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VIA EMAIL

June 3, 2010

Joslyn North Mine Joint Review Panel
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Place Bell Canada
Ottawa, ON, K1A 0H3

Energy Resources Conservation Board
Fort McMurray Regional Office
2nd Floor, Provincial Building
Fort McMurray, AB T9H 2K4

Attention: Marie-France Therrien
Panel Manager

Attention: Pat Harrison, B. Sc., E.I.T.

**Re: TOTAL E&P Joslyn Ltd. ("TEPJ")
CEAR Reference No. 08-05-37519
ERCB Application No. 1445535**

Dear Sir and Madam:

We are legal co-counsel for TEPJ as it pertains to the regulatory review of TEPJ's proposed Joslyn North Mine Project (the "Project" or "Joslyn").

On March 16, 2010, the Joslyn North Mine Joint Review Panel (the "JRP") issued a Public Notice whereby it provided interested parties with an opportunity to submit comments to the JRP regarding the adequacy of information before the JRP. The JRP also provided TEPJ with an opportunity to reply to comments submitted by interested parties. This letter constitutes TEPJ's reply.

Background

To assess whether there is adequate information before the JRP to now schedule a public hearing, the following chronology of pertinent events should be taken into account:

1. Upon its appointment in mid-2008, the JRP, in accordance with its Terms of Reference,¹ undertook a thorough review of the information on the public

¹ In this letter, a reference to the "Terms of Reference" is to those appended to the Agreement Establishing the JRP. References to the "Final Terms of Reference for the Environmental Impact Assessment Report established by Alberta Environment" or to the "FTOR" are to those terms of reference established by Alberta Environment.

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registry and of comments received from the public. This review was undertaken so that the JRP could determine whether or not there was sufficient information to schedule a public hearing into the Project.

2. On September 18, 2008, the JRP determined that additional information was required from TEPJ before the JRP could proceed to the public hearing phase of the joint review process. The JRP therefore issued to TEPJ additional information requests (the "AIRs").
3. On February 9, 2009, TEPJ advised the JRP of the following:²
 - a. TEPJ had completed an assessment of the bitumen extraction and tailings management processes originally proposed as part of the Project. As a result of this assessment, TEPJ concluded that the proposed suite of technologies were not technically and hence economically feasible. Therefore, TEPJ assessed alternative viable extraction and tailings technologies that considered reliability, operability, tailing deposition and reclamation planning, and capital and operating cost. The technologies selected by TEPJ included the use of conventional extraction technology and for tailings, the use of sand beaching with enhanced fines capture as well as the use of fines thickening.
 - b. Although the scope of the Project was not changing, an update of the environmental assessment was required and TEPJ intended on filing this as part of its Additional Information Project Update (the "Project Update") during Q4 of 2009.
 - c. TEPJ would provide its responses to the AIRs at the same time as it submits the Project Update.
 - d. TEPJ would continue to consult with stakeholders while it completes the Project Update and its responses to the AIRs.
4. TEPJ regularly provided the JRP and interested parties with progress reports:
 - a. By way of letter dated June 10, 2009, TEPJ advised as follows:
 - i. TEPJ was in the process of testing new froth production and treatment technologies with the intent of maximizing Project bitumen recovery and enhancing the extraction process.

² The letter from TEPJ to the JRP was mistakenly dated February 9, 2008 as opposed to the correct date, February 9, 2009.

- ii. The environmental assessment team was updating the list of other oil sands developments that have been approved or that are planned, for cumulative effects assessment purposes.
 - iii. The Project Update was expected to be submitted, with responses to the AIRs, in February of 2010.
 - iv. TEPJ continued its consultation with various First Nations and committed to funding traditional land use studies in late 2008. These studies continue to be prepared by both the Athabasca Chipewyan First Nation ("ACFN") and Mikisew Cree First Nation ("MCFN").
- b. By way of letter dated August 19, 2009, TEPJ advised as follows:
- i. TEPJ's team was conducting an environmental assessment of proposed technology and engineering refinements.
 - ii. TEPJ met with numerous stakeholders including, among others, the Oil Sands Environmental Coalition ("OSEC"), Fort McKay First Nation ("FMFN"), MCFN and ACFN.
 - iii. TEPJ was optimistic that content from the traditional land use studies being prepared by the ACFN and MCFN could be incorporated in the future.
- c. By way of letter dated October 15, 2009, TEPJ advised as follows:
- i. The mine plan, process design, tailings plan and water management plan have been finalized.
 - ii. All engineering for environmental assessment purposes would be completed in the fourth quarter of 2009.
 - iii. Traditional land use studies funded by TEPJ continued to be prepared by both ACFN and MCFN although completion of the studies was not expected to be early enough to include in the responses to AIRs or the Project Update.
 - iv. TEPJ met with representatives of OSEC.
- d. By way of letter dated February 12, 2010, TEPJ advised as follows:
- i. TEPJ would submit to the JRP its responses to AIRs and the Project Update before the end of February, 2010.
 - ii. TEPJ had received four letters of support for the Project. These letters were from: Denman Industrial Trailers; Fort McKay

Metis Nation Local #63; Fort Chipewyan Metis 125; and Metis Nation of Alberta - Local 1935 (Fort McMurray).

5. On February 25, 2010, TEPJ submitted its Project Update and its responses to the AIRs. The design basis of the revised Project includes technology that:
 - is commercially proven;
 - optimizes resource conservation;
 - addresses the requirements of Directive 074; and
 - minimizes project effects on air, land, water and therefore traditional land use.
6. On March 16, 2010, the JRP issued a Public Notice whereby it provided interested parties with an opportunity to submit comments to the JRP regarding the adequacy of information now before the JRP.
7. On March 16, 2010, the JRP also wrote to a number of federal and Alberta government departments seeking those departments' views on whether the information submitted by TEPJ adequately addresses the requirements set out in the Final Terms of Reference for the Environmental Impact Assessment Report established by Alberta Environment ("FTOR"), the JRP's Terms of Reference, and on the technical merit of the additional information.
8. In response to the JRP's Public Notice and the JRP's letters of the same date, a number of parties, including some federal and Alberta government departments, made submissions to the JRP. Some but not all of these submissions addressed whether the JRP now had sufficient information to schedule a public hearing into the Project.

Question Arising

Pursuant to its Terms of Reference and its Public Notice of March 16, 2010, the question to now be determined by the JRP is whether or not there is adequate information before the JRP to schedule a public hearing into the Project. Whether there is adequate information before the JRP to schedule a hearing is a distinct question from whether the JRP possesses all the evidence that interested parties may want the JRP to consider. Once a hearing is scheduled, interested parties who have the requisite standing will have an opportunity to file argument and evidence, including expert evidence, with the JRP. The JRP will need to consider this argument and evidence after the conclusion of the public hearing, during its deliberations. Accordingly, it is during the hearing, and not now, that the JRP should entertain arguments regarding the merits of the Project or the methodology employed by TEPJ in assessing the environmental effects associated with the Project.

In addition, parties that disagree with conclusions reached by TEPJ in its assessment of the Project will have an opportunity to test those conclusions during the course of the hearing. The fact that a party may disagree with TEPJ's conclusions is not

relevant as it pertains to the JRP's determination as to whether it has adequate information before it to schedule a public hearing.

Finally, the Courts have consistently recognized that when it comes to environmental assessments, it is unreasonable to expect that a review panel will have before it perfectly complete information. In *Alberta Wilderness Assn. v. Express Pipelines Ltd.*, [1996] F.C.J. No. 1016, the Federal Court of Appeal considered an application for judicial review of a report of a joint review panel concerning an underground crude oil pipeline project. As part of its decision, the Court found that there can be disagreement on the adequacy of evidence before the panel, stating at para. 10 [emphasis added]:

In the first place, and in a general way, the great majority of the applicants' submissions failed to raise any questions of law or jurisdiction but were simply an attack on the quality of the evidence before the panel and the correctness of the conclusions that the majority drew from that evidence. No information about the probable future effects of a project can ever be complete or exclude all possible future outcomes. The appreciation of the adequacy of such evidence is a matter properly left to the judgment of the panel which may be expected to have, as this one in fact did, a high degree of expertise in environmental matters. In addition, the principal criterion set by the statute is the "significance" of the environmental effects of the project: that is not a fixed or wholly objective standard and contains a large measure of opinion and judgment. Reasonable people can and do disagree about the adequacy and completeness of evidence which forecasts future results and about the significance of such results without thereby raising questions of law.

The adequacy and completeness of evidence regarding an environmental assessment was also considered by the Federal Court in *Pembina Institute for Appropriate Development v. Canada (Attorney General)*, 2008 FC 302. At paragraph 23, the Court stated [emphasis added]:

The adequacy and completeness of the evidence must be evaluated in light of the preliminary nature of a review panel's assessment. In *Express Pipelines, supra*, at para. 14, Hugessen J.A. discussed the predictive and preliminary nature of the panel's role:

The panel's view that the evidence before it was adequate to allow it to complete that function "as early as is practicable in the planning stages ... and before irrevocable decisions are made"

(see section 11(1)) is one with which we will not lightly interfere. By its nature the panel's exercise is predictive and it is not surprising that the statute specifically envisages the possibility of "follow up" programmes. Indeed, given the nature of the task we suspect that finality and certainty in environmental assessment can never be achieved.

This view was echoed in *Inverhuron & District Ratepayers' Assn. v. Canada (Minister of the Environment)*, 2001 FCA 203, [2001] F.C.J. No. 1008 (Fed. C.A.), at para. 55, by Sexton J.A. Therefore, given the predictive function of an environmental assessment and the existence of follow-up mechanisms envisioned by the CEAA, the Panel's assessment of significance does not extend to the elimination of uncertainty surrounding project effects.

Taking all of the above into account, we submit that the information provided by TEPJ addresses the requirements of the Terms of Reference, the AIRs and the FTOR, and that the JRP has adequate information to schedule a public hearing into the Project.

Common Concerns

There are several common concerns raised in the various submissions filed with the JRP. Although not directly relevant to whether the JRP currently has adequate information to schedule a public hearing, as part of TEPJ's commitment to ongoing consultation with stakeholders and regulators, TEPJ takes this opportunity to reiterate its position on some of these common concerns:

Closure, Conservation and Reclamation Plan

The Closure, Conservation and Reclamation ("CC&R") Plan for the Project has been prepared using the progressive reclamation approach. Through incorporating progressive reclamation planning into the mine design, the net area of disturbance will be minimized to the extent possible relative to the proposed development of the Project. TEPJ has designed the overburden and tailings management components of the mine plan to provide area for reclamation as soon as possible during mine operations while ensuring that the geotechnical stability of the reclaimed landforms is not compromised.

Continued discussions with the Aboriginal groups will provide opportunities for TEPJ to further refine reclamation plans.

Monitoring

Monitoring measures were presented in the 2006 Application, Section A.9 and Section D and in numerous SIR responses based on the 2007 Supplemental Information Project Update. As details of various project components are finalized, detailed monitoring programs will be developed to ensure that specific project effects will be monitored. Anticipated approvals for the Project are expected to include monitoring requirements for gauging the effectiveness and performance of mitigation measures and for validating models. A brief description of some of these monitoring programs includes:

- Monitoring of surficial and basal water sands (“BWS”) groundwater levels will continue and will be refined and optimized throughout the Project life, incorporating previous monitoring results and ongoing development of the Project.
- TEPJ and the Regional Aquatic Monitoring Program (“RAMP”) will undertake climate and hydrometric monitoring in watersheds and receiving streams. Results of this monitoring program will be used to confirm that the drainage design plans are effective in maintaining streamflows and water levels that correspond to the levels predicted in the EIA. Water levels and flows in receiving surface waters, the pit lake and wetlands will be monitored to validate the design of the reclaimed landscape and that acceptable water quantities will be produced.
- Monitoring of water quality in receiving surface waters and in treatment systems (e.g., polishing ponds, wetlands, compensation lake and the pit lake) will be undertaken to verify compliance with anticipated regulatory release standards and to evaluate the performance of these mitigation measures. Detailed monitoring requirements will be specified in the anticipated Alberta *Environmental Protection and Enhancement Act* (“AEPEA”) approval. Pit lake water and sediment quality parameters as well as outflows of the lake into receiving waters, will be monitored. TEPJ continues to support the inclusion of surface water quality monitoring in the Athabasca River, Ells River and Joslyn Creek under RAMP.
- Monitoring of fish and fish habitat in the compensation lake and in receiving watercourses and waterbodies will be undertaken to confirm that the Project does not result in net loss of fish and fish habitat. The specific details of the monitoring plan will be developed after anticipated Project approval and during detailed design of the compensation lake.
- Monitoring of ambient air quality will be undertaken to confirm that installed air emission-control equipment is effective. As a funding member of the Wood Buffalo Environmental Association (“WBEA”), TEPJ supports ongoing regional monitoring initiatives, including the regional air quality monitoring network, terrestrial environmental monitoring programs and human exposure monitoring programs. In addition to the regional monitoring initiatives by CEMA and

WBEA, TEPJ will undertake continuous NO_x emissions monitoring to confirm that installed air emission-control equipment is effective.

- TEPJ is a participating member of the WBEA Terrestrial Environmental Effects Monitoring Committee, which is monitoring effects on vegetation and soils from atmospheric deposition of some of the chemicals from industrial and urban emissions.

Tailings

TEPJ understands the importance of addressing the tailings challenge and has spent significant time and effort to assess tailings management technologies and develop a robust tailings management plan. The plan includes multiple treatment processes for managing fluid fine tailings within the extraction process, combined with return fluid and pond management techniques aimed at reducing fluid storage requirements during operation while increasing fine tailings deposit strengths by exposing treated fine tailings beaches.

The Project tailings plan has numerous beneficial features including minimal fluid fine tailings inventories during life of mine operation, an in-plant thickener for hot water re-use and recovery, and increased flexibility to vary fines treatment processes to manage operation realities. TEPJ is confident that its selected tailings management plan will meet ERCB Directive 074.

Greenhouse Gas Management

TEPJ has estimated the anticipated greenhouse gas emissions associated with the Project in a manner consistent with the Terms of Reference and the FTOR. TEPJ has submitted a GHG management plan which includes energy efficiency technologies and measures as well as readiness for carbon capture. TEPJ is actively involved in a number of studies and pilot tests around the world, including in Alberta, to better understand all aspects of carbon capture and sequestration, and this information will be used to assess the feasibility of applying these technologies to the Project. At the worldwide level, TOTAL is committed to contributing to a global reduction in GHG emissions through a company wide action plan that includes reducing GHG footprint, enhancing the energy efficiency of its products and processes, investing in renewable energies, conducting research and development on new equipment and processes that produce fewer emissions and exploring new technologies like carbon capture and geological sequestration.

No Net Loss Fish Habitat Compensation

Fish habitat affected by development of the Project will be fully compensated for by implementation of a fish habitat compensation plan. As described in the No Net Loss Plan Summary (Section 14.18 of the Project Update), habitat losses are compensated for by the compensation lake and associated inlet and outlet channels at a ratio of greater than 2:1 (gains:losses).

The input of First Nations and regulatory authorities has been included in the development of the No Net Loss fish habitat compensation plan.

Water Management

The Project design includes a 90-day off stream storage pond (“OSSP”) to maintain planned full production rates and meet current and proposed in-stream flow needs (“IFN”) restrictions of water withdrawals from the Athabasca River. The IFN restrictions are developed and implemented by regulators to protect fisheries and environmental effects on the Athabasca River during low flow periods, especially in winter months. Therefore, by using make-up water from the OSSP and avoiding withdrawal from the Athabasca River during extremely low winter flow periods, the Project will not cause unacceptable flow-related effects on fish habitat, fish populations, aquatic health and traditional uses of the river.

The OSSP and associated infrastructure are designed to withstand harsh winter freezing conditions, allow easy re-start of these infrastructure after winter low flow restrictions cause them to be shutdown, and protect other Project facilities by providing fire water during IFN restrictions.

Environmental Impact Assessment (“EIA”) Methods

The EIA methods applied in the Project Update are based on established and accepted approaches for the oil sands region. The methods are consistent with those used in the 2006 Application and the 2007 Update upon which Alberta Environment issued an EIA completeness decision on January 22, 2008. The approaches are also consistent with both the *Canadian Environmental Assessment Act* (“CEAA”) and Terms of Reference. In addition, TEPJ updated the developments inclusion list and assessment cases to accommodate changes in the region since the original Project Application was filed. A pre-development snapshot was added to the assessment cases. TEPJ’s significance classification methods have been transparently described and applied to relevant components.

Specific Responses to Submissions by Non-Governmental Interested Parties

The submissions filed by various non-governmental parties raise a variety of issues, only some of which are germane to the issue of whether the JRP has adequate information before it to schedule a public hearing into the Project. Specific responses to each of the non-governmental submissions are provided below.

Canadian Natural

Canadian Natural Resources Limited (“CNRL”) has raised concerns that arise principally as a result of TEPJ’s and CNRL’s common lease boundary. Concerns of this type commonly arise as between oil sands operators who share common lease boundaries. As CNRL notes in its submission, TEPJ and CNRL have a history of working together cooperatively. TEPJ will continue working with CNRL to address the concerns identified. TEPJ is confident that the concerns can be successfully

addressed and notes that oil sands operators often enter into agreements to address issues arising as a result of common lease boundaries. The Energy Resources Conservation Board also manages these considerations during the licensing phase of oil sands operations.

In its submission, CNRL does not request that the JRP obtain further information from TEPJ prior to scheduling a public hearing into the Project.

Non-Status Band Descendants

The Non-Status Fort Mackay Band Descendants and the Non-Status Fort McMurray Band Descendants have filed nearly identical submissions. These submissions contain argument regarding standing and identify issues of concern. These submissions do not contain any substantive arguments as to whether the JRP currently has adequate information to schedule a public hearing into the Project. These submissions do not request that the JRP obtain further information from TEPJ prior to scheduling a public hearing into the Project.

Regional Municipality of Wood Buffalo

The submissions of the Regional Municipality of Wood Buffalo ("RMWB") argue the issue of standing and present argument as to why, in the RMWB's view, the Project is not in the public interest. Neither of these issues are currently before the JRP. The submissions do not request that the JRP obtain further information from TEPJ prior to scheduling a public hearing into the Project.

TEPJ will continue to work with the RMWB with a view to resolving the concerns raised in the submissions.

Fort McKay Industry Relations Corporation

On May 17, 2010, the Fort McKay Industry Relations Corporation ("FM IRC") filed submissions on behalf of the community of Fort McKay, including the Fort McKay First Nation and Métis Local #63. On May 18, 2010, the Fort McKay First Nation filed with the JRP a letter indicating that the FM IRC expected to work directly with TEPJ to clarify and/or mitigate the concerns raised in the submission. The FM First Nation does not expect TEPJ to respond to the submission through the JRP process. Accordingly, the FM First Nation has confirmed that in its view the JRP does not need to obtain further information from TEPJ prior to a public hearing into the Project.

TEPJ is pleased to have been able to develop an extremely positive relationship with the Fort McKay First Nation and Métis Local #63.

Sierra Club of Canada

The submissions by the Sierra Club of Canada ("Sierra") contain a list of questions covering a variety of areas. As a general comment, we submit that a party making

submissions as to the adequacy of information currently before the JRP should provide a rationale as to why certain information is required before the JRP can schedule a hearing. Simply developing a list of questions without considering whether the answers to the questions are already before the JRP or without analyzing whether the information is required pursuant to the Terms of Reference, the AIRs or the FTOR, is not helpful. Sierra could have, but chose not to, provide a well reasoned rationale as to why certain information was required by the JRP prior to scheduling a public hearing.

Sierra poses a number of questions that appear to have no relevance to the assessment of the Project, or that can be directly answered by reference to the already filed Project Application materials.

Many of the Sierra questions are argumentative in nature meaning that, instead of indentifying information the JRP needs prior to scheduling a public hearing, they challenge the conclusions reached by TEPJ. For instance:

Question 6: If the proponent has taken into consideration “making conservative assumptions about the magnitude and probability of the effects in the face of uncertainty” and “practicing risk management”, why is the Athabasca River selected as an “ecological boundary to confine the assessment of impacts”?

Question 7: How has the proponent taken into account that some wildlife VEC’s can cross the Athabasca River by swimming across it, walking across it when it is frozen , or flying across it?

Question 11: Why does the proponent consider all regional effects on wildlife VEC’s in the Planned Development Case to be of moderate magnitude and insignificant, when according to the proponent’s own definition of a high magnitude effect, a scientific threshold is predicted to be reached at a minimum and exceeded by as much as a factor of four at a maximum?

Question 37: Does DCEL/TEPCA understand the difference between compensation and mitigation?

Other examples of these types of questions are questions 8, 10 and 12. These are questions that can be posed to TEPJ at the public hearing into the Project and these do not need to be answered prior to the scheduling of the public hearing.

Some of the Sierra questions ask for legal opinions or are more properly directed to other parties. For instance:

Question 14: Is there potential infringement of Aboriginal or Treaty right?

Question 21: Were the First Nations satisfied with the compensation package for the alteration/destruction of fish habitat?

Legal issues will, for the most part, be addressed by the parties at the end of the hearing. It would be inappropriate for TEPJ to now speak on behalf of First Nations who will have an opportunity to address the JRP directly. In any event, the above questions are not relevant to the JRP's determination as to whether there is currently adequate information before the JRP to schedule a public hearing.

Questions 13 through 23, questions 25 and 26, questions 33 to 35, questions 40, 41, 44 and questions 60 to 63 are with respect to First Nations concerns. First Nations in the area, which have received funding from TEPJ through their respective Industrial Relations Corporations, have an opportunity to participate in the JRP's process and raise issues of concern to them. It is not for Sierra to advocate on behalf of First Nations who in any event, have a far greater understanding of the issues and concerns in the Wood Buffalo region than does Sierra.

Questions 1 to 4, 50, and 64 to 66 seek clarification or question the accuracy of the information contained in the materials filed by TEPJ. These are questions that are appropriately asked at a hearing into the Project. These questions do not identify information that is required prior to the scheduling of a hearing.

Many of the Sierra questions ask for information that is not relevant to the assessment of the Project and is not required pursuant the Terms of Reference, the AIRs or the FTOR. This includes questions 5, 9, 27, 42, 45, 47, 53, 54, 55, 56, 58, 67, 69 and 70.

In conclusion, we submit that Sierra has failed to establish that responses to any of the questions in its submissions are required by the JRP prior to the scheduling of a public hearing.

Oil Sands Environmental Coalition

As indicated in TEPJ's letter to the JRP dated March 2, 2010, TEPJ has been engaged in consultation with OSEC since 2007. In addition, in June of 2009, TEPJ initiated dialogue with OSEC and followed up with a workshop with OSEC on August 12, 2009, on the concept of participating in a Project Environmental Review Board. This would have allowed OSEC to engage directly with TEPJ, provide feedback on, and influence Project design prior to TEPJ filing the Project Update with the JRP. In addition, OSEC would have had access to information during construction and operation to assess the environmental performance of the Project and provide recommendations regarding potential improvements. Unfortunately, OSEC declined to participate in the Project Environmental Review Board at this point in the process as the Project will be the subject of a hearing at which OSEC intends to tender evidence. Discussions will continue with OSEC post-hearing regarding participation in the Project Environmental Review Board during the construction and operating phases of the Project. TEPJ is also exploring with OSEC opportunities for OSEC to participate on other TOTAL E&P Canada projects.

Many of the comments we made above in respect of the Sierra submissions apply equally to the OSEC submissions. OSEC has developed a lengthy list of questions

covering a variety of concerns but has not provided any analysis or any substantive reasoning as to why the questions posed must be responded to before the JRP schedules a public hearing. As the Courts have repeatedly recognized, “finality and certainty in environmental assessment can never be achieved.”

As with the Sierra questions, many of OSEC’s are argumentative in nature and instead of identifying information the JRP needs prior to scheduling a public hearing, they challenge the conclusions reached by TEPJ. For instance, all of the questions on tailings management are of this nature. In addition, the following questions are also argumentative:

Question 13: What does the above statement mean? Given that RAC is not a regulatory authority – and only makes recommendations to cabinet, what is the relevance of consulting RAC?

Question 20: Why are the entire project lease areas (including in situ lease areas) identified as “disturbance” on maps used to calculate soil critical loads such as on Figure 12-3? Does this underestimate soils that will be impacted by acidification?

Question 25: Given the preference given to active reclamation, why is the percentage of direct soil placement only 28%?

Question 28: What evidence does [TEPJ] have that demonstrates how the new topography will avoid a deleterious effect on wildlife habitat (in particular, Yellow Rail)?

Question 83: How does [TEPJ] know that the Phase 2 Framework recommendations will be implemented by the Government of Alberta and that the framework will be sufficient to consider cumulative effects in the Lower Athabasca watershed?

Question 84: Given the capacity of the OSSP, will Joslyn North Mine Project be able to operate and protect infrastructure at zero water withdrawals from the Athabasca River?

OSEC will have an opportunity to challenge conclusions reached by TEPJ at the hearing and we consider that these questions are not germane to whether the JRP has adequate information to schedule a hearing.

A number of the OSEC questions seek to obtain commitments from TEPJ. Examples of these are questions 15, 17, 29, 47, 66 and 67. However, in the materials already submitted by TEPJ, numerous commitments have been made. OSEC will have an opportunity at the hearing to argue whether the commitments made by TEPJ are satisfactory or sufficient.

A number of the OSEC questions seek clarification or question the accuracy of the information contained in the materials filed by TEPJ. These are questions that are

appropriately asked at a hearing into the Project. These questions do not identify information that is required prior to the scheduling of a hearing.

Many of the OSEC questions ask for information that is not relevant to the assessment of the Project and is not required pursuant the Terms of Reference, the AIRs or the FTOR. This includes questions 4, 14, 18, 21, 24, 48 to 53, 55 to 61, 65, 71 to 74, 76, 79 and 85.

A number of the OSEC questions illustrate the quality of OSEC's review of the TEPJ application materials. For example, question 81 asks whether TEPJ considered the use of dry tailings technology. The original Project Application submitted in 2006 and the 2007 Project Update propose the use of dry tailings technology. Numerous other questions are also already responded to in the materials before the JRP, including question 85.

In conclusion, we submit OSEC has not established that responses to any of the questions in its submissions are required by the JRP prior to the scheduling of a public hearing. No substantive arguments in this regard have been made.

Athabasca Chipewyan First Nation Industry Relations Corporation and Mikisew Cree First Nation Government and Industry Relations Corporation

TEPJ has reviewed the reports prepared by Management and Solutions in Environmental Science ("MSES") for the Athabasca Chipewyan First Nation Industry Relations Corporation ("ACFN IRC") and Mikisew Cree First Nation Government and Industry Relations Corporation ("MCFN IRC"). We note that the reports prepared by MSES for each of the ACFN IRC and MCFN IRC are virtually identical. We therefore respond to both under a single heading.

TEPJ has been engaged in meaningful consultations with the ACFN IRC, the MCFN IRC and the First Nations they represent since becoming the owner of the Project. These consultations continued while TEPJ prepared its Project Update and responses to the AIRs. TEPJ will continue to consult with these First Nations on their specific comments and concerns.

The MSES reports are substantial documents that, unlike the Sierra and OSEC submissions, provide context and varying levels of rationale. While TEPJ does not agree with all of the conclusions in the MSES reports, TEPJ can appreciate the professionalism and effort that led to the preparation of these reports. In this regard, it is important to keep in mind the objective of these reports as stated at page iv of the Executive Summaries:

MSES evaluated the Update information to determine how and to what extent TEPJ has addressed the concerns of the ACFN surrounding environmental stewardship and considered the ramifications of such a project to the ACFN in terms of their use of traditional resources and potential impacts to and effects on the environment.

....

MSES evaluated the Update Information to determine whether, how and to what extent TEPJ has addressed the concerns of the Mikisew Cree. These concerns include among others, environmental stewardship, the ramifications of TEPJ's project to the Mikisew Cree in terms of their use of traditional resources and potential impacts to and effects on the environment.

It is important to note that the MSES reports were not prepared in response to the specific question faced by the JRP, namely whether it has adequate information to schedule a public hearing into the Project.

MSES has identified what it perceives to be the shortcomings of information provided by TEPJ in the Executive Summaries. These perceived shortcomings can be categorized as falling into four general areas and TEPJ's responses to these are as follows:

1. Failure by TEPJ to rely on and consider traditional knowledge: TEPJ has attempted to obtain and consider the traditional knowledge of MCFN and ACFN. However, as previously indicated, traditional land use studies funded by TEPJ are being prepared by both ACFN and MCFN. Unfortunately, the ACFN and MCFN have not yet completed these studies. Should these studies be completed in a timely manner, we expect that in accordance with the *Aboriginal Consultation Framework for the Joslyn North Mine Project Joint Review Panel Process*, the ACFN and MCFN will file these studies as evidence at the public hearing into the Project so that they may be considered by TEPJ and the JRP.
2. Monitoring: The MSES reports make a number of suggestions regarding the level of mitigation and monitoring proposed by TEPJ. These are valid issues to be considered by the JRP at the public hearing. While the sufficiency of proposed mitigation and monitoring are issues to be considered by the JRP during its assessment of the Project, they are not relevant to whether the JRP currently has adequate information to schedule a public hearing.
3. Country foods: The MSES reports suggest TEPJ failed to comply with the FTOR because it did not carry out an assessment of human health impacts from consumption of country and natural foods. However, as noted in its submission, Health Canada "has no objection to the type of country foods identified by the proponent and the consumption rates used in [TEPJ's] assessment."
4. Significance of effects: The MSES reports take issue with TEPJ's conclusions as it pertains to the significance of effects. ACFN and MCFN will have an opportunity to test those conclusions during the course of the hearing, which is the proper venue for this. The fact that a party may disagree with TEPJ's conclusions is not relevant as it pertains to the JRP's determination as to whether it has adequate information before it to schedule a public hearing.

In conclusion, while the ACFN and MCFN have taken this opportunity to raise concerns with the materials already filed by TEPJ, they have not established that there is currently inadequate information for the JRP to schedule a public hearing into the Project.

Specific Responses to Submissions by Government Departments and Agencies

Specific responses to each of the submissions by government departments or agencies are provided below.

Health Canada

The Health Canada submissions do not request that the JRP obtain further information from TEPJ prior to scheduling a public hearing into the Project. In our view, none of the questions posed by Health Canada require responses prior to the scheduling of a public hearing. The questions are typical of those that arise during the course of a hearing. Nevertheless, in order to assist Health Canada, TEPJ can advise as follows, using the same numbering as contained in Health Canada's submission:

- C1 Table F1-5 is missing limits for beryllium, boron, copper, dichlorobenzenes, methyl mercury, molybdenum, and selenium. This is a typographical omission. However, toxicity profiles are provided for these chemicals later in Appendix F1 and were evaluated in the multiple pathway exposure model (i.e., Table F2-48).

As the limit for the aromatic C9-C16 group (40 µg/kg/d) is more conservative than the US EPA value for anthracene (300 µg/kg/d), anthracene was evaluated as part of the aromatic C9-C16 group in the HHRA. Table F2-48 provides the oral exposure limit for anthracene and the HHRA predicted exposure and risks to anthracene on its own, but the HHRA only reports risks to the aromatic C9-C16 group in the HHRA. All Chemicals of Potential Concern ("COPCs") in Table F2-48 were assessed in the multiple pathway assessment.

- C2 Consumption surveys conducted by CEMA (2006)³ have been problematic based on low sample size and to our knowledge a report has not been provided to date. TEPJ considers that the consumption rates used in the HHRA are highly conservative and assumes that all of an individual's diet is derived from the local environment around the project.

TEPJ is not aware of any populations that solely derive their diet

³ CEMA 2006. Consultation Summary Feasibility for Traditional Food Consumption Survey December 2006 Prepared for: Trace Metals and Air Contaminants Working Group (TMAC).

from country foods. The HHRA was completed conservatively by assuming that the diet is from country foods.

- C3 The concentration of manganese (430 mg/kg dry weight) in berries is correct. This is a 95UCLM value and is considered conservative. Appendix F3 provides a full detailed statistical summary of measured concentrations of manganese in soil, Labrador tea, cattail, alder and blueberries samples collect from the Joslyn lease. In addition, average moisture contents in blueberries are 84%, resulting in a wet weight concentration of 69 mg/kg for the 95UCLM value.
- C4i Appendix F3 provides a detailed statistical summary of mercury concentrations in fish collected from the oil sands region. The Appendix also indicates where samples were collected, the sample size per year and is organized according to species of fish. Mercury levels in fish are monitored in the oil sands region through RAMP. Since 2002 to 2008, average or 95UCLM mercury concentrations in fish appear to be relatively stable. To clarify, baseline mercury concentrations in fish were not predicted, but based on measured data (see Table F3-15). In addition, surface water concentrations were not predicted to materially change due to Project operations; therefore, mercury concentrations in fish did not change dramatically. RAMP does monitor for other fish species that are consumed, but the HHRA assumed individuals would consume only fish with the highest mercury concentrations. Northern pike and lake whitefish concentrations are at or below the maximum mercury level of 0.2 mg/kg for subsistence fishing.
- C4ii Changes in water quality on the Athabasca River from the Project were not predicted to increase substantially (see 14.11).
- D1 With regards to the Fort McKay water treatment intake and system, TEPJ evaluated potential changes in water quality in the Ells River as a result of the Project. TEPJ has previously discussed this issue, notably in response to Alberta Environment Questions 249 and 250 in Volume 2 of the 2007 Update. The current assessment generated more accurate estimates of potential process-affected seepage into the Ells River and the Joslyn Creek realignment ("JCR") from the project in Section 14.5.3.4 of the Project Update. This assessment predicts that no seepage will reach the JCR or Ells River during operation. An insignificant amount could potentially reach the Ells River after 500 years but this potential seepage would likely be no different from the character of the groundwater presently migrating to the Ells River. Increases in total suspended solids ("TSS") in the Ells River as a result of the Project are also insignificant (see Section 14.8.3) in that the minor changes in suspended sediment concentrations and channel morphology due to the JCR are

insignificant relative to the natural variations in suspended sediment concentrations in the Ells River. Hence, the Project will not have any effects on drinking water quality at the Fort McKay intake site.

TEPJ will work with Fort McKay and the Regional Municipality of Wood Buffalo to ensure that Fort McKay continues to have a safe, secure water supply.

The water quality assessment (see Table 14.11-5 of the Project Update) has shown that there are not expected to be any discernable cumulative changes to the quality of the water at Embarras, upstream of the only other water treatment facility at Fort Chipewyan.

- D2 Increased concentrations in the listed parameters of concern (antimony, barium, beryllium, chromium, manganese, PAH groups 2, 5 and 6, refractory naphthenic acids, total phosphorus and vanadium) are not expected to result in any adverse effects to human health, as detailed in the Project Update, Section 14.7.5.

- N1 The FTOR specifically require that ERCB methods for noise assessment be used to determine impacts and TEPJ is not aware of any request from Health Canada to use alternate methods at the time of the 2007 Supplemental Information Project Update. ERCB Directive 038: Noise Control states that the ERCB “aims to not adversely affect indoor noise levels for residents near a facility.” Noise annoyance and sleep disturbance is managed through the Directive, as is a process and requirements for managing potential complaints. As the Project Update uses the ERCB Directive 038 methods, the potential for noise annoyance has already been assessed. Conducting the noise assessment using the alternate methods described in CAN/CSA:ISO 1996-1 (ISO 2003) is not planned.

The remaining issues raised in the Health Canada submissions make a number of suggestions regarding mitigation and monitoring. These suggestions are to be considered by the JRP at the public hearing into the Project and are not relevant to whether the JRP currently has adequate information to schedule a public hearing.

Environment Canada

The Environment Canada submissions do not request that the JRP obtain further information from TEPJ prior to scheduling a public hearing into the Project. In our view, the comments of Environment Canada can be dealt with at the public hearing into the Project.

TEPJ appreciates Environment Canada's views with respect to collecting additional baseline data and undertaking specific modelling of all listed species under the *Species at Risk Act* ("SARA"). However, the approach that TEPJ has taken, using surrogate species, has been accepted by regulators in the oil sands region for all project applications and furthermore is supported by the wildlife professionals undertaking the assessments. This approach has been determined to be scientifically sound and in compliance with the FTOR and Terms of Reference. TEPJ will continue to discuss this matter with Environment Canada. In any event, Environment Canada can submit argument and evidence regarding appropriate methodologies at the public hearing.

With respect to species at risk, Environment Canada notes that as of March 11, 2010, three species were added to the list of those considered as Threatened Species under the SARA. TEPJ plans to conduct further surveys for these species in areas of potentially suitable habitat. This will determine the mitigation options to minimize impacts on these species. TEPJ will implement effective predevelopment surveys and habitat mitigation strategies for these species in its reclamation plans, unless these issues are dealt with on a regional basis. This approach was endorsed by the Joint Review Panel established for Imperial Oil's Kearl Project and subsequently by the Federal Court in *Pembina Institute for Appropriate Development v. Minister Of Fisheries And Oceans*, 2008 FC 302, at paras. 63 to 69. Taking all of this into account, the fact that species have been added to the Threatened Species list under SARA does not justify a delay in the scheduling of a public hearing into the Project.

Specific to the three subject species, TEPJ has plans to commence field surveys this June.

With respect to the questions related to water quantity (EC4 and EC5), Environment Canada questions why TEPJ has chosen to rely on certain information in the course of preparing its assessment. These types of questions are usually addressed during the course of a hearing where parties will have an opportunity to test TEPJ on whether the information it relied upon is representative of baseline conditions. These questions regarding the assessment approach used by TEPJ do not justify a delay in the scheduling of the hearing.

TEPJ notes Environment Canada's advice regarding ozone levels being overestimated in the assessment.

Fisheries and Oceans Canada

Fisheries and Oceans Canada ("DFO") advises that it is reviewing the effects of the Project on fish and fish habitat and that it is engaged in consultation on the draft compensation plan. DFO has not identified any information it requires to complete this review nor has it advised that the JRP requires further information regarding fish and fish habitat prior to scheduling a public hearing.

DFO acknowledges the efforts of TEPJ to obtain information related to the traditional use of lands and resources. In December of 2008 TEPJ provided partial funding to

ACFN and committed funding to MCFN in May 2008 for the conduct of traditional land use studies. To date the reports are yet to be submitted to TEPJ. DFO also advises that it is “unsure” as to whether the JRP has adequate information on traditional land use to assess the environmental effects of the Project. DFO does not question whether there is adequate information to schedule a public hearing. In this regard, we note that if a public hearing is scheduled, First Nations and other parties will have an opportunity to file additional information, including traditional knowledge, prior to the hearing.

Pursuant to the *Aboriginal Consultation Framework for the Joslyn North Mine Project Joint Review Panel Process* (the “Framework”), the current stage of the review process is characterized as Phase II, Determining the Adequacy of the Information. Pursuant to the Framework, it is during Phase III, Public Hearings and Preparation of Panel Report, when First Nations are expected to do the following:

All matters that fall within the Panel’s mandate are to be provided to the Panel. Key items in this regard include potential impacts to current use of lands and resources for traditional purposes, community knowledge and Aboriginal traditional knowledge and cumulative effects resulting from the Project in combination with other existing and reasonable foreseeable projects or activities. In addition, because the Crown Consultation Coordinator will be monitoring the Panel hearings we also urge you to present any information on potential impact to your established and potential Aboriginal and treaty rights.

Accordingly, the Framework specifically contemplates that traditional knowledge will be addressed, if needed, during Phase III.

Natural Resources Canada

Natural Resources Canada (“NRCAN”) does not ask that the JRP request additional information prior to scheduling the public hearing into the Project. NRCAN does suggest, however, that the JRP may choose to request additional information in respect of groundwater quality and the effects of BWS re-injection. TEPJ notes that NRCAN has been engaged in the review of the Project and that NRCAN participated in the preparation of supplemental information requests previously submitted to TEPJ.

With respect to groundwater quality:

1. Estimates of potential changes in groundwater quality are provided in the Project Update at subsection 14.11.3.1 for the local scale and at subsection 14.11.3.2 for the regional scale. Surface water quality is discussed in the Project Update at subsection 14.11.3.1. Water quality modelling at local and regional receptor locations was described and compared to guidelines and thresholds during operations, at closure and in the far future.

TEPJ has indicated (see Section 14.5.3.4) that no seepage will occur off site during operations because potential process-affected seepage to groundwater during operations will be intercepted or contained by:

- a. depressurization of the BWS;
- b. dewatering of the Quaternary sediments;
- c. perimeter ditches; and
- d. low permeability of the materials underlying and surrounding the mine landforms.

TEPJ has committed to the design and implementation of a groundwater monitoring program that will include facilities that have potential to emit seepage. This monitoring program will either (i) confirm that potential seepage will migrate and attenuate as expected or (ii) give an early indication of developing conditions that possibly would eventually need additional management. Therefore, TEPJ will not await closure before addressing a developing condition that would warrant action, but would instead respond in a timely manner before closure. Post-closure monitoring will continue until reclamation certification is obtained.

2. With respect to BWS re-injection, Figure 2.6-1 in the Project Update is a map showing the location of the proposed BWS injection target. Identification of the exact location of individual injection wells is not provided because the McMurray Formation has localized variability. TEPJ has specifically tested the injection target. The data from that test is compiled in the Project Update at Appendix A Section 2.5.

Information contained in the material already filed by TEPJ satisfies the Terms of Reference and the FTOR.

Parks Canada

Parks Canada concludes that because the regional study area (“RSA”) used by TEPJ for hydrology, water quality and fish does not include the Peace-Athabasca Delta (“PAD”), the Project Update and responses to AIRs do not consider transboundary impacts and cumulative effects to the ecological integrity of Wood Buffalo National Park, including the PAD. This is incorrect as the boundaries of the RSA were extended to the farthest extent of cumulative effects to which TEPJ contributes with all other existing, approved and planned oil sands developments. Accordingly, it follows that the farthest extent of cumulative effects to which TEPJ contributes with all other existing, approved and planned oil sands developments, as before, does not extend to the PAD.

In any event, we note that Parks Canada does not request that the JRP obtain further information from TEPJ prior to scheduling a public hearing into the Project.

Alberta Sustainable Resource Development

TEPJ continues to engage with Alberta Sustainable Resource Development (“SRD”) regarding the issues raised in its submission. With respect to the 50m offset from the north edge of the Ells River valley used for the mine plan, no further information is required by the JRP. The question of whether the buffer is appropriate or not raises issues of resource conservation. The Alberta Government must balance the potentially competing interests of resource conservation and maintenance of possible wildlife corridors. For the purposes of assessing the environmental effects of the Project, the JRP needs to be able to assess the effects associated with the proposed offset of 50m and this information is provided in the Project Update.

The construction and operations camps have been combined and moved to the current location to allow sharing of facilities between the two camps. By doing so the combined disturbance area is reduced. This location also offers the advantage that it improves safety by reducing travel distances to the site. Finally, this location also creates the opportunity to share infrastructure, such as site medical facilities, with the local community.

Alberta Environment

Alberta Environment has advised that it will be seeking further information from TEPJ in connection with the very detailed Alberta *Water Act* licence and *Environmental Protection and Enhancement Act* approval, both of which are required by TEPJ. Alberta Environment has not requested that this information be obtained by the JRP. This position is entirely reasonable given that the level of detail required by Alberta Environment to carry out its legislated responsibilities is very different from that required by the JRP. Alberta Environment must draft, issue and then enforce detailed operating permits whereas the JRP must make a public interest decision and make a finding regarding the potential of significant adverse environmental effects.

Alberta Health and Wellness

Alberta Health and Wellness recommends that the JRP request an enhanced risk assessment and evaluation of the potential health impacts from the Project on those living at the work camp. We submit that this information is not required by the JRP prior to scheduling a public hearing. Worker safety is not an issue to be assessed by the JRP. Worker safety falls under the jurisdiction of Alberta Employment and Immigration, Safe and Fair Workplaces. Worker safety is a priority to TEPJ.

Conclusion

In this letter, on behalf of TEPJ, we have provided further information to the JRP where required or alternatively, we have provided a rationale for why certain questions are more appropriately addressed during the course of the public hearing into the Project. The information currently before the JRP addresses the requirements

of the Terms of Reference, the AIRs and the FTOR. Therefore, the JRP now has adequate information before it to schedule a public hearing into the Project.

Once a public hearing into the Project is scheduled, the JRP will receive further information from interested parties in the form of hearing submissions, which will include argument and evidence, including expert evidence. The information currently before the JRP, combined with these hearing submissions and *viva voce* evidence to be tendered at the public hearing, will allow the JRP to make the necessary findings as required under the *Canadian Environmental Assessment Act*, the *Energy Resources Conservation Act* and the *Oil Sands Conservation Act*.

Please direct correspondence from the JRP to Mr. Geoff Chow, Manager, Regulatory Affairs and Government Relations, TOTAL E&P Joslyn Ltd., copying the writer.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Ignasiak', written in a cursive style.

Martin Ignasiak

cc: TOTAL E&P Joslyn Ltd.
Attn: Mr. Geoff Chow