

From: Gary Perkins <email address removed>

Date: Monday, 29 October, 2012 10:27 AM

To: 'Jenny Biem'; 'Eamon Murphy; <email address removed>; Ignasiak, Martin; <email addresses removed>; Denstedt, Shawn; Tom Rothwell; <email addresses removed> Kirk Lambrecht' <email address removed>; Eriel Deranger <email address removed>; <email addresses removed>

Cc: "'Shell.Reviews [CEAA]'" <Shell.Reviews@ceaa-acee.gc.ca>, Meighan LaCasse <email address removed>, <email addresses removed>, Amanda Black <email address removed>, Bob Curran <email address removed>, "Jamault,Lucille [CEAA]" <email address removed>

Subject: Participation in Jackpine Mine Expansion Project Joint ERCB CEAA Review

Please see the attached letter concerning participation in the JME hearing.

Gary Perkins

Gary D. Perkins

Associate General Counsel

Energy Resources Conservation Board

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Joint Review Panel

Established to review the Jackpine Mine Expansion Project

Canadian Environmental Assessment Agency, 160 Elgin Street, 22nd Floor, Place Bell Canada, Ottawa, ON, K1A 0H3, 613-948-2674
Energy Resources Conservation Board, 9915 Franklin Avenue, Provincial Building, 2nd Floor, Fort McMurray, AB, T9H 2K4, 780-743-7473

October 29, 2012

Sent By Electronic Mail Only

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, T2P 5H1

Attention: Shawn Denstedt, Q.C., Martin Ignasiak

Eriel Deranger

Email: <email addresses removed>

Regional Chief Bill Erasmus

Email: <email address removed>

Dear Sirs and Madam:

Re: Participation in Jackpine Mine Expansion Project Joint Review Hearing

The Panel has asked me to contact each of you to clarify matters relating to participation in this hearing by Aboriginal groups and individuals. Ms. Deranger and Chief Erasmus are receiving this letter directly as they are two individuals with whom I have had communications attempting to clarify the participation rights they or the group they represent are seeking. It is the Panel's view that to date it has not excluded any parties from participating in the hearing, in particular Aboriginal groups or individuals (it has, however, limited the participation of two groups under the leadership of Mr. Malcolm whose hearing submissions and notices of questions of constitutional law were filed after the deadlines imposed by statute and by the Panel's Notice of Hearing).

The purpose of my past communications with Ms. Deranger and Chief Erasmus has been to clarify the nature of the hearing participation desired by them or the group they represent. They appear (from the media reports, since I have not addressed the matter with either of them directly) to have misunderstood my messages to mean that they have been denied any right of participation in the hearing. The Panel has asked me to state that this is not the case, and to reiterate the request for information about what participation each of you or the group you represents is seeking. You can provide that information to me in writing by letter or email, you can discuss the matter with me in the hearing, or you can address the Panel directly during the hearing.

Project Public Registry: <http://www.ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=59540>

Part of the confusion about participation in the hearing may relate to the "JotForm" message that each of you filed with the Shell.Reviews email address that was established to receive public comments and hearing submissions relating to the Project. To be clear, the JotForm email template was not created by the Panel or Secretariat and was not endorsed as a form of hearing submission. The Panel and Secretariat have no information about who created that form or how the form came to be used by so many members of the public to provide comments on the Project; however, the JotForm submissions that were filed were reviewed to identify any that indicated the filer may have an interest in participating in the proceeding. Following that review, each of you and 25 other filers received an email message or letter from me asking for clarification about intentions to participate in the hearing. Less than half of those I contacted responded to me. Ms. Deranger responded on October 16th and Chief Erasmus responded on October 23rd.

I have also been asked to clarify erroneous reports in the media about the Panel's decision on the notices of questions of constitutional law. The Panel did not rule that it has no jurisdiction to decide questions of constitutional law. It ruled that it did not have jurisdiction in this proceeding to decide the particular questions posed by ACFN and MNA, i.e., has the Crown satisfied its duty to consult in relation to the Project? The Panel also ruled that even if it did have jurisdiction over the questions, it would be premature to decide the Project application based on a finding about the adequacy of Crown consultation because Crown consultation in relation to the Project is not complete. Both Canada and Alberta confirmed that consultation will continue after the Panel has issued its final report in this proceeding, and that the report itself will inform the Crown's consultation process and decision-making.

In addition, also contrary to reports in the media, the Panel's decision on the questions of constitutional law does not affect the ability of Aboriginal groups or individuals to participate in the hearing. The Panel has confirmed the full participation in this hearing of each of the following groups or individuals: Donna Deranger; Mikisew Cree First Nation; Athabasca Cree First Nation; Fort McKay First Nation and Fort McKay Métis Community Association; Fort McMurray First Nation #468; and the Métis Nation of Alberta Region 1 and the groups and individuals associated with it. The Panel is required to assess and report on the potential impacts of the Project on Aboriginal groups and persons, and the Panel expects the information that will be provided by the groups and individuals listed above will assist greatly in that task.

Hopefully this letter will clarify the purposes of my previous communications with each of Ms. Deranger and Chief Erasmus, and will clarify the erroneous statements made in the media about participation in the hearing.

Sincerely,

Original signed by

Gary Perkins
Counsel to the Joint Review Panel

cc: Counsel for Interested Parties
cc: JME Registry