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Re: Fort McKay Métis Nation support submissions re s.9 designation request for Pathways CO2 Transportation Network and Storage Hub; IAAC Reference Number 89090

Fort McKay Métis Nation ("FMMN") writes to support the request of numerous indigenous communities that the Pathways Alliance CO2 Transportation Network and Storage Hub Project (the "Project") be designated for a federal impact assessment under the *Impact Assessment Act*. By way of this letter, we also respond to the Impact Assessment Agency of Canada's ("IAAC") questions dated December 3, 2024.

FMMN support for the designation request

FMMN supports the designation request filed by Beaver Lake Cree Nation, Cold Lake First Nations, Frog Lake First Nations, Heart Lake First Nation, Kewin Cree Nation, Onion Lake Cree Nation, and Whitefish (Goodfish) Lake First Nation #128.

We agree with the submissions of those nations and the subsequent submission of the Athabasca Chipewyan First Nation that similarly articulates compelling reasons for designating the Project for a federal impact assessment.

We call on the Government of Canada to take prompt steps to initiate a federal impact assessment for the Project.



About FMMN and the Project effects on FMMN rights, heritage and current use of lands and resources that warrant a designation

FMMN is the legal entity by which Fort McKay Métis Nation acts, organizes, and governs itself. The Fort McKay Métis is a distinct Métis community originating when French Canadian fur traders entered Northeastern Alberta in the 1700s and 1800s. The historic and modern community is located approximately 45km north of Fort McMurray. The Fort McKay Métis sit in the middle of Alberta's oil sands development. Many of the oil sands facilities participating in the Project are located in FMMN's territory, and key components of the Project will be built within FMMN's territory.

Fort McKay Métis have unextinguished rights, including among others, the right to hunt, fish, trap, and gather, as well as exercise activities necessary to these activities, on lands overlapping the Project area. These Métis harvesting rights are protected by section 35(1) of the *Constitution Act, 1982*. The province's recognition of Fort McKay Métis as a historic and contemporary Métis community in its Métis Harvesting Policy as well as its recognition that the Fort McKay Métis Community Association (the predecessor to FMMN) has met the criteria of credible assertion demonstrates that the Crown recognizes the Fort McKay Métis' credibly asserted section 35 rights. The right to commercial fur harvesting for holders of Métis trapper's licences pursuant to the Wildlife Regulation; and the statutory right to hunt, fish and trap on Crown lands. The Project is proposed to be located in FMMN hunting territory where FMMN members historically and currently seek to exercise their rights to hunt, fish, trap and gather for food, social, cultural and other purposes.

The McKay Métis have a special relationship with the natural environment, including flora, fauna, and both terrestrial and aquatic habitat which sustains the community's subsistence and commercial needs, and traditional values. Having a harmonious relationship with the natural environment is an important cultural value and continues to be as important today as it was in the past. Maintaining rights and related traditional land use practices such as hunting, trapping, fishing, and gathering, provides a source of sustenance and is essential to the community's cultural survival, spiritual life, and connection with its ancestors. Given the Project location, it is clear that the Project's direct, indirect and cumulative effects will negatively impact these relationships.

The designation request directly engages our s.35 rights because, from the information provided to us to date,

- we have been able to conclude that Project activities will adversely impact FMMN through impacts to our rights, our relationship with our territory and aspects of the environment within federal jurisdiction that support our way of life; and



- it has become clear that a federal assessment is needed to evaluate and regulate Project effects on federal matters because the existing provincial regulatory and consultation processes for the Project have no credible path for protecting our rights and interests, including those under s.91(24) of the Constitution Act and other federal matters that are linked to our way of life.

The Project will have non-trivial adverse effects within federal jurisdiction to warrant a designation, including on FMMN heritage, current use of lands and resources and s.35 rights

While the Project is not on the Physical Activities Regulation, it is clear that the Project not only engages various matters within federal jurisdiction, but also has the potential to have adverse, non-trivial effects on those matters. This includes, but is not limited to:

- The Project will directly and adversely affect our **physical and cultural heritage, current use of lands and resources for traditional purposes, and sites/things of historical and archaeological significance**. For example:
 - the Project overlaps with and will impact areas of identified burial sites for our members;
 - the Project will adversely impact Constitutionally protected rights, traditional land uses and cultural practices exercised in and around the Project area, including by causing avoidance behavior of land and resource use and practices near the project, undermining confidence in the quality of country foods and altering land use patterns;
 - the Project area is an important location area for our current use of lands and resources for traditional purposes, including for hunting, fishing, trapping and gathering traditional resources for food, cultural, social and spiritual purposes. The Project will further limit areas where FMMN members can safely discharge firearms while harvesting, in addition to other limits on the practice of our rights.
- The Project poses risks to **fish and fish habitat** via water withdrawals from carbon capture equipment at the participating oil sands facilities, construction of the pipeline across the Athabasca. While the Project's carbon storage area is largely adjacent to the Athabasca River watershed, the potential for this contamination to occur and enter into the Athabasca River watershed must be assessed given the proximity, large volume of carbon proposed to be stored, and size of the carbon storage area under consideration.



- The inclusion in this project of multiple crossings **over federally regulated navigable waterway**, the Athabasca River, with proximity to traditional harvesting sites.
- The carbon capture infrastructure that separates and compresses CO2 requires significant amounts of water to cool the equipment. The oil sands facilities that plan on participating in the Project will take this water from the Athabasca River watershed, adding to the existing and significant cumulative impacts on water quantity and navigability in the region.
- The Project overlaps with the ranges of the Richardson, East Side Athabasca, and Cold Lake boreal caribou populations, which are federally protected under the **Species at Risk Act**, and of significant cultural and spiritual importance to FMMN
- The Project is likely to adversely impact **migratory birds**. ECCC has jurisdiction over migratory birds under the *IAA* and *Migratory Birds Convention Act*.
- In addition to the direct effects of the foregoing, the Project will **cause serious adverse impacts to the federal matters listed above** by inducing an increase in oil sands development in the region. Assessment report after assessment report (in addition to the research of federal scientists) have confirmed and reconfirmed that oil sands activities associated with the Project have non-trivial adverse effects on matters within federal jurisdiction, including physical and cultural heritage, current use of lands and resources for traditional purposes, fish and fish habitat, migratory birds, federal species at risk, the Wood Buffalo National Park and matters under s.91(24) of the Constitution Act.

Further considerations warranting federal designation

In our submission, the potential non-trivial adverse effects of the project on matters within federal jurisdiction are sufficient to warrant a designation for an impact assessment under the *Impact Assessment Act*. However, we also offer the following consideration that similarly demonstrate why Canada must designate the Project for a federal impact assessment.

- I. The Project is novel and raises novel issues that can only be credibly assessed with a federal assessment



In previous designation requests for different projects, Canada has taken into account whether a project is novel or may have novel effects.¹ In our submission, that is very much a relevant consideration here for this Project.

Indeed, this designation request differs from other requests where Canada has declined to designate a project for a federal assessment because the Project clearly (and by Pathway's own admission) entails novel technology, to be conducted on a novel scale, in a region where the level of industrial development and sheer number of federal environmental interests will result in novel issues relating to cumulative effects on matters within federal jurisdiction. In other words, this is precisely the type of project that warrants federal designation.

In addition, we note that the novel nature of the Project underscores that this is not a context where Canada can credibly rely on standard mitigation measures as proxy for addressing potential effects on matters within federal jurisdiction.

II. The federal government is financially connected to the Project

A pillar of Canada's impact assessment regime is that projects with significant federal funding support should undergo federal impact assessments. This makes sense because Canada has an obligation to its citizens to ensure that federal resources are being deployed responsibly.

Here, Pathways has repeated again and again that federal grants, funding and other financial measures are a key component to the Project. Indeed, Pathways officials have gone so far as to explain that federal fiscal supports are essentially determinative of whether the Project will proceed or not. To date, the federal government has developed fiscal tools that would cover half of the Project's \$16 billion in capital costs. According to media reports, Canada is currently considering further federal financial supports for the Project.

This reality distinguishes this designation request from any other previously submitted to IAAC and weighs heavily in favour of granting this request. It is essential, where federal fiscal supports are a necessary and key component of a project's viability that Canada take steps to ensure there is a robust assessment of potential project effects and federal project conditions under the Impact Assessment Act to avoid and mitigate potential effects.

¹ See, eg, IAAC's analysis report in response to the request for a designation for the Great Bear Advanced Exploration Project, dated September 17, 2024



Federal involvement with the Project is not limited to financial matters. We also note that extensive parts of the Project will be located on federal lands.

III. There is no credible framework for considering and addressing matters pertaining to federal jurisdiction and interests (including FMMN's rights) without a federal impact assessment

In previous designation requests, Canada has relied heavily on its analysis of whether there are means other than an impact assessment that would permit the adverse effects within federal jurisdiction and direct or incidental adverse effects to be addressed. Here, there is no credible provincial or federal framework for addressing the effects of the Project on matters within federal jurisdiction. We draw the following to your attention:

- There is no mechanism for addressing Project effects through consultation with the provincial government:
 - Alberta has been and continues to be wholly non-responsive to our requests for consultation regarding the Project
 - Alberta has not developed a consultation process with FMMN for the Project
 - Alberta will not provide any funding to support our participation in consultation regarding the Project
 - Alberta will not consult on any cumulative effects from the Project on our rights or areas of federal jurisdiction
 - Alberta will not consult with us on impacts to current use of lands and resources as those fall outside the Alberta consultation policy
 - Alberta will not consult with us on impacts to physical heritage
 - Alberta excludes impacts to migratory birds from consultation
 - Alberta excludes impacts to species at risk from consultation
 - Alberta excludes impacts to navigation from consultation

- There is no mechanism for addressing Project effects through consultation with the Proponent. Unlike other designation requests where IAAC could rely on detailed and documented commitments by a proponent to ensure that consultation would provide an effective way for assessing and addressing concerns about Project effects on indigenous rights and current use, it is already clear that this proponent is not enabling effective consultation. Specifically,
 - The proponent submitted dozens of applications in the absence of a consultation workplan or funding



- While we recently confirmed some funding from the proponent, the funding is insufficient to support meaningful consultation activities we identified to the proponent
 - The proponent's piecemeal approach to submitting applications has caused us to utilize a significant portion of the funding before we can even engage in other activities
 - The proponent has not provided adequate information to date nor committed to provide information needed to properly assess effects on FMMN rights and interests
 - The proponent has not provided sufficient funding to allow FMMN to undertake necessary technical reviews
 - The proponent will not develop consultation engagement principles with FMMN. While we included that in our consultation workplan, Pathways has declined to provide funding for that essential step in consultation
 - It appears that the proponent will not support necessary work to consider Project effects on FMMN's rights
 - We have had no meaningful engagement with the Proponent relating to the avoidance of our concerns
- Provincial legislative mechanisms are inadequate for addressing Project effects within federal jurisdiction. For example,
- Unlike other contexts where Canada relied on the existence of a provincial environmental assessment process as a reason for declining to designate a project, here Alberta has expressly rejected requests for an environmental assessment of the Project
 - FMMN agrees with and adopts the Treaty 6 Nations' concerns with the AER as a regulator as expressed at pp. 13-20 of their designation request
 - In our experience, the AER does not undertake credible assessments of effects on current use of lands and resources, fish and fish habitat, migratory birds or cumulative effects, among others
 - Unlike IAAC, the AER lacks a framework for credibly assessing impacts to s.35 rights
 - Unlike other designation requests for other projects, there is no credible provincial framework relating to cumulative effects
 - The AER is statutorily prohibited from considering the adequacy of consultation, limiting FMMN's ability to ensure consideration of that critical issue prior to a decision on the Project
 - recent provincial approvals for in situ oil sands projects – which have enormous impacts on migratory birds, as discussed above – have



included hardly any mention of birds specifically, and instead contained only general mitigation measures for wildlife

- Project effects cannot be appropriately assessed and addressed through federal permitting processes alone
 - It is our experience that existing federal permitting processes do not provide a framework to address the potential adverse effects on federal matters set out above.
 - The Project involves, among other things, an extensive linear corridor and other effects different from a local reservoir or mine project. An impact assessment is better suited to this type of project than isolated, ad hoc permitting under the Fisheries Act.
 - An impact assessment is better suited to dealing with migratory bird issues because of the extensive and disjointed reality of construction activities with this Project.

IV. The facts of this designation request materially differ from other contexts where Canada declined designation requests

At the risk of repeating some of the points above, we draw your attention to some of the key differences between this designation request and recent examples where Canada declined requests to designate a project for an impact assessment:

- In the context of the Chin Reservoir Expansion and Modernization Project and the Vista Coal Mine Phase II Expansion Project, Canada relied on the existence of a provincial environmental assessment for concluding that there was a provincial mechanism for managing effects within federal jurisdiction
 - Here, Alberta has expressly refused to utilize its legislative mechanism to require a provincial environmental assessment.
- In the context of the Vista Coal Mine Phase II Expansion Project, Canada considered that there would be no activities or effects from the project on federal lands. Similarly in the context of the Great Bear Advanced Exploration Project, Canada relied on the distance to federal lands as a factor for rejecting a designation request
 - Here, parts of the Project would be situated on federal lands and, in addition, may impact nearby reserve lands (which are also federal lands under s.91(24) of the Constitution Act, 1867) of Beaver Lake and other First Nation communities. We have also provided information that the Project is intended to induce further oil sands activities that previous joint



review panels and federal scientists have concluded do impact federal lands and interests, particularly Wood Buffalo National Park.

- In other contexts, IAAC has relied on consultation by Alberta under the Environmental Protection and Enhancement Act as a factor when rejecting a designation request.
 - Here, we have provided IAAC with information establishing that Alberta is not requiring an environmental assessment under EPEA. We have also provided information showing that Alberta has not consulted FMMN and, in any event, all of the impacts on matters within federal jurisdiction will fall outside of the provincial consultation policy. We have also provided information establishing that the proponent is not supporting consultation activities in any way comparable to what would be required if a federal impact assessment was required.

- Of the other designation requests we were able to access on the IAAC registry where Canada concluded that federal permitting processes were adequate for protecting federal interests, most if not all involved projects were more localized potential adverse effects. None involved the extensive geographic scale of this Project, the mixture of linear activities and localized facilities associated with this Project or novel project components of this Project.

In short, few if any of the considerations that have led Canada to decline previous designation requests for other projects are present in the context of the designation request for this Project.

Conclusion

For the reasons set out above, FMMN urges Canada to agree with the request of Beaver Lake Cree Nation, Cold Lake First Nations, Frog Lake First Nations, Heart Lake First Nation, Kewin Cree Nation, Onion Lake Cree Nation, and Whitefish (Goodfish) Lake First Nation #128 to designate the Project for a federal impact assessment.

Regards,
<Original signed by>

Steve Jani

Executive Director

Fort McKay Métis Nation



Fort McKay Métis Nation
Alberta's First Credibly Asserted Métis Community

