



# Presentation to the Expert Panel: Review of Environmental Assessment Processes

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November 24, 2016

Melody Lepine  
Director, Government and Industry Relations - Mikisew Cree First Nation



# Outline

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- Introduction to Mikisew Cree First Nation
- Links between environmental assessments and reconciliation
- Key recommendations for reconciliation-based EA regime



# Mikisew Cree First Nation

- We are the people of the Peace-Athabasca Delta and the Athabasca River System
- We are Treaty people
- Mikisew members rely on the Delta and the other parts of our territory to support their families and to maintain their culture
- Mikisew has participated in numerous federal EAs





# Types of development in Mikisew's territory

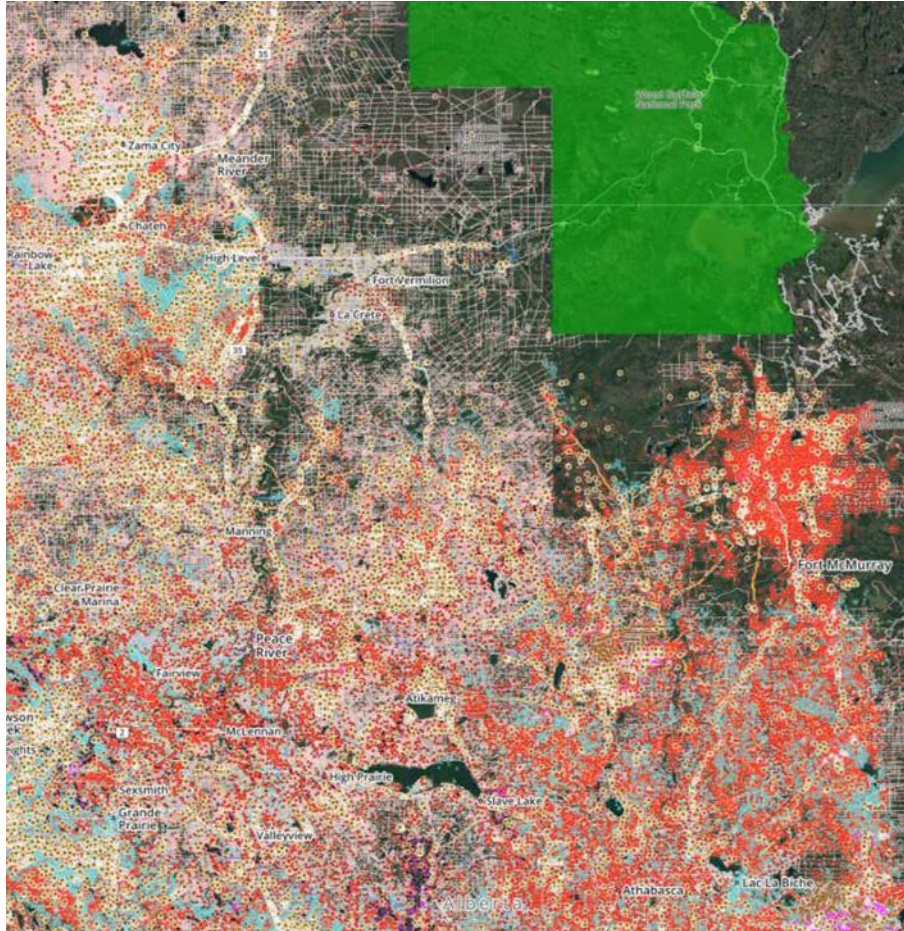


## Examples include:

- Open pit mining
- SAGD projects
- Solvent-based oil sands projects
- Bridges
- Water intake structures
- Forestry
- Roads
- ...and more



# Impacts Already Occurring

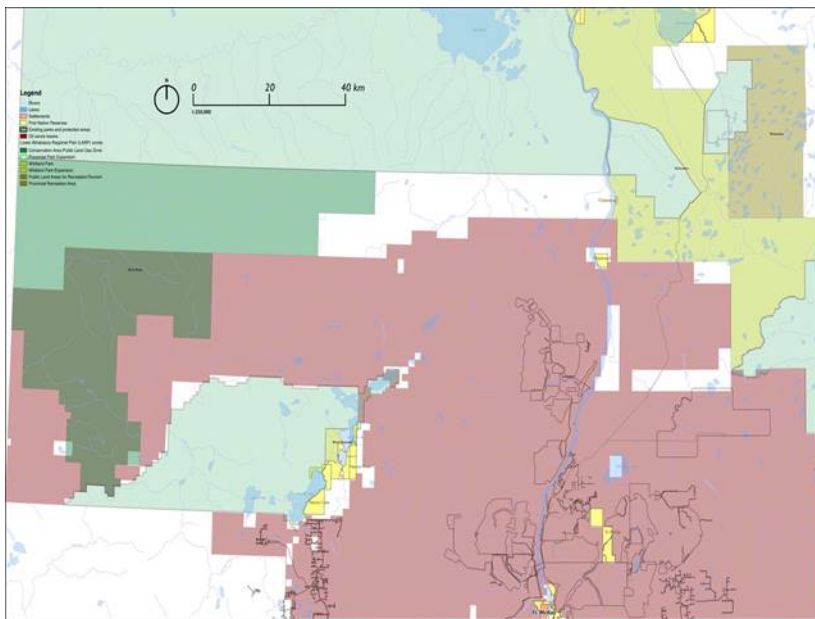


## Adverse Impacts to:

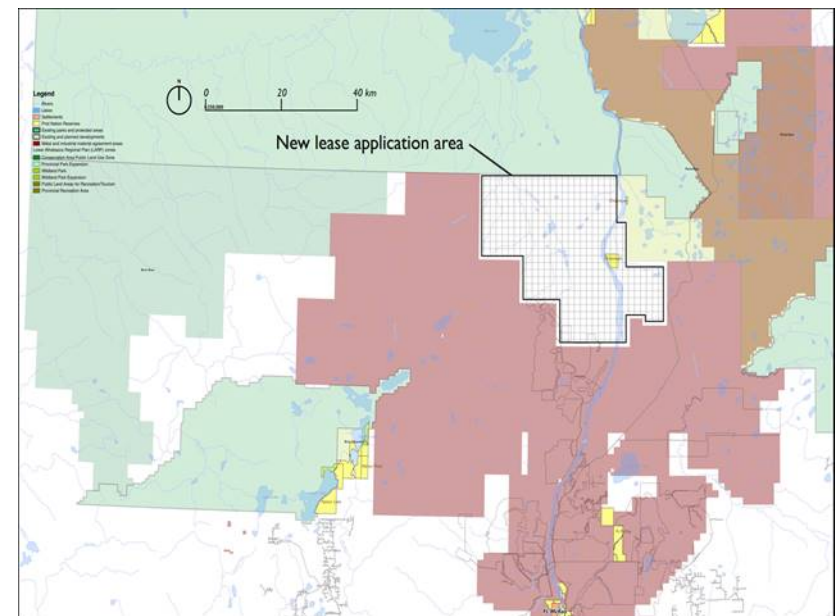
- UNESCO World Heritage Site
- Indian Reserve Lands
- Areas for exercise of Treaty rights
- Navigable Waters
- Fish Habitat
- Migratory bird flyways
- Habitat of SARA species
- Local and Regional Flora and Fauna
- Biodiversity
- Ecosystem health
- Treaty & Aboriginal Rights

# Future impacts

## Current oil leases



## Current mineral tenures



Under *CEAA, 2012*, it is unclear what, if any, role Canada will play in assessing future projects in this region (despite future projects impacting on matters of national importance and areas of federal responsibility)



## MCFN EA Experience

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- Mikisew has participated in many federal EAs
  - Past examples: Muskeg River, Kearl, Horizon, Joslyn North, Jackpine Expansion, Site C
  - Current example: Frontier
- Mikisew also has extensive experience with provincial environmental reviews
- *Courtoreille v Canada* lawsuit regarding CEAA, 2012 (2014 FC 1244)



# MCFN EA Experience

- Many barriers to indigenous participation
- Insufficient triggers for federal EAs
- Requirement for incorporation of MCFN knowledge is ineffective
- Improper scoping of baselines hinder cumulative effects assessments
- Improper scoping of study areas minimize findings of impacts to rights
- Assessment methodologies guarantee approvals and decision making lacks transparency
- Federal evidence frequently ignored
- Recommendations to governments are minimized or ignored







# Mikisew's Key Message

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- Expert Panel should **“think big”**
- Put **reconciliation** at the center of environmental assessment and regulatory review process
- Clarify that impacts on Treaty and Aboriginal rights are to be assessed as part of EA
- Link rights-based thresholds into to the EA process



# Towards a reconciliation based environmental assessment regime

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- For Mikisew, cultural, social and spiritual health cannot be separated from biophysical health of territory
- Our confidence in the health of our waters and resources is similarly connected to the health of our community and our ability to maintain our distinctive way of life
- Our ability to exercise our Treaty rights is tied to how well the government does at protecting the biophysical and human environment
- Environmental assessment is key tool to ensuring that treaty promises are upheld. In this region, EAs are a tool for ensuring that Canada's largest World Heritage Site is protected



# Towards a reconciliation based environmental assessment regime

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- Components of reconciliation:
  - Using environmental assessment methodology to identify impacts to Aboriginal and treaty rights
  - Eliminating processes that foster indifference to indigenous concerns, exclude traditional knowledge and thwart transparency
  - Establish and entrench processes that facilitate, not hinder, indigenous participation; and
  - Shared decision making over lands and resources.



# Key features of a reconciliation based environmental assessment approach

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- **1. Statute that requires consideration of effects of proposed development on Treaty rights**
- Require effects to Treaty rights be assessed as a component of study (e.g. like Aquatic species, Species at Risk or Migratory Birds).
- Allow for collaborative identification and community validation of mitigation and accommodation
- **Be clear:** rights are either in or out. Uncertainty in CEAA 2012 lets proponents, panels and CEAA say both to frustrate indigenous participation



# Key features of a reconciliation based environmental assessment approach

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- **2. Meaningful cumulative effects assessment**
  - CEAA 2012 continues to enable faulty cumulative effects assessments within Project-specific reviews
    - This takes many forms: insufficient baseline requirements, exclusion of traditional knowledge, improper approaches to assessments
  - CEAA 2012 perpetuates the death by a thousand cut approach of cumulative effects assessments
    - Project by Project assessments have resulted in substantial areas being removed from MCFN use indefinitely
    - The current regulatory regime allows for regional EAs and strategic environmental assessments – but these are rarely used.





# Key features of a reconciliation based environmental assessment approach

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- **3. Require consideration of Indigenous Knowledge**
  - Presently optional under s.19 of CEAA, 2012
  - The statute shapes Terms of Reference and early consultation by proponents
  - Indigenous knowledge is critical to understanding effects of project on environment and on Treaty rights
  - Example: Can't appreciate effect of changes to water levels without understanding how Mikisew has traditionally used waterways to navigate in the Delta



# Key features of a reconciliation based environmental assessment approach

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- **4. Support Indigenous participation and role in decision-making**
  - **Non-exhaustive examples include**
    - **Lower thresholds for triggering EA and defined role for indigenous communities in establishing triggers for federal EAs**
    - **Early engagement with indigenous communities by proponents and the Crown**
    - **Sufficient capacity**
    - **Adequate timelines that are reflective of our realities**
    - **Bring engagement between CEAA, MPMO and proponents out of the shadows**
    - **Binding obligations to monitor, with indigenous people, accuracy of EA predictions**
    - **Require transparent decision making at all stages of an EA**