



Review of the Federal Environmental Assessment Process

ConocoPhillips Canada Submission to the
Expert Panel Review

December 2016

INTRODUCTION

ConocoPhillips Canada Resources Corp. (“ConocoPhillips”) appreciates the opportunity to provide our perspective regarding the review of federal environmental assessment (EA) processes.

ConocoPhillips is one of Canada’s leading oil and natural gas exploration and production companies. Based in Calgary, Alberta, our operations are made up primarily of natural gas fields in Western Canada and in situ oil sands projects in the Athabasca Region of northeastern Alberta.

We hold approximately 0.9 million net acres of land in the Athabasca Region. The significant bitumen deposits on these lands are estimated to contain approximately 14 billion net barrels of resource, making ConocoPhillips the holder of one of the largest land and resource positions in the region. Our operated and non-operated assets produced 151 thousand barrels per day in 2015, ranking us second among in situ steam assisted gravity drainage (SAGD) producers in Canada.

ConocoPhillips is closely following this important review of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and paying careful attention to the broad and often competing views expressed by Canadians. Notably, participants frequently expressed concern that environmental protections have been lost through CEAA 2012; meaningful consultation with Indigenous communities is lacking; and the project list should be reviewed to capture major projects that may impact areas of federal responsibility, such as in situ.

We are making this submission to recommend that in situ oil sands projects not be added to the *Regulations Designating Physical Activities* (“the project list”) and should not be subject to federal EA under CEAA 2012. Therefore, our submission will focus primarily on the panel theme of Planning Environmental Assessment. We also offer our perspective on the theme of Overarching Indigenous Concerns.

PLANNING ENVIRONMENTAL ASSESSMENT

One-Project/One-Review

In situ projects are constitutionally the responsibility of the province and subject to provincial regulatory review processes. ConocoPhillips believes that Alberta's EA process and extensive regulatory requirements are robust and effective. This belief is supported by an independent 2014 study¹, which found Alberta to be among the world's leading jurisdictions for its stringency, transparency, and compliance in terms of their environmental policies, laws and regulatory systems.

In situ oil sands projects are not a new undertaking. As demonstrated under the former CEAA (prior to July 6, 2012), these types of projects are unlikely to cause significant adverse environment effects to areas of federal jurisdiction and unlikely to be subject to federal EA. It is difficult to understand why these projects should now be considered an area of federal environmental priority or national interest when environmental effects are well understood, projects are comprehensively regulated by the province, and environmental performance is steadily improving.

Subjecting in situ projects to another EA process is unlikely to improve environmental or socioeconomic outcomes. The layering of federal EA on an already rigorous provincial process adds complexity and represents unnecessary and costly duplication of process and decision-making. The federal government should be able to rely on provincial EA to ensure federal obligations (e.g., fisheries, species under the *Species at Risk Act*, migratory birds) are met. Notwithstanding, the Minister of Environment and Climate Change already has power to require a CEAA assessment for non-listed projects if it is justified.

Investor Confidence

Reduced duplication and project reviews that are predictable and timely continue to be of utmost importance to our industry.

The Fraser Institute's annual survey² of petroleum-sector executives released on December 6, 2016 reported that Alberta has recently become less attractive for investment in oil and gas, specifically noting regulatory duplication and inconsistencies, high taxation, and uncertain environmental regulations.

To encourage continued investment in Canada, a predictable regulatory process that supports timely assessment and project review is required. Uncertainty, duplication, delays, and increased costs undermine the economic viability of projects and jeopardize the competitiveness of the Canadian sector – especially when compared to some of the opportunities in the United States.

¹ Worley Parsons. 2014. An International Comparison of Leading Oil and Gas Producing Regions: Environmental Regulation. 22pp.

² Jackson, T., K. P. Green and K Sholes. December 6, 2016. Fraser Institute Global Petroleum Survey. 80pp.

Public Confidence

The Government of Canada indicates the goal of the review is to “develop new, fair processes that are robust, incorporate scientific evidence, protect our environment, respect the rights of Indigenous peoples, and support economic growth”. At the end of the review, the Expert Panel will develop recommendations to the Minister of Environment and Climate Change for restoring public confidence in environmental assessment processes.

From an industry perspective, both provincial and federal regulatory processes are marked by complexity and can be difficult to navigate. Not surprisingly, the public may not be fully aware of provincial regulatory frameworks and environmental protections in place beyond CEAA 2012. The presentation to the Panel by the In Situ Oil Sands Alliance³ suggests that public trust in EA processes could be regained by “demonstrating the strength and rigour associated with project development and oversight”. ConocoPhillips supports this recommendation.

³ In Situ Oil Sands Alliance, November 23, 2016 presentation, page 6

THE ALBERTA PERSPECTIVE

Alberta Environment and Parks sets the thresholds to minimize the impact of oil sands development on air, land and water through policy and the development of environmental frameworks. It is responsible for regional planning, integrated land management and land use policy (Canada Oil Sands website).⁴

ConocoPhillips believes that the environmental effects of in situ projects can be effectively addressed through regulatory frameworks, policies, and initiatives at the provincial level. We ask that the Panel consider in full – the important strides made by the provincial government, industry, and various multi-interest groups in Alberta to improve environmental outcomes and sustainable development. For context, we offer information below regarding:

1. Provincial Land Use Planning
2. Oil Sands Advisory Group
3. Canada Oil Sands Innovation Alliance
4. Environmental Monitoring

Provincial Land Use Planning

The Athabasca Oil Sands Area in Alberta is one of the most extensively managed and monitored regions in Canada. Regional plans to address cumulative effects began 19 years ago through industry-led, multi-stakeholder committees, and have since evolved into provincially led programs.

The Lower Athabasca Regional Plan (LARP) is the first of seven regional plans to be released under the *Alberta Land Stewardship Act* to facilitate land use planning on a regional level. The LARP, which came into effect September 1, 2012, considers the cumulative effects of all activities on air, water, and biodiversity. It establishes new environmental frameworks with limits to protect air and surface water quality, and increases the total conserved land within the region.

Management frameworks build on existing environmental policy, legislation and regulations, and provide an understanding of the current state of the environment, as well as emerging trends, challenges and opportunities.

Management frameworks in effect include:

- Surface Water Quantity Management Framework for the Lower Athabasca River
- Surface Water Quality Management Framework for the Lower Athabasca River
- Groundwater Management Framework for Lower Athabasca Region
- Air Quality Management Framework for NO₂ and SO₂

Additional planning initiatives under development:

- Biodiversity Management Framework
- Landscape Management Plan
- South Athabasca Oil Sands Regional Strategic Assessment and Sub-Regional Plan

Each management framework includes: desired regional objectives, regional limits (not to be exceeded) and triggers (provide warning signals), key indicators, approaches/actions to achieve

⁴ Canada Oil Sands website: <http://www.canadasoilsands.ca/en/explore-topics/regulation-and-monitoring>

objectives and an approach to monitor, evaluate and report the results to Albertans. If a trigger or limit is exceeded, a management response to reverse the trends and exceedance is pursued such as: preparation of a management plan, further modelling or monitoring, development and implementation of new performance standards, and the use of best management practices.

Oil Sands Advisory Group

In July 2016, the Alberta government established the Oil Sands Advisory Group (OSAG)⁵, a government panel composed of multi-stakeholder membership from industry, environmental organizations, Indigenous and non-Indigenous communities. The group is mandated to advise the government on the implementation of the Alberta Climate Leadership Plan as it relates to the oil sands, and help Alberta's energy industry achieves the goal of being one of the most environmentally progressive in the world

The OSAG will provide advice on climate, energy and environmental policy with four focus areas:

- implementation of the carbon emissions limit of 100Mt/year on oil sands;
- advice on how to invest in innovations to reduce emission intensity;
- to improve local and regional performance related to environmental issues; and
- to define pathways and policies to 2050.

A specific requirement listed in the Terms of Reference, is to develop durable, effective structures and processes to address local and regional environmental issues such as air, land, water, biodiversity and cumulative effects⁶.

Canada Oil Sands Innovation Alliance

Formed in 2012, the Canada Oil Sands Innovation Alliance (COSIA)⁷ is an alliance of 13 in-situ and mining oil sands producers, representing 90 percent of production from the Alberta Oil Sands region. The group's vision is to enable responsible and sustainable development of the oil sands, while delivering accelerated improvement in environmental performance through collaborative action and innovation in the areas of greenhouse gases, land and biodiversity, water and tailings. By 2016, COSIA shared 936 distinct environmental technologies, costing \$1.33 billion, amongst member companies.

A description of COSIA's Environmental Priority Areas (EPAs) related to GHGs, land, and water is provided in Appendix A. Key COSIA projects that ConocoPhillips participates in are also noted for each EPA. Additional information can be found at www.cosia.ca.

⁵ Alberta Environment and Parks (AEP). July 13, 2016 Ministerial Order 44/2016 for the Oil Sands Advisory Group signed by Minister Shannon Phillips. Schedule 2 Terms of Reference.

⁶ July 13, 2016 Media Release from GoA

⁷ COSIA website, www.cosia.ca

Oil Sands Environmental Monitoring Program

The Oil Sands Environmental Monitoring Program⁸ was jointly implemented in 2012 by the governments of Alberta and Canada to be a world-class scientifically rigorous, comprehensive, integrated and transparent environmental monitoring program to ensure responsible development of the oil sands.

The Environmental Monitoring and Science Division (EMSD) of Alberta Environment and Parks (AEP) is currently responsible for the program with Environment and Climate Change Canada providing technical expertise. Costs for the program are paid for by industry at \$50 million annually.

EMSD is responsible for providing proactive, objective reporting of scientific data and information on the condition of Alberta's environment, including:

- baseline environmental monitoring
- cumulative effects monitoring
- data evaluation and management
- on-going condition of environment reporting in all regions of Alberta
- credible data, evaluation, knowledge and reporting to inform policy and regulatory decision-making

A 2016-2017 work plan and projects summary table is available at:
<http://environmentalmonitoring.alberta.ca/activities/projects-summary/>.

⁸ <http://jointoilsandsmonitoring.ca/>

ENVIRONMENTAL ASSESSMENT AT THE REGIONAL LEVEL

During public presentations in Calgary, Panel members frequently asked participants to comment on the notion of regional assessments (REA, RSEA, regional studies, etc.) and whether regional assessments could be used to incorporate federal interests in the EA process.

It is ConocoPhillips' view that under specific circumstances, regional assessment has strong potential to improve overall EA processes and decision-making by bridging the gap between federal environmental policy implementation and project-level EA. In addition, a thoughtfully planned and executed regional assessment can significantly improve indigenous participation, cumulative effects management, and environmental and social-economic baselines.

Although we are supportive of the general concept, regional assessment has significant challenges which need to be addressed before it should be considered a formal process under the provisions of CEAA. Notably, regional assessment must:

- represent a cooperative effort at a multi-jurisdictional level and not intrude on provincial jurisdiction;
- provide clarity on key elements like purpose, triggers, responsible parties, role in decision making, scope, legislative authority, etc.
- consider existing provincial land use planning legislation such as the *Alberta Land Stewardship Act*;
- consider indigenous values and design elements;
- add value for decision-makers and stakeholders;
- be “fit-for-purpose” and focus on the priority and long term risks for the region;
- improve long-term regulatory certainty and/or efficiency; and
- be firmly anchored in existing regulatory frameworks to ensure results are accepted by regulatory authorities in their decision-making process.

In cases where regional assessment is deemed appropriate – flexibility will be required. Regional assessment should not delay or interfere with ongoing plans or activities; nor should it encumber projects already approved or undergoing regulatory review.

Consideration should be given to the variety of pilots and examples of regional “studies” that exist across Canada; each with different scope, audience, outputs, levels of public participation, and success in achieving outcomes.

OVERARCHING INDIGENOUS CONCERNS

Project-level Consultation in Context

Oil sands developers adhere to Alberta's policy, guidelines and operating procedures for consultation with Indigenous peoples on their oil sands projects. This structured consultation process was established in November 2013 through the Aboriginal Consultation Office (ACO), which reports to the Minister of Indigenous Relations. The ACO offers a one-window approach that has enhanced coordination of Alberta's consultation process as well as service delivery to First Nations, Metis Settlements, industry, and Alberta ministries. ACO guides all aspects of provincial consultation, including scope and level; information requirements; time requirements; and reporting to government, and First Nations and Metis Settlements. It also requires an assessment of adequacy of both consultation and efforts to address potential adverse impacts on Treaty rights and traditional uses (ceremonial grounds, burial grounds, gathering sites, and historical locations). The possible need to accommodate Indigenous groups is also identified.

ConocoPhillips and other in situ developers take their role in consultation on their projects seriously with most consultation programs continuing over the life of the project, from EA to closure. For example, ConocoPhillips has its own Stakeholder Engagement Policy, which commits us to early, regular and transparent consultation with Indigenous communities. We believe this best practice is important for the establishment and maintenance of trust and long-term relationships. We know Indigenous groups have concerns about impacts to their rights and traditional uses, as well as to their quality and way of life. We address adverse impacts as fully as possible, and strive to provide significant long-term, positive benefits to help offset impacts.

For example, ConocoPhillips' consultation program on its recent Surmont 3 Project included:

- holding early open houses and meetings to introduce the project and gather concerns to be addressed in the upcoming EA,
- funding individual First Nations and Metis community traditional land use studies, and use of these studies in the EA,
- funding individual community technical reviews of the EA, and discussing and revising responses to each concern,
- mitigating trapper impacts,
- discussing and offering project benefits to each community, and
- committing to long-term relationships and project communication.

Some of the benefits provided as enhancements include training programs, employment, business opportunities and community funding to support community goals and self-sufficiency. Benefits may also be provided in cooperation agreements, which govern ongoing relationships, benefits, and ongoing project involvement in many areas.

In addition, ConocoPhillips has been building capacity within Indigenous Communities so they can participate in regional environmental committees and regulatory reviews of oil sand project applications. For example, around 15 years ago, ConocoPhillips and other oil sand operators collaborated to establish and fund Industry Relations Corporations (IRCs) for several Indigenous communities to increase their capacities to consult. The IRCs continue to be funded by industry today.

The areas for improvement in project-level consultation include earlier engagement, proper incorporation of traditional knowledge, and consistent capacity funding. Furthermore, it is difficult for communities to separate project-level concerns from broad policy issues related to regional planning, cumulative effects management, monitoring, and overarching issues related to Indigenous rights and reconciliation. This represents a significant area for improvement and is discussed more below.

Indigenous Rights and Reconciliation

The Expert Panel noted an overwhelming expression of concern by Indigenous groups on the inadequacies of EA process in the areas of consultation and management of cumulative effects. ConocoPhillips suggests that these concerns have their origin in the overall failure of the federal government to provide a means for Indigenous Groups to assess and, where appropriate, obtain accommodation for the infringement of Indigenous rights. Regulatory EA processes are not the place to address outstanding issues regarding Indigenous rights and reconciliation. A separate government effort to engage and work with Indigenous Peoples at a policy level to understand and resolve the issues of cultural respect, accommodation, and self-determination is required.

In the absence of an appropriate vehicle to address infringement and accommodation, Indigenous communities use whatever regulatory processes are available to raise their concerns, especially as part of project EAs. However, project EA processes were never designed to handle the accommodation of infringed rights. Seeking pathways to regulatory approvals and in response to Indigenous community concerns, project proponents enter agreements to capture the interests and commitments of both parties, commonly referred to as Impact Benefit Agreements (IBAs). Hundreds of extractive industry proponents across Canada, and within the Athabasca Oil Sands region, have entered into these agreements (see [Indigenous Mining Agreements – GoA Website](#) and [IBA Research Network](#)). Together, they represent a patchwork approach to accommodation of infringed Indigenous rights for which the federal and provincial governments are absent.

Both in and outside of these IBAs, indigenous communities are provided preferential access to competitive contracting and employment, which in the oil sands region totaled billions of dollars over the last 10 years. ConocoPhillips' Surmont 2 in-situ SAGD project resulted in over \$500 million in contracts being competitively awarded to local indigenous companies (predominantly joint ventures) over the 5-year construction period. This provided substantive benefits to local communities. The combination of agreements, contracting and employment represents material accommodation of infringed rights not formally captured in any government framework. Reconciliation of First Nation interests around resource development will continue to show up at the project-level until there is broader reconciliation of Indigenous traditional land use rights and involvement in land management planning by the federal and Alberta governments.

On the broader indigenous reconciliation and accommodation file, industry has a clear role. ConocoPhillips has been actively exploring options for brokering a tri-partite dialogue in service of helping governments to address the growing risk of unattended accommodation for infringed rights and the options for process and system architecture solutions.

RECOMMENDATIONS

ConocoPhillips recommends that in situ oil sands projects not be listed in the *Regulations Designating Physical Activities* and not be subject to federal EA under CEAA 2012. We urge the Panel to carefully examine the purpose of CEAA and to provide clear and fair rationale for designating projects. Federal involvement in the environmental assessment of in situ projects on provincial land should be considered within the following context:

- In situ projects are within provincial rather than federal jurisdiction. The application of CEAA to in situ projects would result in duplication with provincial processes.
- Duplication, uncertainty, delays, and increased costs associated with the layering of environmental assessment processes undermines the economic viability of projects and jeopardizes competitiveness – while often not making a difference to outcomes.
- Public perception that environmental protections were lost with CEAA 2012 does not consider the extensive and robust environmental assessment processes in place at the provincial level - Alberta is among the world's leading jurisdictions.
- The Government of Alberta is responsible for regional planning, integrated land management and land use policy; the Athabasca Oil Sands Area is one of the most extensively managed and monitored regions in Canada.
 - The Lower Athabasca Regional Plan considers the cumulative effects of all activities on air, water, and biodiversity and establishes environmental frameworks to achieve desired regional objectives.
 - The multi-stakeholder Oil Sands Advisory Group was established to advise the Government of Alberta on climate, energy and environmental policy and specifically to develop durable, effective structures and processes to address local and regional environmental issues such as air, land, water, biodiversity, and cumulative effects.
 - Oil sands operators in Alberta are working collaboratively through the Oil Sands Innovation Alliance to enable responsible and sustainable development of the oil sands, while delivering accelerated improvement in environmental performance.
 - The Oil Sands Environmental Monitoring Program was established in Alberta to be a world-class scientifically rigorous, comprehensive and transparent environmental monitoring program to evaluate cumulative effects and the effectiveness of management tools in the oil sands region
- Under specific circumstances, regional assessment has potential to bridge the gap between federal environmental policy implementation and project-level environmental assessment. It also has potential to significantly improve indigenous and other public participation, cumulative effects management and socio-economic and environmental baseline management. However, until more clarity is provided on the role, key elements, and legislative framework – ConocoPhillips believes regional assessment is not ready to become a formal part of the CEAA process. ConocoPhillips recommends that CEAA consult broadly on regional assessments before making this tool a formal part of the CEAA process.

- Early, regular, transparent, and effective consultation does take place with Indigenous communities in Alberta and significant efforts are made to address concerns and incorporate traditional knowledge. Substantive benefits to Indigenous communities include training programs, employment, business opportunities and community funding to support community goals and self-sufficiency. However, EA processes cannot address outstanding policy issues regarding Indigenous rights and reconciliation.
- Reconciliation of Indigenous interests around resource development will continue to be an issue at the project-level until there is broader reconciliation of Indigenous traditional land use rights and involvement in land management planning by the federal and Alberta governments.

Appendix A - COSIA Environmental Priority Areas: Key Issues and Projects

Greenhouse Gas Environmental Priority Area		
Aspiration	Key Issues Being Addressed	Key Projects
Produce oil with lower greenhouse gas emissions than other sources of oil	<ul style="list-style-type: none"> Improving energy efficiency in all aspects of oil sands operations, including the production of steam for in-situ (in place) recovery of bitumen; Recovering waste heat for reuse; Design and operating best practices; Measurement, monitoring, and verification; Reducing flaring, venting, and fugitive emissions; CCS of CO₂ from steam generators and other large oil sands facilities; Producing alternative energy; and Exploring regional opportunities to reduce GHG emissions with non-industry parties. 	<p>Carbon XPRIZE</p> <p>To tackle climate change, the GHG EPA has initiated a global competition, Carbon XPRIZE, with a substantial monetary prize to identify developers of technologies that can convert CO₂ emissions into valuable products. The competition has two tracks: one focused on testing technologies at a natural gas power facility, and the other at a coal power plant.</p> <p>Improved Efficiency via Waste Heat Recovery</p> <p>While step-changing solutions may significantly contribute to GHG emission reduction from oil sands, most are still in the early stage in the development path. Incremental and targeted technologies can, therefore, address emissions reduction via improving efficiency in the existing facilities in near future. Through COSIA-ARCTIC Waste Heat Recovery Challenge, clean-tech solutions, potentially applicable in oil sands, have been selected for capturing heat lost to the atmosphere (waste heat). ConocoPhillips has taken a leadership role in advancing the most promising technology for flue gas heat recovery from steam generation units at Surmont. While not tested in SAGD facilities yet, selected technologies are commercially available and have been applied in other energy intensive industries. Deploying this concept is a promising quick-win for incremental GHG emissions reduction in SAGD.</p>
Land Environmental Priority Area		
Aspiration	Key Issues Being Addressed	Key Projects
<i>Aspiration:</i> Be world leaders in land management, restoring the land and preserving biodiversity of plants and animals.	<ul style="list-style-type: none"> Footprint intensity reduction - more efficient use of land by reducing the extent and duration of industrial footprints; Accelerate reclamation - reclaiming and restoring disturbed land in a timely manner; Preserve biodiversity - maintaining natural diversity including bird, mammal and fish species with a focus on species of management concern. required for caribou conservation. 	<p>Footprint Intensity Reduction</p> <p>Through the process of developing a public in-situ footprint intensity performance goal at the COSIA (http://www.cosia.ca/initiatives/land/land-performance-goals) ConocoPhillips has taken concrete steps to reduce footprint intensity at the Surmont Project. Opportunity areas at Surmont have been identified and internal goals for 2017-2022 are being set to achieve further footprint intensity reductions. An important project in advancing better construction and reclamation practices at Surmont is the Northern Alberta Institute of Technology interim reclamation research project (http://www.cosia.ca/initiatives/land/surmont-boreal-reclamation-project).</p> <p>Caribou Recovery Project</p> <p>Caribou habitat protection and restoration are foundational to caribou recovery but on their own, are likely insufficient to conserve boreal caribou populations in Alberta. Building on efforts at COSIA that address caribou conservation, ConocoPhillips has taken a leadership role in advancing one of the technically most promising concepts for caribou recovery; a very large predator exclosure. This provides wildlife managers with another option in a suite of tools required for caribou conservation.</p>

Water Environmental Priority Area		
Aspiration	Key Issues Being Addressed	Key Projects
<p>Be world leaders in water management, producing Canadian energy with no adverse impact on water.</p>	<ul style="list-style-type: none"> Improving the use and management of all water resources, fresh, saline and recycled; creating a collaborative regional water management solution that links mining and in situ supply/demand; Accelerating the development and commercialization of water treatment technologies; Developing game-changing steam generation technology to reduce water used to produce steam for in situ oil sands development; and Managing salt accumulation in water streams on mine sites during active mining. 	<p>In-Situ Water Best Practices Working Group</p> <p>The <i>Working Group</i> is led by ConocoPhillips and brings companies together to share best practices and adopt and improve technologies that advance operational and environmental performance. Recent examples of company initiatives that were shared that have improved environmental performance include:</p> <ul style="list-style-type: none"> Increased steam quality to increase steam volume output while decreasing greenhouse gas intensity; Improved evaporator cleaning to increase heat-transfer efficiency; Slop oil treating to minimize the amount of waste trucked off site; and Operational lessons learned related to using brackish water.

Of further note, COSIA's Monitoring Working Group recently initiated an Indigenous Community-based Monitoring Program to:

- understand current community-based monitoring initiatives in the oil sands region,
- develop tools to guide future ICBM options and opportunities, and
- help reconcile traditional indigenous perspectives with those of western science related to local and cumulative effects.