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Métis Nation of Alberta Local 1909 Submission to the Federal EA Panel

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Introduction

Who is ML 1909?

Métis Nation of Albera Local 1909 (ML 1909) is a political organization representing 82 Métis members residing between Lac La Biche and Fort McMurray in Alberta. Aware of the increasing impacts of industrial development on Métis harvesting practices, lifelong Métis residents of Lac La Biche decided to form this Métis Local in 2010. The organization was formed to protect their interests as a contemporary Métis community. We continue to do the hard work that is necessary to protect our members' harvesting rights and practices in relation to proposed development, while also seeking out economic development opportunities.

Most ML 1909 members have houses in Lac La Biche, but members continue to engage in traditional harvesting practices throughout the Athabasca Basin between Lac La Biche and Fort Chipewyan and have relations extending across the region. ML 1909 members' traditional practices and values have been integral to their families' Métis culture and are considered by ML 1909 to be protected as Aboriginal rights under Section 35 of Canada's highest order of law, the *Constitution Act.*

Overview of Issues Specific to Métis in EA

In this submission, we raise several issues that you may believe are no longer a problem in relation to Indigenous peoples in today's federal environmental assessment (EA) processes. We assure you nothing could be further from the truth, especially for Métis peoples of Canada. For example, in a recent federal EA, our members' Aboriginal rights were left unrecognized until we intervened. It has taken nearly two and a half years of our own volunteer time and finances with some minimal supplemental support from the Canadian Environmental Assessment Agency (CEAA), to gain this recognition within the EA process. The Panel has already been struck, but our concerns over likely adverse impacts on our priority valued components, rights, and interests have not been heard or responded to.

Part of the problem is the unique jurisdictional vacuum within which Métis exist. Despite Canada's policies informed by the *Constitution Act*, Alberta does not have a Métis consultation policy. And under a joint federal-provincial review panel EA, the Proponent is only guided by the federal government to consult, no specific federal legal requirement compels Proponents to act in ways that uphold the honour of the Crown. Many Proponents are uninformed about Métis rights and, as a result, avoid or hesitate engaging.

This submission provides unique insights on these Métis-specific issues and proposed solutions. This submission is scoped around ML 1909's experience in a recent federal EA. Appendix 1 provides a sample letter that outlines the critical problems we have faced in this EA, as requested by the Federal EA Panel following the ML 1909 presentation in Fort McMurray in November. This written submission is also scoped around interviews we conducted with five

community members who have been actively involved in this and other federal EAs. These issues are presented in this submission and summarized in Appendix 2.

There are six (6) key areas where ML 1909 makes recommendations for federal EA improvement. These are:

- Enhance knowledge of Métis people and related issues for federal government EA staff and Proponents;
- Develop federal government EA guidelines for Métis-specific information and consultation requirements;
- Improve federal funding to Métis communities following the *Daniels* ruling[1] to ensure our membership are adequately represented by a political organization;
- Provide funding opportunities to develop and update community consultation protocols for EAs;
- Provide funding for EA participation earlier in the process, upfront, so burden of cost of EA are not carried by the Indigenous organization; and
- Increase federal government legal control over the EA process, including enhanced options available for punitive measures when it is clear best efforts have not been made.

Lack of Knowledge of Metis Rights and Interests

Reflecting the principles of *United Nations Declaration of the Rights of Indigenous Peoples* and Free, Prior and Informed Consent in the context of Métis in Alberta is a major current gap that requires clear federal legislation and policy revisions. There remains a lack of clarity on federal consultation requirements for Métis (Newman, 2010) and this is especially the case in Alberta where no consultation policy exists. Indeed, CEAA's (2015) guidance to Proponents on working with Aboriginal groups does not include specific guidance for Métis within this unique split of jurisdictions. In part due to the lack of government guidance on Métis rights and consultation requirements in Alberta, Proponents operating in this province are often left uninformed and reluctant to engage with the Métis organizations. Other reasons for the lack of engagement include lack of understanding of Métis history and rights, and the relative lack of capacity within Métis communities to engage on matters related to environmental effects and Indigenous rights. From ML 1909's view, reflecting the principles of FPIC is essential for an effective EA process, and requires that we have a meaningful contribution to decision-making over development likely to adversely affect our members' rights and interests.

Federal leadership is critical because Alberta's Indigenous consultation policies have proven inadequate for our members. The Aboriginal Consultation Office (ACO) administers two policies that relate to Aboriginal consultation – the First Nations Consultation Policy and the Métis Settlements Consultation Policy – neither of which fit the circumstances of ML 1909. The Métis Settlements Consultation Policy (ACO, 2015) strictly deals with Métis communities residing on

[1] *Daniels v. Canada, 2016 SCC 12*

designated Métis [sic] Settlements. ML 1909 is representative of a Métis community not residing on a settlement and, as such, the Alberta consultation policy does not apply to our organization or membership. It is worth noting that Alberta Environment and Parks also administers a Métis Harvesting in Alberta agreement. This harvesting agreement only deals with the rights of individual Métis to hunt and fish in Alberta, ignoring the overarching questions of consultation and protection of the full spectrum of other Métis rights and interests. Of particular concern for Métis in Alberta is that this agreement arbitrarily defines harvesting areas to a radius of 160km from a community when the provincial government does not have any pre-defined understanding of Métis historic and continued use (AESRD 2010, p.3). What is most disconcerting is that Proponents mistake this agreement as Alberta's consultation policy and the geographic delimitation as falsely reflective of the boundary of individual Métis groups' rights and interests. In our experience, proponents tend to adopt this arbitrary and inaccurate standard to guide their engagement effort in EAs, rather than making effort to respect federal guidelines or consider the Métis rights test outlined in the Supreme Court's *R. v. Powley* ruling.[2] We spell out this crucial consultation policy problem unique to Alberta in our sample letter provided in Appendix 1.

The federal government must take the lead in fulfilling fiduciary obligations. The consultation gap in Alberta, the Proponent lack of awareness of Métis rights and land use patterns, and the recent *Daniels v. Canada*[3] decision, leads Métis Local 1909 to highlight the primary importance of the fiduciary relationship between Métis and Canada. As outlined in Madden et al. (2016), the *Daniels v. Canada* Supreme Court ruling reaffirmed *Haida Nation v. BC*, *Tsilhqot'in v. BC*,[4] and Powley, in that "a context-specific duty to negotiate" exists and is triggered when Métis communities have credible Section 35 rights or claims (i.e. they need not be proven first).

Lawyer and Métis rights expert, Jean Teillet advises that: "Métis, the Crown and project proponents have the same consultation obligations that they have to all other aboriginal peoples" (2013, p.9-11). Proponents' obligations include (a) informing Métis about pending actions and (b) informing themselves about Métis to understand potential Project effects. In ML 1909's experience, the federal "government and the proponent are not genuinely seeking to inform themselves about the aboriginal interests that will be affected, the significance of such effects and how those could be mitigated" (Teillet 2013, p.9-11). We explore this experience in the next section.

Federal EA places an unfair burden on Métis to educate and reach out to Proponents to protect our own rights and interests.

[2] The Supreme Court set out the test for determining Métis harvesting rights in 2003 with the *Powley Test - R. v. Powley, (2003) SCC 43*

[3] *Daniels v. Canada, 2016 SCC 12*

[4] Haida Nation *v*. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73
Tsilhqot'in Nation *v.* British Columbia, 2014 SCC 44, [2014] 2 S.C.R. 256

What is equally challenging for Métis Local 1909 in the federal EA process has been Proponents' general lack of awareness of Métis rights and interests. Despite the fact that the Proponent is obliged to educate themselves in regards to this critical cultural and rights context, they usually require our support to walk them through the history, context, and governance. While we expect to do some of this work, we ask that Proponents provide us with compensation to walk them through these information gaps within reasonable timelines. We do not have staff members funded to do any of this work and require monies to hire contractors or temporary staff to support our leadership.

ML 1909's experience with one recent federal EA demonstrates the difficulties Métis in Alberta face when dealing with Proponents who are un-informed and reluctant to engage. In this oil sands EA example, we only managed to get the Proponent to include us in their EA engagement activities after we hired technical consultants to demonstrate clearly that our members' rights would likely be adversely affected by the Project. It was only after the Proponent was presented with this undeniable information we were provided with minimal funding for a baseline traditional use study. Once complete, the study showed both extensive *uses* and *values* with the Project-affected area. CEAA had requested this information, including information on impacts, for the EA record, but the Proponent refused to integrate our traditional use information into their assessment. The Proponent justified their low level of engagement with ML 1909 based on the distance of our physical community from the Project, a reminder of the disservice that Alberta's current policy does to the Métis.

In an effort to be included in the EA, ML 1909 did three things:

a) Requested that CEAA issue a letter outlining the Crown's determination of level of consultation - a determination that was higher than what the Proponent was using to guide their consultation activities with ML 1909;
b) Used CEAA participant funding to hire a consultant to provide a preliminary description of the likely adverse effects of the Project using the Project-specific ML 1909 traditional use baseline study and Proponent's Project Description; and,
c) Filed the effects analysis and baseline study as part of the EA.

Only after the three items above were completed did the Proponent agree to sit down with us to speak about our most pressing concerns. In the interim, ML 1909 was burdened with 30 months of work to educate and reach out to the Proponent so that they were finally informed about the potential Project effects, a basic requirement for Proponents in consultation processes, according to Teillet (2013) outlined above.

Generally, there is very little information readily available on how to assess effects on Métis rights in federal EA. What is available is not published by federal government sources. In the past, CEAA funded expert discussion papers that informed best practice. These papers were used to inform practice and, in turn, inform federal guidelines. The federal government should reintegrate this expert input into development of best practice and occasional updates to

guidance. We strongly recommend that the federal government re-introduce a healthy research and development program for federal EA. We ask that CEAA require some of this research to include or be led by Indigenous, including Métis, communities so that guidelines are more thoroughly informed by community-based research and information. Such an evidence-based approach to developing EA guidelines would create both neutral and credible guidelines that would be hard to dispute by any party. All of this information should be readily available on CEAA's website.

Proposed Solutions to Enhance Knowledge on Métis Issues

We ask that the federal government take steps to enhance EA administrator, decision-maker, Proponent, and practitioner knowledge of Métis rights and issues. The following solutions are proposed:

1. Hire new – and train existing - federal government staff with experience in Métis rights and governance in Alberta to provide necessary information to Proponents early in the process.

2. Re-introduce a research and development program for federal EA to push best practice forward in a transparent way, while informing federal EA guidelines so they are credible and undisputed. Such a program will involve community-based research approaches so that guidelines are more thoroughly informed by Indigenous communities. All of this information should be readily available on CEAA's website.

3. Update all relevant EA guidelines to include information on Métis rights, information and consultation requirements specific to Métis. The federal government must also provide information to Proponents on the problems facing communities in the split of jurisdictions as outlined below and in Appendix 1 where no consultation policy exists in Alberta for Métis communities, despite constitutional requirements.

The Unique Capacity Constraints Facing Métis in EA

As detailed above, consultation for Métis in Alberta exists in a jurisdictional vacuum. The federal government has a responsibility to uphold section 35 of the *Constitution Act* where provinces, like Alberta, fail to do so. This problem between the split of jurisdictions relates also to the injustice facing Métis communities, as clearly outlined in *Daniels.* ML 1909 maintains that this ruling points to a requirement that the federal government provide similar resources and funding to Métis as to "status Indians" already recognized under section 91(24) of the *Constitution Act.*

Capacity is particularly critical issue for Métis communities that have no core operational funds, unlike Band Councils that are provided with basic funding. The fact that it is extremely difficult for Métis to secure core operational funding is particularly troubling for ML 1909. It is a sign that

to date the federal government has not taken the necessary steps to address this injustice pointed out in the *Daniels* ruling.

Minimal participant funding provided by CEAA for Métis communities have allowed us to initiate preliminary engagement in the federal EA process. As outlined above, ML 1909 has exhausted all financial capacity – and at extensive internal opportunity cost, given our limited human resources - just to secure a meaningful conversation with the Proponent through education and outreach tasks. In our experience, we have not had sufficient funding to begin to understand the potentially damaging information that the Proponent has included on the EA record regarding likely impacts on our rights and interests. Nor have we been able to conduct a fulsome effects analysis on our rights and interests.

In order to more meaningfully engage in the federal EA process, ML 1909 would like to develop and implement our own consultation policy so we can quickly educate and inform Proponents of our expectations of them in relation to our membership's rights and interests. This is necessary so we can begin to do the work necessary to *protect* our members' rights and interests. We hope that a new federal EA process will allow ML 1909 to move beyond education and outreach so we can begin to identify Project specific and cumulative effects on our members' rights and interests.

ML 1909 recommends that the federal government provide funding for Métis to work with membership and technical experts to write consultation policies for each individual community.

When we requested funding to participate in the EA from the Proponent, we gave them control of the process. The power to decide who can engage in the process and what information should be included in an EA should not rest with the Proponent. The Proponent has denied ML 1909 funding to conduct a full impact assessment, to review the Proponent's technical information related to Métis Local 1909 rights and interests, and to participate in mitigation meetings.

That the Proponent is the effective gatekeeper to Métis entry into the federal EA process is a sign that the system is broken and backwards. The federal environmental assessment authorities need to more emphatically govern the federal EA process, earlier and in strongly consultation with affected Aboriginal groups. As stated above, it has taken over two years for ML 1909 to be taken seriously in the EA process by the Proponent despite CEAA recognition that we are to be consulted on the "moderate" end of the spectrum, and CEAA information requests that the Proponent provide information on likely effects on ML 1909 rights and interests. CEAA must be able to legally compel the Proponent to conduct a proper effects assessment when they are clearly not following federal guidance.

Proposed Solutions to Enhance Capacity and EA Requirements

ML 1909 proposes the following solutions to enhance capacity of Indigenous groups, especially Métis communities:

4. The federal government to provide EA funding or capacity earlier in the process to avoid having costs carried by cash-strapped organizations. The federal government should provide more stable and longer-term funding envelopes available to:
    a. Participate in project-specific EAs throughout various steps in the process;
    b. Enhance capacity in communities to deal with EAs through: (a) policies, (b) hiring and training staff, and (c) building governance and unity across organizations to share costs.

5. The federal government to introduce and administer a realistic, full-cost "User Pay" EA fee system, with distribution of funds to affected Aboriginal groups from this pot. We understand funding may be limited, given the resource revenue streams flow to the Provinces; however, several examples of EA processes exist where fees are levered to cover costs for the Province in advance of the EA start-up. British Columbia's *Environmental Assessment Fee Regulation* is an example of this system that is in place. We know this one only provides funding for the provincial regulator and does nothing to address the injustice experienced by Indigenous groups engaging in EAs.

6. Levering additional funding in the proposed "User Pay" system above, create a joint funding program to ensure the fair distribution of funding so Proponents do not have control over the consultation process. CEAA and industry funding should be jointly held and distributed fairly.

ML 1909 proposes the following solutions to strengthen EA legal requirements early in the process to ensure Indigenous rights and interests are properly protected:

7. Introduce a legally enforceable requirement that will ensure the Proponent will engage in a meaningful way with affected Indigenous groups early in the process, such as "check-in points" that would involve one or several meetings with affected Indigenous groups taking place prior to EIS guideline finalization for the express purpose of understanding the relative performance of the Proponent. If the performance is deemed to be generally poor, the federal government should be permitted to escalate their involvement and require that the Proponent follow specific steps agreed upon with affected Indigenous groups before any EISG may be finalized.

Summary of Recommendations

1. Hire new – and train existing - federal government staff with experience in Métis rights and governance in Alberta to provide necessary information to Proponents early in the process.

2. Re-introduce a research and development program for federal EA to push best practice forward in a transparent way, while informing federal EA guidelines so they are credible and undisputed. Such a program will involve community-based research approaches so that guidelines are more thoroughly informed by Indigenous communities. All of this information should be readily available on CEAA's website.

3. Update all relevant EA guidelines to include information on Métis rights, information and consultation requirements specific to Métis. The federal government must also provide information to Proponents on the problems facing communities in the split of jurisdictions as outlined below and in Appendix 1 where no consultation policy exists in Alberta for Métis communities, despite constitutional requirements.

4. The federal government to provide EA funding or capacity earlier in the process to avoid having costs carried by cash-strapped organizations. The federal government should provide more stable and longer-term funding envelopes available to:
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taking place prior to EIS guideline finalization for the express purpose of understanding the relative performance of the Proponent. If the performance is deemed to be generally poor, the federal government should be permitted to escalate their involvement and require that the Proponent follow specific steps agreed upon with affected Indigenous groups before any EISG may be finalized.

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Appendix 1: Sample Letter Outlining Key Issues in Example EA

Melina Scoville, President
Métis Nation of Alberta, Local 1909

[date removed]

Federal EA Authority [names removed]

RE: Remaining Gaps in the EA Record - Métis Local of Alberta Association Local 1909 October 2015 Phase 1 Traditional Knowledge and Use Baseline Study [name removed] Project

Dear [name removed],

Métis Local 1909 ("ML 1909") is pleased to provide you with the Métis Local 1909 Traditional Knowledge and Use Baseline Study ("the TKU Baseline Study") for the proposed [name removed] Project ("the Project"). [name removed] (or "the Proponent") provided funding for a "Phase 1" study in December 2014 following ML 1909 submission of preliminary evidence of traditional knowledge and use within the vicinity of the proposed Project.

As we have indicated in previous filings in this EA, ML 1909 is the political entity representing its 82 member's harvesting rights and practices within the Athabasca Basin. Although many ML 1909 members have houses in Lac La Biche, members continue to engage in traditional harvesting practices throughout the Athabasca Basin between Lac La Biche and Fort Chipewyan, as detailed in our attached TKU Baseline Study. ML 1909 member's traditional practices and values have been integral to their families Métis culture and are considered by ML 1909 to be protected as Aboriginal rights under Section 35 of the *Constitution Act, 1982*.

In the TKU Baseline Study, you will find detailed baseline information of ML 1909 traditional knowledge and use ("TKU") within the Project-affected area, including within the proposed Project footprint or Project Development Area (PDA). When we submitted this information to [name removed] on November 9, 2015, we requested that the Proponent fill the very substantial remaining gaps identified by ML 1909 and CEAA on the EA record in relation to ML 1909 rights and interests, including as it relates to *Canadian Environmental Assessment Act 2012* section 5(1)(c) and related Supplemental Information Requests that remain outstanding. Some of these gaps were discussed in our November 24, 2015 meeting with the Crown consultation team where we discussed some of the findings in our TKU Baseline Study and in previous correspondence, including our November 21, 2014 letter to CEAA. We also hope this now final and public report will support the Crown consultation team in their work to:

- Revise their preliminary finding and consider requiring a higher level of consultation; and
- Ensure that [name removed] is engaging with ML 1909 in aspects of consultation designated by the Crown to the Proponent at an appropriate level.

To support the Panel in their first task – review of EA documentation – we have developed this cover letter to clearly identify the outstanding gaps in process and information that ML 1909 believes must be addressed *before* the Panel hearings begin. As such, we request the following:

- The Panel determine there is insufficient information on the record to proceed to a hearing phase; and
- The Panel issue additional information requests to the Proponent in order to require [name removed] to address the outstanding information gaps identified herein.

We look forward to the Panel's written response to this request.

For ease of reading, this cover letter is organized in five parts:

1. An overview of the EA process to date, including engagement to date;
2. Adequacy of information known to be on the record;
3. A detailed synopsis of the key findings of the TKU Baseline Study and description remaining gaps;
4. A preliminary discussion of potential effects on ML 1909 rights and interests; and
5. Recommended next steps and reiteration of ML 1909 requests of the Panel.

1. The EA process to date

ML 1909 initiation of engaging in the EA process

ML 1909 was awarded a small amount of funding by CEAA in 2012 to participate in the [name removed] EA. With this funding, ML 1909 was able to complete a narrow, very high level review of the Joint Panel Agreement and responses to 15 AER, ESRD, and CEAA questions issued for Supplemental Information Request (SIR) Round 3 (see letters to CEAA dated April 15, 2014 and November 21, 2014). In November 2014 we also completed a gaps analysis of evidence that provided an initial overview of ML 1909 existing traditional use and knowledge information to demonstrate ML 1909 rights and interests occur in the Project-affected area. We provided this information to [name removed] to show that our section 35 rights and related interests were likely be adversely affected by their proposed Project. This work initiated our first meaningful discussion with [name removed] when they committed to provide ML 1909 with initial Phase 1 funding for a traditional use study. ML 1909 agreed to a "phased approach" to the TKU research, starting with a Phase 1 study that would be adequate only for characterizing *baseline* conditions. Any effects analysis would be conducted in a Phase 2 report that would be funded by [name removed] as deemed justified upon review of the Phase 1 report. The completed and final Phase 1 TKU Baseline Study (the same copy as submitted herein) was submitted to [name removed] on November 9, 2015.

Upon submission of the TKU Baseline Study to [name removed], ML 1909 requested a meeting with [name removed] to discuss the findings, and also discuss concerns regarding inadequate engagement between February and November 2015, documented in a letter dated November 29, 2015 (copied to CEAA as an attachment in a letter dated April 5, 2016). This letter noted that despite ML 1909 best efforts to scope out a [name removed]-requested community meeting, [name removed] refused to provide basic funding in line with ML 1909 protocols for hosting meetings. [name removed] also excluded ML 1909 from a wildlife mitigation meeting on November 6, 2015.

[name removed] has not met with ML 1909 membership since ML 1909 initiated engagement in late 2014, despite ML 1909 best efforts to scope such a meeting in line with ML 1909 protocol. As outlined in the November 19, 2015 letter to [name removed] (provided to CEAA on April 5, 2016) [name removed] committed in writing to fund a community meeting and, upon request from [name removed], ML 1909 developed a scope of work for this meeting and provided a revised scope based on [name removed] feedback at a cost to ML 1909. In response, [name removed] declined to fund any meetings. It is acknowledged that ML 1909 has since agreed to initiate coordination of membership in order to facilitate a meeting that will be led by [name removed] and *not* aligned with ML 1909 protocol. Specifically, this meeting will occur under duress with ML 1909 to provide travel costs and honorariums to our members to attend this meeting.

ML 1909 does not have latent capacity to engage with our community members without external support, to understand the range and priority of the concerns about the Project, nor to review technical information related to these key issues in the Integrated Application, Project Update, or SIR responses to understand how [name removed] has described effects on ML 1909 rights and interests. To date, ML 1909 engagement with [name removed] has been limited to:

a) High level review and comment of the Joint Panel Agreement, high level review of responses to 15 responses to AER, ESRD, and CEAA questions for Round 3 SIRs (see letters to CEAA dated April 15, 2014 and November 21, 2014);

b) Telephone meetings with [name removed] to discuss content of written correspondence and other items;

c) In-person participation in [name removed]-led Project Update meeting and two fisheries habitat offsetting meetings; and

d) Completion of a Phase 1 TKU Baseline Study with a ML 1909-selected technical researcher (Willow Springs Strategic Solutions).

Lack of justification for [name removed] low level of engagement: Distance of community

The argument [name removed] uses to justify its lack of engagement to date is flawed. In a letter to ML 1909 dated August 12, 2015, [name removed] notes that "a community's distance from a proposed Project is one indicator of potential impacts" and that if the ML 1909 TKU Baseline Report "outlines extensive impacts to ML 1909 members, we will consider appropriate additional work with ML 1909". Our response was copied to CEAA. As noted above, ML 1909 has consistently indicated the TKUS Baseline Study includes only *baseline* conditions and an effects assessment would be part of Phase 2. As such, [name removed] suggested measure of demonstrating "extensive impacts" is not appropriate as it is premature. What needed to be shown, and we suggest to the Panel is demonstrably shown in our TKU Baseline Study, is high extensiveness of *uses* and *values* with the Project-affected area, which may be subject to Project interactions and therefore have potential to be adversely impacted. Further, the distance between the community and the proposed Project is not an appropriately strong indicator to justify whether or not [name removed] will engage in "additional work". This argument is not justified in Canada's consultation policies or in the *Haida* and *Taku* Supreme Court Case decisions that are clear that consultation and (as appropriate) accommodation is required even when rights are not yet proven. [name removed] August 2015 response is also inconsistent with CEAA's determination that the preliminary depth of the duty to consult with ML 1909 in relation to the proposed Project is "moderate on the consultation spectrum" (see May 19, 2016 letter from CEAA to ML 1909). ML 1909 members are not bound by the locations of their primary residences in the practice of their Aboriginal rights. As you will see in the TKU Baseline Study, they have demonstrably used and continue to actively use the Project-affected area extensively for Aboriginal rights practices. This actual extent of past, present and desired future use is the proper gauge of impact potentiality for our members, given their mobile way of life on the land.

Mobility is a part of Métis rights, culture, and way of life[5,6]. A Métis family may have their residence in one location and harvest and practice their rights in another. This mobility is a longstanding historical practice that is continued today[7,8,9]:

> *"Historians are in agreement that the Metis were highly mobile, that they transacted routinely with settlers and Indians, and that they used fixed settlements as base*."

[5] Page 42, Teillet, B. J. (2008). *The Metis of the Northwest: Towards a Definition of a Rights-bearing Community for a Mobile People*.

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[9] Page 1-11, Teillet, Jean. 2013. Métis Law in Canada. (Vancouver: Pape Salter Teillet).

"[M]obility of the Métis, based on spatially extensive family networks and economies, was the foundation of their culture."

Lac La Biche is historically known as one of these "fixed settlements" or "hubs" that were used as a base[10]; indeed, the Powley Test[11] does not require a settlement to exist before the harvesting practice began, only presence on the land[12]. Consistent with this description of Métis culture, ML 1909 members reported various life-paths moving them throughout the Athabasca Basin moving house for socio-economic reasons and seasonally for accessing traditional harvesting areas in the TKU Baseline Study.

Since our ML 1909-initiated engagement with [name removed] in 2014, ML 1909 has been clear with [name removed] in correspondence, evidence and dialogue that our members actively engage in traditional harvesting activities in the Project-affected area, inclusive of the lands and resources between Lac La Biche and Fort Chipewyan, reflecting the way of life of Métis people and the nature of our unique section 35 Aboriginal rights[13]. This includes the relationship between Aboriginal rights and mobility of our people. Our harvesting practices and presence on the land itself is a much more influential indicator than settlement proximity to the proposed Project in fulfillment of the "Powley test"[14]. Indeed, a harvesting area and a residence are two elements that constitute a "community" from a Métis point of view, regardless of the distance between them[15].

As part of the Crown's duties, information on severity of impact of the proposed Project on ML 1909 rights and interests must be part of the information record for the EA. ML 1909 has not yet been afforded an opportunity to complete a fulsome effects assessment on either (a) our section 35 Aboriginal rights or (b) *CEAA 2012* section 5(1)(c) factors. Nor have we been permitted to work with [name removed] to co-develop this information and analysis so that the Proponent can complete this required task. As such, ML 1909 has not been able to propose mitigations for these yet-to-be-identified effects, and has not been afforded an opportunity to conduct or

[10] Page i, Anuik, Jonathan and Frank Tough, with the Métis Archival Project Lab. 2009. "Historical Métis Communities in Region One of the Métis Nation of Alberta, 1881-1916." (Edmonton: University of Alberta). Last accessed 31 May 2016. http://www.ceaa.gc.ca/050/documents_staticpost/59540/81947/Tab10_-_Historical_Metis_Communities_in_Region_1.pdf

[11] The Supreme Court set out the test for determining Métis harvesting rights in 2003 with the *Powley Test - R. v. Powley, (2003) SCC 43*

[12] Teillet, Jean. 2013. Métis Law in Canada. (Vancouver: Pape Salter Teillet).

[13] For a discussion on the nature of Métis rights in Canada, including in relation to their spatial boundaries, see Jean Teillet's 2013 report titled *Métis Law in Canada* available here: http://www.pstlaw.ca/resources/Metis-Law-in-Canada-2013.pdf

[14] The test for determining Métis harvesting rights, as set out in the Supreme Court decision *R. v. Powley, (2003) SCC 43*, requires consideration that Métis identify with a historic and contemporary rights-bearing community and such membership can be verified, the rights practices continued from prior to effective European control, and these practices are integral to the unique and distinctive Métis culture.

[15] Teillet, B. J. (2008). *The Metis of the Northwest: Towards a Definition of a Rights-bearing Community for a Mobile People*.

contribute to the characterization of residual effects after the imposition of mitigation committed to by [name removed], or determine the significance of residual adverse effects. This lack of opportunity is especially disconcerting given the TKU Baseline Study points to a strong likelihood that the proposed Project alone - as well as in cumulative combination with other past, present, and reasonably foreseeable future projects and activities - is likely to directly and indirectly adversely impact ML 1909 members' ability to exercise rights and interests in the project-affected area, most particularly but not exclusively hunting, fishing, trapping, and related activities. **We identify an insupportable high risk that the Proponent has not identified a significance adverse impact resulting from the proposed Project in the future, without a completed effects assessment.** Section 4 of this letter draws upon key findings from the TKU Baseline Study and other established literature to clearly justify the above assertion.

In response to our November 19, 2015 letter, [name removed] met with our leadership and technical support over the phone on December 7, 2015. In that meeting, ML 1909 was informed for the first time that [name removed] considers ML 1909 to be at the "notification" end of the consultation spectrum. In response, we documented this concern in a letter to [name removed] on April 5, 2016 (copied to CEAA) where we respectfully requested [name removed] to provide all of the evidence and information used to justify this perspective. [name removed] provided a letter response on May 27, 2016 indicating that the notification determination was "largely due to the distance of ML 1909" from the Project. Other than this flawed 'distance' argument already refuted above, no other justification has been provided to justify [name removed] level of engagement with ML 1909. Around the same time, CEAA shared their May 19, 2016 CEAA letter outlining a preliminary determination of "moderate" depth with a summary of the information used to determine this approach.

We respectfully request that the Crown consultation team issue written guidance to [name removed] on Crown expectations for engagement consistent with the Crown's preliminary estimation of the required duty of the depth to consult with ML 1909 in this EA.

[Several sections of letter removed.]

Closure

We look forward to hearing from the Panel and the Crown consultation team to meet and discuss the matters raised in this letter and the attached ML 1909 TKU Baseline Study report.

Sincerely,

ORIGINALLY SIGNED

Melina Scoville, President

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Métis Nation of Alberta, Local 1909

CC: [names removed]

Attachment: Métis Local 1909 Traditional Knowledge and Use Baseline Study

Appendix 2: ML 1909 Community Summary of Interviews

There were 5 participants interviewed. Local 1909 tried to focus on the questions requested by the Federal EA Panel after ML1909's presentation in Fort McMurray. Below is a summary of the responses we received from members interviewed.

- There is a lack of knowledge of Metis people within CEAA. What do you think a framework would look like that would allow industry be more prepared when engaging with Metis groups? For example: Best practice guide, information prior to engagement, cultural awareness, and community protocols.

-Daniels Case, the Metis are now included in Section 91(24). This has huge implications. We are not included in the Indian Act nor do we have a consultation policy. This needs to change for the Metis to be equally recognized.

-The CEAA process should reflect that the Metis are federally recognized with fair distributions of funding and resources.

-Industry should be talking to the Metis community leadership to get a better idea of what's been happening and what our expectation are.

-I think there should be something like a questionnaire to gather information for guidelines to follow.

-There should be Capacity for Metis groups to develop a community protocol. Every community is unique. There should be minimum standards in place.

-It wouldn't work to develop policies at the Metis Nation National or Provincial office level, as the grassroots members are most impacted. They assert themselves as individual municipalities because that is what the government understands, this research needs to be done at the Local level.

-Industry player are swamped with information, so it would be hard to read something and be engaged in a proper manner. Maybe there should be an Aboriginal consultant or specialist at CEAA that could inform companies about Metis people who are working towards an application approval. You can't teach a company this information in a few minutes, currently this is what many Metis groups are forced to do.

-Metis consultation must be mandatory in Provinces that do not include Metis in the Aboriginal Consultation Office. This has to be done at the Federal level.

-The Federal government has the capability to validate the rights of the Metis people. There should be funding allocated to allow for the Metis groups to assist with the development of their own consultation policy at the Federal Level.

-There needs to be field work done, workshops, methods developed to incorporate environmental work (Western science) with Traditional Land use. Otherwise Traditional Land Use information is misunderstood and overlooked.

-Develop an information gathering process that engages with various Aboriginal groups that could set up a best practice guide. This matter needs to be looked into at multiple levels in order to help CEAA do a better job. For example, multiple working groups, or organizations personal engagement. There is a lot to consider.

-A consultation policy at the Federal level needs to be implemented in order for true engagement to take place. Without a consultation policy in place, there will never be equal or adequate consultation for the Metis.

-There should be a percentage of funding available to give Metis groups a kick-start with participant funding. Many instances there is a percentage that has to be provided upfront (retainer), which is difficult for many organizations to come up with on their own.

-CEAA needs to have the authority to enforce recommendations. Companies have too much control of this process. There are no consequences for lack of information or engagement with Metis organizations, especially in provinces like Alberta that do not have the Metis included in the ACO (Aboriginal Consultation Office).

-What CEAA needs to realize is that the Metis Settlements are a different body than The Metis Nation of Alberta, which has 3 levels. The grassroots level, the local level, has zero core funding. The Settlements have a consultation policy in Alberta. The MNA does not. We are completely separate. Like the First Nations, they have band offices but they are separate. Would it be fair for one band office to have a Consultation policy, but the one 100kms away doesn't.