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LARP Review Panel
c/o Land Use Secretariat
9th Floor, Centre West Building
10035 - 108 Street N.W.
Edmonton, Alberta, T5J 3E1

File No. 1051-041

Dear Review Panel:

Re: Review of the Lower Athabasca Regional Plan

We represent the Mikisew Cree First Nation (Mikisew) in connection with the above noted review under section 19.2 of the *Alberta Land Stewardship Act*.

We write to provide Mikisew's position on the matters set out below.

Athabasca Chipewyan First Nation's request to amend its submission of August 25, 2014

We advise that Mikisew has no objections to Athabasca Chipewyan First Nation's request to amend its submission of August 25, 2014.

Athabasca Chipewyan First Nation's request for an extension of time under Rule 32

In its October 17, 2014 letter to the Panel and Minister Campbell, the Athabasca Chipewyan First Nation requested an extension of time to respond to the Government of Alberta's response to IRs #1 and #2 once the Panel has advised how it plans to proceed with Alberta's limited IR responses.

For the reasons set out in the October 17 letter, Mikisew supports the Athabasca Chipewyan First Nation's request for an extension under Rule 32 to ensure that Mikisew has adequate time to provide a response to Alberta's IR responses.

Information Request #1 directed to the Crown

In the event that the Minister does not grant an extension under Rule 32, Mikisew provides the following responses to Alberta's August 19, 2014 response to IR#1.

a) Mikisew objects to Alberta's noncompliance with IR #1

Mikisew is in agreement with the submissions and arguments of Fort McKay First Nation regarding Alberta's August 19, 2014 response to IR#1, as set out in Fort McKay First Nation's October 17, 2014, August 20, 2014 and September 23, 2014 correspondence addressed to Minister Campbell and the LARP Review Panel. Mikisew adopts the submissions relating to the appropriateness of IR#1 and the inadequacy of Alberta's response to IR#1 set out in those materials.

b) Mikisew's response to IR #1

Mikisew submits it would procedurally unfair to require Mikisew to provide a fulsome response to IR#1 until the Panel has addressed Alberta's August 19, 2014 letter. Despite the limitations arising from this situation, Mikisew wishes to provide the comments below in relation to the matters discussed in Fort McKay First Nation's October 17, 2014 letter. Please note that Mikisew may wish to provide further comments following the Panel addressing Alberta's August 19, 2014 letter.

General remark regarding the matters set out in IR#1

Mikisew advises that it has experienced substantially similar deficiencies with the initiatives set out in in Part 3C and 3D to IR#1 as described in Fort McKay First Nation's October 17, 2014 letter.

Furthermore, Mikisew has experienced similar frustrations and concerns regarding Alberta's lack of meaningful engagement with First Nations regarding those initiatives.

Joint Canada – Alberta implementation plan for Oil Sands Monitoring (JOSM)

Mikisew advises that it withdrew from JOSM for substantially similar reasons as set out in Fort McKay First Nation's October 17, 2014 letter. Mikisew remains withdrawn from JOSM as the issues prompted Mikisew's withdrawal have not been addressed.

As described in the attached letters dated January 20, 2014 and October 20, 2014, it appears that Alberta has no intention of addressing these issues.¹

¹ File named "Attachment 1 - LTRs relating to exclusion from oil sands monitoring"

Tailings Management Framework, management frameworks and regional landscape management plan

Mikisew advises that it has a substantially similar understanding regarding the status of the Tailings Management Framework, management frameworks and regional landscape management plan and the other initiatives described from pages 4-6 in Fort McKay First Nation's October 17, 2014 letter. Mikisew has had a similar experience regarding the lack of consultation on those initiatives by Alberta.

Part II Status Report From GoA LARP Commitments to Aboriginal Peoples

Mikisew advises that it has a substantially similar understanding regarding the status of the commitments described from pages 6-8 in Fort McKay First Nation's October 17, 2014 letter. Mikisew has had a substantially similar experience regarding the lack of consultation by Alberta on the commitments described in the spreadsheet entitled, Part II Status Report From GoA LARP Commitments to Aboriginal Peoples, that forms part of IR#1.

With respect to the biodiversity management framework, Mikisew advises that Alberta presented an overview of its approach to the biodiversity management framework to Mikisew in the fall of 2014. Mikisew understands, based on that presentation, that the Government of Alberta has determined that it will not incorporate traditional land use objectives/requirements into the proposed biodiversity management framework and that it will not consider a traditional land use management framework under LARP. Mikisew has raised concerns with the exclusion of such objectives/requirements from the biodiversity framework but has received no response from Alberta.

Mikisew's comments on Alberta's approach to the biodiversity framework are attached hereto.²

Information Request #2 directed to the Crown

Mikisew provides the following responses to Alberta's September 18, 2014 response to IR#2.

a) Alberta's noncompliance with IR #2

Mikisew agrees with the submissions and arguments of the Athabasca Chipewyan First Nation, set out in its October 21, 2014 letter, regarding the authority of the Panel to issue IR #2 and the appropriateness of IR#2 in the context of this review. Mikisew adopts those submissions here.

Mikisew submits that Alberta's narrow interpretation of IR#2 and limited response to this information request is improper and unnecessarily thwarts the purpose of this review process. Mikisew is concerned that the Government of Alberta has demonstrated the same lack of regard for the Review Panel's authority and for the purpose of the review that the Government of

² File named "Attachment 2 - LTRs regarding BMF"

Alberta demonstrated to First Nations when developing LARP and when establishing the process for this review.³

b) Mikisew's response to IR #2

Mikisew provides the comments below in relation IR#2. Please note that Mikisew may wish to provide further comments following the Panel addressing Alberta's September 18, 2014 letter.

Mikisew advises that it has a substantially similar understanding and experience as described in pages 3-4 of Fort McKay First Nation's October 21, 2014 letter regarding the inadequate protections provided by the *Historical Resources Act* and the lack of meaningful efforts by Alberta to protect historical resources.

While Mikisew requested that Alberta provide resources through the Traditional Land and Resource Use Management Plan to better articulate the relationship between Mikisew's rights and its traditional lands, Alberta had sufficient information in its possession during the development of LARP to be well aware of the general scope of the areas used by Mikisew for rights-based activities. This information is publicly available. Among other things:

- Mikisew has rights under Treaty 8 and the Crown is deemed to have knowledge of the context of those rights.
- Alberta was in possession of Mikisew's 2009 consultation protocol, which includes a map outlining the area over which Mikisew expects to be consulted. This map has been used by Alberta for determining when to consult Mikisew.⁴
- Mikisew has provided the textual descriptions of its traditional lands to Alberta on many occasions. For example, Mikisew's August 24, 2010 written submission in the Joslyn North Mine hearing contained the following description: The traditional lands of the Mikisew extend around Lake Athabasca over the entire Peace-Athabasca Delta, and south to and including Fort McMurray and the Clearwater River.
- Mikisew provided Alberta with an ethnohistory report of Mikisew as part of its August 24, 2010 submission in the Joslyn North hearing. This report describes areas in which Mikisew has engaged in traditional activities.⁵
- During the development of LARP Mikisew provided Alberta a report entitled "Patterns of Mikisew Cree land and resource use" that included maps showing existing traditional use

³ Following its receipt of Mikisew's request for this review, the Government of Alberta rejected repeated requests from Mikisew for the Government of Alberta work with Mikisew and the other parties that requested this review to design an effective process. Mikisew's requests are attached as "Attachment 3 - LTRs regarding LARP review process consultation

⁴ File named "Attachment 4 - Mikisew Consultation Protocol - Nov 24, 2009"

⁵ File named "Attachment 5 - Mikisew ethnohistory report"

information along with maps showing Mikisew's analysis of the traditional use areas that required protection from industrial development.⁶

Mikisew submits that Alberta's position that a map of traditional use areas for Mikisew does not exist is demonstrative of Alberta's failure to consider the information that Mikisew provided during the development of LARP and Alberta's failure to develop land use classifications with any regard to Mikisew's rights-based activities.

With respect to the Panel's request for information on Conservation Areas, Mikisew notes the following:

- The areas designated as Conservation Areas were set without regard to the quality and quantity of land and other resources that are necessary for the exercise of aboriginal and treaty rights presently and into the future.
- LARP Conservation Areas avoid almost all (96%) of oil sands leases, designating only an insignificant amount (4%) of the oil sands lease area to be protected.
- The Conservation Areas established under LARP show no indication that they were designated based on a meaningful consideration and incorporation of the submissions by MCFN.
- Alberta has provided no evidence on how or if traditional knowledge or traditional land use information informed the selection of Conservation Areas or the determination of what activities are allowed within those areas.
- The Conservation Areas of LARP are generally located on the periphery of Mikisew's traditional territory, in areas that are difficult to access, and in areas that are not as productive for the exercise of Treaty rights and other traditional uses.
- The conservation areas set out in LARP are not a meaningful reflection of the concerns and needs of Mikisew as described in its submissions on LARP.
- Mikisew also refers the Panel to pages 11-17 of attachment 1 to Mikisew's June 3, 2011 submission on the draft LARP for an analysis of restrictions on traditional use activities within Conservation Areas.⁷

⁶ Included at Appendix 4 of Mikisew's supporting materials:
https://landuse.alberta.ca/Forms%20and%20Applications/MCFN%20-%20Application%20App%204%20-%20November%202010%20LARP%20Subm_2014-03-05_PUBLIC.pdf

⁷ Appendix 7 to Mikisew's supporting materials:
https://landuse.alberta.ca/Forms%20and%20Applications/MCFN%20-%20Application%20App%207%20-%20June%2028%202011%20LARP%20letter_2014-03-05_PUBLIC.pdf

Mikisew agrees with Athabasca Chipewyan First Nation's overview of the problems with Recreation and Tourism areas as described on pages 5-6 of its October 21, 2014 submission. Mikisew adopts that response. In addition, Mikisew notes the following:

- Alberta provided no justification for why it selected the areas in Schedules 6-11 as Recreation and Tourism Areas.
- Alberta did not meaningfully consult with the First Nations prior to designating Recreation and Tourism Areas.
- Mikisew refers the Panel to pages 11-15 of attachment 1 to Mikisew's June 3, 2011 submission on the draft LARP for an analysis of restrictions on traditional use activities within Recreation and Tourism areas.⁸

Sincerely,

JFK Law Corporation

Per:



Mark Gustafson

MAG/mag/nf

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⁸ Appendix 7 to Mikisew's supporting materials:

https://landuse.alberta.ca/Forms%20and%20Applications/MCFN%20-%20Application%20App%207%20-%20June%2028%202011%20LARP%20letter_2014-03-05_PUBLIC.pdf