

May 17, 2011

Land Use Secretariat  
9<sup>th</sup> Floor, 10035 – 108 Street  
Edmonton, Alberta T5J 3E1

Dear Sir/Madam:

**Re: *Draft Lower Athabasca Integrated Regional Plan, 2011 – 2021***

Ecojustice is a national non-profit organization of lawyers and scientists dedicated to the protection and restoration of the environment in Canada. Within Alberta, Ecojustice has offices in Edmonton and Calgary. Ecojustice has represented several Alberta environmental non-governmental organizations in legal matters pertaining to the development of the Alberta oil sands. As such, Ecojustice has an interest in the *Draft Lower Athabasca Integrated Regional Plan, 2011 – 2021* (the “*Draft Plan*”) recently released by the Government of Alberta. The purpose of this letter is to present Ecojustice’s concerns and opinions with respect to the *Draft Plan*.

- 1. The Government of Alberta should not approve any new oil sands developments within the Lower Athabasca regional planning area until the management frameworks are complete.**

The *Draft Plan* proposes to manage the cumulative impacts on air, water and biodiversity through management frameworks that set limits and triggers and minimize land disturbance in the region.<sup>1</sup> However, the *Draft Plan* presents only three management frameworks and those frameworks have significant gaps. Further, other management frameworks, for biological diversity, land disturbance, tailings management and surface water quantity, are not yet developed. Therefore, the proposed management framework for the *Draft Plan* is incomplete and insufficient.

#### *Air Quality Management Framework*

The draft *Air Quality Management Framework* addresses only SO<sub>2</sub> and NO<sub>2</sub> emissions and excludes other significant air pollutants. The draft *Air Quality Management Framework* does not establish triggers or limits for air-borne particulates which have

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<sup>1</sup> Government of Alberta, *Draft Lower Athabasca Integrated Regional Plan, 2011-2021: Strategic Plan, Implementation Plan*, (March 2011) at 14 [*Draft Plan*].

been shown to be a significant source of polycyclic aromatic compounds (“PAC’s) and metals that impact both terrestrial and aquatic ecosystems in the region.<sup>2</sup>

Further, the draft *Air Quality Management Framework* fails to provide a management framework for CO<sub>2</sub> or other greenhouse gases. Greenhouse gas emissions are one of the most significant air emissions from oil sands operations but are not addressed in the management framework.

Therefore, the draft *Air Quality Management Framework* must be viewed as incomplete.

#### *Surface Water Quality Management Framework*

The draft *Surface Water Quality Management Framework* states that notable releases to the lower Athabasca River are limited to wastewater from the city of Fort McMurray and one industrial point source from oil sands operations. This statement ignores the significant contribution of airborne emissions of PAC’s and metals to the Athabasca River and its tributaries, released through the spring-melt of snowpack accumulations of these substances.<sup>3</sup> This also ignores the documented contribution of leakage from tailings ponds to tributaries of the Athabasca River.<sup>4</sup> Therefore, the draft *Surface Water Quality Management Framework* lacks triggers and limits for significant water pollutants such as PAC’s and naphthenic acids, stating only that these will be developed at a later date.

Further, the draft *Surface Water Quality Management Framework* notes that historical levels for several substances exceed current guidelines and therefore suitable limits will be developed at a later date. The historical levels are based on data from 1988 to 2008 and therefore are not pre-development levels. The lack of pre-development historical data and the fact that certain levels already exceed guidelines suggest that significant impacts may have already occurred and remedial plans should be immediately developed and implemented.

#### *Groundwater Management Framework*

The draft *Groundwater Management Framework* confirms that knowledge of the regional groundwater systems is incomplete and that there is insufficient pre-development monitoring to establish baseline quantity or quality levels.

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<sup>2</sup> Erin N. Kelly et al., “Oil sands development contributes polycyclic aromatic compounds to the Athabasca River and its tributaries”, (2009) Proc. Nat. Acad. Sci., PNAS Early Edition at [www.pnas.org/cgi/dol/10.1073/pnas.0912050106](http://www.pnas.org/cgi/dol/10.1073/pnas.0912050106); Erin N. Kelly et al., “Oil sands development contributes elements toxic at low concentrations to the Athabasca River and its tributaries”, (2010) 107:37 Proc. Nat. Acad. Sci. 16178.

<sup>3</sup> *Ibid.*

<sup>4</sup> Golder Associates, *Final Report: Beaver Creek Profiling Program, 2008 Field Study*, submitted to Syncrude Canada Ltd. (February 2009).

### *Lack of Management Frameworks for Tailings, Water Quantity and Biodiversity*

The *Draft Plan* defers the development of the tailings management framework and the water quantity management framework until 2012. The development of a biodiversity management framework and a regional land disturbance plan are delayed until 2013. This means that the strategies and tools necessary for implementing the *Draft Plan* are incomplete.

Although the biodiversity framework is yet to be developed, the *Draft Plan* includes a disconcerting statement regarding what it will contain. As stated in *Draft Plan*:

“Limits will be set on a regional level, but areas important to economic development (such as oil sands) will experience higher levels of disturbance, and areas important for biodiversity such as caribou and moose habitat will experience lower levels of disturbance.”<sup>5</sup>

Such a statement indicates a misunderstanding of the composition of the region. Areas that have high economic development value are often also important habitat for species at risk. They are not mutually exclusive. The *Draft Plan* appears to disregard this important point and raises concerns about how the Government of Alberta plans to address the inevitable situations where economic development and biodiversity are at odds.

### *Conclusion*

Even though essential triggers and limits for particulates, PAC's, metals, naphthenic acids and other pollutants are incomplete and management frameworks for tailings management, water quantity, biodiversity and land disturbance are lacking, the Government of Alberta is continuing to approve oil sands developments.

Further approval of oil sands developments before these limits and management frameworks are established may eliminate options to meet the desired limits and outcomes. The precautionary principle would suggest that further approvals should be delayed until the management frameworks are in place.

Therefore, it is Ecojustice's position that the Government of Alberta should not approve any further oil sands developments until all of the required management frameworks are in place.

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<sup>5</sup> *Draft Plan, supra* at 18.

## **2. The proposed conservation areas fail to protect certain critical landscapes and ecosystems.**

The conservation areas proposed in the *Draft Plan* fail to protect the current ranges or critical habitat for the threatened Boreal Caribou.<sup>6</sup> In fact, virtually none of the proposed conservation areas include areas critical to the survival and recovery of Boreal Caribou. The *Draft Plan* also ignores the recommendation of the Alberta Woodland Caribou Recovery Team that there be a moratorium on new mineral or timber allocations in certain critical habitat areas.<sup>7</sup>

Further, the proposed conservation areas fail to include the critical McLelland Lake wetland complex and fail to identify or protect critical habitat for other species at risk such as the Yellow Rail.

It is Ecojustice's position that the Government of Alberta must address the protection of the Boreal Caribou herds and other species at risk in the Lower Athabasca Regional Plan.

Even within the proposed conservation areas, existing conventional oil and gas tenures will be allowed to continue, thus offering little protection to the conservation values that these areas are intended to protect. It is Ecojustice's position that existing conventional oil and gas tenures should be cancelled within the proposed conservation areas. Further, the Government of Alberta must put an immediate moratorium on new oil and gas tenures in these proposed conservation areas pending final approval of the *Draft Plan* to avoid a "land rush" to obtain tenures before the final *Plan* is approved.

## **3. The draft Regulations provide too much discretion to government decision-makers.**

The *Proposed Lower Athabasca Integrated Regional Plan Regulations* (the "*Proposed Regulations*") are the legal mechanism by which the *Draft Plan* is to be implemented. However, the *Proposed Regulations* contain highly discretionary language that will make enforcement difficult when government decision-makers fail to follow the intent of the *Plan*.

Subsections 4(2) and 5(2) of the *Proposed Regulations* require only that a decision-maker "consider" the Strategic Plan and Implementation Plan. There is no requirement that the decision-maker comply with the *Plan*.

Throughout the *Proposed Regulations*, the determination of whether designated limits and triggers have been or will be exceeded is left to "the opinion of the Designated

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<sup>6</sup> Environment Canada, *Scientific Review for the Identification of critical Habitat for Woodland Caribou (Rangifer tarandus caribou), Boreal Population in Canada*, (Ottawa: Environment Canada, 2008).

<sup>7</sup> Alberta Woodland Caribou Recovery Team, *Alberta Woodland Caribou Recovery Plan, 2004/05 – 2013/14*, (Edmonton: Alberta Sustainable Resource Development, 2005).

Minister.” Experience has shown that tribunals and courts will give great deference to the Minister’s decision where such discretionary language is used in the *Regulations*.

The determination of whether actions have or may exceed designated limits and triggers is primarily a scientific matter. Therefore, such determinations should be made by an independent scientific panel and not left to the discretion of the Designated Minister. The *Proposed Regulations* should be amended to base the determination of whether limits and triggers have been or may be exceeded on the best available science. Such determinations must be scientifically defensible and not left to the discretion of the Designated Minister.

### **Summary**

In summary, the *Draft Plan* and management frameworks are incomplete and insufficient to manage the cumulative effects of industrial development in the Lower Athabasca region. The *Draft Plan* itself may be viewed as “too little, too late” given that much of the region has already been allocated to oil sands and timber development. This problem will only be compounded if further oil sands developments are approved before a complete management framework is in place.

Further, the *Draft Plan* fails to provide adequate protection for legally designated species at risk such as the Boreal Caribou herds.

Finally, the *Proposed Regulations* provide too much discretion to government decision-makers in determining if the identified limits and triggers have been or may be exceeded.

Ecojustice requests that the Government of Alberta consider these concerns in finalizing the *Draft Plan*, management frameworks and *Proposed Regulations*.

Sincerely,



Barry Robinson  
Staff Lawyer



Melissa Gorrie  
Staff Lawyer