



June 28, 2011

Mr. Morris Seiferling
Stewardship Commissioner
Alberta Land Use Secretariat
9th floor, Centre West Building
10035 – 108 Street
Edmonton, AB T5J 3E1

Dear Mr. Seiferling:

Re: Draft Lower Athabasca Regional Plan

We are writing to elaborate on our contribution to the recent online consultation on the draft Lower Athabasca Regional Plan (LARP)¹. We commend the Government of Alberta for making a commitment to strategic land use planning, beginning with the oil sands region, and for undertaking public consultations on this topic.

With \$5 billion in assets under management, NEI Investments' approach to investing incorporates the thesis that companies integrating best environmental, social and governance (ESG) practices into their strategy and operations will provide higher risk-adjusted returns over the long term. Through our company evaluations, our active engagement with the companies in our funds, and our issues research, we have developed considerable insight into the challenges associated with improving corporate sustainability practice, which we endeavour to share in the context of consultations on policy and standards.

Within its funds, NEI Investments has holdings in companies that operate in the Lower Athabasca region. We have well-established ongoing dialogues with a number of public companies involved in oil sands development, but we believe some ESG risks can be most effectively mitigated through public policy initiatives.

Land use planning and ESG risk mitigation in the Alberta oil sands

Awareness has been increasing among investment institutions that the cumulative environmental and social impacts of oil sands development could pose risks to the long-term value of the companies involved². These risks could include operational challenges and restrictions, litigation on health impacts or breach of Aboriginal treaty rights, erosion of the social license to operate, reputational damage, and reduced acceptance of oil sands product in some markets. Risk is heightened in a context of major projects with significant development costs and long investment horizons.

¹ **Government of Alberta**. Draft Lower Athabasca Integrated Regional Plan 2011-2021. [Online] 2011.

http://www.landuse.alberta.ca/RegionalPlans/LowerAthabasca/documents/DLARP%20Regional%20Plan_FINAL_March%2029%202011_1%2044%20pm.pdf

² For example, see: **NEI Investments**. Lines in the Sands: Oil Sands Sector Benchmarking. [Online] 2009.

http://www.neiinvestments.com/nei/files/PDFs/5.4%20Research/lines_in_the_sands.pdf)

NEI INVESTMENTS

T: 604.633.0615 F: 604.633.0619

NEIinvestments.com Toll Free : 1.866.888.0615

500 - 1111 West Georgia Street Vancouver, British Columbia V6E 4T6

Establishing a comprehensive land use plan that demonstrates a commitment to responsible oil sands development and sets limits on cumulative impacts is a key public policy intervention to mitigate risks, create greater clarity and certainty for investors, and enhance the reputation of the province and the oil sands industry.

Comments on the Draft Plan

In the following pages we set out comments on specific aspects of the Draft Plan, in some cases drawing on earlier comments³ on the Lower Athabasca Regional Advisory Council's *Advice to the Government of Alberta Regarding a Vision for the Lower Athabasca Region* (the RAC Advice)⁴.

The Draft Plan addresses many areas of importance from an ESG risk mitigation perspective, including cumulative impact management, and the need to set impact thresholds and limits. We believe, however, that there is scope for enhancement.

Studying the RAC Advice and the summaries of consultation input⁵, it is sometimes unclear on what basis decisions have been taken in the preparation of the Draft Plan. For example, some RAC Advice environmental proposals have been revised down or pended, but participants in the consultations appear to have called for more emphasis on environment, not less. The LARP would be enhanced with an explanation of how it responds to the RAC Advice, consultation feedback, and the findings of recent expert panels⁶ on oil sands, as well as any considerations that overrode this input.

Economic optimization of the oil sands resource

The Draft Plan sets out a number of regional outcomes. Outcome 1 is that “the economic potential of the oil sands resource is optimized”. Economic optimization may not equate to maximizing the scale and pace of oil sands development. As we noted in our comments on the RAC Advice, the period of rapid growth that preceded the global economic crisis fuelled cost increases that created significant challenges for project economics, as well as outpacing the capacity of companies to develop and apply mitigation measures for environmental and social impacts. We are now moving into another boom phase in the oil sands. In its 2011 report, *Shaping Alberta's Future*⁷, the Premier's Council for Economic Strategy highlighted the vulnerability created by over-reliance on one sector and market, the need to address oil sands costs and impacts, and the risk that oil sands could be displaced by other energy sources with lower costs and impacts. The Premier's Council also noted that oil boom-bust cycles have prevented other industries from establishing a competitive position. We would therefore suggest that optimization may equate to encouraging staged oil sands

³ Our contribution to the online consultation on the RAC Advice is elaborated in the following document: **NEI Investments**. A Vision for the Lower Athabasca Region: an ESG Investing Perspective (October 2010). [Online 2010].

<http://www.neiinvestments.com/neifiles/PDFs/5.5%20Public%20Policy%20and%20Standards/Lower%20Athabasca%20Regional%20Plan%20Vision.pdf>

⁴ **Lower Athabasca Regional Advisory Council**. *Advice to the Government of Alberta Regarding a Vision for the Lower Athabasca Region*. [Online 2010]. <http://www.landuse.alberta.ca/RegionalPlans/LowerAthabasca/documents/LARP-VisionForLowerAthabascaRegion-Aug2010.pdf>

⁵ **Government of Alberta**. Lower Athabasca Regional Plan Phase 2 Consultation Summary. [Online] 2010.

<http://www.landuse.alberta.ca/RegionalPlans/LowerAthabasca/documents/LARP%20Summary%20Phase%202%20Workbook.pdf>

⁶ **The Royal Society of Canada Expert Panel**. [Environmental and Health Impacts of Canada's Oil Sands Industry](#). 2010; **Oil Sands Advisory Panel**. [A Foundation for the Future: Building an Environmental Monitoring System for the Oil Sands](#). 2010; **Water Monitoring Data Review Committee**. [Evaluation of Four Reports on Contamination of the Athabasca River System by Oil Sands Operations](#). 2011; **Alberta Innovates – Technology Futures**. [2010 Regional Aquatics Monitoring Panel \(RAMP\) Scientific Review](#). 2011.

⁷ **The Premier's Council for Economic Strategy**. *Shaping Alberta's Future*. [Online] 2011.

http://premier.alberta.ca/plans/initiatives/economic/RPCEs_ShapingABFuture_Report_web2.pdf

development approaches that not only reduce risk to investor capital, but also allow space for other industries to grow and reduce the scale of environmental and social impacts.

Against this background, a further desirable outcome for the LARP would be that “the reputation of the province, the region and the oil sands industry is enhanced”. Fairly or unfairly, the Alberta oil sands have become the focus of global criticism that has generated momentum for policy initiatives targeting oil sands product and other high-carbon energy sources in a number of jurisdictions, including the U.S. and the European Union. Demonstrating commitment to managing the impacts of oil sands development that generate reputational risk is an important aspect of maintaining access to markets and the competitiveness of oil sands product.

The Draft Plan does not include strategies designed to stimulate development of technologies to reduce oil sands impact – an idea that was touched upon in the RAC Advice. We believe this is a missed opportunity. Possible models include Alberta’s own Climate Change and Emissions Management Fund, through which proceeds from the emissions pricing regime are directed towards technology innovations to reduce climate impact, as well as permitting processes in the East Coast offshore oil industry that incorporate requirements relating to R&D investment. We would also suggest including strategies to encourage more rapid commercialization and dissemination of new technology – innovations can only contribute to risk mitigation if they are deployed in the field. This would reflect the policy direction outlined in the Energy Resources Conservation Board Bulletin 2010-44, *Enhancing the ERCB Role in Technology Development*⁸.

Managing the impacts of oil sands development

The commitment to cumulative effects management in the Draft Plan is welcome. Demonstrating that oil sands development is taking place within a context of credible environmental management frameworks incorporating limits and triggers could reduce reputational risk across the industry.

Impacts to land

In our earlier comments on the RAC Advice we noted that setting a limit on land disturbance at a fraction of the total area of oil sands deposits could reduce risk for the oil sands industry as a whole. A challenging limit could stimulate companies to efficiency improvements and timely reclamation, reducing environmental liabilities and reputational risk. The proposed delay in establishing the land disturbance plan until 2013 is therefore a concern.

The progressive reclamation strategy is a welcome policy enhancement that will help investors to understand the environmental performance and liabilities of different companies. The reclamation strategy set could be enhanced with further discussion of how timely reclamation will be incentivized, for example by linkages to the permitting process for new development. As noted in our earlier comments on the RAC Advice, reclamation strategy should also take into account the need to support traditional use, to mitigate indirect litigation risk from possible Aboriginal treaty and constitutional rights infringement claims.

The growing tailings inventory is a major source of reputational risk for oil sands mining companies. The tailings management framework is an important intervention to address this issue, but the Draft Plan does not include details on the timeline for its completion.

⁸ Energy Resources Conservation Board. Bulletin 2010-44: Enhancing the ERCB Role in Technology Development. [Online] 2010. <http://www.ercb.ca/docs/documents/bulletins/bulletin-2010-44.pdf>

Impacts to climate

Unlike the RAC Advice, the Draft Plan includes no specific proposals to address the issue of greenhouse gas (GHG) emissions. This is a significant omission, as climate impact is a key area of reputational risk for the oil sands industry within the international responsible investment community. In our earlier comments, we noted that the carbon dioxide management framework reference in the RAC Advice specified alignment with provincial regulations. The present Alberta GHG emissions reduction strategy allows for emissions growth up to 2020, and relies heavily on the rapid introduction of carbon capture and storage. We suggested that taking into consideration only the Alberta regulations may be a risk, given that future Canadian federal, U.S. and international carbon regulatory frameworks could have significant implications for an export-oriented industry.

Impacts to water

Given the rapid growth of in situ oil sands development, the reliance of in situ oil sands operations on access to groundwater, and continuing uncertainty about the sustainability of this resource, groundwater mapping is an important priority from an investor perspective. To enhance the credibility of the LARP, the surface water quality framework should take into consideration the concerns highlighted by several of the recent expert panels regarding the current Regional Aquatic Monitoring Program (RAMP). To create clarity on long-term water-related operational risk to oil sands mining projects, the surface water quantity framework should address the issue of maintaining minimum flow needs for the Athabasca River.

Impacts to community health and safety

Although the physical infrastructure improvement strategies described in the Draft Plan are important, the RAC Advice also included a focus on creating safe and healthy communities, which does not appear to have been taken up.

Lack of consensus about the contribution of oil sands to air and water pollution, and about the resulting human health impacts, has attracted international investor concern, and poses a significant reputational, social license and litigation risk to oil sands companies. Recent expert panels⁹ have concluded that enhanced monitoring systems and strategies are needed, and integrating their recommendations to the LARP would enhance its credibility. In the Draft Plan, the air and water quality management frameworks do not appear to make reference to pollutants that have been proposed in widely-quoted research¹⁰ as possible risks to community and environmental health. Furthermore the Draft Plan does not provide detail on specific strategies with respect to monitoring and mitigating community health impacts of development.

The Draft Plan does not address potential industrial emergencies, such as tailings containment failure or plant explosions. As noted in our earlier comments on the RAC Advice, the impact of such events for both communities and companies can be mitigated if emergency scenarios have been taken into account in decision-making on sites for both

⁹ See footnote 3.

¹⁰ For discussion of this research, see in particular: **Water Monitoring Data Review Committee**. Evaluation of Four Reports on Contamination of the Athabasca River System by Oil Sands Operations. [Online] 2011. <http://environment.alberta.ca/documents/WMDRC - Final Report March 7 2011.pdf>



industrial and community development projects. Other relevant strategies could include improving community access to information on emergency planning and procedures, and promoting emergency preparedness activities in communities.

Conservation commitments

Establishing a world-class regional protected area network could enhance Alberta's reputation, increase certainty that company leases will not conflict with future conservation obligations, and reduce litigation risk relating to possible infringements of protected species legislation or Aboriginal treaty rights. Furthermore, as a member of the Boreal Leadership Council (BLC), we support the Boreal Forest Conservation Framework (BFCF), which calls for protection of at least 50% of Canada's Boreal, sustainable development best practices for the rest, and respect for Aboriginal rights across the whole. We would welcome a significant Boreal protection commitment in Alberta that contributes to achieving the BFCF vision across Canada.

The draft proposes bringing 22% of the region in total under various forms of conservation management. This would represent a significant increase, but it is the low end of previous recommendations: the RAC Advice identified conservation areas for 20-32% of the region, while the Alberta members of the Boreal Leadership Council earlier proposed that some 40% of the region should be placed under protection. We understand that concerns have been expressed about the quality and effectiveness of the proposed conservation area system, notably regarding limited coverage of caribou range, and the exclusion of specific sites of exceptional biodiversity value. Concerns have also been expressed about the consequences of delaying finalization of the biodiversity management framework, and particularly strategy on caribou habitat needs, until 2013. In addition to the possible impacts of this delay on biodiversity, from an investor perspective encouraging development in areas that may later be identified as critical for conservation creates continuing uncertainty. Finally, the Draft Plan does not address wetland policy or conservation offset regimes.

Aboriginal rights

Aboriginal litigation claiming possible infringements of consultation requirements and treaty rights poses indirect risk to companies and their projects. Land use policy that encourages improved performance in Aboriginal consultation and supports traditional uses could therefore increase certainty and reduce risk. Although we defer to comments from Aboriginal peoples, compared to the RAC Advice, there appears to be decreased emphasis on Aboriginal rights considerations in the Draft Plan, for example in the strategies for conservation management. In this context, we note with concern that several First Nations have expressed their disappointment with the current content of the draft plan¹¹.

As noted in our earlier comments on the RAC Advice, a further risk mitigation strategy would be to consider application within the development leasing and approval process of the principle of Free, Prior and Informed Consent (FPIC) – an emerging best practice to win and maintain license to operate.

Monitoring, evaluation and reporting

Strong environmental monitoring and reporting structures are vital to set baselines and reduce uncertainty about impacts. Recent expert panels¹² have identified deficiencies in the current monitoring of oil sands impacts, and as a

¹¹ Athabasca Chipewyan First Nation and Mikisew Cree First Nation. Press Release: Chiefs tell Alberta Government: "Fix Lower Athabasca Regional Plan". [Online] 2011. <http://www.marketwire.com/press-release/chiefs-tell-alberta-government-fix-lower-athabasca-regional-plan-1523321.htm>

¹² See footnote 3.



result the Alberta Environmental Monitoring Panel (AEMP) has been struck to provide recommendations. It is not entirely clear from the Draft Plan how the AEMP recommendations will be integrated into the LARP¹³.

Conclusion

We commend the Government of Alberta for making a commitment to strategic land use planning in the oil sands region, and for undertaking public consultation on this topic. The Draft Plan addresses many areas of importance from an ESG risk mitigation perspective, including cumulative impact management, and the need to set impact thresholds and limits. Key areas which could be enhanced in the LARP include:

- Acknowledging that economic optimization of the oil sands resource may not equate to maximizing the scale and pace of oil sands development.
- Incorporating into outcomes the need for the LARP content and process to enjoy credibility among stakeholders and enhance the reputation of the province, the region and the oil sands industry.
- Using planning to incentivize research, development and deployment of technologies that reduce oil sands impacts.
- Including strategies to address greenhouse gas emissions.
- Incorporating strategies on community health and safety, including possible pollution impacts and industrial emergency risk mitigation.
- Addressing concerns about the extent and quality of the conservation network, including coverage of caribou range, expediting completion of the land disturbance and biodiversity management frameworks, and including wetland policy and conservation offset regimes.
- Integrating Aboriginal rights and traditional use considerations throughout the LARP.
- Clarifying the linkages to the enhanced environmental monitoring framework to emerge from the AEMP process.
- Including more detailed explanation of the rationale for decisions that do not reflect the RAC Advice, the outcomes of consultation exercises or the findings of recent expert panels.

The greater the extent to which the approved plan creates certainty, addresses development impacts and is accepted by key stakeholders, the more effectively it will contribute to mitigating ESG risk. If you have any questions regarding this letter, please contact Michelle de Cordova, Manager, Public Policy & Research, NEI Investments (mdecordova@NEIinvestments.com 604-742-8319).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Walker", with a long horizontal flourish extending to the right.

Robert Walker
Vice President, ESG Services

CC: Board of Directors, NEI Investments

¹³ NEI Investments recently led an international group of institutions in writing to the AEMP to provide an investor perspective. See: **NEI Investments**. Alberta Environmental Monitoring Panel: World-Class Environmental Monitoring for the Oil Sands Region. [Online 2011]. <http://www.neiinvestments.com/neifiles/PDFs/5.5%20Public%20Policy%20and%20Standards/Investors%20Oil%20Sands%20Monitoring.pdf>