

Fort McKay Cultural Impact Assessment (CIA) Position Paper

Fort McKay Sustainability Department

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Introduction

The Fort McKay First Nation represents people of Cree and Dene descent who have a long-standing history in North-eastern Alberta. Within their traditional territory, they carry out and maintain their customs, traditions and practices including hunting, fishing, trapping and gathering. These activities are treaty rights protected by the Canadian Constitution to which Fort McKay became a signatory (of Treaty 8) in 1899 and includes the promise to preserve the “Indian” way of life. The Supreme Court of Canada has described the promises made:

Treaty No. 8, made on June 21, 1899, involved the surrender of vast tracts of land in what is now northern Alberta, northeastern British Columbia, northwestern Saskatchewan and part of the Northwest Territories. In exchange for the land, the Crown made a number of commitments, for example, to provide the bands with reserves, education, annuities, farm equipment, ammunition, and relief in times of famine or pestilence. *However, it is clear that for the Indians the guarantee that hunting, fishing and trapping rights would continue was the essential element which led to their signing the treaties. The report of the Commissioners who negotiated Treaty No. 8 on behalf of the government underscored the importance to the Indians of the right to hunt, fish and trap.*

(R. v. Badger, 2005 SCC 69)

However, as a result of the scale and pace of recent industrial development in its traditional territory, Fort McKay and its members are experiencing an unprecedented change to the land, air and water they depend on culturally, socially and for their health and well-being. The consequence of these changes to the environment is profound cultural shifts in the community, which are largely under-estimated, if considered at all, in the current regulatory system.

Industrial activity requires some form of authorization by a regulatory body. However, based on Fort McKay's experience, these authorizations are granted without any or adequate consideration of the cultural impacts to Fort McKay that inevitably result from the change of land use to industrial development.

Alberta's regulatory system requires proponents to carry out an environmental impact assessment (EIA) when a large-scale project, such as oil sands in-situ project, exceeds a production threshold of 2,000 cubic metres a day. These large-scale projects often consider impacts to traditional land use (TLU) that target the identification of "site-specific" impacts but often do not capture the full impacts of development to the exercise of treaty rights and the way of life, culture and well-being of Fort McKay.

Some industrial developments engage the federal regulatory system under the Canadian Environmental Assessment Act (CEAA), and accordingly have recently been required to specifically consider impacts to culture through completion of a Cultural Impact Assessment (CIA), in addition to a TLU study (see AER 2013). Fort McKay considers this a positive development as CIAs are designed to more comprehensively document the cultural values of a community and track effects of changes in the expression of those cultural values due to industrial development.

However, projects engaging federal jurisdiction are limited and exclude all SAGD developments and large mine expansions. Based on Fort McKay's experience, proponents design projects such as mine expansions to avoid triggering an environmental assessment under CEAA, and therefore are not required to assess the impacts to culture.

Impacts from development on the land and its waterbodies affect the physical patterns of Fort McKay's land use. Changes in species composition, declines in culturally valuable wildlife species populations, and inability to access culturally valuable areas due to industrial development are among the environmental changes people in Fort McKay are forced to respond to when carrying out their treaty rights. This shift in how members exercise their treaty rights on the land ultimately adversely affects the expression Fort McKay's culture. When the

environmental changes are profound (such as those in and around the reserves of Fort McKay) or significantly alter not only the vegetation, but also the landforms and associated water systems, an even greater burden is placed on the culture to adapt. These cultural impacts have to be considered in order to understand the impacts of a development on Fort McKay.

The close cultural association with environment and place is critical to the maintenance of a healthy Fort McKay culture and has been well documented in other jurisdictions and cultures (cf. Ingold 2000; Johnson and Hunn 2010; Thom 2005; Thornton 2008). As stated by Fort McKay leadership more than 30 years ago,

Since time immemorial we have roamed this land, lived from this land, been a part of this land. To separate us from this land would be to split our very identity in two.

(FMTA 1983: 1)

The knowledge, values, activities, symbols, stories and memories learned and reinforced year after year while members are exercising their land based rights have helped to maintain Fort McKay people's connection to the land and support that cultural linkage across generations. Changing the land has significant impacts on this type of generational learning and knowledge transfer, and ultimately to the ability for Fort McKay to sustain its culture.

Everything we had came from the land...we are people of the land. Without the land we feel lost. Without the land we are nothing.

(Fort McKay workshop 2008 noted in FMIRC 2010)

Everything was taught on the land – we identify places in our language.

(Fort McKay workshop 2008 noted in FMIRC 2010)

The relationship between the impacts on development pressures and Fort McKay's culture and knowledge transmission has been articulated in multiple Fort McKay studies, government submissions and publications (see A. Currier In

Press, Berryman et al. 2013, FMTA 1983, FMFN 1994, FMSD 2011, Garibaldi 2009, Garibaldi and Behr 2011, Garibaldi and Behr 2013.

An in-depth cultural study completed in 2010 for Fort McKay concluded that the impact from development on their culture as of 2008 was *significant and adverse* (FMIRC 2010). The Joint Review Panel for the Jackpine Mine Expansion relied on the report to find the following:

[1740] [p.289] The Panel believes that the oil sands industry has contributed to the socioeconomic and cultural changes experienced by Fort McKay by affecting its land use, contributing to the avoidance and loss of use of traditional lands, and increasing its reliance on the wage economy. Some of the effects, such as increased income levels, have been positive while others, such as loss of language or opportunities for TLU activities, have been negative. The Panel believes that the above effects are long term and that the cultural changes experienced by Fort McKay will likely increase further in the future.

[1741] [p.289] The Panel finds that the cumulative effects on some elements of Fort McKay's cultural heritage are already adverse, long-term, likely irreversible, and significant. The Panel believes that the application case and PDC will further increase these effects if projects proceed as planned.

[1742] [p.289] The Panel is of the opinion that people's cultures are naturally evolving and that the adverse aspects of cultural changes can be mitigated when people have control over the changes experienced in their daily life. In order to mitigate the adverse effects on the land use and culture of Fort McKay and the other Aboriginal groups, the Panel has recommended greater involvement of First Nation and Métis groups in regional planning and in the stewardship of the traditional resources.

While these findings of cultural impacts are not new to Fort McKay, it is only recently that growing attention is being placed by government and industry on the effects that land disturbance is having specifically on cultural values and the ability of people to maintain their cultural practices and ultimately their social resiliency. As there currently is no effective regulatory mechanism to address cumulative effects and accommodate impacts to Aboriginal and Treaty rights, there is increased interest in CIA studies where they are designed to examine how industrial development cumulatively affects the culture of an aboriginal community.

Accordingly, while regulators have begun to understand the need to consider cultural impacts in considering project applications, the regulatory regime has

been slow to follow suit. For example, the Alberta Energy Regulator (AER) in Prosper Petroleum Ltd's 2014 OSE Program requested information from Fort McKay about the cultural impacts of a single project. Neither the federal or provincial regulator required the proponent to undertake any type of study to consider the impacts on Fort McKay despite Fort McKay's requests and also found that the issue of cumulative effects was beyond its jurisdiction (See Prosper OSE Program).

The consequence of these shortcomings in the regulatory regime not only limit the Crown's ability to satisfy its Treaty 8 solemn promises, but importantly can have devastating impacts on the preservation of Fort McKay as a distinctive aboriginal society.

This position paper outlines Fort McKay's expectations and general recommended approach to conduct a CIA and how it should link with other community initiatives such as TLU studies, cumulative effects assessments and land use planning. In general, Fort McKay expects industrial proponents that operate within their traditional territory to support their "Fort McKay Cultural Strategy" through the execution of community-led CIAs and TLU studies, and that proponents demonstrate how Fort McKay's information was considered in the project application. Furthermore, it is Fort McKay's position that federal and provincial regulators should clearly identify, in a timely manner, how the results of Fort McKay's CIAs and TLU contribute to the assessment of overall project impacts. For background information on the context of CIAs in the federal and provincial context, see Attachment 1.

Fort McKay's Approach to CIA

It is Fort McKay's expectation that the following six guiding will govern all CIA-related work for the community:

1. Use professional standards from relevant guiding bodies;
2. Build on and integrate existing information available specific to Fort McKay, specifically the Fort McKay Cultural Heritage Assessment (CHA) and other cultural research;

3. Address a pre-development baseline;
4. Include effects assessment that develop cultural indicators and address project boundaries, Fort McKay's traditional territory and cumulative effects.
5. Develop linkages among culture, TLUS, HRIAs and environmental research & initiatives; and,
6. Develop, implement and measure clear mitigations or commitments in collaboration with Fort McKay that can address cultural needs to sustain Fort McKay's culture into the future.

Principle 1: Endorsed Guidelines

Fort McKay's CIA approach adheres to the principles in the Code of Ethics from relevant guiding bodies, including:

- International Association for Impact Assessment - Principles for Social Impact Assessment¹
- International Society of Ethnobiology – ISE Code of Ethics²
- American Anthropological Association – Principles of Professional Responsibility³

These guidelines are approved by expert members of each organization and demonstrate current best thinking on ensuring that work completed with communities (aboriginal and non-aboriginal) adhere to high ethical standards.

Some of the key points in these guidance documents that Fort McKay expects proponents and government to respect include:

- Early, ongoing and transparent engagement
- Addressing cultural impacts is a process not a product

¹ <https://www.iaia.org/publicdocuments/special-publications/SP2.pdf>

² <http://www.ethnobiology.net/what-we-do/core-programs/ise-ethics-program/code-of-ethics/>

³ <http://ethics.aaanet.org/ethics-statement-0-preamble/>

- Cultural Impact Assessment is relevant to all phases of a project
- Culture includes tangible and many intangible elements

Principle 2: Consider Existing Information

Building on previous community work, Fort McKay's CIA approach considers values identified in the Fort McKay Cultural Heritage Assessment (IRC 2010) as well as information from on-going cultural research. Fort McKay CIAs will adapt and modify the existing model as necessary to ensure that further cultural assessments and related work accurately represent community experience and understanding, and support Fort McKay's Culture Strategy. Fort McKay CIA work will also ensure that there is ongoing verification and validation and engagement with the community.

Principle 3: Pre-development Baseline

Fort McKay advocates for the use of a pre-development baseline when conducting a CIA. A pre-development baseline reflects community members' understanding of their culture and the landscape prior to industrial disturbance. For the purposes of the Fort McKay Cultural Heritage Assessment (IRC 2010), the baseline was defined as the "1960s" to reflect the onset of large-scale land development due to oil sands and the initiation of considerable associated cultural change. When a CIA is done in relation to a proposed development project, Fort McKay expects that both a pre-development baseline and a current conditions will be included as reference points for assessing cultural impacts from development.

Principle 4: Effects Assessment

The assessment of effects in Fort McKay's CIA approach considers guidance from the federal CEAA,⁴ as well as recommendations outlined by the International Association for Impact Assessment.⁵ Further, the effects assessment

⁴ Canadian Environmental Assessment Agency (CEA Agency). 2015. https://www.ceaa-acee.gc.ca/D213D286-2512-47F4-B9C3-08B5C01E5005/Determining_Whether_a_Project_is_Likely_to_Cause_Significant_Adverse_Environmental_Effects.pdf

⁵ International Association of Impact Assessment (IAIA). 2003. International principles for social impact assessment. IAIA Special Publication Series No. 2.

will include both cumulative effects since pre-development as well as effects related to specific-project developments where appropriate.

Principle 5: Cultural Indicators

Cultural indicators, both qualitative and quantitative will be developed for Fort McKay CIA work. Where possible, Fort McKay will intercept these cultural indicators with culturally relevant environmental indicators to develop a more comprehensive assessment. For example, the activity of moose hunting and sharing of moose meat is an important cultural activity in Fort McKay that supports cultural values such as time on the land, sharing and visiting with community members, and sharing of traditional knowledge and language (see Figure 1). However, the ability to carry out the activity of moose hunting requires time on the land, accessible functioning habitat and a healthy moose population. Indicators designed to assess the cultural elements of this activity may include: time spent on the land; proximity to Fort McKay; trapline cabins or development; and language used when in the bush. There is also an ability to use indicators developed in other Fort McKay initiatives to inform the CIA such as moose habitat quality juxtaposed with key hunting areas. Indicators will be developed in collaboration with community members as well as tracked and revisited with community members to ensure their continued relevance.

Cultural Impact Assessment: Background and Context

The public identification of the need for Cultural Impact Assessments (CIA) or similar studies is relatively new in Alberta, and stems from three key drivers:

- (i) **Requests from Aboriginal communities:** Aboriginal communities have expressed a growing desire to demonstrate that development impacts extend beyond biophysical and cultural site-based (spatial) disturbance and encompass many intangible, but very real elements of culture;
- (ii) **Federal:** Federal criteria identified in the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), and in federal comments as part of joint review processes; and,
- (iii) **Provincial:** Some Provincial Environmental Impact Assessment (EIA) Terms of Reference (ToR) documents developed for the applications of proposed projects mention culture.

These drivers, as they relate to the community of Fort McKay, are described in more detail below under the headings:

- “Fort McKay Community Context” which relates to Fort McKay’s history and interest in understanding impacts of development on community’s culture through the completion of a Cultural Heritage Assessment (CHA),
- “Federal Context” which discusses federal criteria and comments regarding assessing impacts to culture, and
- “Provincial Context” which articulates provincial interests with assessing development impacts to culture.

FORT MCKAY COMMUNITY CONTEXT

In 2010, the Fort McKay Industry Relations Corporation (IRC; now the Fort McKay Sustainability Department, FMSD) identified a significant gap in the documentation and assessment of development impacts on the community’s culture. The FMSD then completed a Cultural Heritage Assessment (FMIRC 2010), the first regional study that guides Fort McKay’s CIA approach. The Fort McKay CHA was comprised of both a pre-development baseline study and a project-specific analysis (completed for the Shell Canada Jackpine Mine Expansion and Pierre River Mine Project application). With input from multiple discipline-specific experts, the CHA

employed a community-engagement approach that examined changes to Fort McKay's culture by focussing on changes to key cultural practices linked to cultural values. The CHA also identified stressors that inhibit or compromise Fort McKay members' ability to carry out these key cultural practices as well as select qualitative and quantitative indicators of cultural change that could be refined and monitored by the FMSD. The CHA was the first documentation of the direct link between changes to the land and associated effects on Fort McKay's culture. It provided an assessment that Fort McKay, regulators and industrial proponents could use to assess cultural ramifications of development to identify mechanisms to mitigate or accommodate cultural impacts as well as assist Fort McKay members in supporting their culture.

Fort McKay is building on its existing CHA approach in a manner that will lend itself to effectively conduct CIAs under the umbrella of the Fort McKay Cultural Strategy and also track cumulative cultural impacts, responses and cultural resiliency. The general structure of this approach is outlined in the Fort McKay CIA Position Paper. It is Fort McKay's expectation that CIAs will become standard components of the regulatory process going forward.

FEDERAL CONTEXT

The federal government is placing increased attention on the effects of development impacts on culture and sustainability. The communication occurring between industrial regulators, industry proponents and Aboriginal communities suggest a trend for CIA studies to be more common in the regulatory process.

Below are select segments and quotations from key documents that have influenced Fort McKay's most recent request for the development of a CIA from Teck Resources Ltd. in August 2015. Note that emphasis in quotations below has been added.

ESRD Final Terms of Reference for the Frontier Project (February 11, 2009):¹

5. TRADITIONAL ECOLOGICAL KNOWLEDGE AND LAND USE

[A] Provide:

d) a discussion of:

iv) ongoing impacts to traditional lands and culture;

f) a discussion of traditional uses including fishing, hunting, trapping, nutritional or medicinal plant harvesting, and cultural use by affected aboriginal peoples

¹ (ESRD 2009): <http://esrd.alberta.ca/lands-forests/land-industrial/programs-and-services/environmental-assessment/current-projects.aspx>

Draft Agreement to Establish a Joint Review Panel for the Frontier Oil Sands Mine Project Between the Minister of the Environment, Canada and the Alberta Energy Regulator, Alberta (March 17, 2014):²

The Joint Review Panel shall consider:

- Evidence presented by participants concerning any potential project effects to asserted or established Aboriginal or treaty rights, such as:
 - Any potential effects on current uses of lands and resources by Aboriginal persons for traditional purposes;
 - Any effects (including the effects related to increased access and fragmentation of habitat) on hunting, fishing, trapping, cultural and other traditional uses of the land (e.g. collection of medicinal plants, use of sacred sites), as well as related effects on lifestyle, culture, health and quality of life of Aboriginal persons;
 - Any effects of alterations to access into areas used by Aboriginal persons for traditional uses;
 - Any adverse effects of the project on the ability of future generations to pursue traditional activities or lifestyle;
 - Any effects of the project on heritage and archaeological resources in the project area that are of importance or concern to Aboriginal groups;
 - Evidence presented by participants concerning the measures proposed to manage, mitigate and compensate any identified effects on asserted or established Aboriginal rights and interests.

Supplemental Information Request No. 3 provided to Teck Resources Ltd by the Alberta Energy Regulator on May 14, 2014³

The Supplemental Information Request (SIR) was requested on May 14, 2014 and included a new directive that to our knowledge has not been requested previously for a project occurring in Alberta. The SIR states that:

Teck's response does not address the intergenerational impact of the Project on the cultural and spiritual relationship with the land, for example, the transmission of site specific knowledge and practices (sic). Based on consultation and traditional knowledge from all potentially impacted Aboriginal groups:

- g. Provide an assessment of cultural and spiritual impacts of the Project for each

² (CEAA, 2014 pA2): <http://www.ceaa-acee.gc.ca/050/documents/p65505/98501E.pdf>

³ (CEAA 2014, p57) <http://www.ceaa-acee.gc.ca/050/documents/p65505/99188E.pdf>

potentially impacted Aboriginal group, including Métis. (p57)

*Shell Jackpine Mine Expansion – Joint Review Panel decision (July 9, 2013)*⁴

As stated in the Fort McKay CIA Position Paper, Fort McKay proposed and conducted a cultural heritage assessment that was provided to the JRP for consideration prior to the hearing for the Shell Jackpine Mine Expansion. Panel comments indicate that the CHA provided a *comprehensive and sound assessment* of impacts on Fort McKay's culture and heritage. The CHA was the first regional assessment designed to assess development impacts on culture and its scope is shaping current CIA work in Alberta. Members of CEAA expressed to the FMSD that the CHA was instrumental in conveying the profound impacts experienced by members of the community on their culture as a result of industrial development. Below are select excerpts from the JRP decision on July 9, 2013.

[1737] [p.289] The Panel finds that existing and approved projects and other disturbances are likely already having a significant adverse cumulative effect on the TLU activities of Fort McKay. Notwithstanding the agreement Fort McKay has with Shell with respect to mitigation of project specific effects, the addition of the Project and other planned projects are likely to exacerbate these effects. The Panel believes that the finding of significant adverse effects to Fort McKay's TLU is consistent with the Panel's other findings of significant adverse cumulative effects to wetlands, old-growth forests, traditional plant potential, biodiversity, and wetland- and old growth-reliant migratory birds and species at risk, including caribou.

[1738] [p.289] The Panel found the CHA baseline and project-specific CHA provided as part of the FMSA provided a comprehensive and sound assessment of the impacts of oil sands and industrial development on the cultural heritage of Fort McKay from Fort McKay's perspective. The Panel found the reports very helpful in furthering the Panel's understanding of the impacts of development on Fort McKay's cultural heritage. The Panel considered both Shell's and Fort McKay's cultural assessment information in its determination of significance.

[1742] [p.289] The Panel is of the opinion that people's cultures are naturally evolving and that the adverse aspects of cultural changes can be mitigated when people have control over the changes experienced in their daily life. In order to mitigate the adverse effects on the land use and culture of Fort McKay and the other Aboriginal groups, the Panel has recommended greater involvement of First Nation and Métis groups in regional planning and in the stewardship of the traditional resources.

PROVINCIAL CONTEXT

A specific assessment of impacts to Aboriginal culture is not a regulatory requirement for project applications in Alberta and a focussed assessment of impacts to culture has received very limited focus by GoA. Currently, the need to include a discussion of cultural-related impacts is located in select project ToR. For example, the ToR for Koch Oil Sands proposed Dunkirk 60,000 bpd Steam

⁴ <http://www.ceaa-acee.gc.ca/050/document-eng.cfm?document=90873>

Assisted Gravity Drainage (SAGD) Project contains a specific reference to culture in the Traditional Ecological Knowledge and Land Use section:

5 [C] Determine the impacts of the Project on traditional, medicinal and cultural purposes and identify possible mitigation strategies.⁵

Yet no study to specially address potential cultural impacts arising from the project's development or contribution to cumulative affects was required.

The GoA First Nation Consultation Guidelines (FNCG, GoA 2014) is the only document, other than project ToRs that mentions consideration of culture in project impact assessments. The FNCG includes frequent references to "traditional use sites," which has led to an emphasis on Traditional Land Use Studies (TLUS) studies in Environmental Impact Assessments and increased focus placed on identification of locations of traditional activities. Accordingly, there has been less prominence placed on cultural attributes that are not primarily geographic. There is not a discrete distinction between TLUS and CIA, but given the fast-paced nature of development in the region and limited opportunity for documenting and assessing impacts, a TLUS will invariably prioritize the terms outlined in regulatory documents and focus less attention to assessing impacts on elements of culture and cultural values. Nonetheless, TLUS and CIAs are closely linked as each study reflects Aboriginal relationships with the land, their culture, and social well-being. See Fort McKay CIA Position Paper for additional discussion.

References

Fort McKay Industry Relations Corporation (FMIRC). 2010. *Fort McKay Cultural Heritage Assessment*.

Government of Alberta (GoA). 2014. *First Nations Consultation Guidelines*. July 28, 2014.
http://www.aboriginal.alberta.ca/documents/First_Nations_Consultation_Guidelines_LNRD.pdf

⁵ Alberta Environment and Sustainable Resource Development. June 12, 2014. Terms of Reference Environmental Impact Assessment Report for Koch Oil Sands Operating ULC Proposed Dunkirk In Situ Project.