeholders in the region (e.g., developers, AENV, and CEMA).

The key goal of this phase will be to build a preliminary model for the TLRUMP, to be tested and validated in the next phase.

Phase Three: Primary data collection and analysis

Data will be gathered on selected valued components, criteria and indicators related to the TLRUMP. This will include surveys, interviews, focus groups, TUS and TEK inputs, mapping and modelling exercises. The focus of this work will be to establish the conditions needed for the practice of rights, and gather the data on all the key valued components that were identified in earlier phases.

The focus of the interviews, focus groups and research in this stage will be to establish the geographic scale for resources for practicing rights, the required condition of the resources, and the future strategies that might need to be implemented to protect rights. Research in this phase will:

- Identify why the protection of resources is culturally important to both First Nations, including ACFN and MCFN defined concepts of environmental stewardship;
- Identify what pressures (e.g., road access and habitat fragmentation) have been threats to the meaningful practice of Treaty 8 rights;
- Identify what resources are integral to the meaningful practice of Treaty 8 rights;;
- Integrate the information into an appropriate management tool format (e.g., GIS; planning documents) for use by decision-makers;
- Determine the socio-cultural, ecological and economic conditions (including desired conditions of manageable or acceptable change) that support the meaningful practice of Treaty 8 rights for each identified resource currently;
- Recommend land and resource management strategies, including monitoring, that would ensure the continued meaningful exercise of Treaty 8 rights (e.g., protected or conservation areas; hunting restrictions; setbacks; timing windows; etc.); and,
- Develop Aboriginal and treaty rights enhancement strategies and a suite of mitigation measures for the exercise of rights that are grounded in cultural realities.

Phase Four: Traditional Land and Resource Use Management Plan (TLRUMP)

The purpose of the TLRUMP is to provide credible, sufficient, defensible, and reliable information on the land and resource needs of the First Nations for the meaningful exercise of their Treaty 8 rights within their Traditional Lands now and into the future. At this point, the TLRUMP will be presented to the communities, with a focus on reporting on the current state of the traditional resources. This effort will be twinned with proactive development of strategies and tools for maintaining the health of the traditional resources of the region that people depend on for practice of Aboriginal and treaty rights. A variety of management options will already have been developed, which will then be field tested with the communities, and negotiated in government to government tables, where appropriate. For example, where there is an existing threat to traditional resources, there may need to be both government and community strategies in place for management and mitigation.

6. Summary of TLRUMP Deliverables

The specific outcomes of developing the TLRUMP will include:

- Baseline and trend dataset for valued components related to traditional resources, with qualitative and quantitative components;
- A State of Knowledge report on the valued components that have been community selected, bringing together data and knowledge from disparate sources;
- A pressure-state-response framework from the cultural framework that illustrates pathways of change. This will enable future impact assessments to accurately model their own impact pathways and predict changes;

- Mapping of areas of special sensitivity (confidentiality provisions may apply to external use); and,
- Replicable, community-accepted methods of assessment (thus applicable for both future project-specific and cumulative effects assessments).

The primary deliverable to Government will be a **Traditional Land Resource Use Plan Management and Assessment Framework** that includes the following:

- MCFN and ACFN Guidelines for assessing Traditional Land and Resources. This guidance document will provide clear expectations for proponents regarding the process for accessing traditional land and resource data from MCFN and ACFN, as well as guidelines for quality traditional use, socioeconomic and ecological research;
- Management objectives, criteria and thresholds for traditional lands and resources; and
- Management and mitigation options for traditional lands and resources.

In order to enable implementation of the TLRUMP, it is necessary to develop internal capacity within ACFN and MCFN. This will consist of an internal database, data management procedures and formalizing functional roles within each organization. While this “deliverable” is internal, we can provide a report to our external funders on the structure of this system (the guidance document mentioned above).

7. Timelines and Budget

Provided the required funding is made available, this project will be completed within two years, with the following schedule, deliverables and updates to funders. The cost for each individual First Nation (ACFN and MCFN) to complete a TLRUMP specific to their First Nation is anticipated to be \$1,435,500 (total budget of \$2,871,000).

Project Phase/Step	Estimated Timeline	Deliverables	Consultants	Community engagement	Project Manager	
Phase 1	Month 1	Project team formation	\$10,000	0	\$5,000	
Phase 2	Months 2-4	Vision sessions	\$25,000	\$100,000	\$15,000	
	Months 5-8	State of knowledge report	\$60,000	0	\$15,000	
	Months 8-10	Testing of VCs, criteria and indicators with communities	\$25,000	\$100,000	\$10,000	
	Months 7-16	Design of dataset for VCs, criteria and indicators	\$200,000	\$50,000	\$50,000	
Phase 3	Months 15-19	Community data reports and management systems	\$300,000	\$50,000	\$15,000	
Phase 4	Months 18-24	TLRUMP planning and validation	\$150,000	\$100,000	\$25,000	
		Subtotal of costs	\$770,000	\$400,000	\$135,000	\$1,305,000
		Administration (10%)				\$130,500
		Total project value per First Nation				\$1,435,500
		x 2				\$2,871,000



MIKISEW CREE FIRST NATION
Government and Industry Relations
206 – 9401 Franklin Ave.
Fort McMurray, AB T9H 3Z7
Phone (780) 714-6500 Fax (780) 715-4098

September 25, 2014

Stacey Smythe
Senior Manager, Engagement and Relationships
Aboriginal Engagement and Planning
Stewardship Branch
Environment and Sustainable Resource Development
3rd fl Great West Life Building
9920 - 108 Street
Edmonton, AB
T5K 2M4

Sent by email: [Stacey.smythe@gov.ab.ca]

Re: Crown consultation regarding the Biodiversity Management Framework for the Lower Athabasca Region

Dear Ms. Smythe:

We write further to our correspondence from September 12, 2014 regarding the Biodiversity Management Framework (“BMF”) for the Lower Athabasca Region to elaborate on our expectations for consultation on the BMF.

As described in our September 12 letter, the BMF has the potential to dramatically impact our aboriginal and treaty rights and our culture and therefore requires consultation. Given that the BMF relates to the management of resources in the region, it is our view that the BMF is the very type of strategic decision-making that the Supreme Court of Canada (“SCC”) contemplated in *Rio Tinto* when confirming that the duty to consult extends to “strategic, higher level decisions” that may have an impact on Aboriginal claims and rights.¹

Alberta’s proposal for the BMF is to create a framework or lens through which decisions related to biodiversity in our territory will be made. Our ability to continue to exercise our aboriginal and treaty rights and to engage with and pass on our culture is fundamentally dependent on a healthy, balanced and diverse ecosystem. The extent to which this is possible will largely depend on the existence of an effective resource management system that supports Mikisew’s continued meaningful exercise of its treaty rights and ensures that Mikisew members have access to traditional resources of sufficient quality and quantity for the meaningful exercise of our rights and culture. As such, and as we explain below, Mikisew is entitled to meaningful consultation at the deepest end of the *Haida* spectrum.

About Mikisew’s Rights

¹ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 at para 44.

Mikisew has provided Alberta detailed information about its traditional lands, its members' exercise of their aboriginal and treaty rights, its culture and its way of life in numerous contexts. We have gone to great effort and expense to prepare project-specific reports for various oilsands projects, we made submissions throughout the development of the LARP and provided feedback on various policies and guidelines Alberta has proposed in recent years. We refer you to these submissions and reports for more information about Mikisew's aboriginal and treaty rights and reiterate that those materials should be considered by Alberta in the context of consultation on the BMF. That said, for our present purposes it is worth providing some high-level background information.

Mikisew's community includes just fewer than 3000 registered members. About half of our members live in and around Fort Chipewyan while the remaining mostly live in the Fort McMurray area. Our community is growing, and that means that the demand for traditional resources is greater and maintaining our ability to pass on our traditional knowledge to the next generation is all the more important.

As stated above, much of our traditional lands are situated within the Lower Athabasca Region. Our ancestors traditionally lived around Lake Athabasca, throughout the entire Peace-Athabasca Delta and down south including Fort McMurray and the Clearwater River. Today, our members continue to exercise our aboriginal and treaty rights throughout these lands and, in doing so, we maintain our connection to the same lands and resources our ancestors relied on for countless generations. This connection to place and space is critical for our traditional way of life and our ability to pass on our culture.

We rely on our constitutionally protected rights in order to ensure we continue to have the space to practice our traditional way of life and culture. In particular, Mikisew, as a signatory to Treaty 8, is guaranteed the right to maintain our way of life throughout our traditional lands. When our ancestors signed the treaty, they understood that our harvesting practices would continue and that, while there would be some development in our territory, it would be balanced with our interests as the land would be shared between settlers and the indigenous people. In Mikisew's view, the development that has occurred in our territory over the last fifty years or so has not been balanced. Development has weighted the scale heavily in favour of the settler (or Euro-Canadian) interests and the cumulative effects of such development are threatening to tip the scale entirely and render our treaty rights meaningless.

We have said it before in other contexts but the warning bears repeating here again: our traditional lands within the Lower Athabasca Region have been developed to the extent that Mikisew's treaty rights are in very real danger of being rendered meaningless. A critical aspect of preventing this from occurring is addressing the cumulative effects of development on biodiversity in order to ensure Mikisew has ample access to rights-based resources. This is why Mikisew's aboriginal and treaty rights must form the basis of the BMF and be integrated throughout the BMF and any related management system.

When Mikisew talks about our rights, we are not talking about an abstract legal concept. We are talking about Mikisew people suiting up for the elements and hiking hours to check traplines. We are talking about elders and youth packing rucksacks and heading out into the bush to learn how to identify culturally significant plants and berries and make tea. We are talking about hunters spending weeks watching the signs in nature on tracking excursions before they finally head out to hunt a moose for meat to share with their families and the broader community. Our treaty rights are these examples and so much more. Our members continue to harvest from the land, to teach our children what it means

when we say “treaty rights”. Our members continue to do the work of maintaining our culture, our spirituality and to pass that on to our children. For Mikisew, consultation about the BMF is not just another meeting or exchange of correspondence and reports; it is about protecting this way of life.

Concerns about the BMF

Our submissions on the Workshop Materials and Management and Solutions in Environmental Sciences’ (“MSES”) technical review of the same materials emphasize that the current concept for the BMF is fundamentally flawed and will not only fail to protect biodiversity in a manner consistent with our aboriginal and treaty rights and culture but actually has great potential to *harm* our rights and culture. We do not propose to revisit those comments here, but we note generally that the failure to select rights-based indicators and identify rights-based thresholds is a significant gap which will require additional information and research if it is to be filled. This cannot be achieved by Alberta revising the concepts and sending another draft for Mikisew to comment on. This will result in both parties working from assumptions instead of credible and reliable information. Instead, filling the gaps we have identified will require direct participation of Mikisew’s technical experts and the integration of traditional knowledge.

Mikisew is disappointed that Alberta appears to be starting the process for such a critical strategic decision on the wrong foot. If Alberta sets out a BMF that does not incorporate our traditional knowledge and consider what biodiversity means for our rights and culture, it will create a system that ignores impacts to our rights and culture until it is much too late. If this is to be avoided, it is critical that Alberta clearly articulate how the BMF relates to other land-use decisions and development applications and those future decisions incorporate a rights-based perspective with regard to rights-based indicators and thresholds for biodiversity in Mikisew’s territory.

In light of the above, Mikisew requests that Alberta seriously reconsider its current approach to the BMF. As detailed in our comments and in the MSES technical review of the Workshop Materials, Mikisew is concerned that Alberta’s overall approach to the BMF, from the pyramid concept to the rationale for the selection of indicators and the application of thresholds to those indicators overlooks aboriginal and treaty rights and culture entirely and is generally not designed to adequately protect biodiversity. We do not see how the vaguely defined management responses will incorporate a rights-based approach as it is precluded by the design of the indicators and thresholds. The fact that the entire approach is premised on the current state of development being acceptable (and ignores any pre-disturbance baseline) undermines Alberta’s stated goals. We believe, indeed, that there is a great deal of work to do on the BMF.

Deep and Meaningful Consultation is Required

Alberta must seriously consider the legal principles underlying its duty to consult with Mikisew on the development of the BMF in order to ensure consultation not only upholds the honour of the Crown but leads to a biodiversity management plan that incorporates a rights-based understanding of biodiversity.

In the past ten years since the *Haida Nation*² decision, courts have commented extensively what is required for meaningful consultation and it is worth revisiting some of those principles here.

² *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73 (“*Haida Nation*”)

1. Consultation entails **being prepared to amend policy proposals** in light of information received and providing feedback. In *Haida Nation* the SCC cited the New Zealand *Guide for Consultation with Māori* with approval, which noted that a genuine consultation process involves:
 - gathering information to test policy proposals
 - putting forward proposals that are not yet finalised
 - seeking Māori opinion on those proposals
 - **informing Māori of all relevant information upon which those proposals are based**
 - not promoting but **listening with an open mind** to what Māori have to say
 - being prepared to alter the original proposal
 - **providing feedback** both during the consultation process and after the decision-process.³

2. When considering impacts on Treaty rights, Alberta **must take into account the historical context** of development: *West Moberly First Nations v British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247 at para 83 and 117, leave to appeal to SCC refused, 2012 CanLII 8361.

3. When considering impacts on Treaty rights, **the Crown must inform itself of the impact** the project will have on the exercise of rights and communicate its findings to the First Nation: *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014 SCC 48.

4. Section 35(1) of the Constitution Act, 1982 is to be construed in a purposive way. A **generous, liberal interpretation** is demanded given that the provision is to affirm aboriginal rights: *R v Sparrow*, [1990] 1 SCR 1075. Likewise, when determining how a decision or action may impact a Treaty right, decision makers must also take a generous and purposive approach because “actions affecting unproven Aboriginal title or rights or treaty rights can have irreversible effects that are not in keeping with the honour of the Crown”: *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 46.

5. The SCC has repeatedly confirmed that when dealing with an issue related to the rights of aboriginal peoples, **decision-makers must consider the aboriginal perspective**. [*R v. Sparrow*, [1990] 1 SCR 1075 at 1112; *R. v. Marshall*; *R. v. Bernard*, 2005 SCC 43 at para 46-7; *Mitchell v. M.N.R.*, 2001 SCC 33 at para 37; *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 at 84].

The final point is particularly important within the context of the BMF because, as we noted in our comments on the BMF Workshop Materials,⁴ the concepts were developed without Mikisew’s input and completely ignore the aboriginal perspective on biodiversity as related to our rights and culture.

We look forward to working with Alberta to develop an effective plan for consultation on the BMF that corresponds to the potential magnitude of the BMF’s impact on our rights and culture. A project like the BMF, which provides a strategic plan for not just the framework but all other decisions about development and land-use in our territory, requires deep and meaningful consultation that will not fit

³ *Haida Nation* at para 46.

⁴ “Development of Lower Athabasca Biodiversity Management Framework, September 2014”; “Biodiversity Management Frameworks Lower Athabasca Region” (BMF Fact Sheet); “Building the Lower Athabasca Region Biodiversity Management Framework Survey” [the “Workshop Materials”].

neatly into consultation matrixes and demands flexibility in timelines and approach. At a minimum effective consultation on this issue requires Alberta:

- Be clear and transparent as to its understanding of the scope of consultation required;
- Work with Mikisew to identify reasonable timeframes, procedures, and capacity support;
- Identify Alberta's specific deliverables and a specific commitment to provide feedback to each of Mikisew's concerns;
- Provide Mikisew with the information it requires to properly understand the BMF's impacts and identify its concerns;
- Gather credible and reliable information about Mikisew's aboriginal rights and culture and the BMF's impacts to those rights and culture including working with Mikisew to:
 - gather the information necessary to understand the BMF's potential to adversely impact Mikisew's aboriginal and treaty rights and culture;
 - incorporate into the BMF information about Mikisew's aboriginal and treaty rights and culture and how biodiversity is necessary to support the exercise of those rights;
- Consider the cumulative effects of the decision on Mikisew's ongoing ability to exercise its aboriginal and treaty rights and culture – this is particularly critical given the BMF's focus on managing cumulative impacts in the Lower Athabasca Region.

Concerns about Alberta's Consultation Approach

From what we have seen so far, Alberta's approach to consultation on the BMF does not meet what is required to uphold the honour of the Crown. Indeed, we do not really know what Alberta plans to do in terms of consulting on the BMF beyond providing a workshop and seeking comments on draft documents through surveys. This may be suitable for your average business stakeholder or municipality, but this is insufficient when our constitutionally protected rights are at stake. In this regard, we are concerned that Alberta plans to take the same approach to consultation on the BMF that it took towards LARP – namely providing insufficient capacity funding to support consultation, repeatedly declining to provide information or feedback during consultation and ultimately failing to incorporate our concerns or our needs in the final plan.

It is also not at all clear to Mikisew how Alberta determined the scope of consultation necessary and what information it based its decision on. We do know that we were not asked to provide any information with respect to the BMF prior to Alberta developing its initial concepts. We were simply asked to provide comments in response to your proposal and told we will have an opportunity to provide comments on a further draft. That much confirms that Alberta has not seriously considered what is necessary to fulfill its duty to meaningfully consult with Mikisew on the BMF and is proceeding with *ad hoc* consultation.

Alberta has not explained whether and how it intends to *respond* to the comments we have already provided or to demonstrate how they have been incorporated into the BMF. This is why it is necessary for Alberta to work with Mikisew to develop a clear plan to consultation with deliverables and mutual plans for feedback. Otherwise, Mikisew again finds itself in a position of going to great expense and effort to review materials and provide comments without any guarantee that they will be demonstrably considered and addressed.

This is partly what we are describing when we talk of a tipping point. We have warned of the cumulative impacts of development in our territory for years. We have requested Alberta work with us to develop the credible and reliable data about the status of our aboriginal and treaty rights and culture and the impacts of development on our rights and culture in a number of contexts. We have put forward specific proposals about how to assess cumulative impacts in the Lower Athabasca Region from an aboriginal rights perspective. After years of delay, Alberta is now purporting to address cumulative effects but has again precluded the proper consideration of the impacts of cumulative effects on our rights and culture. Thus, our greatest concern in this context is that Alberta's failure to consider our aboriginal and treaty rights and culture at this stage of developing the BMF will ensure the true impact of development on our rights and culture will never be addressed in any future contexts.

If Alberta refuses to adjust its consultation approach for the BMF and work with Mikisew to ensure its concerns are properly addressed with the BMF, Mikisew fears the result will be the irreversible harm the SCC wrote of in *Rio Tinto*. This result would be inconsistent with the stated outcomes of the LARP,⁵ inconsistent with the stated intents in the Workshop Materials themselves,⁶ and, most importantly, inconsistent with Alberta's duty to consult and uphold the honour of the Crown.

In our view, the BMF's potential to adversely impact Mikisew's aboriginal and treaty rights and culture is such that Alberta must change its proposed plans. Given the extensive concerns identified in our comments and the MSES technical review, which highlighted numerous problems and gaps in Alberta's approach, Alberta must be open to significantly reworking its current concepts for the BMF and incorporating a rights-based perspective. We are concerned that Alberta's current target of completing the BMF by the end of 2014 is unreasonable as it will not allow enough time to meaningfully consult and accommodate Mikisew, which will result in lasting adverse impacts to our rights and culture.

Alberta must develop a plan for consulting about the BMF that incorporates our feedback above and is more suitable for the development of a strategic framework like the BMF. We also request that Alberta work with Mikisew to identify the best way to incorporate traditional knowledge into the BMF and to ensure the BMF protect biodiversity as it relates to our rights and culture.

Incorporating Traditional Knowledge

As we noted in our comments on the Workshop Materials, one way to address our concerns would be to commit to undertaking a Traditional Land and Resource Use Management Plan ("TLRUMP") and to develop a regulatory system that incorporates and applies the TLRUMP. A TLRUMP would provide much of the data necessary to develop rights-based indicators, thresholds and management responses.

A TLRUMP would have benefits for Albertans generally. Traditional knowledge is not only about the ways in which we use the land or a manner of passing along culture – though these aspects of traditional

⁵ Please see Outcome 7 of LARP, page 63 as well as page 29, which states that "In developing a biodiversity management framework and a landscape management plan, the Government of Alberta will work with First Nations to consider how First nations' exercise of constitutionally protected rights to hunt, fish and trap for food can continue within reasonable proximity of First nations' main population centres. ... It is recognized that managing cumulative effects on air, water, land and biodiversity is important to the needs of those aboriginal communities in the region that hold constitutionally protected rights. Accordingly, engagement with these communities is desired as air, water, land and biodiversity strategies and plans are developed."

⁶ See page 1 of the Strategy document dated August 2014.

knowledge are critically important. Traditional knowledge reflects the personal experience of generations of Mikisew people, including those who travel our territory today. It is contextual and historical, but also continually updated as our present-day rights holders share their observations. It is as timely and relevant to the development of the BMF and the perfect complement to other scientific indicators and thresholds.

Our community has been living in the region since time immemorial and we are therefore able to offer unique insight into the changes to the land and resources. Some of our members have been using these lands since before the pace of development increased exponentially and their knowledge can benefit the broader community beyond Mikisew. We believe our members are able to offer information that will help Alberta reconcile scientific biodiversity indicators with those related to our aboriginal and treaty rights and culture.

Although Mikisew has participated in a number of regulatory and land-use procedures in recent years and provided project-specific information about our land use, these reports do not provide a complete picture. A systematic analysis of the impacts of development from a rights-based perspective is crucial. The BMF concepts in the Workshop Materials will not achieve this.

Moving Forward

We expect that Alberta will work with Mikisew's team, including technical experts, advisers and traditional-knowledge holder, to develop a better approach to consultation and a BMF that protects diversity from a rights-based perspective. To facilitate this, Mikisew makes the following requests:

1. Please confirm whether Alberta has conducted an initial assessment of the BMF's potential to adversely impact Mikisew's aboriginal and treaty rights. It is critical that Mikisew be able to respond to this assessment in order to ensure consultation does not proceed based on assumptions.
2. Please confirm that Alberta will take into account the information Mikisew has provided regarding its aboriginal and treaty rights in other contexts as described in this letter and explain how this information will be considered in the context of consultation on the BMF.
3. Please confirm whether Alberta will work with Mikisew to develop a consultation process for the BMF that reflects our comments above.
4. Please respond to our letter of September 12, 2014 regarding capacity funding. Is Alberta willing to provide additional capacity funding in order to ensure Mikisew is able to meaningful consult on and participate in the development of the BMF?
5. Please explain how Alberta has incorporated rights-based criteria, thresholds and management measures into the BMF.
6. Please describe how Alberta intends to show it considered and incorporated Mikisew's feedback into the BMF.
7. Please provide the information and data used to develop the BMF concepts proposed in the Workshop Materials. As noted in the MSES technical review, the Workshop Materials presented

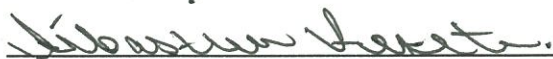
vague concepts but requested Mikisew offer specific feedback such as whether indicators selected adequately represented our interests. Though we generally do not agree with the proposed approach, it is difficult to provide further feedback without additional information supporting Alberta's rationale for its initial approach.

8. Please confirm whether and how Alberta is willing to work with Mikisew to complete a TLRUMP to support the BMF. If Alberta is not willing to work on a TLRUMP with Mikisew, please explain why not.
9. If Alberta refuses to complete a TLRUMP with Mikisew, please explain how Alberta intends to integrate traditional knowledge and data respecting our aboriginal and treaty rights and culture into the BMF so that Mikisew can provide comments at an early stage.
10. Please confirm that Alberta will work with Mikisew's technical team to ensure that the BMF offers a credible methodology for considering impacts to rights and culture with clear indicators, thresholds and management responses. Without this clear methodology, Mikisew is hesitant to suggest indicators or thresholds as to do so haphazardly could result in unintended adverse impacts to our rights and culture.
11. Please provide specific feedback to each of the recommendations in the MSES Technical Review and to our comments on the Workshop Materials. In particular, to the extent any recommendations or comments are rejected, please provide the specific rationale as to why Alberta refuses to accept them.
12. Please confirm that Alberta is willing to adjust its goal of completing the BMF complete by the end of 2014 after consulting with Mikisew on more appropriate timelines.

We look forward to hearing Alberta's responses to each of the questions listed above as well as the questions and comments throughout this letter.

Alberta must meaningfully involve us in the development of an effective, rights-based BMF. The time for simply sharing powerpoint presentations and asking for limited comments has passed. We sincerely hope that Alberta will seize this opportunity to address the cumulative impacts of development on our rights and culture before it is too late.

Sincerely,



Sebastien Fekete, Consultation Coordinator, MCFN GIR

Cc: Chief and Council
Melody Lepine, Director, MCFN GIR
Chris Hopkins, Operations Manager, MCFN GIR
Mark Gustafson, Legal Counsel, JFK Law
Scott Duguid, Director, ESRD Stewardship Branch
Joshua Mackintosh, Engagement and Stewardship Advisor, ESRD Stewardship Branch
Scott Milligan, Executive Director, ESRD
Brian Kolman, North Planning Lead, ESRD