# RIGHTS vs. RESOURCES: WHY THE FIRST NATIONS LEFT THE CUMULATIVE ENVIRONMENTAL MANAGEMENT ASSOCIATION

By

Traci Tanner

A thesis submitted in partial fulfillment of
the requirements for the degree of

MASTER OF ARTS
In
ENVIRONMENTAL EDUCATION AND COMMUNICATION

We accept this thesis as conforming
to the required standard

.....
Dr. James Frideres Thesis Supervisor
University of Calgary

.....
Dr. Richard Kool, EEC Program Head
School of Environment and Sustainability

.....
Dr. Anthony Boydell, Director
School of Environment and Sustainability

ROYAL ROADS UNIVERSITY

July, 2008

Your file Votre référence
ISBN: 978-0-494-75815-1

Our file Notre référence
ISBN: 978-0-494-75815-1

# DEDICATION

For Robert, Kennedy, and Haven … my greatest inspiration.

## ABSTRACT

The Cumulative Environmental Management Association (CEMA) was formulated in 1998 by Alberta Environment to provide a multi-stakeholder, consensus-based recommendation forum for managing cumulative effects of oil sands development in the Athabasca region. The Association was designed with 'stakeholders' in mind, rather than First Nations 'rights' holders, creating frustration and tension between the Association and Aboriginal communities. This resulted in the withdrawal of the Athabasca Chipewyan First Nation (ACFN) and the Mikisew Cree First Nation (MCFN) from the Association process[1]. Through qualitative interviews, results depict the Association's ineffective management framework, the lack of Aboriginal power or influence, inadequate Crown consultation, and the failure to recognize legislated Aboriginal rights, as major factors contributing to the First Nations withdrawal. This study includes recommendations for the meaningful contributions of Aboriginal people in environmental monitoring and the promotion of sustainable development in and around their traditional lands.


Key words: Aboriginal rights, Athabasca Chipewyan First Nation, Athabasca Oil Sands, Consensus, Consultation, Mikisew Cree First Nation, Multi-stakeholder, Natural resource co-management, Sustainable development, Traditional Environmental Knowledge.

[1] Since the initiation of this research, the Fort McMurray First Nation (FMFN) and the Chipewyan Prairie Dené First Nation (CPDFN) have also withdrawn their membership from the Cumulative Environmental Management Association.

ACKNOWLEDGEMENTS

This thesis is the end of one dream, and the beginning of another. I wish to express my gratitude to the following people who have assisted me throughout this journey, and were instrumental to the outcome of this project:

- Dr. Rick Kool who welcomed me into the Masters program at Royal Roads University; his acceptance built my confidence, and his energy kept me inspired.

- Dr. Frideres, for accepting the tireless position of Thesis Advisor. His belief in my abilities, his knowledge, and dedication to Aboriginal issues made this research both enjoyable, and effective. He is a true Mentor.

- Dr. Jim Tanner who provided my first opportunity to work with the First Nations people in Alberta. His insight sent me on a path of discovery, and his guidance led the way.

- Graham Statt of the Alberta Government Resource, Consultation, and Traditional Use Office, whose support and assistance were both the start, and the finish line for this project. Thank you.

- Blair Whenham and Pat Marcel of the ACFN who immediately supported this project and believed the results could shed light and understanding on First Nations concerns and Aboriginal rights.

- Melody Lepine and Sherwin Shih of the Mikisew Cree First Nation who realized the necessity of this work and provided information and participant referral support throughout the process.

- To all of the interviewees who willingly participated in this project. Without their courage and voice, this thesis would not have been possible.

- Most importantly, thank you to my parents for their unconditional love and support, and to my husband and children for their constant encouragement, understanding and patience as this Masters program relentlessly consumed our lives for the past two years … “I’m back”.

TABLE OF CONTENTS

# LIST OF TABLES AND FIGURES

# CHAPTER 1: INTRODUCTION AND RESEARCH PROBLEM

> The Athabasca Chipewyan First Nation (ACFN) consists of Denesuline people who have occupied these traditional lands since time immemorial. The Denesuline have a unique relationship with the earth and have a high regard for the universal law of respect for all life. The pace and magnitude of development throughout our traditional lands has created significant additional threats to the health of the land, air, water, flora and fauna. This is creating additional pressures on us to ensure this land and its natural resources are sustained for our future generations. (Chief Archie Cyprien, Athabasca Chipewyan First Nation, 2006, p. 1)

The Cumulative Environmental Management Association[2] was formed in 1998 with the intent of understanding and incorporating Indigenous[3] Knowledge and Indigenous people[4] into the current environmental sustainability equation in the oil sands region of Alberta; however, the process formulated and currently in use has left many Aboriginal[5] members disillusioned and frustrated. This disconnect and confusion caused the Athabasca Chipewyan First Nation (ACFN) and the Mikisew Cree First Nation (MCFN) to resign from the Association in 2006.

When this research project began in September 2007, there were still three other First Nation groups participating in the Association. In May 2008, however, the Fort McMurray First Nation (FMFN) and the Chipewyan Prairie Dené First Nation (CPDFN) also withdrew their support from the Association, leaving Fort McKay as the only First Nation in the region actively participating in the Cumulative Environmental Management Association.

---

[2] For the purpose of this report, the Cumulative Environmental Management Association (CEMA) will also be referred to as the 'Association'.

[3] Throughout this project, the terms Indigenous, Aboriginal, First Nation, and Native are intermingled and collectively used when referring to the original occupants of North America, and their rights, knowledge, and management systems.

[4] The term Indigenous means "native to the area." Although the meaning of "Indigenous peoples" is similar to "Aboriginal peoples," "Native peoples" or "First Peoples", it is a term more frequently used to refer to Aboriginal people internationally (Indian and Northern Affairs, 2004).

[5] Aboriginal is a legal term that refers to the original peoples of North America and their descendants. The Canadian Constitution (*The Constitution Act, 1982*) recognizes three groups of Aboriginal peoples — Indians, Métis and Inuit (Indian and Northern Affairs, 2004).

This has left many unanswered questions pertaining to the reality of equitable power sharing within co-management structures; the effectiveness of multi-stakeholder consensus-based decision making; the collection and use of Traditional Environmental Knowledge; Aboriginal rights and the role of Government and industry in the Aboriginal consultation and accommodation process; and the assessment of cumulative environmental effects of large-scale development projects throughout Aboriginal traditional lands in northeastern Alberta.

In order to instill a sense of place and context for which this research problem has emerged, this section provides a brief outline of the Athabasca region over the past century including an overview of natural resource use from Aboriginal times, through to and including the fur trade, early industry, and today's large-scale oil sand extraction projects. This will provide a deeper understanding of environmental concerns in this region, and the initiation of the Cumulative Environmental Management Association. Please refer to Figure 1 for a map of the oil sands deposits in this region.

## Geographic Location

The Alberta oil sands are a large region of oil-rich bitumen[6] located in northern Alberta, Canada. These tar sands are found in three different deposits including Peace River, Cold Lake, and Athabasca. Together, they cover about 141 000 square kilometres (Alberta Energy, 2007) of sparsely populated Boreal Forest and muskeg. The mineable area of this deposit, as defined by the Alberta Government, covers 37 contiguous townships, equivalent to approximately 3400 square kilometres. The Athabasca deposit is the largest of the three, and has the most

[6] Oil sands are deposits of bitumen; a naturally occurring molasses-like mixture of hydrocarbons. Bitumen must be upgraded into crude oil before it can be used by refineries to produce gasoline and diesel fuels (Government of Alberta, 2007).

concentrated oil sands development - it is also the area that this historical background and research encompasses (Athabasca Regional Issues Working Groups, 2007).

Figure 1: Context Map of Alberta, Canada Oil Sands


(Reprinted with permission, Einstein, 2006)

The Athabasca deposit is named after the Athabasca River which runs through its centre, and since the earliest recorded history, traces of the heavy oil have been observed all along its banks. Within this region is the Municipality of Wood Buffalo and the city of Fort McMurray. Located northeast of Edmonton, and just west of the Saskatchewan border, Fort McMurray is the largest community within this region and the hub of the oil sands industry (The Regional Municipality of Wood Buffalo, 2007). Figure 2 on page 10 provides a map of Fort McMurray and the surrounding area of Wood Buffalo.

## First Nations Traditional Livelihood

Archaeological evidence shows that Aboriginal peoples have inhabited the Wood Buffalo region for more than 8000 years, long before fur traders arrived in the early 1700s (World Commission on Protected Areas, 2000). Artifacts left behind by these early inhabitants shed light on Native culture and survival, including projectile points likely to have been used to hunt big game such as large mastodons, mammoths, saber tooth tigers, and giant beavers (Royal Alberta Museum, 2006). This region encompasses the traditional territory of the Cree and Chipewyan people. The Cree are the ancestors of the Algonquin Shield Archaic people who moved in from the south 8000 years ago as the glaciers from the ice age melted. The Chipewyan and Beaver are the ancestors of the Athabascan Dené Taltheilei people. Unlike the Cree, they arrived in this region from the north and northwest, and evidence of this group dates back approximately 2600 years (Royal Alberta Museum, 2006).

Throughout this time, both these groups were hunter-gatherer societies. The Cree in this region adapted well to the lush Boreal Forest landscape and traditionally harvested many of the animals and plants native to the region including moose, bison, and berries. They also developed agricultural activities, and were known to use clay pottery (Ives, 1993; Royal Alberta Museum,

2006). However, the further north they foraged, the less involved they became with agriculture and pottery, and adopted a more nomadic lifestyle that required a wide use of the Boreal Forest waterways. Hence, the creation of the large birch bark canoe.

The ancestors of the Taltheilei also were influenced by the environmental conditions that surrounded them. Like the Cree, the Beaver people lived in the Boreal Forest, which provided an abundance of moose, wood buffalo and other forest resources to harvest. While the Chipewyan also occupied this area, Yerbury (1976) and others note they were forced further north by the Cree during the time of the fur trade (Ives, 1993). With this, the Chipewyan became proficient harvesters of the caribou that grazed in massive herds throughout northern Alberta and became known to all as the "caribou eaters" (University of Saskatchewan, 2004).

The environmental adaptation of the Cree and Chipewyan people helped define traditional territories in the oil sands region, since they related to specific land use, seasonal harvesting, and migrations of wildlife herds (Fumoleau, 2004). The Athabasca region is comprised of traditional territories that are scattered with spiritual burial grounds and habitation sites. Hence, all of the mountains and hills, lakes and streams, trails and portages have Aboriginal placenames, and legends that are associated with them (Wood Buffalo National Park, 2007).

The Athabasca oil sands first came to the attention of European fur traders in 1719 when Wa-pa-su, a Cree trader, brought a sample of the oil sands to the Hudson's Bay Company post at Fort Churchill in northern Manitoba (Hudson Bay Archives, 2007). In 1778, Peter Pond was the first fur trader to visit the area, and became the first, non-Aboriginal to witness the bitumen accumulating along the Athabasca River (Library and Archives Canada, 2007). Explorer

Alexander Mackenzie made the first recorded description of the sands, and described them as follows:

> At about 24 miles from the fork (of the Athabasca and Clearwater Rivers) are some bitumous fountains into which a pole of 20 feet long may be inserted without the least resistance. (Alberta Government, 2007c, p. 1)

The bitumen, however, was not a new discovery to the Aboriginals. Evidence shows that bitumen was a valuable resource to the First Nations people long before the Europeans happened upon it (Wood Buffalo National Park, 2007). Aboriginals of the Athabasca and Clearwater River regions traditionally used the molasses-like substance to make smudge pots to ward off mosquitoes during the summer months, and as waterproofing for their birch bark canoes (Alberta Government, 2007c).

## Fur Trade Industry

The traditional life of the First Nations in this region remained stable and relatively unchanged until the European explorers and fur traders arrived in the mid 1700s. This made the Athabasca region one of the earliest areas of Alberta explored by non-Aboriginal peoples (CEMA Online, 2007; Fumoleau, 2004). Later, during Peter Pond's visit, he ventured south along the Athabasca and Clearwater Rivers, and north, near Lake Athabasca (Library and Archives Canada, 2007). Although the Cree entered into trade with the Europeans before the Chipewyan, they both became middlemen, trading furs with peoples of the interior and taking them to the European traders on the Hudson Bay. Before the fur trade however, furbearers were another natural resource of the First Nations that were taken and used on an 'as needed' basis; and trapping was one of many traditional Aboriginal harvesting activities.

Late in the 1700s, as the European demand for furs grew stronger, European traders began to construct posts in western Canada and the traditional livelihood of the Aboriginal

people in this area began to change. Initially however, the First Nations were able to maintain most of their social and cultural ways, with minimal involvement and dependence upon the Europeans (Smith, 1978). Between 1769 and 1772, when Samuel Hearne had lived and traveled with the Chipewyan, he reported that many of them still "…live generally in a state of plenty, without trouble or risk; and consequently must be the most happy, and, in truth, the most independent also" (Yerbury, 1976, p. 248). The caribou of the region continued to supply almost all of their needs and a small quantity of fur was sufficient to obtain the few items of European goods and supplies that they required (Yerbury, 1976). This remained true until the early to mid 1800s.

The period between 1840 and 1880, however, was plagued with disease, flu epidemics, and famine. It was also marked by major wildlife depletions, particularly of furbearers and bison. Prior to the 1800s, Aboriginals were travelling to York Factory to trade, located on the shores of Hudson's Bay in Manitoba. By the mid 1800s, inland trading posts were built in the Athabasca district, eliminating this long journey, encouraging First Nations in the region to devote more time to commercial trapping and trading, and less time to other traditional activities needed to sustain their traditional lifestyle. As the fur trade in the west expanded, the population of furbearing animals decreased. Trapping competition between Aboriginals and non-Aboriginals increased, and Aboriginal peoples became more dependent on European trade goods to survive (Fumoleau, 2004).

The Hudson's Bay Company established a post in Fort McMurray in 1870, adjacent to the Athabasca River, which continued to operate as a transportation stopover for decades (Hudson Bay Archives, 2007). The fur trade had opened this region up for settlement, and drastically altered the landscape, livelihood, and traditional activities of the Aboriginal people. In

essence, the effects of the fur trade industry caused major resource depletion and ecological disruption that diminished the ability of the Aboriginal peoples to follow their traditional annual cycles, making it very difficult to continue to live their traditional lives (Carlos and Lewis, 1999).

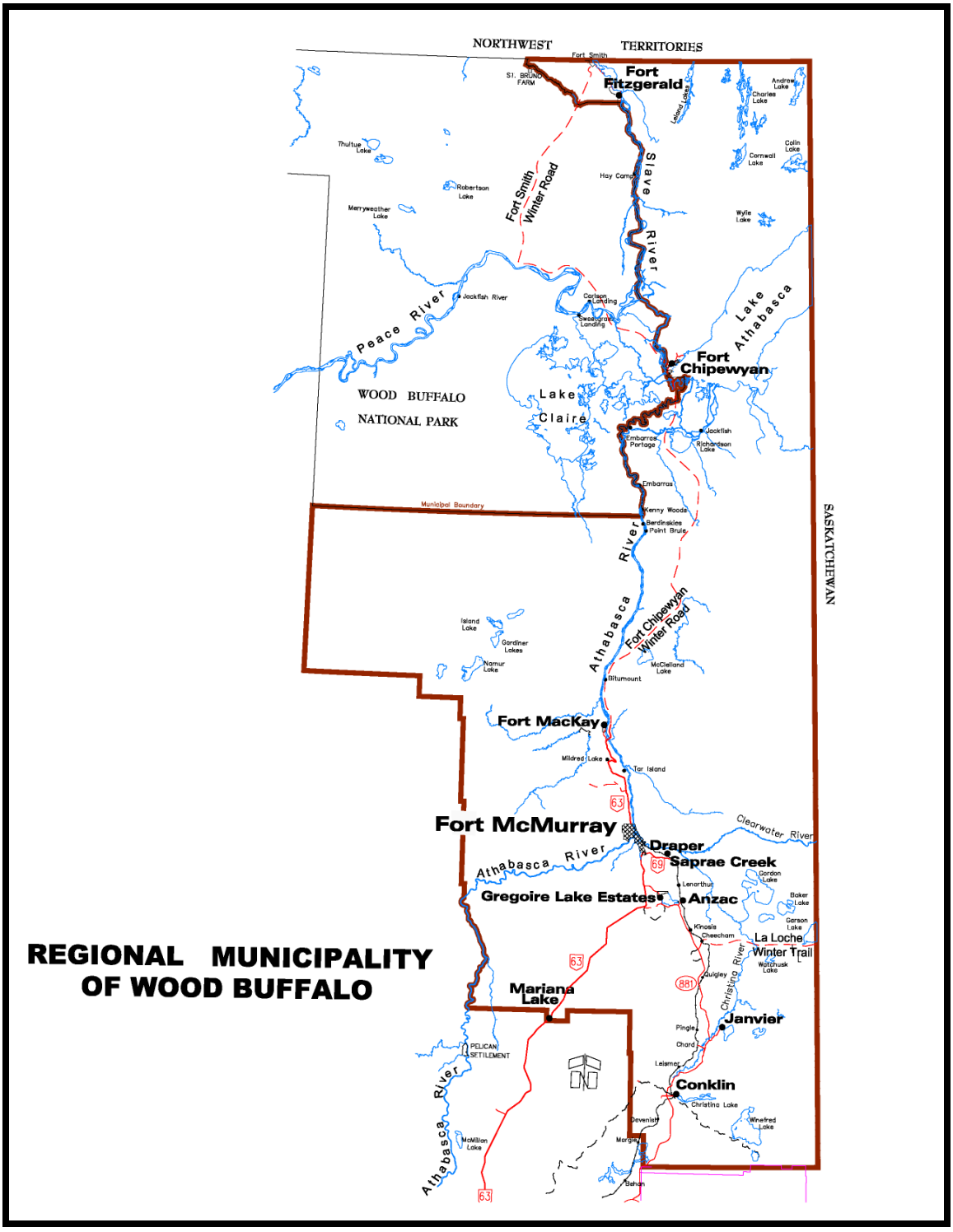

Natives at Fort McMurray, 1884. (Reprinted with permission, University of Toronto Tyrell Collections. P1017, 1884)

## Early Industry and Development

Fort McMurray was the closest settlement to Aboriginal camps, and as the fur trade diminished other industries developed, providing seasonal work to supplement First Nations livelihood. The first significant industrial changes were in transportation. The Athabasca and Peace Rivers became commercial transportation highways, and steamboats began transporting gold-seekers to the far north during the Klondike Gold Rush (Fumoleau, 2004). Between 1915 and 1922, the Alberta Great Waterways Railway, now known as the Northern Alberta Railway, constructed a 280-kilometre rail line connecting Lac La Biche to Old Waterways, now called Draper (Chipewyan Prairie Dené First Nation, 2007; Wetherall, 2000). By 1928, the rail line was extended to present day Waterways, which improved access to the north and made room for industry development like commercial fishing, salt mining, forestry, and of course, oil and gas (please refer to Figure 2 for a regional map).

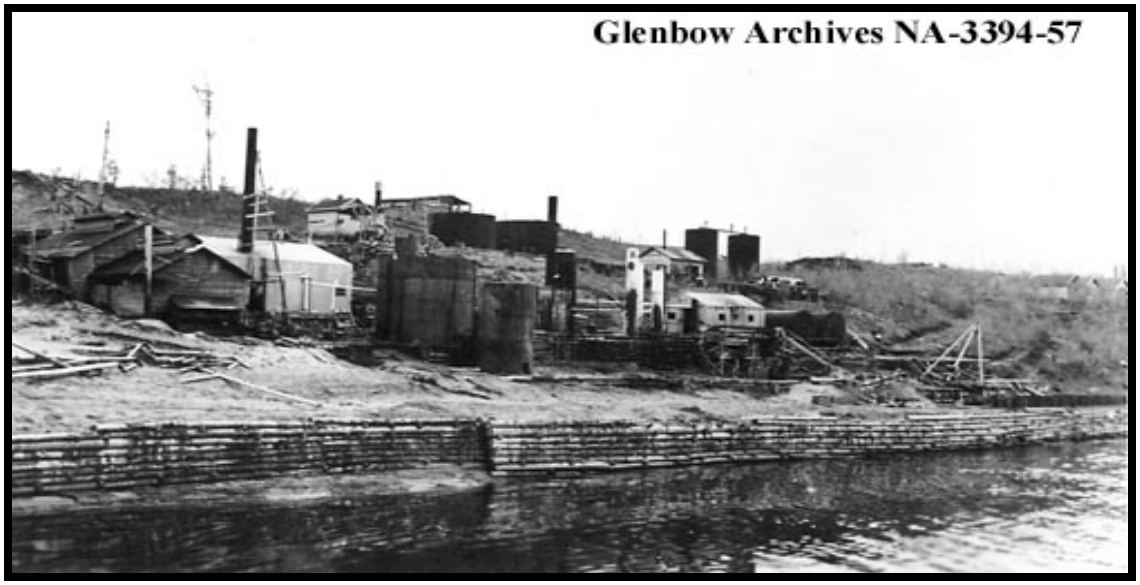
The first industry to develop in the area was commercial fishing in 1926 (Wetherall, 2000). Whitefish from Lake Athabasca were processed at the McInnes Fish Company in Waterways (Wetherall, 2000). It was a large, profitable business, which provided wage labour jobs to assist many of the Aboriginal people in the region. With the discovery of rock salt beds, Alberta Salt Company constructed a salt plant at the mouth of Horse Creek in 1929 (Wetherall, 2000), and in 1937, another salt plant was built by Industrial Minerals Limited. Rock salt was an important and viable business in this area until 1950, at which time, natural gas was discovered (History of Fort McMurray, 2007) and the Chard Gas Field, located immediately west, south, and north of Janvier, began drilling in 1957 (Wetherall, 2000).

Figure 2: Map of Fort McMurray and Surrounding Communities




(Reprinted with permission, Regional Municipality of Wood Buffalo Council Report, 2007)

Meanwhile, in the 1920s (History of Fort McMurray, 2007), settler interest in tar sands bitumen began to grow as demands for petroleum products increased. By 1921, there was serious interest in developing a refining plant to separate the oil from the sands. Alcan Oil Company was the first to begin bulk testing at Fort McMurray, and by the 1930s, (History of Fort McMurray, 2007) Abasands Oil (please refer to photo below) was the first to successfully separate the oil from the sand using hot water extraction.[7] Still, production was very low. It was not until 1967 that the Great Canadian Oil Sands Plant, now Suncor Energy, opened its first mine, which produced 30 000 barrels of synthetic crude oil per day (Energy and Utilities Board, 2005). This was the start of intensive oil sands development in the region, accompanied by major ecological alterations and disturbances.




Fort McMurray Tar Sands, 1936. (Reprinted with permission, Glenbow Museum, NA-3394-57, 1936)

[7] The hot water extraction technique uses hot water to separate oil from oil sands. Oil sand is mixed with hot water creating a slurry, which is separated into three layers - sand, water and bitumen. The bitumen is then skimmed off the top to be cleaned and processed further (Oil Sands Discovery Centre, 2007).

*Athabasca Oil Sands Today*

Due to fluctuating oil prices, oil sands development in this region went through many stops and starts. Declining world oil prices inhibited the development of a second mine, and Syncrude Canada Limited, now the biggest mine in the world (Syncrude Canada Ltd., n.d.), did not open in this area until 1978. Even though the 1979 energy crisis caused oil prices to peak, the introduction of Trudeau's National Energy Program[8] in 1980, caused oil prices to decline in Canada. With this, the third mine, operated by Albian Sands and owned by Shell Canada, Chevron, and Western Oil Sands Ltd., did not begin operating until 2003. With the increase of oil prices between 2004 and 2006, the existing three mine's have expanded with further developments in the works (Energy and Utilities Board, 2005). Today, Alberta's oil sands produce approximately 1.7 million barrels of oil per day, with a projected production of over 4 million barrels per day by 2015 (National Energy Board, 2007b). Please refer to Figure 3 for the National Energy Boards preliminary oil sands production chart. The combination of these mining operations has made Canada's oil sands the largest known hydrocarbon[9] resource in the world, estimated to contain about 1.7 trillion barrels of recoverable oil (Alberta Energy, 2008b).

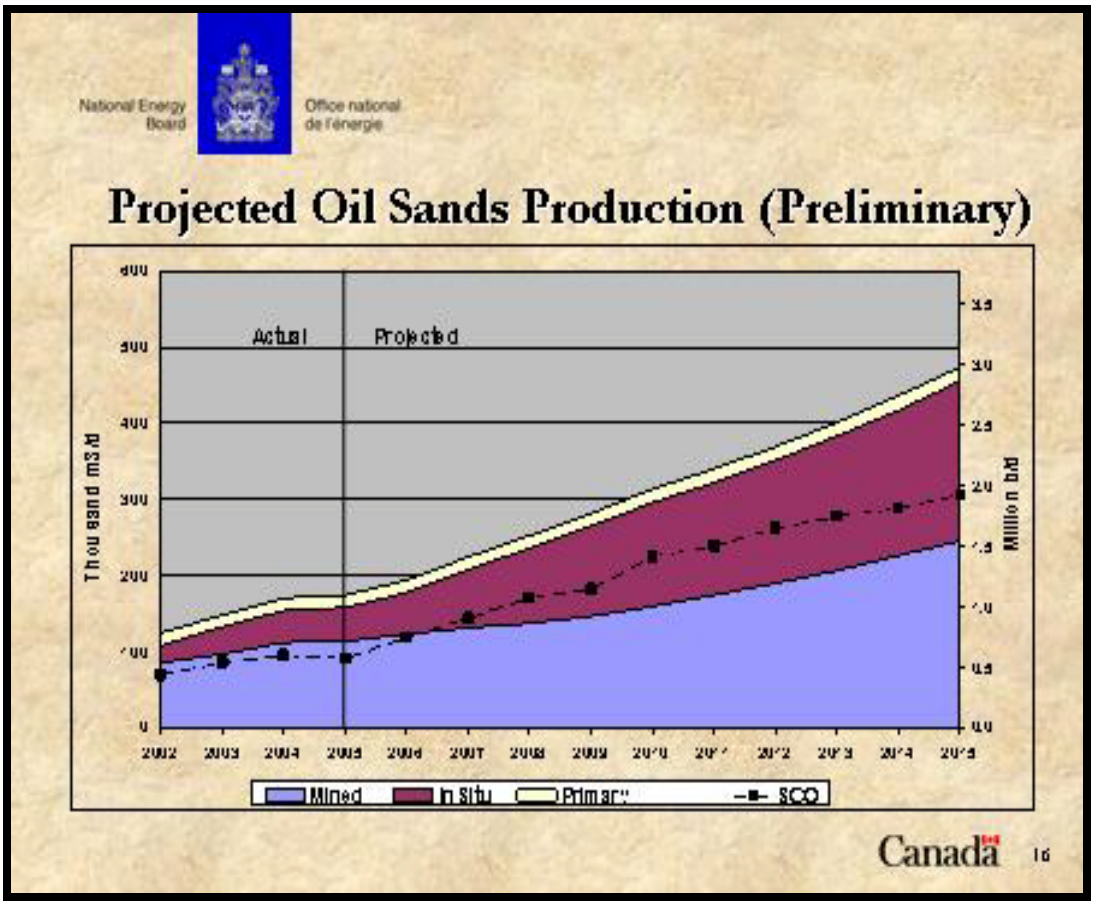
Alberta has played a significant role in the history of the petroleum industry in Canada, and over the past decade, Fort McMurray's growth is characteristic of a boomtown. Current development of the oil sands has resulted in the strongest period of economic growth ever recorded by a Canadian province and has driven Alberta's unemployment rates to the lowest levels in history (Statistics Canada, 2006).

---

[8] The National Energy Program was introduced on October 28, 1980 by the Canadian Federal Government in an effort to increase both Canadian control and Canadian ownership of the energy industry. In an effort to protect all Canadians from surging oil prices, the Federal Government introduced measures such as price controls and Federal taxes on oil and gas production, which increased Federal control, and decreased Provincial control in the oil and gas industry (Alberta Online Encyclopaedia, n.d.).

[9] Hydrocarbons are any of numerous organic compounds such as natural gas, oil, and coal, that contain only carbon and hydrogen (*The American Heritage® Dictionary of the English Language, Fourth Edition*, 2007).

Figure 3: Projected Oil Sands Production




(Projected Oil Sands Production chart reprinted with permission, National Energy Board, 2007b)

*Extraction Process*

Much of the concern regarding oil sand development in this region has stemmed from the open pit mining and technical techniques used to extract the bitumen from the sand. Unlike traditional oil fields, where petroleum products are pumped to the surface, the Athabasca tar sands conducts open pit surface mining. Essentially, this means that large giant open pits are dug that require millions of tons of overburden[10] to be removed. This process begins with the clearing

[10] Overburden consists of one to three metres of water-logged muskeg on top of up to 75 metres of clay and barren sand. The underlying oil sands are typically 40 to 60 metres thick and sit on top of relatively flat limestone rock (Ransco, Roaring Dinosaurs, 2006).

of trees, draining and storing the muskeg, and then removal of the top layer of earth to expose the ore body underneath (Alberta Government, 2007b), usually buried 45 metres or more below the overburden. Approximately two tonnes of oil sands must be dug up, moved, and processed in order to produce one barrel of oil. Some of these pits are three miles wide and over 200 feet deep.

The oil laden sand is loaded into large three storey trucks and brought to processing plants for upgrading. Unlike conventional crude, this sand must be ground down and mixed with hot water in order to extract the oil. The resulting bitumen slurry is then hydraulically transported to refineries throughout Canada and the United States via pipelines. As the slurry flows through the pipe, it is broken down and the bitumen separation process is facilitated enroute. All elements of this process have tremendous impacts on the land, water, and air quality. Some of these are identified in Figure 4.

Figure 4: Environmental Impacts

Development activity in northeastern Alberta is staged for significant growth over the next decade or so. These new and expanded projects to extract and process the oil sands will not only increase production, but also will result in increased stresses on the environment (CEMA Online, 2007). For example, to produce one cubic metre of oil in the Alberta mining operations requires about 2 to 4.5 cubic metres of water from the Athabasca River (National Energy Board, 2007). This is twice the annual water needs of a city of one million people (National Energy Board, 2007). This expansion is also on target to consume half of the surface water of the Athabasca River and its tributaries (Randsco, 2007).

It is also estimated that the oil sands will eventually consume more natural gas than is needed to heat every home in Canada (Randsco, 2007).

At present, the Alberta Government does not require companies to restore the land to "original condition" but only to "equivalent land capability" (Alberta Environment, 2004). Since the Government considers agricultural land to be equivalent to forest land, oil sands companies that have reclaimed mined land, have restored it to pasture for buffalo, rather than to the original state of Boreal Forest and muskeg.

Greenhouse gases from oil sands development also are a major environmental concern. For every barrel of synthetic oil produced in Alberta, more than 80 kg of greenhouse gases are released into the atmosphere and between two and four barrels of waste water are dumped into tailing ponds[11] that have replaced about 50 km² of forest (Water is Life, 2006). The water dumped into these ponds is so contaminated that it cannot be returned to the river. Some of these tailing ponds are so large they can be seen from space (Oil Sands Watch, 2007).

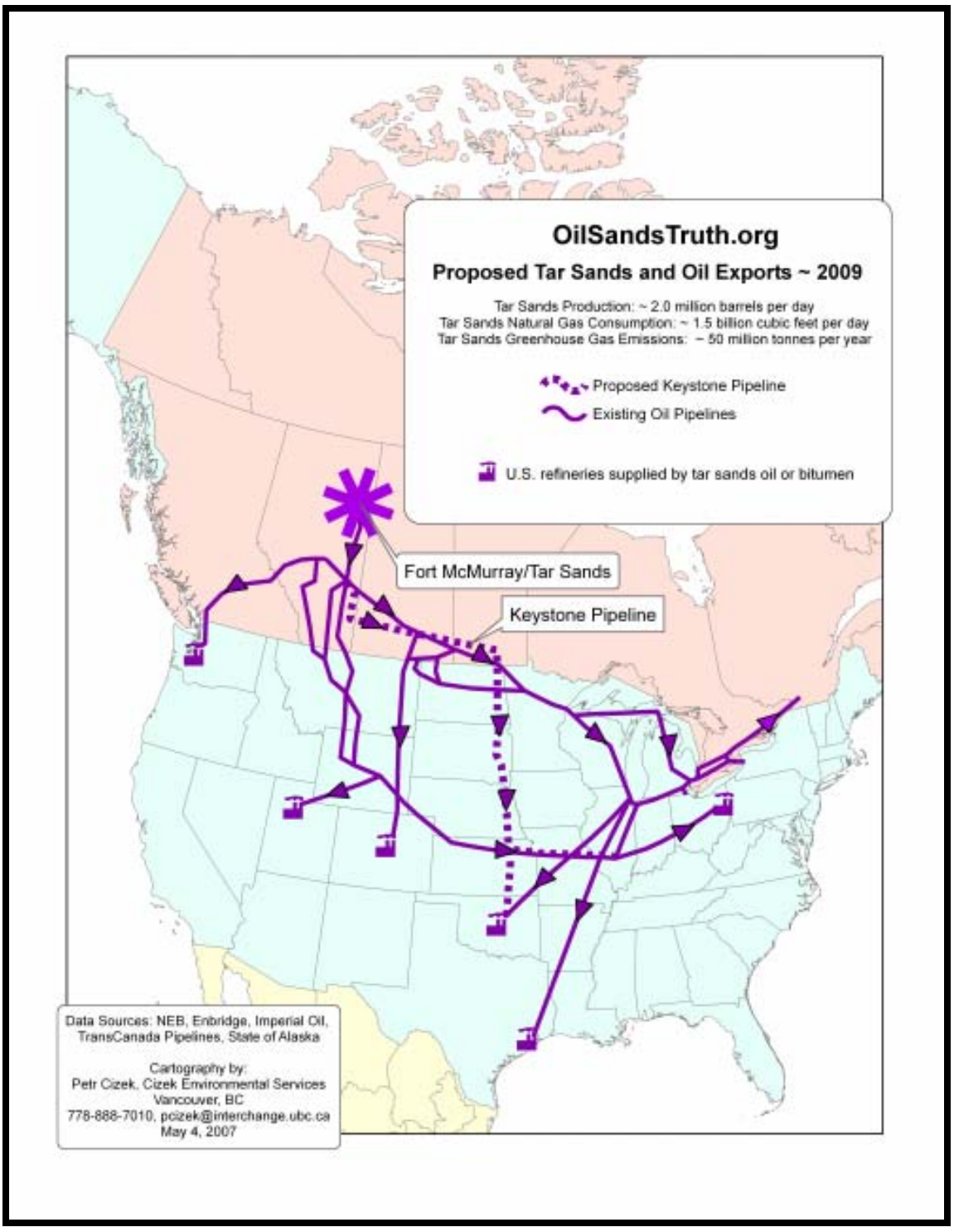
Since 1990, rather than reduce, Canada's total greenhouse gas emissions had increased by 24% (Climate Action Network Canada, 2005). At present, Canada is the eighth largest emitter of greenhouse gases in the world (Climate Action Network Canada, 2005).

With planned projects coming on stream, by 2010 oil sands production is projected to reach two million barrels per day, about two thirds of Canadian production (Petroleum Society, 2004). By 2015, Canadian oil production could reach up to four million barrels per day, and 4.8 million by the year 2020 (Petroleum Society, 2004). Only 10% of this total production will be conventional crude oil; the rest will all be bitumen and synthetic crude oil extracted from Alberta's oil sands deposits (Petroleum Society, 2004)[12]. Please refer to Figure 5 for an outline of current and proposed pipelines servicing this area, and Figure 6 for a list of current and expected oil sand development projects in the Athabasca oil sands region.

[11] Tailing ponds are areas of mining tailings that are covered with water to prevent dust from blowing away. These ponds are dangerous because the wastes deposited into the ponds are often very toxic, corrosive, or both to human and animal life (Wikipedia, 2004).

[12] The Athabasca deposit contains an estimated 212 billion $m^3$ (cubic metres) of bitumen lying under 0-750 metres of overburden; Cold Lake contains 32 billion $m^3$ and Peace River contains 25 billion $m^3$, for a total of 269 billion $m^3$ of mineable oil (The Canadian Encyclopaedia, 2008).

Figure 5: Current and Proposed Tar Sands Pipelines




(Proposed Pipelines Map reprinted with permission, Oilsandstruth.org, 2007)

Figure 6: Current and Expected Projects in the Athabasca Oil Sands Region

Suncor Energy's Steepbank and millennium mines currently produce 263 000 barrels per day and its Firebag in-situ project produces 35 000 bpd. It intends to spend $3.2 billion to expand its mining operations to 400 000 bpd and its in-situ production to 140 000 bpd by 2008.

Syncrude's Mildred Lake and Aurora mines currently can produce 360 000 bpd.

Shell Canada currently operated its Muskeg River mine producing 155 000 bpd and the Scotford Upgrader at Fort Saskatchewan, Alberta. Shell intends to open its new Jackpine mine and expand total production to 500 000 bpd over the next few years.

Nexen's in-situ Long Lake SAGD project is on schedule to produce 70 000 bpd by late 2007, with plans to expand it to 240 000 bpd over the next 10 years.

CNRL's $8 billion Horizon mine is planned to produce 110 000 bpd on startup in 2008 and grow to 300 000 bpd by 2010.

Total S.A.'s subsidiary Deer Creek Energy is operating a SAGD project on its Joslyn lease, producing 10 000 bpd. It intends on constructing its mine by 2010 to expand its production by 100 000 bpd.

Imperial Oil's $5 to $8 billion Kearl Oil Sands Project is projected to start construction in 2008 and produce 100 000 bpd by 2010. Imperial also operates a 160 000 bpd in-situ operation in the Cold Lake oil sands region.

Synenco Energy and SinoCanada Petroleum Corp., a subsidiary of Sinopec, China's largest oil refiner, have agreed to create the $3.5 billion Northern Lights mine, projected to produce 100 000 bpd by 2009.

(The source of the materials is http://www.environment.gov.ab.ca/. The use of these materials by Tracey Tanner is done without any affiliation with or endorsement by the Government of Alberta. Reliance upon Tracey Tanner's use of these materials is at the risk of the end user, Alberta Government, 2007b)

## Regional Sustainable Development Strategy and the Association

This large-scale oil sands development resulted in the projection of $12 billion worth of new investment in the Athabasca region, and also resulted in questions about the ability of the environment to handle the level of projected growth and development from mining, extraction, and upgrading projects (CEMA Online, 2007). This led to concern regarding the combined or cumulative effects this increased level of industrial activity could have on the environment (CEMA Online, 2007). Therefore, the Alberta Government took steps to initiate a strategy that would address potential cumulative environmental effects in the oil sands region, and provide a framework to ensure sustainable development in the region. With this, Alberta Environment partnered with all levels of Alberta and Saskatchewan Government, industry, environmental interest groups and Aboriginal communities to initiate the Regional Sustainable Development Strategy[13] (Alberta Environment, 1999) that would build upon Alberta's already existing environmental and resource management system, and create a framework that would:

1. Provide support for the continued economic development in the region that addresses environmental needs and resource sustainability.
2. Create an enhanced management framework that would adapt to the changing needs of the area, and guide Government's environmental and resource managers.
3. Develop a strong foundation of environmental information and science to assist in making decisions on sustainable resource and environmental management in the region; and
4. Create a way to identify priority regional environmental issues, and organize the science and monitoring work needed to understand these issues.

---

[13] For the purpose of this report, the Regional Sustainable Development Strategy (RSDS) will also be referred to as the 'Strategy'.

Although the Strategy described the tools needed to address cumulative effects issues in the Athabasca oil sands, and provided a broad conceptual outline for the development of a management framework to accomplish this, it was never translated into operational procedures (Kennett, 2007). This initial framework identified and prioritized 72 environmental issues within the oil sands region that were divided into 14 themes with three priority categories. The diversity of environmental values and stakeholder interests prompted the need for a forum that would work with the newly formed Strategy to effectively establish environmental management objectives. As a result, the Cumulative Environmental Management Association was formed in 1999 (CEMA Online, 2007). Thirty-seven of the environmental issues prioritized by the Strategy were then passed on to the newly formed Association to address. Since the release of the Strategy in 1999 however, there has been little or no progress within Government to build the legal, policy, and institutional framework necessary to make this a viable strategy for effectively managing cumulative effects in the region, leaving the Association with little direction and a lot of responsibility.

## Research Question and Objectives

This thesis explored the reasons for the First Nations withdrawal from the Cumulative Environmental Management Association, and addressed the various cultural, structural, and legal issues that may have contributed to this breakdown. A clarification of these factors will assist all parties in attaining a deeper understanding of the situation so that adequate consultation and accommodation of Aboriginal concerns are recognized, and a more equitable co-management process can be implemented that includes the meaningful participation and contributions of First Nations in the region.

Through interviews, and the examination of professional documents and scholarly works conducted on this topic, I investigated the following research question:

> What are the factors that led to the First Nations withdrawal from the Cumulative Environmental Management Association?

To decipher potential causes for this situation, I employed a deductive[14] model of inquiry, which focused upon investigating the following four hypotheses:

1. The First Nations withdrew from the Cumulative Environmental Management Association because the Association did not adequately include Traditional Knowledge within their environmental monitoring processes.

2. The First Nations withdrew from the Cumulative Environmental Management Association monitoring process because the Association's management framework was not effective at generating recommendations that addressed cumulative environmental effects for land and resource use in northern Alberta.

3. The First Nations withdrew from the Cumulative Environmental Management Association because they did not have power or influence in the Association commensurate with their perceived rights to protect the environment.

4. The First Nations withdrew from the Cumulative Environmental Management Association because timely and adequate Crown consultation with respect to Aboriginal rights did not occur.

[14] A deductive model of inquiry is an approach to the relationship between theory and research in which the latter is conducted with reference to hypotheses and ideas inferred from the theory (Bryman & Teevan, 2005). Therefore, these hypotheses were derived prior to the data collection, rather than being ideas created through the process of my investigation.

# CHAPTER 2: BACKGROUND AND LITERATURE REVIEW

The purpose of this review was to highlight specific arguments and ideas that would support or negate my initial hypotheses pertaining to the factors that led to the withdrawal of the First Nations from the Association process. To do this, I reviewed the literature on two issues. The first, explaining the differences between Traditional and Western Knowledge systems and the structure of co-management and multi-stakeholder forums to create a deeper understanding of the systemic barriers that are present when trying to integrate these polarized worldviews to a common end - environmental decision making. This led to a second issue relating to the Cumulative Environmental Management Association mandate and processes, and how they relate to environmental decision-making, industry and Government actions, and Aboriginal rights. Background information pertaining to the Athabasca region and the research problem investigated was intertwined throughout this literature review in order to provide a deeper understanding of the situation and its origins.

## Indigenous and Western Scientific Knowledge Systems

> Ecological awareness will arise only when we combine our rational knowledge with an intuition for the nonlinear nature of our environment. Such intuitive wisdom is characteristic of traditional, non-literate cultures, especially of American Indian cultures, in which life was organized around a highly refined awareness of the environment. (Capra, 1982, p. 41)

Hypothesis 1: The First Nations withdrew from the Cumulative Environmental Management Association process because the Association did not adequately include Traditional Knowledge within their environmental monitoring processes.

This section reviews the literature explaining Traditional Knowledge and its relevance and application to environmental monitoring. Western environmental systems and co-management structures are also outlined to depict the polarized views inherent in Aboriginal and

western thought, and the difficulties that present themselves when partnering the two ideologies in one forum.

*Indigenous Knowledge*

> Traditional Environmental Knowledge is a body of local environmental knowledge and beliefs acquired through generations, and transmitted through oral tradition and first hand observation based on living in close contact with nature. It includes a system of classification, a set of empirical observations about local environment, a system of self of management that governs sustainable resource base, and an understanding of the relationships of living beings (including humans) with one another and their environment. Environmental aspects are closely tied to social and spiritual aspects of the knowledge system. TEK is both cumulative and dynamic, building upon the experience of earlier generations and adapting to the new technological and socioeconomic changes of the present. (Adapted from Rita Marten, Mikisew Cree First Nation, 2008, p. 1)

There are fundamental differences between Traditional Knowledge and Western Scientific Knowledge systems. To begin to comprehend the scope of Traditional Environmental Knowledge, we must first look to the misconceptions created by our own (western) language. Aboriginal Knowledge systems are not all 'environmental', nor or they all 'traditional'. Because sound environmental decision-making requires more than just Traditional or Environmental Knowledge, the term 'Indigenous Knowledge' is a more appropriate and respectful term. Traditional Environmental Knowledge is merely a subset of the value that Indigenous Knowledge as a whole can contribute to environmental decision-making. Indigenous Knowledge systems incorporate core values that are holistic and integral to the cultural survival and livelihood of First Nations groups. These systems link and shape *all* sources of knowledge into a culturally constructed and coherent base, not just environmental information (Barnhardt & Kawagely, 2005; Fish Creek Consulting and Associates, 2003).

Indigenous Knowledge systems fully integrate all aspects of culture (Sherry & Myers, 2002), and therefore include contributions from all members of the community. Although Elders are considered to have greater wisdom and perhaps greater knowledge, they do not necessarily have better information (Hawley, Sherry, & Johnson, 2005). The greatest credibility is given to the observations and views of individuals who are considered by the community to have the greatest knowledge and understanding of the item under consideration. Therefore, the integrity of the information is considered based on the person from whom the knowledge derived, rather than a hierarchal structure or set of specific protocols (Hawley et al., 2005).

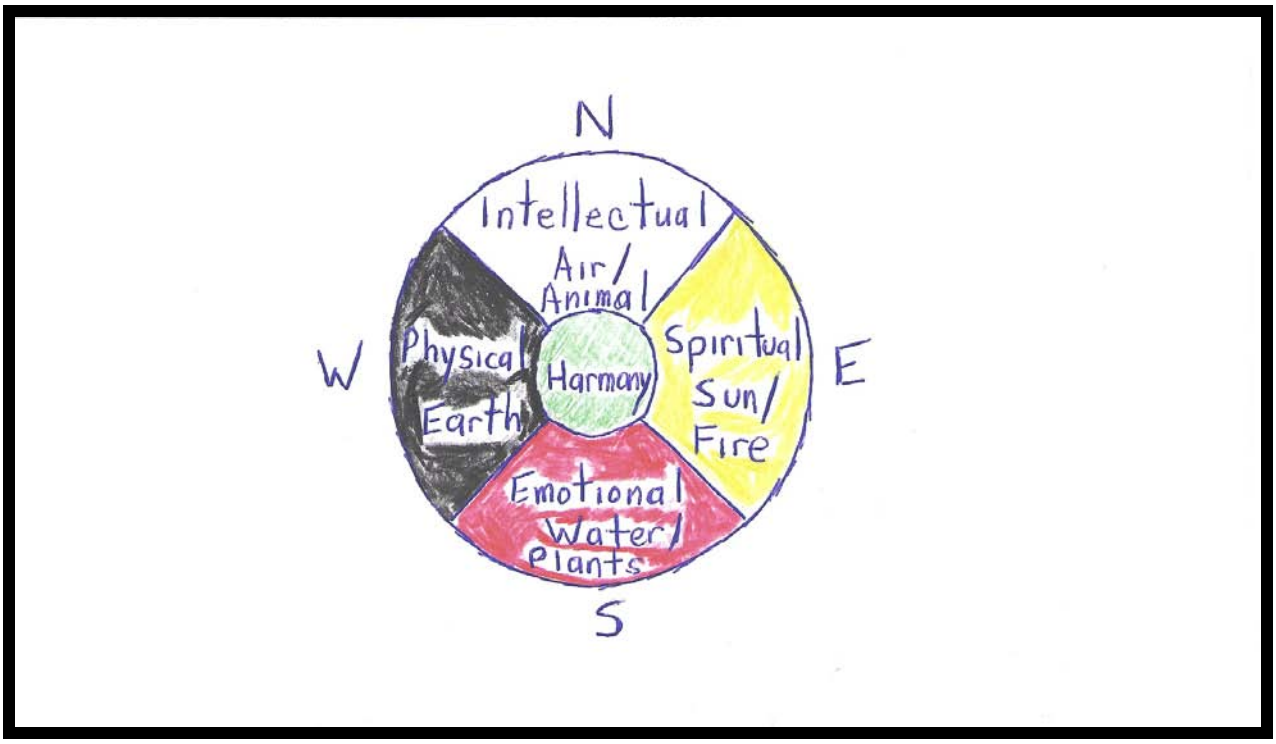
Over time, Aboriginal peoples in the Athabasca region have developed extensive knowledge bases about the behaviours, distributions, and conditions of specific plants and animals, and the many factors that influence these phenomena (Fish Creek Consulting and Associates, 2003; Stevenson, 1996). This ecological knowledge could reveal much about natural variation over time and space in valued ecosystems, species, and their interrelationships. It can also fill in many gaps within Western Scientific Knowledge data sets that are crucial to making sound environmental decisions over broader areas and time (Stevenson, 1996). However, understanding the holistic nature of this knowledge is an important piece to the puzzle. Because Aboriginal reference to the environment is relational, to extract certain parts of it out of context from the whole could render it incomplete and meaningless (Berkes, 2007; Hawley et. al., 2005; Lertzman & Vredenburg, 2005; Marker, 2006; Sherry, Halseth, Fondahl, Karjala, & Leon, 2005).

The holistic ideology encompassed in Indigenous Knowledge systems is clearly depicted within the Medicine Wheel - an Aboriginal concept that interrelates the intellectual, spiritual, emotional, and physical elements that are necessary for the understanding and application of all life processes. It is an Aboriginal tool that is used to teach, apply, and communicate knowledge.

It is a healing tool, as well as a means utilized to explain abstract thought and reality presented in the moment.

Since time immemorial, the medicine wheel has been all knowing. It is the library contained in the earth, moon, sun, planets, each human being, animal, plant, insect, rock … The four aspects of the wheel that are universal in nature are often referred to as the four directions depicted by elements, animals, concepts and processes. Please refer to Figure 7 for a generic diagram of how the Medicine Wheel is presented.

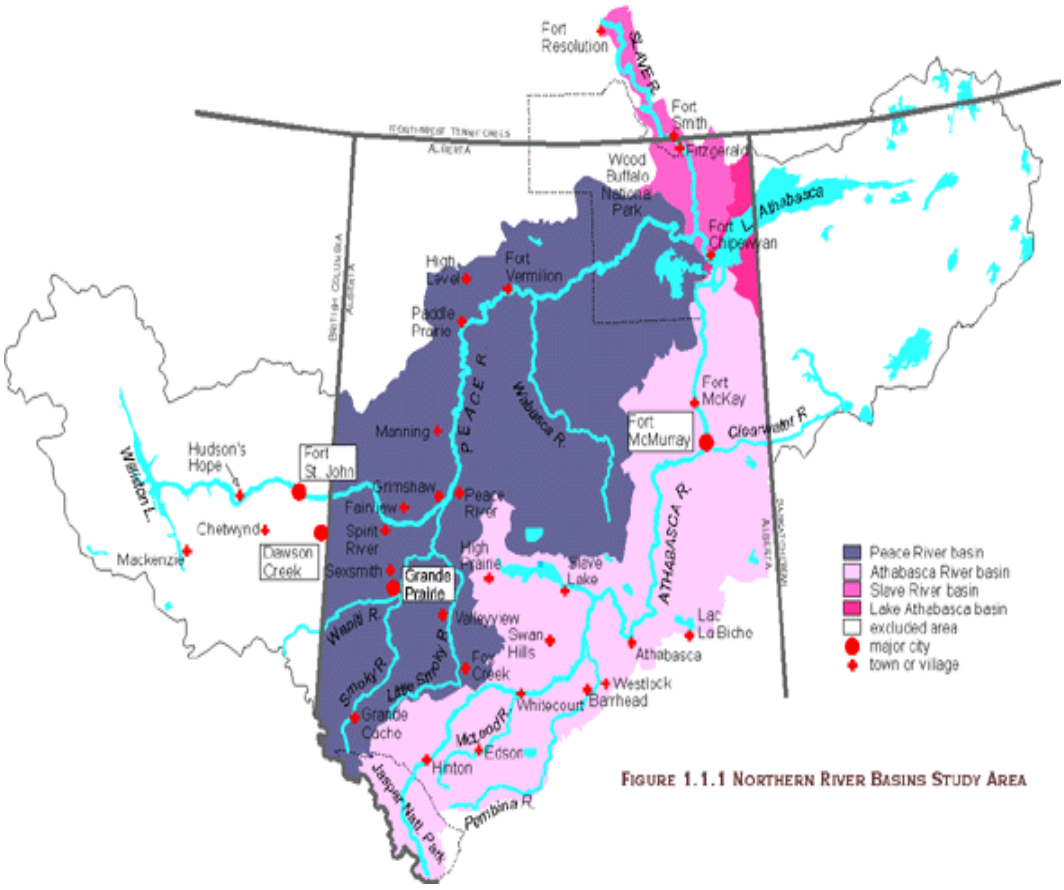
Figure 7: The Medicine Wheel




(Created by Tracey Tanner, 2011)

The medicine wheel concept has been used in the design of Traditional Knowledge projects in order to make the collection and application of Traditional Knowledge more effective and meaningful. *The Northern River Basins Study Traditional Knowledge Documentation Project* (1996) for example, was a first time experiment in applying the medicine wheel framework to Traditional Knowledge research. This project interviewed people from Aboriginal communities situated along the northern river basins of northern Alberta and the NWT. Please refer to figure 8 to geographically situate this study.

Figure 8: Northern River Basins Study Area




(Printed with permission, Alberta Environment, 1997)

The medicine wheel design met expectations of the communities and Elders involved because it was community based, community paced, and community driven. The process supported the way of life that was being researched, and the data reflected the stewardship relationship that exists between the earth and Aboriginal peoples in this region. In the end, this project was successful in its mandate and demonstrated many relationships between environmental data collected scientifically, and traditional environmental data provided by the Aboriginal community (Bill, 1997). Although there are other instances where methods of Indigenous data collection and research processes are more 'community owned' rather than imposed by outsiders, for the most part, processes used to collect Traditional Knowledge information are outdated, and do not increase capacity or encourage the self-determination of Aboriginal peoples (LaDuke, 1994).

Traditional Knowledge research has become an important and valued component of Aboriginal people seeking to preserve their culture and traditional livelihood. For the First Nations, Traditional Knowledge projects have primarily focused on collecting data in order to preserve knowledge and oral history, and to aid in Aboriginal land claims. It also has been utilized to assist in natural resource planning and environmental monitoring in order to provide an alternative perspective and insight into ways of managing the earth's resources with a stewardship ideology, based upon mind and heart (Bill, 1997).

### *Western Scientific Knowledge & Environmental Management Systems*

Unlike Indigenous Knowledge, western paradigms are based on the scientific accumulation, organization, and interpretation of data. Although western processes utilize science to manage valued ecosystem components, they do not usually manage valued ecosystem relationships on a holistic level (Kawagley & Barnhardt, 2007; Knudtson & Suzuki, 1992;

Stevenson, 1996 & 2007). Within this system, it is easy for the natural resources of the land to become 'things' that are created outside of ecological, social, cultural, and political realities (Howitt, 2001), with little attention given to the role of humans in ecology. Although human-ecosystem relationships are sometimes considered, it is still in a linear context pertaining only to the human impact on whatever is being managed (Mulvihill, Baker & Morrison, 2001).

Within these western management systems, problems are resolved in a technical, historical framework, which tends to be bureaucratic, hierarchically organized, and vertically compartmentalized:

> Managers become distinct from harvesters, authority becomes centralized and flows from the top down. The environment is reduced to conceptually discrete components, which are managed separately. As these separate management units take on a life of their own, management objectives diverge and become focused on specialized objectives. (Usher, 1986, p. 71)

In order for Traditional Environmental Knowledge to fit into these systems, 'relevant' aspects of the data are extracted and recontextualized to inform western environmental resource strategies. For example, in Aboriginal systems, changes in wildlife populations are gauged through trends rather than actual numbers, and predictions are based on behavioural observations and harvesting needs (Johnson, 2002). When western scientists extract this qualitative information to calculate population dynamics, the data becomes incomplete and ineffective (Johnson, 2002). The broader holistic framework that informs this Indigenous Knowledge must be considered in order to find meaning in these extracted quantitative elements.

The ideology of segmenting knowledge is as foreign a concept to the First Nations as 'managing' the environment. To the extent that Aboriginal people manage or managed anything, would be in context of human activities and their relationships with or connections to the natural world (Spak, 2002). Within Aboriginal systems, maintaining a balance between human beings

and the natural world is preferred to human control over nature (Fish Creek Consulting and Associates, 2003). The cultural standpoint by which Aboriginal people traditionally constructed their knowledge bases and worldviews focused primarily upon relationships and ecosystems, rather than specific resources (Berkes, 1999; Berkes, Colding, Folke, 2000).

Although natural resource scientists and managers are becoming conceptually and increasingly aware of the importance of understanding real-world ecosystem relationships, the culture of "pure" scientific research, still, either excludes the ecological influences of humans, or is conducted at scales of little use to resource managers (Baskerville, 1997). Because of this, current institutional processes and procedures that drive environmental decision-making in areas such as the oil sands, have not kept pace with current ecological thinking (Fish Creek Consulting and Associates, 2003; Hajer, 1997).

### *Co-Management Structures*

> Co-management is a process that brings local resource users and Government representatives together to share the management responsibility for local or regional resources. It is an alternative approach to managing local resources that has been gaining increasing support throughout Canada. There are many co-management agreements that take a variety of forms and address a range of issues This cooperative approach to management can involve several stakeholders including Aboriginal, nonaboriginal and Government groups, working together with both scientific and traditional knowledge to manage resources. This approach has provided opportunities for Aboriginal people to participate in resource management decision-making, a process from which they had largely been excluded in the past. (Adapted from the Beverly and Quamanirjuaq Caribou Management Board, n.d.)

Also referred to as ‘co-operative management’, ‘joint management’, or ‘joint stewardship’, there are a number of co-management arrangements between Governments and First Nations throughout Canada that are less formal than land and resource use plans and processes created under settlement agreements (Assembly of First Nations Environment Stewardship Unit, 2005). These arrangements are usually formed around natural resource use,

and combine Western Scientific Knowledge with Traditional Environmental Knowledge in an effort to improve resource management and the environmental impacts of development. Implicit within co-management literature is the idea that better management is achieved by the integration of Aboriginal/local philosophies and state management systems (Stevenson, 2006). Yet, this is more difficult than it may first appear, since Aboriginal systems lack the formal structures and procedures inherent within the western systems, rendering them unfamiliar and inaccessible to most environmental managers and technical specialists - and western co-management structures favour a scientific method of inquiry that relies upon quantitative, reductionistic, technical skills that are foreign to traditional Aboriginal ideology. Please refer to Figure 9 for a brief list of typical co-management strategies.

Figure 9: Typical Co-Management Strategies

| | |
|---|---|
| a) | Include non-traditional decision-makers, i.e., non-traditional meaning those other than state or industry managers. |
| b) | Encourage the participation of the local community in the management of natural resources in some capacity. |
| c) | Are consensus-based with decision-making power being shared among the various actors. |
| d) | Stress negotiation rather than litigation in situations of conflict. |
| e) | Combine Western Scientific Knowledge and Traditional Environmental Knowledge. |
| f) | Include decision-making arrangements and agreements from public participation initiatives to land claim settlements. |

(Adapted from International Institute for Sustainable Development, 1998)

The original intent of Aboriginal and non-Aboriginal co-management was to create a balanced development and shift away from the centralized, technical solutions of the past that monopolized natural resource use (Gupta, 1992; Niamir, 1990; Warren, 1990). While there is much to gain by integrating these two structures, in reality, this arrangement also can be very

problematic (Notzke, 1995). Because the two systems are based upon such polarized realities, one rarely finds value within the other, and commonly, fails to acknowledge the other as having any legitimacy at all (Notzke, 1995). These two worldviews can work together in co-operative management and environmental decision-making since both contain non-technical insights, wisdom, ideas, perceptions, and innovative capabilities (Thrupp, 1989), and both have a vested interest in ecological monitoring and sustainability practices.

Indigenous Knowledge is acquired through life experiences, and applied in activities such as land use, decision-making, and community leadership. Because of this, it is often viewed in a local context, anchored to a particular group, setting and time (Banuri & Apffel-Marglin, 1993). This familiarity can often provide a bridge for understanding a variety of environmental processes over time. Although Western Scientific Knowledge systems claim "universal validity" (Krugly-Smolska, 2005), the social, political, and cultural contexts of *both* knowledge systems are relevant and necessary for the accurate and long term monitoring of environmental impacts surrounding natural resource development.

## Decision Making for Land and Resource Use

> It seems that politics have trumped environmental protection. Each draft of the [Regional Sustainable Development] plan makes more concessions to the oil sands industry. (Melody Lepine, Mikisew Cree First Nation in Woynillowicz, 2007, p.1)

Hypothesis 2: The First Nations withdrew from the Cumulative Environmental Management Association monitoring process because the Association's management framework was not effective at generating recommendations that address cumulative environmental effects for land and resource use in northern Alberta.

This section describes the history of Alberta's Regional Sustainable Development Strategy (RSDS), the Cumulative Environmental Management Association, and the assumptions

behind multi-stakeholder consensus based forums. Clarification of the original intent, goals and objectives of the Strategy, the Association, and its design provides a deeper understanding of the Association's recommendation process, and the effect it has on Alberta regulators, lease approvals, and cumulative effects monitoring in the Athabasca oil sands.

### *The Cumulative Environmental Management Association Design*

The Association is a registered not-for-profit, multi-stakeholder, non-governmental, consensus-based organization located in Fort McMurray, Alberta. The Association's multi-stakeholder design was intended to bring all major stakeholders together in a new form of communication, fact-finding, and possibly decision-making on particular issues regarding cumulative environmental effects in the oil sands. This decision making body was created based on recognition of the importance of achieving equity and accountability in communication between stakeholders, and in theory, was to provide equitable representation of all stakeholder groups and their views (United Nations Environment and Development, 2007).

The ideology behind consensus-based decision making also was to involve collaboration, rather than compromise (Selin and Chevez, 2006). Instead of having one opinion adopted by a plurality, this process was designed to bring stakeholders together until a convergent decision is developed. Genuine consensus typically requires more focus on developing the relationships among stakeholders than other decision-making forums in order for members to work together to achieve agreements based on willing consent, rather than forced compliance (Mascarenhas & Scarce, 2004). A more detailed outline of multi-stakeholder consensus based ideology is outlined in Figure 10.

The Association is governed by 44 members representing various levels of Government, industry, non-government organizations, the local health authority, as well as Aboriginal groups

throughout the region (CEMA Online, 2007). These stakeholders all have varied concerns and interests in protecting the environment in the Wood Buffalo region (Spaling et al., 2000) including:

(a) Industry that is committed to corporate responsibility, the orderly development of resources, and economic growth and opportunity.

(b) Environmental non-government organizations that are concerned with guarding and promoting environmental sustainability.

(c) Health agencies that are focused on promoting public wellness and preserving public safety; and

(d) Aboriginal communities to ensure their traditional lifestyle, culture, and environmental knowledge is respected and upheld.

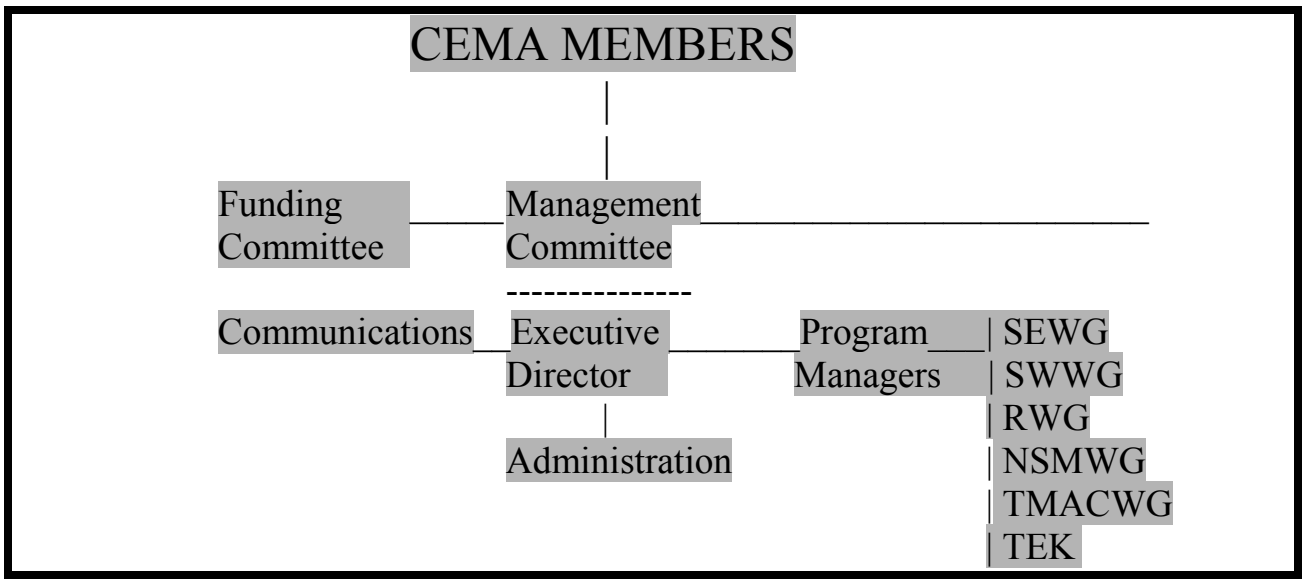
Figure 10: Multi-stakeholder Consensus-based Processes

| | |
|---|---|
| ***Description*** | The aim of multi-stakeholder processes is to promote better decision making by ensuring that the views of the main actors concerned about a particular decision are heard and integrated at all stages through dialogue and consensus building. The process takes the view that everyone involved in the process has a valid view and relevant knowledge and experience to bring to decision making. The approach aims to create trust between the actors and solutions that provide mutual benefits (win-win). The approach is people-centered and everyone involved takes responsibility for the outcome. Because of the inclusive and participatory approaches used, stakeholders have a greater sense of ownership for decisions made. They are thus more likely to comply with them. |
| ***Appropriate Use*** | These processes are used for decisions that require cooperation between many different stakeholders, where a decision made by one group alone might not be complied with by the other groups. These processes are suitable for situations where dialogue between the different actors is possible and there is willingness to listen to and learn from others to reconcile different interests and reach consensus solutions. There is no one set approach. The exact nature of a given process will depend on the issues to be covered, the specific objectives, the expertise available, the participants, and the time and other resources available. |
| ***Scope*** | Global, national, and local. Can be used with a wide range of structures and levels of engagement. |
| ***Key Output*** | Transparent and inclusive decision making, strengthened stakeholder networks. |
| ***Key Input*** | Expertise in facilitation, willingness of participants to learn, time to allow trust building, quantitative and qualitative information (depending on tools used), participation of key actors. |
| ***Ease of Use*** | The approach as well as the techniques used are based on common sense. Good planning is a vital part of ensuring a successful outcome and time must be allowed for the design stage of the process. |
| ***Training Required*** | There are a number of good texts available, but additional appropriate training would be beneficial (depending on time, resources, type of process). Need also to design the process to fit the specific needs and circumstances. |
| ***Applications*** | Multi-stakeholder processes are becoming increasingly popular. Examples of where it has been used include the Aarhus Convention Process, the Bejing+5, Global Forum Online discussions, United Nations sustainable development multi-stakeholder dialogue, and the Environment Council/Shell — Brent Spar Project. |

(Adapted from the United Nations Framework Convention on Climate Change methodologies, 1992, p. 1)

The governing body of the Association is broken down into working groups and subcommittees consisting of member organizations, chaired by nominated representatives who ultimately report to Alberta Environment. Because the Provincial Government and environmental regulations mandate that Traditional Environmental Knowledge be part of all environmental assessments, a Traditional Environmental Knowledge Working Group was formed within the Association to provide standards and direction for the proper collection and use of Traditional Environmental Knowledge within the environmental monitoring process (CEMA Online, 2007). Industry is represented within every working group and committee throughout the Association, including the Traditional Environmental Knowledge Working Group. Please refer to Figure 11 to view the organizational structure of the Association.

Figure 11: CEMA Organizational Structure[15]




(Adapted from the CEMA Online Working Groups Description, 2011)

[15] (SEWG) - Sustainable Ecosystems Working Group, (SWWG) - Surface Water Working Group, (RWG) - Reclamation Working Group, (NSMWG) - NOx SO2 Management Working Group, (TMACWG) - Trace Metals and Air Contaminant Working Group, (TEK) - Traditional Environmental Knowledge.

Although the Association receives grants from the Alberta Government, the majority of funding for the Association is provided by regional oil sands developers (Syncrude, 2008). This is facilitated through the Regional Issues Working Group (RIWG), a non-profit, *industry* funded association that facilitates solutions to shared development issues related to the Athabasca Oil Sands Deposit (Athabasca Regional Issues Working Group, 2008). Please refer to Figure 12 for a list of current members.

Figure 12: Members of the Regional Issues Working Group

Albian Sands Energy Inc.
Shell Canada Limited
ATCO Group of Companies
Birch Mountain Resources Ltd.
Canadian Natural Resources Limited
ConocoPhillips Canada
Devon Canada Corporation
Enbridge Inc.
EnCana Corporation
EPCOR Power Development Corporation Inc.
Husky Oil Operations Limited
Imperial Oil Resources
Japan Canada Oil Sands Limited
Korea National Oil Corporation
MEG Energy Corp.
Nexen Inc.
OPTI Canada Inc.
Petrobank Energy and Resources Ltd.
Petro-Canada Oil and Gas
Regional Municipality of Wood Buffalo (special member status)
StatOil Hydro Canada Ltd.
Suncor Energy Inc.
Syncrude Canada Ltd.
Synenco Energy Inc.
Total E&P Canada Ltd.
TransAlta Energy Corporation
TransCanada Pipelines Ltd.
UTS Energy Corporation

(Athabasca Regional Issues Working Group, 2008)

*The Energy and Utilities Board*

In 1938, the Alberta Government created the Petroleum and Natural Gas Board renamed the Energy Research Conservation Board (ERCB) in 1971, to ensure orderly development of the province's energy resources (Alberta Energy, 2008). Emerging from this board, in 1995, was the Energy and Utilities Board[16] (EUB), an independent, quasi-judicial agency of the Government of Alberta, mandated to regulate the "safe, responsible, and efficient development of Alberta's energy resources, and to ensure the orderly development of the oil sands" (Energy and Utilities Board Online, 2007, p. 1). Although the current process for issuing mineral rights and approving individual resource development projects in Alberta do not specifically take cumulative effects into account (Kennett, 2007), the Board does rely upon the Association's recommendations to determine whether or not the proposed projects are in the public interest (Kennett, 2007). However, because the Association is a consensus body, it has been criticized for its lack of organization and ability to accomplish these recommendations in a timely manner in order to keep up with the pace of current and planned development in the region.

In a series of decisions beginning in 1999 (Kennett, 2007) the Energy and Utilities Board has expressed concern about slow progress and the seemingly inability of the Association to generate the necessary data to address cumulative effects in the oil sands region. Please refer to Figure 13 for a list of Energy and Utilities Board approvals from 1999-2006. Aboriginal communities, the Federal Government, and environmental non-governmental organizations have also voiced these performance concerns. While the First Nations recognize the Association's mandate is "to make recommendations on how to best manage cumulative impacts from development and protect the environment" (CEMA Online, 2007, p. 1), Athabasca Chipewyan

[16] For the purpose of this report, the Energy and Utilities Board (EUB) will also be referred to as the 'Board'.

First Nation Chief Archie Cyprien has voiced his doubts regarding the Association's capabilities to accomplish this. In a letter written to the Association in 2006, he stated that the organizational structure of the Association could hinder its ability to be effective and achieve its goals (Athabasca Chipewyan First Nation, 2006). Please refer to Appendix I to review this correspondence from the Chief, outlining this, and other concerns of the First Nations pertaining to the Association's ineffectiveness and need for change.

Figure 13: Energy and Utilities Board Approvals from 1999-2006

EUB, Shell Canada, Ltd., Muskeg River Mine Project,
EUB Decision 99-2, 12 February 1999, p. 39;

EUB, Petro-Canada Oil and Gas Steam-Assisted Gravity Drainage Project, Mackay River Project, Athabasca Oil Sands Area, EUB Decision 2000-50, 14 July 2000, p. 14;

EUB, TrueNorth Energy Corporation Application to Construct and Operate an Oil Sands Mine and Cogeneration Plant, Fort McMurray Area, EUB Decision 2002-089, 22 October 2002, p. 55;

EUB and Government of Canada, Canadian Natural Resources Limited Application for an Oil Sands Mine, Bitumen Extraction Plant and Bitumen Upgrading Plant, Fort McMurray Area, EUB Decision 2004-05, 27 January 2004, p. 77;

EUB and Government of Canada, Shell Canada Limited Applications for an Oil Sands Mine, Bitumen Extraction Plant, Cogeneration Plant and Water Pipeline, Fort McMurray Area, EUB Decision 2004-009, 5 February 2004, p. 78.

EUB and Government of Canada, Imperial Oil Resources Ventures Limited, Application for an Oil Sands Mine and Bitumen Processing Facility (Kearl Oil Sands Project), Fort McMurray Area, Joint Panel Report and EUB Decision 2007-013, 27 February 2006.

EUB, Suncor Energy Inc., Application for Expansion of an Oil Sands Mine (North Steepbank Mine Extension) and a Bitumen upgrading Facility (Voyageur Upgrader) Fort McMurray Area, EUB Decision 2006-112, 14 November 2006. p. 68.

EUB and Government of Canada, Albian Sands Energy Inc., Application to Expand the Oil Sands Mining and Processing Plant Facilities at the Muskeg River Mine.
Joint Panel Report and EUB Decision 2006-128, 17 December 2006.

(Energy and Utilities Board Decisions, Energy Issues, 2007)

The inability of the Association to make timely recommendations with regard to cumulative impacts has left regional ecological thresholds unidentified and the environment vulnerable and unprotected (Athabasca Chipewyan First Nation, 2006), and the Athabasca Chipewyan First Nation has expressed concerns regarding the priority of environmental conditions in the region:

> Why should stakeholders have to prove the environment needs protection? It should be inherent upon Government and industry to prove that development can be sustained by the environment. (Chief Archie Cyprien, Athabasca Chipewyan First Nation, 2006, p. 2)

### *Regional Environmental Concerns*

The rate of development in the region coupled with the ineffectiveness of the Association had caused the First Nations to publicly question motives behind Government and industry Association participation; are they participating for the interest of their organizations or for the health and sustainability of the environment (Athabasca Chipewyan First Nation, 2006)? This led to First Nation suggestions that the Association's industry representation and funding yields greater influence in the region and dictate what work is prioritized and undertaken within the Association - altering the group's focus from cumulative effects and framework development, to oil sands expansion and other industry interests (Athabasca Chipewyan First Nation, 2006). Therefore, Athabasca Chipewyan First Nation Chief and Council proposed that Alberta Environment, the Alberta Energy and Utilities Board, the Federal Government, and industry all consider the following recommendation:

> An independent assessment be conducted of the effectiveness of the Cumulative Environmental Management Association and the Regional Sustainable Development Strategy in managing the cumulative environmental effects in the region, and implementation of changes to make the Cumulative Environmental Management Association more effective and responsive. (Chief Archie Cyprien, ACFN, 2006)

Several environmental non-government organizations, the Municipality of Wood Buffalo, and Aboriginal groups have called for a pause or temporary moratorium on the sale of oil sands leases and new approvals by the Energy Utilities Board (Alberta Government – Multi-stakeholder Committee, 2006). From an environmental management standpoint, they argue it would make sense to slow the pace of project approvals and development until scientific research, cumulative effects modeling, and stakeholder discussion of management options have yielded a more complete framework for addressing cumulative effects (Kennett, 2007). This debate plays out repeatedly in this region, and has most recently been addressed within Imperial Oil Resources Ventures Limited application to construct and operate their proposed Kearl Oil Sands Project, located 70 miles north of Fort McMurray (Energy and Utilities Board & Government of Canada, 2007).

Participants of a Joint Environmental Assessment Panel consisting of First Nations, local Aboriginal groups, local residents, the Oil Sands Environmental Coalition, the Northern Lights Health Region, the Regional Municipality of Wood Buffalo, and the Governments of Alberta and Canada, all provided evidence of the negative effects this project could create in northeastern Alberta. While participants raised a number of issues for consideration, the most critical concerns related to the cumulative environmental and socioeconomic impacts of the Kearl project within the context of the overall massive development occurring in Alberta's mineable oil sands (Energy and Utilities Board & Government of Canada, 2007).

The fact that the Association has been assigned the responsibility of addressing most of the critical cumulative effects in this region was a major cause for query. The Joint Environmental Assessment Panel raised concerns regarding the capacity of the Association to complete the monitoring and frameworks it had already been assigned, and noted that the

Association struggles to meet its deadlines (Energy and Utilities Board & Government of Canada, 2007). The success of the Association was viewed by the Panel as critical, and therefore, they strongly encouraged the regulators to take a more direct leadership role in all aspects of the Association:

> The responsibility for developing regional environmental management frameworks has largely been assigned to the Cumulative Environmental Management Association (CEMA), and this work is important to the sustainable development of the mineable oil sands over the long term. The Joint Panel believes that the efficiency of CEMA needs to be improved in order to keep pace with current development in the region and that there is a need for more definitive priority setting and adherence to deadlines. (Energy and Utilities Board & Government of Canada, 2007, p. 3)

In spite of this, the Kearl application was approved. It was however, contingent upon a number of conditions including the request that Government take a leadership role within the Cumulative Environmental Management Association (Energy and Utilities Board & Government of Canada, 2007):

> The Joint Panel emphasizes the importance of the Governments of Alberta and Canada taking a more aggressive leadership role in urgently addressing both the critical socioeconomic issues facing the community of Fort McMurray and the completion of the management frameworks and integrated plans that will establish the context for management of the cumulative environmental and land-use impacts of mineable oil sands development. (Energy and Utilities Board & Government of Canada, 2007, p. 8)

The Athabasca Chipewyan First Nation stated that some of their concerns remain unresolved, including concerns related to cumulative effects assessments, permanent loss of wetlands, and in-stream flow needs effecting traditional activities within their communities (Energy and Utilities Board & Government of Canada, 2007). The Mikisew Cree also voiced their concerns with this approval, requesting a delay of the Kearl project based upon the integrity of the Athabasca River ecosystem under the current inflow needs (see box below) framework,

the tailings process, and the liability associated with the unknowns of what the final landscape would be and its ecological function (Energy and Utilities Board & Government of Canada, 2007).

> The Athabasca River's ecosystem requires adequate flows and natural seasonal variations to support healthy fish populations. This relationship is referred to as the river's instream flow needs and is the amount of water the river needs to sustain a healthy environment. The Athabasca River has less water flowing during the winter months, so habitat for the many fish species that spend the winter in the Athabasca River is limited. Therefore, further reductions in flow because of water withdrawals from industry could reduce the amount of habitat available for fish. (Woynillowicz, Severson-Baker, and Raynolds, 2005, p. 29)

Since the release of the February 27, 2007 Joint Panel Report, no formal initiatives have been made by the Government or the Bands[17] to address the issues and concerns raised regarding this development. Canadian environmental organizations however, have brought their arguments to court. The Pembina Institute, Sierra Club of Canada, the Toxics Watch Society of Alberta, and the Prairie Acid Rain Coalition have all filed a lawsuit against the Federal Government, arguing that the environmental assessment of the open-pit mine project conducted by the Federal-Provincial Joint Panel was flawed, and that the project should be halted until a proper assessment has been completed (Ecojustice, 2008).

---

[17] A Band is a body of Aboriginals for whose collective use and benefit, lands have been set apart or money is held by the Crown, or declared to be a Band for the purposes of the *Indian Act*. Each Band has its own governing Band Council, usually consisting of one Chief and several councillors. Community members choose the Chief and councillors by election, or sometimes through custom. The members of a Band generally share common values, traditions and practices rooted in their ancestral heritage. Today, many Bands prefer to be known as First Nations (Indian and Northern Affairs, 2004).

## Power Differentials

> We will not be like Father and Son, but like Brothers. This friendship shall be everlasting and the younger generations will know it and the rising faces from Mother Earth will benefit by our agreement." The Whiteman said, "I understand, I confirm what you have said, that this will be everlasting as long as there is Mother Earth. We have confirmed this and our generation to come shall never forget what we have agreed. Now it is understood that we shall never interfere with one another's beliefs or laws for generations to come. (The Two Row Wampum Treaty Alliance, Translated by Millar, 1980, p.1)

Hypothesis 3: The First Nations withdrew from the Cumulative Environmental Management Association because they did not have power or influence in the Association commensurate with their perceived rights to protect the environment.

This section outlines the power differentials inherent within Aboriginal/Government resource management structures and the lack of capacity within Aboriginal communities to exercise their rights. Using the Athabasca River inflow needs as an example, how these concerns balance with the goals of large-scale developers, cumulative effects, and the rights of the Aboriginal people to maintain their traditional livelihood is briefly discussed.

The withdraw of the First Nations from the Association suggests that approaches taken to balance the exercise of resource use rights by First Nations, the powers of Governments, and the legislated privileges awarded to resource developers and commercial and recreational resource harvesters (Hough, 1994) have not been effective in the Athabasca oil sands. Within the current process, Aboriginal peoples have yet to exercise influence over decisions about broad Government policy on habitat protection or co-manage resources on a regional basis that affect their traditional lands (Campbell, 1996). A functional resource management structure in this region would enable each partner to play an important role in the process of data collection, evaluation, interpretation and decision-making. This balance does not exist within the current

processes utilized in northeastern Alberta, and it especially does not exist within the Cumulative Environmental Management Association.

The inclusion of five First Nations with approximately 38 other members with different rights and concerns provided Aboriginal representatives with little power to influence environmental decision making in this forum. In general, Aboriginal communities are characterized as having scarce technical, human and financial resources; low levels of education attainment; and a small base of professional and technical expertise from which to draw (National Round Table, 2005). These are all factors that must be considered and addressed when designing a forum involving Aboriginal participation. Therefore, even if the First Nations were to have equal membership representation, their lack of capacity on so many other levels makes it almost impossible for them to effectively participate or benefit from participation within the Association's process. Figure 14 identifies a 2007 list of Association members and makes apparent the uneven distribution among Government, industry, First Nations, and other stakeholder members.

### *Capacity*

Not only are Aboriginal people under-represented within the Association, their limited capacity made it difficult for them to meaningfully contribute to the process. For example, Government responsibilities toward Aboriginal communities impacted by development within the Athabasca oil sands need to include capacity building, administrative assistance, and scientific expertise (Alberta Chamber of Resources, 2006). In turn, the First Nations responsibilities should include the provision of Traditional Knowledge and explanations of traditional management systems and practices that have been developed through years of experience in the region (International Institute for Sustainable Development, 1998).

Figure 14: 2007 CEMA Membership List

**2007 Cumulative Environmental Management Association Member List**

**GOVERNMENT (12)**

-Alberta Aboriginal Affairs & Northern Development
-Alberta Department of Energy
-Alberta Energy and Utilities Board
-Alberta Environment
-Alberta Sustainable Resource Development
-Canadian Environmental Assessment Agency
-Department of Fisheries and Oceans
-Environment Canada
-Health Canada
-Regional Municipality of Wood Buffalo
-Saskatchewan Environment
-Wood Buffalo National Park

**INDUSTRY (18)**

-Albian Sands Energy / Shell Canada
-Alberta Pacific Forest Industries Inc.
-Birch Mountain Resources
-Canadian Natural Resources Ltd.
-ConocoPhillips Canada
-Devon Canada
-EnCana Corporation
-Husky Energy Ltd.
-Imperial Oil Resources
-Japan Canada Oilsands Ltd.
-Natural Resources Canada
-OPTI / Nexen Canada Inc.
-Petro-Canada Oil and Gas
-Suncor Energy Inc.
-Syncrude Canada Inc.
-Synenco Energy Inc.
-Total E&P Canada
-UTS Energy Corporation

**NONGOVERNMENT ENVIRONMENT (6)**

-Alberta Fish and Game Association
-Canadian Parks and Wilderness Society
-Fort McMurray Environmental Association
-Fort McMurray Field Naturalists
-Pembina Institute for Appropriate Development
-Toxics Watch Society of Alberta

**OTHER (1)**

-Northern Lights Regional Health Authority

**ABORIGINAL REPRESENTATION (7)** [18]

-Athabasca Tribal Council
-Conklin Métis Local #193
-Fort Chipewyan Métis Local #125
-Fort McKay Métis Local #63
-Fort McKay First Nation
-Fort McMurray #468 First Nation
-Fort McMurray Métis Local #2020

(Adapted from CEMA Online, 2007)

[18] Of the Aboriginal groups, only the Fort McKay First Nation, the Fort McKay Métis Local #63, and the Fort Chipewyan Métis Local #125 are actively participating within the Association.

If properly designed, this framework would enable each partner to play an important role in the process of data collection, evaluation, interpretation and decision-making. It is unfortunate, however, that systemic barriers often interfere with the success of this ideology (Agrawal, 1995; Berkes, 1991; Blann, 2001; Nelson, 2006; Robyn, 2002), and the structural rigidity of current processes have left many First Nations unable to provide meaningful involvement or adequately address their concerns (Campbell, 1996; Clayoquot Sound Scientific Panel, 2005; Stevenson, 2006).

Capacity is a key challenge for implementing the rights and participation of Aboriginal peoples in the oil sands region because the concept encompasses so much. Capacity building can be broken down and referred to in various ways. For example, capacity building could refer mainly to training and education needs – or it could involve more comprehensive initiatives at a variety of levels within the social system – often capacity building is still thought of as providing basic financial resources to fund contemplated activities. To effectively address capacity issues in Aboriginal communities involves so much more than simply increasing available resources (Beckley, Martz, Nadeau, Reimer, & Wall, 2004); it involves a deep understanding of how the community can effectively use these varied resources in order to preserve the cultural integrity and fundamental human rights to identity, self-determination, and legal protection (Howitt, 2001). However one defines capacity building, it is sorely lacking in this region; and increased developments that infringe upon traditional territories will only compound the already limited capacity of Aboriginal people, as the need for industry and Crown consultation increase.

Perrault and Stevenson (2008) provide a simple way to distinguish what Aboriginal peoples actually need capacity to do in relation to lands and resources:

> Capacity to engage: The capacity to engage refers to the ability of Aboriginal peoples to take advantage of opportunities that present themselves in the form of existing tenures

> and businesses, established roles in land use planning processes, and so on. Aboriginal people play the roles of tenure holders, Governments, workforce, landowners, and entrepreneurs.
>
> Capacity to represent: The capacity to represent refers to the ability of Aboriginal peoples to address deeper issues of exclusion, institutional failures, and accommodation of Aboriginal and Treaty rights and title by effectively understanding and communicating their community and organizational identity, values, and vision to non-Aboriginal parties, to other Aboriginal groups, and for themselves. Aboriginal people play the roles of leaders, ambassadors, and negotiators.

Currently, there is such a lack of human, financial, and institutional resources to increase capacity within Aboriginal communities and organizations that it is near impossible for First Nations to engage effectively, and with full information in any proposed process. Moreover, when participation does occur, it often results in delays, misunderstandings, and mistrust among all parties (Gordon et al., 1997). As for the capacity to represent, this has inevitably been the most challenging to successfully implement (Kepkay, 2007).

Although Aboriginal communities and their Governments hold the primary responsibility for building their own capacity, they must be financed and resourced in order to successfully take on this role. Furthermore, institutional barriers that interfere with capacity building must be removed, and a greater emphasis must be placed upon bottom-up approaches, driven for and by Aboriginal communities, rather than top-down (Kepkay, 2007). A successful capacity building initiative in the oil sands would demonstrate features of good development programs in general. It would be responsive, participatory, transparent, equitable, accountable, consensus-oriented, effective, efficient, strategic, and measureable (Kepkay, 2007). Currently, there is no such encompassing initiative within northeastern Alberta to assist the Aboriginal communities with negotiations regarding development in and around their traditional lands.

Historically, the decision-making influence of co-management bodies to formulate, recommend, and review management policy and concerns has been weighted against local resource users, and subject to the final authority of Provincial and Federal Governments (Scott, 2003). This is ironic, however, since the very fact co-management of resources in and around First Nations traditional lands exist, suggests that Aboriginal jurisdictional rights are *not* subordinate to Provincial and Federal Governments, nor are their proprietary rights subordinate to non-Aboriginal development interests (Scott, 2003). However, the power differentials intrinsic in this process continue to widen as large-scale development accelerates on the traditional lands of the First Nations people.

### *Athabasca Instream Flow Needs*

The lack of Aboriginal power or influence to protect their livelihood, and therefore, their right to protect the environment, plays out repeatedly in this region. The circumstances surrounding the Athabasca River inflow needs provides a good example of this. When the Pembina Institute and First Nations provided reports to the Board expressing their concerns that the environmental integrity of the Athabasca River was in jeopardy, they asserted that permitting the oil sands industry to continue to withdraw large amounts of water when levels are low causes significant ecological impacts that severely affect the River's fish (Woynillowicz, 2007):

> We're talking about the survival of the Athabasca River, but more than that this is about the survival of our people … the Governments of Alberta and Canada are failing us, and Minister Renner and Minister Hearn need to be held accountable. (Pat Marcel, Chair of the Athabasca Chipewyan First Nation Traditional Environmental Knowledge Elders Committee, 2006)

The Board also recognized that "the timely development of the inflow needs for the Athabasca River is needed to preserve the future integrity of the river" and "the establishment of an inflow needs management framework is critically important to mitigate against cumulative

environmental effects associated with water withdrawal from the Athabasca River" (Wenig, 2006, p. 6). Therefore, in early 2004, the Energy and Utilities Board directed Alberta Environment and the Federal Department of Fisheries and Oceans to establish inflow needs for the Athabasca River *if* the Cumulative Environmental Management Association was unable to do so by the end of 2005 (Wenig, 2006). The Association's deadline came and went, and by 2006, they were still unable to reach consensus and produce an inflow needs management plan to present to the Energy and Utilities Board. Therefore, the Provincial Government issued their own Water Management Framework, without the Association's recommendations on cumulative impacts. This framework has been environmentally controversial because it allows oil sands industry to continue their large withdrawals from the Athabasca River while additional research on cumulative effects continues to be conducted (Wenig, 2006).

The Pembina Institute (Woynillowicz, 2007) believes this decision will preclude any significant effort by the oil sands industry to develop and implement new technologies and practices that enable them to manage their withdrawals in a manner that ensures the protection of the Athabasca River. Furthermore, the Athabasca Chipewyan First Nation believes that the slow approach taken by industry members of the Association and the Provincial and Federal Governments regarding instream flow concerns is inconsistent with their publicly stated goal of good faith and consultative processes, and "belies a claimed commitment to protection of critical regional environmental resources" (Athabasca Chipewyan First Nation, 2006, p. 2). This reflects the dysfunction of the Association and disillusion felt by the First Nations people in this region.

Settlement and development has deprived Aboriginal peoples in Canada of their water rights by changing the quality, quantity and flow of rivers and lakes, resulting in damage to habitat and boat routes, flooding of traditional land and forced relocation, and loss of control

over a vital resource (Bartlett, 1988). Constitutionally, Aboriginal rights to water may supersede the rights of both industry and the Provincial Government.[19] Though there has been no specific judicial consideration of an Aboriginal right to the use of water, it is reasonable to assume the existence of such a right since Aboriginal rights lie in the practices, customs and traditions integral to the distinctive cultures of Aboriginal peoples (Nowlan, 2004). Sustenance rights and traditional practices of hunting, fishing and trapping have been upheld by the courts. Since it is difficult to imagine a sustenance right more basic than the right to the use of water, an Aboriginal right to water likely exists. However, this is not reflected in the Inflow Needs Framework, or other decisions pertaining to development in Alberta's oil sands. Figure 15 illustrates the licensed surface water allocations for the Athabasca River and its tributaries.

On December 18, 2006, Treaty 8 First Nations of Alberta[20] petitioned the Auditor General regarding the Athabasca River Inflow Needs decision, and reiterated their concerns that resource development in northern Alberta, especially heavy oil and tar sands development, was proceeding at an unsustainable pace that threatens the environment which First Nations people rely on to pursue their constitutionally protected Treaty and Aboriginal rights. Within Petition 188, the First Nations directed specific questions to various Federal departments regarding ongoing resource development within their traditional lands and requested a regional assessment

---

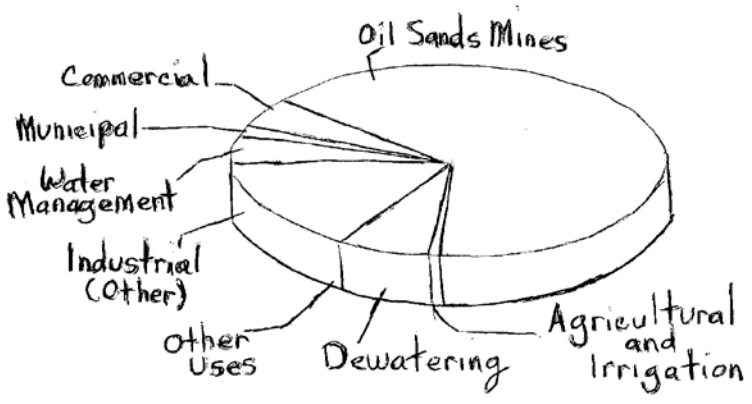
[19] The Piikani Nation was ignored when the province of Alberta decided to construct the Oldman River Dam just four kilometres upstream of the boundary of its reserve. The Piikani sued the province, claiming that their Aboriginal rights to water superseded the rights of the Province, and that they were entitled to sufficient water to maintain the natural in-stream flow through the reserve to meet their reasonable domestic and economic needs. After twelve years of litigation and negotiations, the Piikani received a $64.3 million settlement, an assurance of water supply from the Oldman River to meet residential, community, and agricultural needs, and an allocation of 37,000 acres of water under Alberta Water legislation for the Band's commercial needs (Nowland, 2004).

[20] The Treaty 8 First Nations of Alberta was incorporated in May 1997, with a mandate to operate as a unified and collective organization that shall promote, preserve and ensure the protection and implementation of the true spirit and intent of Treaty No. 8. The organization operates through the direction of an Executive Board of Directors mandated by the membership which includes the First Nations within the Treaty 8 territory of Alberta, represented in assembly by the Chiefs of each respective First Nation (Albertasource, 2002).

of the effects of these developments involving all jurisdictions (please see Appendix A). Although Indian and Northern Affairs Canada did coordinate with other Federal departments and agencies to prepare a joint response on June 6, 2007 (Indian and Northern Affairs, 2007), the joint Federal-Provincial assessment of resource development requested has yet to come to fruition, and large-scale development of the oil sands region in Northern Alberta continues.

In order to protect their rights and interests within western resource management regimes, many of Canada's Aboriginal peoples have found it necessary to adopt the language, concepts and procedures of western environmental management in order to fully participate in the environmental monitoring process (Stevenson, 2006). As seen by the withdrawal of the Athabasca Chipewyan and Mikisew Cree First Nations from the Cumulative Environmental Management Association, perhaps the disadvantages of cooperation within these systems have begun to outweigh the advantages.

Figure 15: Athabasca River & Tributaries: Licensed Surface Water Allocations 2005




(Recreated from Golder & Associates Ltd., 2005)

## Aboriginal Consultation and the Law

> Treaty 8 First Nations in Alberta & their people assert that it is their desire to create greater certainty of environmentally sound and sustainable resource development through meaningful 'consultation processes'. (Treaty 8 First Nations of Alberta, 2005)

Hypothesis 4: The First Nations withdrew from the Cumulative Environmental Management Association because timely and adequate Crown consultation with respect to Aboriginal rights did not occur.

To help clarify the necessity and meaning encompassing Aboriginal consultation and accommodation in the oil sands, this section provides a brief overview of Aboriginal, Treaty and Constitutional rights as they pertain to the duty to consult, and current consultive practices occurring between First Nations, Government, and industry.

### *Aboriginal, Treaty and Constitutional Rights*

Long before the massive oil sands development in the Athabasca region, the First Nations lived on this land, and hunting, fishing and trapping lay at the centre of their traditional way of life. While fish, furbearers, and wildlife were important resources to the Aboriginal people, they were not the only natural resources used to support their livelihood. A variety of natural resources were gathered and manufactured for traditional use, trade, and to support guiding and transportation services provided during the fur-trade (Howitt, 2001). This large range of resource-based livelihood activities were central to the identity and culture of the Natives[21] in the Treaty 8 region, and a significant part of an Aboriginal "mixed economy" (Tough, 1996, pp.14-43). With the onset of settler society, the traditional livelihood of the First Nations in northern

---

[21] As with the term "Aboriginal peoples" "Native peoples" is a collective term to describe the descendants of the original peoples of North America. The term is increasingly seen as outdated (particularly when used as a noun) and is starting to lose currency (Indian and Northern Affairs, 2004).

Alberta began to change, and the Aboriginal people entered into Treaty 8 negotiations on the understanding that the source of their livelihood and culture would be protected. With that promise, the First Nations signed Treaty 8 and allowed the Government of Canada to "have title" to their traditional lands, provided that the First Nations could continue to live within these territories as they had before the newcomers had arrived (Fish Creek Consulting and Associates, 2003). Please refer to the box below for more detail, and Figure 16 for a map of Treaty 8 boundaries.

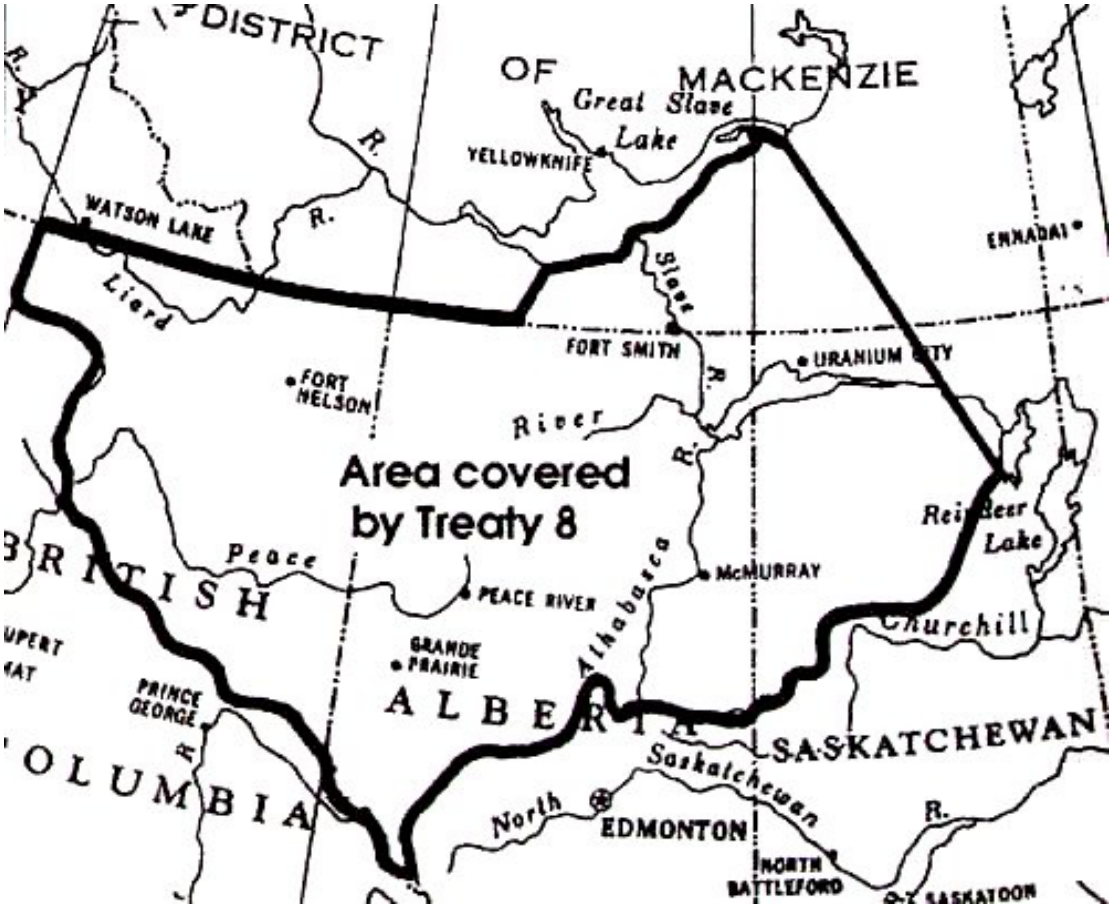
> On June 21, 1899, the eighth Treaty between the Indians of North America and the Queen of England was signed. The signatories of Treaty 8 agreed to its terms for reasons of peace and friendship - ensuring what they thought would be a partnership.
>
> Treaty 8 was the most comprehensive Treaty, encompassing a land mass of approximately 840 000 kilometres, and is home to 39 First Nation communities. Treaty territory covers the areas of northern Alberta, northwestern Saskatchewan, northeastern British Columbia, and the southwest portion of the Northwest Territories. (Albertasource, 2002, p. 1)

Today, Treaty rights are constitutionally protected in Canada, and the infringement of a Treaty right is not permissible. Dispositions of lands by the Crown, and the issuance of regulatory approvals that may lead to the loss of traditional lands available for Aboriginal people to pursue their usual vocations constitutes a possible infringement. Chief Justice Lamer of the Supreme Court of Canada described the important concept of reconciliation when referring to a

range of legislative objectives that may justify the infringement of Aboriginal title:

> Aboriginal rights are recognized and affirmed by s. 35(1)[22] in order to reconcile the existence of distinctive Aboriginal societies prior to the arrival of Europeans in North America with the assertion of Crown sovereignty over that territory; they are the means by which the critical and integral aspects of those societies are maintained. (Gladstone v. Canada (Attorney General), 2005 SCC 21, [2005] 1 S.C.R. 325)

Figure 16: Map of Area Covered by Treaty 8




Treaty 8 spans Northern Alberta, Northwestern Saskatchewan, Northeastern British Columbia and a portion of Southern NWT.
(Reprinted with permission, Albertasource.ca, n.d., p. 1)

---

[22] S. 35(1) is a subsection of the 1982 Constitution Act, a provision that recognizes and affirms existing Aboriginal and Treaty rights, including Aboriginal title, in the Constitution of Canada. This new status for such rights is underscored by the fact that prior to 1982, such rights were in appropriate circumstances, subject to unilateral modification or extinguishment by the Federal Crown. This vulnerability changed in 1982 with the enactment of the Constitution Act 1982 (Goliath, 2008).

### *The Duty to Consult*

When Canada amended its Constitution in 1982, subsection 35(1) provided a provision to protect Aboriginal rights. Canadian courts are now being required to interpret this provision and the extent of its protection (Glenn & Drost, 1999). Since 1982, Canadian law has outlined important distinctions between an obligation of procedural fairness and the duty to consult and accommodate Aboriginal peoples. The most fundamental difference between the two lies within their respective purposes. Fairness is aimed at providing an unbiased forum to those affected by a Government proposal, whereas consultation is designed to advance the process of reconciliation between the Aboriginal and settler societies in Canada (Passelac-Ross, 2007). The decisions of the Supreme Court confirm that the Crown always has a duty to consult in its dealings with Aboriginal peoples and to deal with them honourably and fairly. Accordingly, the Constitution Act sets the trigger of the duty to consult at a very low level:

> The foundation of the duty in the Crown's honour and the goal of reconciliation suggest[s] that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it. (Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 S.C.R. 511)

The Crown not only has a duty to consult, but it must do so in a timely manner. Justice Finch of the British Columbia Court of Appeals makes the distinction between adequate notice as a requirement of procedural fairness and adequate consultation:

> The Crown's duty to consult imposes on it a positive obligation to reasonably ensure that Aboriginal peoples are provided with all necessary information in a timely way so that they have an opportunity to express their interests and concerns, and to ensure that their representations are seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action. (Halfway River First Nation v. British Columbia (Ministry of Forests), [1999] 4 C.N.L.R. 1 (B.C.C.A.)

It is important to note however, that ‘adequate notice’ does not discharge the duty to consult in cases involving Aboriginal peoples. Adequate consultation imposes a positive obligation to ensure that the First Nations are provided with all necessary information in a timely way so that they have an opportunity to express their interests and concerns, and to ensure that their representations are considered and integrated into any proposed plan of action (Halfway River First Nation v. British Columbia (Ministry of Forests, [1999] 4 C.N.L.R. 1 (B.C.C.A.). While on some level, the Cumulative Environmental Management Association may fulfill obligations pertaining to ‘procedural fairness’ or even ‘adequate notice’, the current process does not fulfill the constitutional duties of the Crown to consult and accommodate Aboriginal peoples and is not designed to address the potential impacts of development on Aboriginal or Treaty rights (Passelac-Ross, 2007).

### *The Natural Resources Transfer Act*

Enactment of the *Natural Resources Transfer Act* (1930) which established provincial governance over First Nations access to natural resources within Crown provincial lands, made the livelihood interests of Treaty 8 First Nations subject to Provincial law (Webb, 2006). Because the Canadian legal system is based on common law, Aboriginal rights are impacted by the interpretation of existing Treaty, constitutional, and other legal rulings. This makes it possible for some judicial outcomes to set a precedent that may guide subsequent decisions in similar cases (Norton & Zwicker, 2005). Treaty 8 First Nations however, assert that enactment of the *National Resource Transfer Act* and the establishment of a Provincial Crown regime for discretionary control over Treaty-protected Aboriginal livelihood interests (without concluding the Federal-Provincial negotiations to protect and safeguard the livelihood interests of Treaty 8 Natives) is a breech of their fiduciary obligations (Webb, 2006). In *Haida Nation v British*

*Columbia* (2004), the Supreme Court outlined why consultation and accommodation of First Nations people is required:

> Where a strong prima facie[23] case exists for the claim, and the consequences of the Government's proposed decision may adversely affect it in a significant way, addressing the Aboriginal concerns may require taking steps to avoid irreparable harm or to minimize the effects of infringement, pending final resolution of the underlying claim. Accommodation is achieved through consultation. (Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 S.C.R. 511)

In theory, there are clear boundaries between Federal and Provincial authority. The *Indian Act* gives the Government of Canada jurisdiction over "Indians and land reserved for Indians" and the *Constitution Act* 1981 gives Provincial Governments jurisdiction over non-renewable natural resources. Although the Supreme Court of Canada has determined that the Crown has a fiduciary duty to consult where there is an infringement of an existing Aboriginal or Treaty right (Norton & Zwicker, 2005), Provincial regulatory requirements still represent the minimum guidelines for adequate Aboriginal consultation and engagement.

The rationale provided in *Haida Nation v. British Columbia* (2004) gives both the Federal and Provincial Crown knowledge of the potential existence of asserted but unproven Treaty-protected Aboriginal livelihood interests. If the honour of the Crown is to be protected, both Crown Governments must now participate in negotiations, and seek reconciliation regarding possible infringements involving the First Nations and their lands.

---

[23] A prima facie case would be evident without need for proof or reasoning --- obvious. (The American Heritage® Dictionary of the English Language, Fourth Edition, 2007).

*Government and Aboriginal Consultation Guidelines*

Alberta Government's *First Nations Consultation Policy on Land Management and Resource Development*[24] (March, 2005) and Alberta Government's *Consultation Guidelines*[25] (June, 2005) were designed specifically to fulfill the Crown's obligation to consult First Nations whose rights may be adversely affected by development (Passelac-Ross, 2007). This policy is grounded in the Government's recognition that "some activities on Provincial Crown lands affect existing Treaty rights and other interests of First Nations in Alberta" (Alberta Government, 2007a, p. 2). In this document, the Government acknowledges that it has "a duty to consult with First Nations where legislation, regulations or other actions infringe upon Treaty rights" (Alberta Government, 2007a, p. 4). While these guidelines acknowledge consultation regarding First Nations rights to fish, hunt, and trap, they do not look broadly at infringements upon First Nations culture and livelihood on a whole. Aboriginal livelihood interest is proprietary, which constitutes an interest in lands and resources, and provides a *sui generis*[26] basis for equitable allocation and commercial use of natural resources to sustain First Nation economies (Webb, 2006):

> Rights and traditional uses includes existing constitutionally protected rights to hunt, trap and fish and other uses of public lands such as burial grounds, gathering sites and historic or ceremonial locations, and does not refer to proprietary interests in the land. (Alberta Aboriginal Affairs and Northern Development, August 31, 2004)

---

[24] The intent of this Consultation Policy is to establish principles for meaningful consultation, define Alberta's role in the consultation process, and set out Alberta's expectations of industry and First Nations. The Consultation Policy provides for the development of consultation guidelines to address questions about how consultation should occur in relation to specific activities such as resource extraction and the management of forests, fish and wildlife. The guidelines are to be consistent with and provide for implementation of the Consultation Policy (Alberta Energy, August 10, 2006).

[25] This document supports implementation of the guidelines to ensure they are effective, efficient and consistent across Government departments. This document also identifies a long-term vision for how the Consultation Policy will be implemented and evaluated (Alberta Energy, August 10, 2006).

[26] Sui generis is defined as being the only example of its kind; unique (The American Heritage® Dictionary of the English Language, Fourth Edition, 2007).

The *First Nations Consultation Policy on Land Management and Resource Development* guidelines formulated by the Government of Alberta were not acceptable to the First Nations people. Following its release, the Treaty 8 First Nations of Alberta, an organization that is the collective voice of First Nations communities within Treaty 8, defined its own approach to consultation and developed the *First Nations Consultation Policy* (March, 2005) and *First Nations Consultation Guidelines Framework* (June, 2005). The Treaty 8 First Nations policy and consultation principles differed from the Government's on fundamental elements relevant to Aboriginal rights including:

1. The interpretation of the rights and interests protected by Treaty 8.
2. The need to obtain consent from First Nations on certain decisions.
3. The necessity of a separate consultation process as opposed to incorporating First Nation consultation within existing public consultation processes.
4. The obligation to negotiate benefit sharing agreements or compensation agreements in relation to infringement of First Nations rights.

Even though an agreement between the Government and First Nations was not made, the Government issued their Framework for Consultation Guidelines anyway, which came into effect on September 1, 2006 (Alberta Government, 2007a). Two weeks after its release, by unanimous resolution, the Assembly of Treaty Chiefs of Treaty 6, 7, and 8, rejected the Government's Policy and their Guidelines stating that they adopted them without adequate consultation or consent of the First Nations affected by this initiative (Assembly of Treaty Chiefs, 2006).

The outright refusal of the Chiefs of Alberta to be sidestepped in this manner illustrates a lack of understanding on behalf of the Provincial Government of the fundamental purpose of the consultation process and the importance of that process to the First Nations people (Passelac-

Ross, 2007). In order for consultation to be adequate and meaningful, there must be evidence that First Nations rights are on the table; that these rights are understood by all parties; and that the Crown is undertaking good faith efforts to address these rights and concerns (Halfway River First Nation v. British Columbia (Ministry of Forests), [1999] 4 C.N.L.R. 1 (B.C.C.A.).

Although Alberta has developed policy statements to guide consultations with Aboriginal peoples with the intent of subjecting them to an annual review, Webb (2006) believes that the Government of Alberta still takes every opportunity to deny that it has any consultation obligations towards First Nation peoples at all. Alberta has been described as a province with a "shallow view of history" that is stubbornly unwilling to recognize the legitimacy of Aboriginal aspirations of self-determination, or to negotiate development of equitable principles for coexistence and sharing with First Nations (Agius, Davies, Howitt, Jarvis, & Williams, 2004; Webb, 2006):

> Few would argue with the proposition that mutual accommodation of Aboriginal and non-Aboriginal natural resource interests in a manner which supports re-establishment of First Nation economic self-reliance and self-determination, is a preferable future to a continued Government reliance on a strategy of extinguishment, confinement, and assimilation of impoverished Aboriginal peoples into the larger Canadian populace. Negotiations between the Treaty 8 First Nations, the Provincial Crown Government of Alberta and the Federal Crown Government of Canada, grounded in establishment of a mutually-shared understanding of the nature and scope of Treaty-protected Aboriginal livelihood interests, could provide a principled basis for reconciliation of these Treaty 8 interests as required by the Constitution. (Stevenson & Webb, 2003, p. 1)

### *Industry Consultation*

The Canadian Association of Petroleum Producers (CAPP) has identified several methods for oil companies to engage Aboriginal communities in consultation efforts. These include workforce development initiatives, business development initiatives, community relations efforts, collaborative resource management, and a demonstration of corporate

commitment (Norton & Zwicker, 2005). Although these steps toward open communication are strongly recommended for the smooth operations of any development project within the region, they are simply industry-First Nations relational procedures, and do not in any way replace the Crown's duty to consult.

The legal framework governing Aboriginal engagement and public involvement is based on case law, which continues to develop with the processing of each legal dispute. The Federal, Provincial, and Territorial Governments each regulate case law and have specific, sometimes overlapping authority in the development of oil and gas reserves (Norton & Zwicker, 2005). Because the duty to consult is the responsibility of the Crown, industry is not constitutionally or legally bound to a consultation process with Aboriginal people (Passelac-Ross, 2007). However, the Alberta Government does recommend some act of industry/First Nation consultation when oil and gas activities may adversely impact First Nations rights and traditional uses of Crown lands, which is often a requirement of Alberta Energy before lease applications are approved by the Energy and Utilities Board. Because of this, when applications for oil and gas activities are submitted for approval, some procedural aspects of Crown consultation are delegated from the Government to the developer (Alberta Aboriginal Affairs and Northern Development, August 31, 2004). Under the current process, the procedural aspects of Crown consultation delegated to industry include the following responsibilities:

1. Where possible, consultation should occur during preparation of the operational planning. If this is not possible, the proponent will be required to have completed consultations prior to the issuance of approvals. If desired, a First Nations Consultation Plan can be developed by the proponent during the preparation of the Area Operating Agreement[27] with assistance from Alberta.

[27] An Area Operating Agreement includes and outlines a company's plans for development and operations in a particular operating area for the coming season. This agreement facilitates and identifies company planning, but does not convey statutory approval to proceed with plans (Alberta Energy, 2006).

2. Alberta Government will then review the program, assess the duty to consult, and identify which First Nations are to be consulted.

3. Proponents will provide First Nations with relevant information about their project including, but not limited to a proposed program schedule, and a proposed program plan including maps and proponent contact information.

4. Proponents will initiate meetings with the First Nations to listen to, and gain their input on the potential adverse impacts of the proposed program. First Nations responses and concerns are to be discussed and considered in the consultation process to identify possible methods to avoid or mitigate potential adverse impacts.

5. All forms of consultation and communications shall be documented, and a summary of the consultations will be provided to the Sustainable Resource Development department of the Alberta Government.

6. Matters requiring further consultation may require meetings among the proponents, First Nations, and the Government of Alberta for resolution.

(Adapted from Alberta's First Nations Consultation Guidelines on Land Management and Resources Development, September 1, 2006, p. 11)

This has been a major point of contention for First Nations and where much of the misunderstandings regarding Crown/First Nation consultation occurs, because often, these are the only consultations that occur, and they do not fulfill the Crown's duty to consult, nor are they designed to address the potential impacts of projects on the constitutional rights and livelihood of First Nation peoples affected by development in northern Alberta (Passelac-Ross, 2007).

Aboriginal involvement and consultation is the primary vehicle for understanding and reflecting Aboriginal rights. It is also an effective means by which to identify the potential environmental impacts of development in and around traditional territories. It is therefore advisable that industry, Government, and regulatory boards meet or exceed the currently accepted practices. Please refer to Figure 17 for a brief outline of the major players involved with oil sands development projects and their consultation responsibilities toward Aboriginal people in the region.

Figure 17: The Players and their Duty to Consult

**The Crown**

The Crown is a major participant in this situation on both the Provincial and Federal levels. Court references to the "Crown" as the duty-bearer are all embracing and not confined to a particular form of Governmental institution. The Crown consists of both Federal and Provincial Governments, is not confined to particular departments, and must consult all Aboriginal peoples. This consultation and accommodation process must include all Aboriginal peoples potentially impacted by a proposed Government decision. It is the Crown's obligation to anticipate who will be potentially impacted by its proposals. Resource-intensive activities such as oil sands exploitation affect areas well beyond those activities' immediate area of impact (Passelac-Ross, 2007). They must also make every reasonable effort to inform and to provide an opportunity to First Nations to consult.

**Regulatory Boards**

Regulatory boards such as Alberta's Energy and Utilities Board (EUB) or Canada's National Energy Board (NEB) are entrusted by the Government to regulate oil, gas and other resource industries. These quasi-judicial tribunals do not need to "consult" with Aboriginal people, but they do have the jurisdiction to decide whether adequate consultation by the Crown has been given. This is relevant because the decisions of the EUB cannot violate constitutionally protected rights, notably Aboriginal or Treaty rights (Passelac-Ross, 2007).

**First Nations**

On the other hand, consultation is a two way street, and First Nations have a "reciprocal onus to carry their end of the consultation, to make their concerns known, to respond to the Government's attempt to meet their concerns and suggestions, and to try to reach some mutually satisfactory solution" (Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005 SCC 69, [2005] 3 S.C.R. 388).

**Industry**

Most Governments require resource companies to meet and consult with Aboriginal peoples when their activities occur within the traditional territories of First Nations and may affect their rights. Although this is often a condition for obtaining licenses and permits to operate, third parties do not owe legal duties of consultation and accommodation since these obligations are grounded in the honour of the Crown (Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 S.C.R. 511).

## Summary

A review of the literature presents the complexities involved when oil sands development occurs on Aboriginal traditional lands and some possible factors that may contribute to the frustration of the First Nations people in the Treaty 8 area. The Cumulative Environmental Management Association is a multi-stakeholder consensus based organization that does not seem to understand the holistic nature of Indigenous Knowledge and Aboriginal management systems. The multi-stakeholder consensus based design leaves First Nation members powerless to influence decisions affecting cumulative environmental impacts in and around their traditional lands. The Association also continuously misses deadlines and is ineffective at providing the necessary recommendations that could assist in the sustainable development equation needed to address impacts of current and future oil sands development projects. A lack of consensus and recommendations may provide economic gain to industry and the province, but the Association's lack of direction and priorities are potentially detrimental to the First Nations and the environment on a variety of levels.

The Crown has a duty to consult with First Nations people regarding any infringements upon their Treaty and Constitutional rights. Although historic literature depicts intent to honour Aboriginal and Treaty right issues, meaningful, effective, and equitable processes that address Aboriginal concerns regarding development projects in the oil sands have yet to be made. The Government of Alberta has their own view of what consultation actually entails, which favours Provincial rights outlined in the *Alberta Natural Resources Act* (Alberta Aboriginal Affairs and Northern Development, 1930), rather than Treaty and constitutional requirements that respect First Nations livelihood and cultural needs. Industry follows the laws of the province and tends

to put economic considerations above all else. All the while, the First Nations must deal with all of these bodies in an effort to protect their culture, livelihood, and traditional lands.

# CHAPTER 3: METHODOLOGY

This section describes how this research was conducted by identifying the theoretical framework, the design of this project, and how the data was collected, organized and analyzed. Specific features of these research methods outline considerations of participants, data collection, analysis techniques, and ethical standards followed throughout this project.

## Theoretical Framework

Based upon readings of previous Aboriginal co-management case studies such as the Beverly and Quamanirjuaq Caribou Management Board (1982), The Little Red River Cree-Tall Cree First Nation and the Government of Alberta cooperative management agreement (1996); and the Tlicho claim as a natural resource management plan (2003), I believed there were good grounds to think that culture played an important factor in the withdrawal of the First Nations from the Association. To qualify this assumption, the Association's collection and use of Traditional Environmental Knowledge was examined. Also, Indigenous and Western Knowledge systems were compared to determine whether Aboriginal worldviews were included in the decision-making process, or if systemic barriers were embedded within the Association and its framework.

A cultural lens was also applied to examine the power and influence First Nations may have had within the Association. This reviewed the capacity and resources available to the Association's Aboriginal members to determine whether they had the ability to meaningfully participate in this process. The 'multi-stakeholder consensus based' framework was also examined to determine if it allowed the First Nations voice to be heard, and whether or not it incorporated and addressed Aboriginal rights outlined in the Canadian Constitution, Treaty 8, and Supreme Court rulings.

Aboriginal culture and livelihood have been affected by the large-scale development in and around their traditional lands. Therefore, the last cultural aspect reviewed was Aboriginal consultation and accommodation to determine the consultation responsibilities of the Crown, industry, and Aboriginal peoples, and whether or not these duties were being adhered to, adequate, or effective. These reflections constituted the theory that guided my deductive research design. Therefore, rather than treating theory as something that emerged out of the collection and analysis of data, I chose to qualify theories (Berg, 2004) specified in advance of my data collection that were examined and qualified throughout the research process (Bryman & Teevan, 2005).

Believing that the withdrawal of the First Nations was part of a larger cultural issue, I utilized prior readings regarding the Association, my background studies in Aboriginal culture, and my previous work experience pertaining to the traditional land use of the First Nations in northern Alberta to formulate the following four hypotheses:[28]

1. The First Nations withdrew from the Cumulative Environmental Management Association because the Association did not adequately include Traditional Knowledge within their environmental monitoring processes.

2. The First Nations withdrew from the Cumulative Environmental Management Association monitoring process because the Association's management framework was not effective at generating recommendations that addressed cumulative environmental effects for land and resource use in northern Alberta.

3. The First Nations withdrew from the Cumulative Environmental Management Association because they did not have power or influence in the Association commensurate with their perceived rights to protect the environment.

4. The First Nations withdrew from the Cumulative Environmental Management Association because timely and adequate Crown consultation with respect to Aboriginal rights did not occur.

---

[28] A hypothesis is a proposal intended to explain certain facts or observations. It is a possibility, a theory, a tentative insight into the natural world; a concept that is not yet verified but that if true, would explain certain facts or phenomena (Princeton University WordNet, 2006).

## Research Design

Documenting the experiences of those involved with this situation was an essential element to understanding the factors that led to the withdrawal of the First Nations. Therefore, I chose a qualitative approach to explore this phenomenon:

> Qualitative research methods are valuable in providing rich descriptions of complex phenomena; tracking unique Or unexpected events, illuminating the experience and interpretation of events by actors with widely differing stakes and roles; giving voice to those whose views are rarely heard; conducting initial explorations to develop theories; and to generate and test hypothesis; and moving toward explanations. (Mittman, 2001, p. 2)

My chosen approach was descriptive, which enabled me to provide a meaningful description and a deep understanding of the topic (Berg, 2004; Cohen, Manion & Morrison, 2005; McClaren & Morton, 2003; Sewell, 2004) and analytical, in that it described, interpreted, and was concerned with:

> Conditions or relationships that exist; practices that prevail; beliefs, points of views, or attitudes that are held; processes that are going on; effects that are being felt; or trends that are developing. At times, descriptive research is concerned with how *what is* or *what exists* is related to some preceding event that has influenced or affected a present condition or event. (Best, 1970, p. 169)

Reviewing documents produced or discussed by the Association, as well as documents written by others discussing the Association, were also relevant to the analysis of this research[29]. The assessment of the potential ability of the Association and the attitudes of individuals involved within its process was information that was most meaningful if collected contemporaneously[30] (Cohen et. al., 2005, p. 177). Therefore, I collected my data using a multi-method, one shot, cross sectional, interview-based survey. This design allowed me to interview a

---

[29] Because the Association chose not to participate in this study, all CEMA documentation reviewed were documents found on their website www.cemaonline.ca. Information from other reports discussing or critiquing the Association is intermingled throughout this research and is listed in the bibliography.

[30] Contemporaneously means simultaneously or concurrently; happening during the same period of time (The American Heritage Dictionary of the English Language, n.d.).

subset of people in order to provide a snapshot of the broader situation at that particular time. It also enabled me to clearly analyze informant information currently and simultaneously.

*Participants*

Initially, I planned to involve the Cumulative Environmental Management Association directly for participant referrals and informant selection, but this was not to be the case. In the beginning stages of my inquiry, I approached the Association's Traditional Environmental Knowledge (TEK) Program Manager to discuss my research plan and invite involvement on a multitude of levels. Although the research was initially welcomed, when my thesis proposal was brought to the Association's Management Committee, it was rejected. The Association's Executive Director refused to "collaborate or participate" in this investigation, stating that they had "their own channels of communication on a number of levels to evaluate and foster stakeholder relationships". Please refer to Appendix D for a copy of this correspondence.

With this, I initiated a new plan and approached the Athabasca Chipewyan and Mikisew Cree First Nations directly for project support and participation. Both First Nations were willing and eager to assist with this research, which allowed the successful initiation of a respondent-driven sampling strategy (Berg, 2007), whereby interviewees provided referrals of other potential relevant participants with expertise regarding the current situation between the Association and First Nations. This sampling technique was particularly useful, since my research question was a sensitive topic and willing interviewees were part of a seemingly difficult-to-reach population (Berg, 2007), with many invitees stating that the topic was too "explosive", "volatile", or "sensitive" for them to comment on.

Although I received three relevant referrals for potential participants within the Department of Fisheries and Oceans, all extended invitations made to include the voice and

perspectives of this Federal Government department were declined. Of the three referrals for industry participants that held significant experience with this situation, two declined and one accepted. Although this did permit the inclusion of an industry perspective, it was difficult at best to encourage members of the Federal Government or industry to participate in this project.

This was not the case, however with potential Alberta Government interviewees. My initial Provincial Government referral was pleased to contribute to this research in any way possible, and provided further referrals of those most knowledgeable and closest to the situation. With that, a senior representative volunteered, in the belief that he/she could provide an in-depth understanding of past and current issues within the Association/First Nation relationship.

Non-governmental and First Nation participation also was easily acquired. The first non-government participant referral I received accepted my invitation immediately. Athabasca Chipewyan and Mikisew Cree First Nation representatives were referred and chosen according to their knowledge and individual involvement with the Cumulative Environmental Management Association, and welcomed the opportunity to share their perspectives. Although I could have interviewed more non-governmental, Athabasca Chipewyan, and Mikisew Cree members, I felt that this would upset the balance of the informant group and possibly skew the results, since I was unable to obtain any Federal Government or other industry member participates. Please refer to Appendices E, F, G, and H for letters of support for this project.

This respondent-driven sampling technique was accompanied by a criterion-based selection as defined by Cohen et al. (2005). This ensured that participants selected held unique information needed to answer the research question that could not be obtained as effectively from other sources. In the interests of external validity, I kept my informant group tightly defined, yet as diverse as possible (Cohen et al., 2005). Although this group was small,

participants were considered to be knowledgeable experts, uniquely informed and significantly instructive (Maxwell, 1992). In the end, my informant group provided representation from each of the stakeholder areas (Government, non-government, private, and Aboriginal) and consisted of six individuals; all informed and directly engaged in this situation. These participants covered a wide range of stakeholder interests, capable of providing a variety of data and perspectives for analysis (Bryman & Teevan, 2005). This group includes:

1. First Nations Elder, Aboriginal culture and TEK expert: This participant was a First Nation Elder; former Association Management Committee representative; former Association TEK Committee representative; and was directly involved with First Nations withdrawal.

2. First Nations Industry Relations expert: This participant was a First Nations Industry Relations Corporation (IRC) representative involved with all groups and processes within the Cumulative Environmental Management Committee, and directly involved with First Nations withdrawal.

3. Alberta Government traditional land use and consultation expert: This participant was a Government of Alberta representative; former Association member; and current senior Government official directly involved with Aboriginal land use policy and consultation guidelines in the oil sands region.

4. Non-government and environmental issues expert: This participant was a non-government Organization (NGO) representative; member of the Association's Management Committee; and is directly involved with current legal suits in Alberta involving environmental issues and the use of water.

5. Oil and gas industry expert: This participant was an oil and gas industry representative; former Association senior executive, and directly involved with the First Nations withdrawal.

6. Aboriginal rights and Socio-economic expert: This participant was an Aboriginal rights and socio-economic expert, previously contracted by the Association, and currently contracted by many First Nations in the Athabasca region for expert advice on a variety of environmental, socio-economic and Aboriginal rights based issues.

Although independent informant comments cannot be attributed as official statements or opinions shared by all members of the industry, Government, non-government organization, or Aboriginal group in which they were affiliated, their voices were well informed and provided a broad spectrum of perspectives, and a firm basis for this research and future inquiries to be built upon.

All requests to participate in this study were conducted over the telephone. Participation in the interviews was completely voluntary and confidentiality was ensured to all informants.

## Data

### *Semi-structured Interviews*

I used an interview survey technique in this research with a semi-structured interview design. These semi-structured interviews adhered to a consistent script, but the design still allowed for open-ended responses, providing participants freedom of expression within their answers (Sewell, 2004). The open-ended aspect of my questions was designed to decipher exactly what the situation was and how the informants were managing their circumstances. This allowed my informants to speak for as long as they wished, revealing a great deal of important data. I believe this kind of open-ended format increased the likelihood that the data shared came from the informant's experience rather than any questions posed by myself.

I used established best practices (Berg, 2004) in constructing my questions. Berg (2004) suggested that one avoid overly complex questions, and be mindful of the most effective sequencing of questions, leaving those that may be construed as more difficult until later in the interview. Questions were structured and organized in order to test each of the four hypotheses outlined in this thesis. Although each interviewee answered my questions in relation to their own stakeholder interests, the flexibility of the semi-structured design made it possible to keep the

dialogue of the participants focused on the cumulative effects of oil sands development, and why some First Nations withdrew from the Cumulative Environmental Management Association process.

### *Data Collection*

The data collection for this research consisted of a mix of in-person and telephone, one-on-one interviews, and a literature review providing historical, cultural and legal data, as well as information regarding the Association and its effectiveness in the Athabasca oil sands region. While all of the interviews were one-on-one, geography, winter weather, and the busy schedules of the participants determined the manner in which these sessions were conducted. Interviews were all held between December 6, 2007 and February 6, 2008, and varied in length from 35 to 55 minutes. These conversations were all digitally recorded, not only to provide a record of *what* was said, but also to analyze *how* it was said (Bryman & Teevan, 2005).

A record of contextual information regarding each interviewee, the interview process, and myself as an interviewer was also documented to assist in the provision of a thick description (Cohen et al., 2005) and accurate analysis. Due to the specific nature of my study, I did not pilot my interview design. However, a pre-test was performed in order to ensure the presentation of my questions were clear, and the results of this interview were used in this analysis. This pre-test proved parts of my questionnaire to be lengthy and unnecessary. As a result, some questions were removed for the remaining five interviews. Please refer to Appendix C for an outline of the final interview schedule used.

## Analysis Technique

### *Content Analysis*

Content analysis was the analytical strategy used for this report. Content analysis is a careful, detailed, systematic examination and interpretation of a particular body of material in an effort to identify patterns, themes, biases, and meaning (Berg, 2006; Leedy & Ormrod, 2005; Neuendorf, 2002). Within this technique, an interpretive approach was employed to analyze the data, and treat the human perspectives depicted in my interviews as a collection of symbols expressing layers of meaning. Key-word notes were made during these interviews to identify any agreements or disagreements with other informant answers, as well as possible theoretical ideas and themes that came to mind. Interviews were then immediately transcribed into text and carefully analyzed (Berg, 2006).

Rather than condense or frame this data for various sorting or coding operations, I utilized a phenomenological lens in order to view the data holistically and capture the 'essence' of this situation. As per the advice of Lofland & Lofland (1995), my analysis of data was not left until all interviews had been completed. Rather, analysis was an ongoing activity that allowed me to be more aware of emerging themes and common perspectives present in later interviews (Bryman & Teevan, 2005).

All transcripts were closely examined in relation to my primary research objectives. Informant responses were categorized by the four initial hypotheses set out for this research and

examined through seven major categories:

1. Traditional Knowledge
2. Association design/framework
3. Association performance/recommendations
4. Power and influence
5. Cumulative effects
6. Aboriginal consultation
7. Aboriginal rights

These themes were then considered within the broader objectives of the study and the research question itself. Patterns, relationships, commonalities and disparities were identified and considered in light of previous research and theories (Berg, 2006). This provided an opportunity to truly discover and understand the meaning behind the actions that led to the First Nations withdrawal, and to establish generalizations, interpretations, and recommendations for this situation.

There were some unexpected emergent themes discovered through this process. For example, Inflow Needs were consistently mentioned and tied to First Nation frustration, as was Aboriginal capacity, which was discussed as a causal link for the First Nations/Association communication breakdown. Conversely, the theme I expected to be most prominent – the collection and use of Traditional Knowledge, turned out not to be as prominent in this research problem as I had first hypothesized.

To demonstrate the relative strength or weakness of the various factors at play, both latent and manifest content was explored: "Manifest content is comparable to the *surface structure* present in the message, and latent content is the *deep structural* meaning conveyed by the message (Berg, 2006). Listening repeatedly to the interview tapes, I paid close attention to participant undertones, and while continuously reviewing the transcribed words, I looked for the magnitude – the length and amount of detail provided with each answer, as well as the frequency

in which particular categories were brought up. This process helped determine whether various categories were of major or minor concern.

*Research Trustworthiness and Authenticity*

The trustworthiness and authenticity of this data was established through careful consideration of the following four criterion:

1. Credibility – Interviews were personally transcribed by myself and submitted to participants to confirm that my interpretation of their experience was accurately transcribed. Triangulation[31] was also employed as a means to increase credibility within the analysis process.

2. Transferability – By providing a "thick description" (Geertz, 1973) of this situation, it is possible to transfer the findings of this research to other situations involving stakeholder bodies and Aboriginal issues.

3. Dependability – Complete and assessable records were kept of all phases of this research process and a peer audit was performed.

4. Confirmability – Best efforts were made to ensure my own personal values did not sway the conduct of the research or the findings derived from it (Bryman & Teevan, 2005).

## Ethical Standards

A request for ethical review was submitted and approved to ensure that all ethical requirements were attended to as outlined within the Royal Roads University Research Ethics Policy (Royal Roads University, January 2007). The ethical guideline ensured respect, free and informed consent, as well as privacy and confidentiality. The consent form illustrated in Appendix B was provided to all research participants prior to any interviews, and the ethical interview issues identified by Cohen et al. (2005) were addressed within the design and content of the questions. As outlined in the attached consent form (Appendix B), participant confidentiality was maintained and all data was kept under my control in a secure environment.

---

[31] Triangulation is defined as the use of more than one method or source of data in the study of a social phenomenon so that findings may be cross-checked (Bryman & Teevan, 2005).

# CHAPTER 4: RESULTS

This chapter discusses the results of my content analysis as they pertain to the validity of my initial conjectures. The data is organized by hypotheses, and the findings and analysis are interwoven with a discussion of the results. Linking the current situation to information provided by informants, the research question was then revisited, outlining the major factors for the First Nations withdrawal from the Cumulative Environmental Management Association.

## Hypothesis 1

The First Nations withdrew from the Cumulative Environmental Management Association process because the Association did not adequately include Traditional Knowledge within their environmental monitoring processes.

Results show that this hypothesis was a concern of the First Nations, but not a major contributor to their withdrawal from the Association. If anything, the interviewees believed that the Association had been rather attentive in its attempt to include Traditional Environmental Knowledge within the monitoring protocol. From its inception, the Association initiated a working group made up of Aboriginal and other representatives from the stakeholder base, mandated to develop a process that would integrate this knowledge into the work of the Association:

> I think the concept at the time, was individual CEMA sub-committees would engage the TEK Committee with their work plans, come and meet with them, and you know, discuss the work or research for the upcoming year … then the committee would identify where Traditional Environmental Knowledge would be incorporated, how it would be incorporated, and who to talk to within the communities, identifying which Elders had the appropriate expertise to assist. That was the grand vision, but I don't think it was ever really achieved … essentially, there was conflict and disagreement in regards to the agreements, how the information was going to be housed, how it was going to be protected, and how the First Nations were going to be compensated for their knowledge. (Alberta Government traditional land use and consultation expert)

The initial purpose of the Committee was to collect and use Traditional Ecological Knowledge in a means that would supplement various forms of scientific knowledge in order to create a broader understanding of cumulative environmental effects in the region. The framework they used to achieve this goal however, was flawed and therefore, ineffective:

> … they would simply get the Elders in a room and ask them questions with respect to specific animals or specific plants, or ecosystems, or different scientific or supposedly 'western' scientifically defined categories, and they would use those questions to gather the so called Traditional Ecological Knowledge. (Aboriginal rights and Socio-economic expert)

> … what I do know, just by the process in which CEMA gathers, assesses, and uses TEK, is that they do not consider TEK to be as equally important as Western Science. So they'll basically take out the little bits and pieces of TEK that they think are relevant, and then supplement that with Western Science. (First Nations Industry Relations expert)

This process led to the inaccurate collection and use of Indigenous Knowledge because, from my respondents' perspective, the data was taken out of context from the cultural and relational experiences that informed it. Data collected was often seemingly rendered meaningless to the First Nation, Elder or Aboriginal person who provided that information in the first place (First Nations Industry Relations expert). This collection protocol led to a lack of First Nation involvement within the process because the Aboriginal representatives in the Association felt that the process did not work. Although well meaning, the Association was not effective at developing processes deemed adequate by First Nations to effectively collect and incorporate Traditional Environmental Knowledge into the monitoring of cumulative environmental effects:

> The process that they developed, at least for some of the First Nations, didn't really comply with some of the expectations of the First Nations in terms of gathering TEK, recording TEK, sharing TEK, and applying TEK in the work. In a lot of the cases, TEK was used as an after-thought, or it supplemented Western Science after all of the analytical research was completed. Although there was some intent to use, gather, and incorporate TEK, I think the method by which it was applied still required some work. (First Nations Industry Relations expert)

The Association's accepted methodology resulted in many complaints from the Aboriginal community, and the First Nation Industry Relations Corporations explained to Association members, Government, and industry that this was not an acceptable way to effectively collect Traditional Environmental Knowledge. The Association in turn contracted a team to review how they could put Traditional Environmental Knowledge back into context. This resulted in the *Fish Creek Consulting and Associates* report (2003) that provided information on Traditional Knowledge systems, which included recommendations on how to change the means by which questions were asked, and data was collected. However, those recommendations were rejected by the Association, which continued to use their scientific concepts and scientific backgrounds to ask Elders specific questions based on western thought:

> This process didn't really identify the essence of TEK, which is grounded in their culture and their language and their complete traditional land use cycle. In fact, their complete traditional livelihood … therefore the TEK was more or less inadequate. Although there have been some forms of TEK that have been helpful to CEMA, for the most part, the TEK has been taken out of context. (Aboriginal rights and Socio-economic expert)

> I really didn't see that much TEK incorporated into work plans … I kind of believe that TEK can be taken out of context, but in some ways, I also don't think that can happen, depending on the detail of the information being provided. You get a pretty broad range of TEK; you can get very broad high-level TEK to the more detailed specifics. It just depends on the information you're getting. (Alberta Government traditional land use and consultation expert)

One informant explained how difficult it was to actually make this process work effectively, when essentially, the expectation is for two completely separate knowledge bases to work together; science, which is analytic and scientific in nature, and Indigenous Knowledge, made up of observations over time, oral history, and other components that are not easily quantified or qualified:

> It might just come down to education, and working with those parties, developing relationships and understanding, because there is quite valid TEK out there that

> makes sense; I have seen it through research up in the NWT. How observations and trends can be predicted through TEK, and typically, can be an early warning sign to environmental impacts. I think it can be done, but I think that western society needs to value it. If they don't value the information or don't see any value within it, it is never going to be incorporated. (Alberta Government traditional land use and consultation expert)

Although some of the working groups within the Association have started to use Traditional Environmental Knowledge at the front end of their research process rather than the back, in terms of really incorporating this data into their overall cumulative effects assessment and mitigation plans, informants believed that it still had a long way to go:

> I would say that they are not as effective as they need to be, and also, the process by which they gather TEK is still not adequate. They are still kind of dictating how they want TEK to be collected, as opposed to having the First Nations providing influence as to how *they* want TEK to be gathered, assessed, and incorporated into the work. (First Nations Industry Relations expert)

Therefore, Traditional Environmental Knowledge is not being adequately used within the Association. Although this is a contentious issue that needs work, if their other issues and concerns were being addressed, this was something the First Nations were willing to work with the Association on. The analysis shows that, while this hypothesis is confirmed, it should not be considered a major factor contributing to the withdrawal of the First Nations from the Association process.

## Hypothesis 2

The First Nations withdrew from the Cumulative Environmental Management Association monitoring process because the Association's management framework was not effective at generating recommendations that address cumulative environmental effects for land and resource use in northern Alberta.

### *Management Framework, Consensus, and Recommendations*

Unlike the first hypothesis, the data suggests this was a major factor contributing to the withdrawal of the First Nations from the Association. As a consensus-based decision-making

body, there have been numerous contentious issues where the stakeholders have been unable to reach consensus decisions. Because of this, the Association has not fulfilled its duty to generate recommendations as mandated by the Regional Sustainable Development Strategy. Part of the Association's inability to meet deadlines and make timely recommendations was attributed to a lack of leadership and an inability to make the current consensus structure work:

> Given CEMA's process, at any time, another stakeholder can basically block what's going on, or they can drag the whole issue on for a long time before it really gets resolved. This takes away from the effectiveness of CEMA in terms of addressing the real impacts, the cumulative impacts, of what's going on in this region. (First Nations Industry Relations expert)

> I think CEMA has been talking about the Athabasca River Instream Flow Needs (IFN) for nine years, and where are the threshold targets? Where are the recommendations? I haven't seen anything. When I was there and working in that environment as part of CEMA, I didn't see anything. And now that I have been three/four years removed working for the Government on it, I haven't heard anything. (Alberta Government traditional land use and consultation expert)

The Association does not exist without consensus; that was what it was set up to do. However, the First Nations Industry Relations expert believed that this may now be considered an overused approach to deal with environmental issues, especially in Alberta. Although consensus approaches can work very well, the right conditions must be in place in order for it to be successful, and these conditions had not materialized for the issues outlined in the Strategy:

> … a big part of this is too much of a reliance on CEMA to deal with highly contentious issues, and not enough leadership from the Government … so what has happened, is there's been a lot of delays, and deadlines keep getting pushed and pushed. When there have been contentious issues like the Inflow Needs (IFN), the process did not work to help protect the environment … Unless Government plays a strong leadership role, industry can use stalling tactics, because it is not in their interest to have a bunch of limits placed in that region. (Non-government and environmental issues expert)

Although there are many points of delay in making a recommendation through the Association, all of the interviewees believed that a consensus based approach was not necessarily

a bad thing, deeming it necessary to have all of the vested parties at the table. However, the informants also noted that the structure in which the consensus process was applied needed to be revamped in order to make it more effective and efficient:

> Consensus is always something you want to move forward with, but how do you move forward with consensus when you're outnumbered? When you have 30 industry members around the table, seven First Nation representatives, and four government people … where do you think the majority of the consensus is going to come from? Industry is going to be that charge.
>
> Now, it is consensus and you have to live with it, but that's the lip service provided. It's not getting all you want - it's about being able to live with what's on the table … can you live with it?
>
> It's a good model, consensus is a good way to work in theory, but I think it does hinder some of the work … some of the things slow down as you debate and negotiate, analyze and review. I went through the process of looking at some potential recommendations, and after a year, we were no closer to consensus than we were at the beginning. (Alberta Government traditional land use and consultation expert)

Since its inception, the Association had produced only six management frameworks through consensus that were recommended for implementation by the Government: The Land Capability Classification; Ozone Management Framework; Landscape Design Checklist; Acid Deposition Management Framework; Ecosystems Management Tools; and the Trace Metals Management Framework (CEMA Online, 2008). It was suggested that, while this consensus approach can lead to a better product in the end, perhaps not everything should be subject to a consensus vote (Oil and Gas Industry expert). Within the current process, minority and majority reports can be utilized when negotiations are at an impasse (Alberta Government traditional land use and consultation expert), but when industry controls the majority, how is this process considered consensus? In theory, "consensus is a great way to go, but in a large group, it is extremely challenging to achieve" (Alberta Government traditional land use and consultation expert).

While the Association had made some recommendations to the Government, it has not met its objectives of addressing the 'big ticket' items such as understanding the carrying capacity of the environment in the oil sands region. Informants agreed that there were too many projects being approved, and for the Association to address all of the environmental issues by itself would be a difficult challenge:

> I think CEMA, right now, is in 'crisis management mode' and is trying to deal with it the best they can. But at the same time, they're stretched so thin with all of the issues they're trying to deal with, that they are not really addressing some of the major, major issues that the First Nations are raising. (First Nations Industry Relations expert)

The value of the Association lies within its stakeholder body. When all parties with an interest are able to reach an agreement, the Government will implement the recommendations. But as soon as key stakeholders start withdrawing from the process, or do not get involved from the beginning, than the process itself loses value for the other stakeholders because they can never be sure that the time spent in the process will result in a favourable outcome, or any outcome for that matter. Still, the Association is an essential element of the oil sands development process, providing some sort of environmental accountability for industry

> development in the region:
>
> You know, when the Federal Government and the Provincial Government announced that they had a huge surplus – within the billions – how about the portion that belongs to the First Nations? When is that gonna come about? The Treaty was signed with two parties – with Canada and First Nations. Canada implemented their side of the Treaty and right now, they've started exploiting all the resources, and our side has never been implemented … there's no way for us to share in the wealth they're trimming off our traditional lands, and we're as poor as third world countries right now on a lot of reserves.
>
> I live here in [redacted], Elders are as poor as ever, our housing is the worst ever, with no resolution in sight – and the oil industry comes in and says "guess what, last year we made a three billion dollar profit. (First Nations Elder, Aboriginal culture and TEK expert)

*Cumulative Environmental Effects*

With the unexpected 'explosion' of development in the Athabasca region, it has been suggested that development approval be stopped or at least slowed down, until cumulative environmental effects can be assessed. The Association is currently bombarded with so much work that it cannot necessarily channel its efforts and resources to really get to the heart of the critical environmental issues that are on hand:

> I don't think that CEMA is as effective as it could be. Especially in light of the fact that so many big oil sands projects have been approved, and continue to be approved, without any type of progress on important frameworks and recommendations that CEMA needs to come up with and recommend to the Government. Since the inception of CEMA in 2000, at least from our account, there have only been six frameworks that have been produced. In the mean time, there have been a slew of massive, massive projects that have been approved.
>
> I guess [Aboriginal] concern about this whole situation, is that, by the time CEMA actually gets around to developing these recommendations[32], and Government accepting and implementing these recommendations, the thresholds by which they have developed these recommendations would have already been exceeded. What's the point in having environmental limits, if the baseline has already been exceeded with all the projects that have come on line, are planned, or have already been approved?
>
> I think that CEMA has not necessarily been effective in providing recommendations to Government; I just think that the pace is much too slow for the pace of development in this region. Something certainly needs to be done. CEMA needs to progress at a greater pace if the oil sands development is going to continue at this rate. (First Nations Industry Relations expert)

Not all informants believed that slowing down or stopping approval was realistic. Nor did they believe it was the answer:

> I'm familiar with the science around cumulative impacts, it's difficult to predict - it's difficult to predict natural variability of the environment system, the baselines; the science just isn't there. Do you slow down Alberta's economy, slow down investment based on, you know, not being able to completely predict cumulative effects? I probably say no because, I honestly believe that the changes required, the

[32] The Association plays an advisory role with Governments. When consensus is achieved, recommendations can be made (CEMA Online, 2008).

> public are not going to stand for. We're talking massive job losses, shareholders losing money, investments in the province and Canada – gone. I don't see it happening.
>
> From an environmental standpoint, I think we need to get a grasp of what's going on there. Have thresholds been reached? Are we so beyond the thresholds that we're creating unbelievable damage? These are the questions that people don't know. Yeah, probably we should be slowing it down a little, or taking a closer look. But the question is - are people ready for the consequences of that? I'm not so sure, and I'm not so sure First Nations are ready for that either. They may advocate for it, but its likely going to result in lost contracts, lost jobs for their people - their communities … we all have to be willing to accept the results of a slow down or halting of development. (Alberta Government traditional land use and consultation expert)

Although an Athabasca Chipewyan First Nation representative believed that a moratorium was an idea worth exploring, he explained that the Band was currently in negotiations with some parties, and already had agreements in place with others that needed to be upheld stating "we're between a rock and a hard place" (First Nation Informant). They did however stress the water issue as a priority, and recommended that no further approvals be implemented until the numbers pertaining to the Athabasca River inflow needs are finalized. Although the Department of Fisheries had assured First Nations that these inflow numbers protect the integrity of the river, this has not instilled confidence within the Aboriginal community (First Nations Informant). Currently, there are industry proposals to build two bridges that cross the Athabasca that will be opposed by the First Nations and the Department of Fisheries (First Nations Elder, Aboriginal culture and TEK expert).

One of the First Nation informants stated that, in order for First Nations people to feel 'comfortable', the landscape would need to be protected for future traditional use; everyone needs to get a better understanding of what is actually occurring out there at the moment. Although there are those who would argue that there is a good baseline of information collected, from the First Nations point of view, they do not believe that anyone really understands the

extent of environmental and cumulative effects in the region. Slowing down, may give everyone a better chance to assess, understand, and identify what the major issues are, and to set up a practical plan as to how to manage and mitigate oil sands development.

The conjecture that the management framework of the Cumulative Environmental Management Association was not effective at generating recommendations that address cumulative environmental effects was substantiated and suggests that the lack of an effective management framework had contributed to the withdrawal of the First Nations.

## Hypothesis 3

The First Nations withdrew from the Cumulative Environmental Management Association because they did not have power or influence in the Association commensurate with their perceived rights to protect the environment.

### *Power, Influence, and Capacity*

Interviews with informants portrayed this as a contributing factor to the First Nations withdrawal from the Association. In order for the First Nations to begin to influence decision-making within the Association that would affect their traditional lands and culture, they required the ability and capacity to participate fully in issue negotiations:

> In some ways, yes, they had power, but I would say that the funders of CEMA had the majority of power … the perception there, is that industry runs CEMA. They focus the research, they can fast track or slow down research whatever way they see fit … whether that's right or wrong can be up for debate, but in my opinion, the First Nations probably didn't have as much influence as possibly the other stakeholders. I mean, when you have five First Nations, represented by ten people around a table of 50 - how loud is that voice? It's not going to be … The structure needs to be changed [because] it doesn't work that way; it can't. (Alberta Government traditional land use and consultation expert)

> … they have control of all the fish biologists, every soil analyst, everything that's geared there is under the control of the CEMA Management Committee. There is no capacity building there saying 'ok, lets transfer some monies to the First Nations so they can have capacity to do there fish studies – no way! We're out on our own, and we negotiate our own fish studies right now, and that's where we're going. It's

> not an easy task, but I'm glad [we're] out of there … I can see more capacity building now, with clear direction, and it's understood and shared with Chief and Council [who] support it. (First Nation Elder, Aboriginal culture and TEK expert)

Although there was a general recognition among most members, including Government and industry, that having First Nations at the table was important, participation and capacity within the Association was not openly promoted (First Nations Industry Relations expert). As one Elder informant stated, for the longest time, the First Nations were just there, like the usual 'token Indian'. Because of the structure, results showed that First Nations did not have the authority or power to influence how things were managed, or how environmental impacts were mitigated:

> … I think that there needs to be a process by which First Nation issues and concerns are brought to the forefront, rather than having them kind of dragged from the back end. It's always industry issues that are being dealt with. I mean, a lot of the assessment work being done by industry is to ensure that projects are ok and have no impact, but at the same time, when it comes to First Nations issues of environmental mitigation and monitoring, it is left by the wayside. I think the structure needs to change, I think there needs to be a process by which the influence of First Nations is magnified. (First Nations Industry Relations expert)

In theory, consensus based processes were designed to provide stakeholders who did not have the access to resources, with more information. This was supposed to accommodate groups with a variety of capacity levels. When it works well, the stakeholder groups that have an abundance of resources can bring that to the table and the information this provides can benefit everyone. Although there is an opportunity within the Association for 'lesser' stakeholders to co-chair committees and to have a say at the level of resources that are directed to different things (Oil and Gas Industry expert), it takes a very knowledgeable and experienced stakeholder with a lot of time and resources to take advantage of this option (Non-government Organization and environmental issues expert). In its healthiest state, the theoretical structure does lend itself to a

fairly equitable sharing of power, but in this case, the opportunity for First Nations to actually take advantage of that power has not existed (Non-government and environmental issues expert):

> …when you think about who has power within CEMA, one of the ways to have power is to have lots of resources. The Government agencies like the Department of Fisheries (DFO), Alberta Environment, and industry have more power because they have more resources available. They have experts providing information … they also have more input, because outside of the CEMA process, they have actual clout, whereas the First Nations, environmental groups, and others do not have a sort of direct veto or approval power outside of the process. (Non-government and environmental issues expert)

> CEMA has contributed money to developing Traditional Land Use Studies, and I think that is definitely a contribution to capacity. CEMA does pay for a certain amount of participation in committees, and that has resulted in certain amounts of capacity being built up by specific individuals who happen to be First Nation members … [However], there is really no well coordinated capacity development within CEMA and its perhaps one place where there could have been a great success. (Aboriginal rights and Socio-economic expert)

> There's lip service to [capacity]. I mean, they try to provide honorariums and travel, and things like that. I think capacity is provided; but if you mean capacity in the real sense of providing capacity for helping First Nations engage in the process in a meaningful way, I don't think they're there yet. (Alberta Government traditional land use and consultation expert)

Although attempts were made toward capacity building in order to promote First Nation participation within the Association, these initiatives did not begin to address the scope and magnitude of this problem. Informants stated that the First Nations had provided recommendations to the Association, which included the need for structural change and capacity building for Aboriginal members, but the Association did not provide a response to this request.

### *Aboriginal Rights*

The First Nations Elders feel that they have the right to maintain their culture and modest livelihood through hunting, fishing, and trapping. Because of this, although indirectly, the Aboriginal people in the oil sands region have the right to protect the environment in order to ensure that their lands will continue to produce the plants and animals necessary for traditional

harvesting. These rights are priority rights to hunt, fish, trap, and maintain Aboriginal culture and livelihood within the Athabasca oils sands region. Informants maintain that this right has priority over any other land use because it was established through their original occupation of the land, and was never relinquished in any form, including the signing of Treaties:

> … we're talking about traditional lands, all that sort of stuff that is important for the protection of Treaty rights. CEMA never really endorsed or pushed the Treaty issue, and yet, everything that is happening is all on our traditional lands. For the Bands to be successful and survive all this onslaught of industry, they got to have their traditional lands where they can practice their Treaty rights. They only practice their hunting and fishing inside of the reserves, but outside of the reserves, where they existed for thousands of years, [where] they have all their sacred sites … its being run by industry.
>
> You know, [CEMA] started off looking at historical trails and stuff, part of the RSDS issues, but when they said that there's not enough money to do everything that's spelled out by the Government, they cut back on a lot - and a lot of First Nation issues got chopped, and never brought back into the CEMA scene. (First Nations Elder, Aboriginal culture and TEK expert)

The Association's multi-stakeholder consensus-based process was not designed with Aboriginal rights in mind, and did not acknowledge or recognize the priority rights-based issues and perspectives of the Aboriginal groups affected by development in this area:

> … as we all know, First Nations are not regular stakeholders; they have constitutionally protected Treaty rights and need their traditional uses protected or accommodated. So, they're not like every other stakeholder; they're not like the RVing group, or the snowmobiling group, or the local sports fisherman association, and I think they get drowned out in the CEMA forum. (Alberta Government traditional land use and consultation expert)

By including First Nations in this body, they were then treated as any other stakeholder, when in fact their Aboriginal rights take priority over other stakeholders that partake in natural resource and land use decision-making in northern Alberta:

> The problem is, when the First Nations participate in CEMA, they are implicated in a consultation process that is not based on Aboriginal rights, and that compromises their position, their legal position, when they really want to be consulted according to their rights under the Constitution.

> So, both of the First Nations decided that they could not afford to continue being involved with CEMA - despite the fact that they would like to be informed about what CEMA is doing … despite the fact that there might be some sort of things that they could accomplish by being involved with CEMA, they decided not to participate because it compromises their Aboriginal rights by being implicated in a consultation process that is not based on rights. (Aboriginal rights and Socio-economic expert)

The Association is not a consultation body, nor is it a true co-management system with power. It is a consensus-based stakeholder body mandated by the Alberta Government to make recommendations. This design leaves it with conditional influence at best, and therefore, unable to address First Nations on the level required by Supreme Court rulings. Although the Association, Government, and industry now recognize this, initiating change is a slow process.

Even though the Athabasca Chipewyan and Mikisew Cree First Nations have rejected participation in the Association, they continued to realize the importance of conducting their own cumulative effects monitoring and voicing their views to both the Association and the Government regarding environmental issues, particularly water issues that affect their Aboriginal rights, traditional livelihood, and culture:

> Probably one of the greatest failures of CEMA to date has been their inability to deal with the Instream Flow Needs assessment (IFN) because there has been such contention around the amount of water that needs to be in the streams, particularly the very low flow time … there's a very large range of interests, for example the First Nations interests and … requirement for water are different from … the biodiversity advocates interest for water … and as a result, it is very difficult to obtain a consensus. CEMA was not able to meet its deadlines and therefore, the Provincial Government had to move in to make regulations in order to meet its regulatory schedule. (Aboriginal rights and Socio-economic expert)

The instream flow needs is just one of many failed attempts by the Association to make timely recommendations that greatly effect the culture and livelihood of First Nations. Even though the First Nations have withdrawn from the Association, they continued to be involved

with instream flow needs discussions in order to ensure that their views on water were voiced within the Government and the Association.

The hypothesis that the First Nations did not have power or influence commensurate with their rights to protect the environment was confirmed, and should be considered a factor contributing to their withdrawal from the Cumulative Environmental Management Association.

Hypothesis 4

The First Nations withdrew from the Cumulative Environmental Management Association process because timely and adequate Crown consultation with respect to Aboriginal rights did not occur.

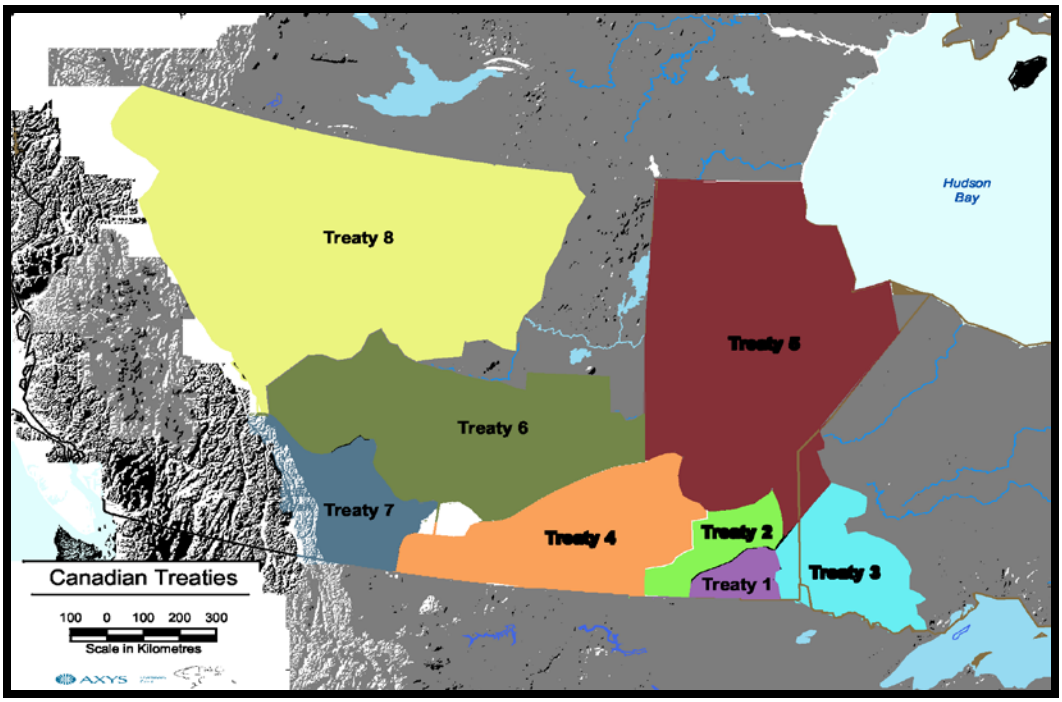
This hypothesis was the crux of the entire situation. The results suggested that the major factor contributing to the withdrawal of the First Nations from the Cumulative Environmental Management Association was that timely and adequate Crown consultation with respect to Aboriginal rights did not occur.

*Treaty 8*

Initiated as a nation-building attempt after Confederation, the Canadian Government negotiated a series of Treaties with Native peoples across Canada that would allow them rights to natural resources and the lands necessary to build a national railway that would link the country together. These Treaties covered vast areas of Canadian lands and delineated whom the Government recognized as a 'Treaty Indian' or later a 'Status Indian'. Signing of these Treaties took place over a span of 50 years from 1871 to 1921. Eleven numbered Treaties were signed in total in which the Natives had to agree to accept settlement on reserves. Most Treaty agreements also included reserve land, based upon the number of Native peoples in a settlement, as well as agreements for schooling, agricultural equipment and training, gifts, and annuities

(Albertasource, 2002). Please refer to Figure 18 for a map delineating Canadian Treaty areas in western Canada.

Figure 18: Map of Canadian Treaty Areas




(Treaty map reprinted with permission, Chipewyan Prairie Dené First Nation, 2007)

Within the Treaty 8 agreement made between the Crown, and the Sovereign First Nations in the region, ongoing Aboriginal rights to hunt, fish, and trap are preserved and identified:

> And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes. (Treaty No. 8, Made June 21, 1899, Indian and Northern Affairs Canada)

While this agreement served to ensure the Aboriginal culture and livelihood, it also served to eliminate the ability of First Nations to partake in their traditional activities on a

commercial basis. For example, they are able to hunt to maintain their culture and livelihood, but they are not permitted to sell the animals or their hides. Therefore, although the Treaty confirmed some ongoing Aboriginal rights, it also changed and restricted other formerly strong rights of the Aboriginal people. Consultation and accommodation processes were meant to protect the rights of Aboriginal people outlined in Treaty agreements to maintain their traditional culture and livelihood, but the processes currently used are not adequate.

### *Consultation and the Association*

The Association is a powerless body that does not fulfill the Crown's constitutional duty of Aboriginal consultation and accommodation. From the viewpoint of the First Nations, the Association provided recommendations to the Provincial Government from a group of stakeholders, rather than rights holders. This design provided a vehicle for Government and companies to involve First Nations in a process that did not adequately consult, but where their participation could be considered as consultation. This left the First Nations powerless to initiate change and protect their Aboriginal rights:

> This is the worst of both worlds for the First Nations … if the First Nations really want to consult; they have to consult with the Crown or the companies in a manner that gives them some sort of a response that meets the requirements of the laws of Canada. (Aboriginal rights and Socio-economic expert)

> The only one's who are doing the consultation right now is industry … third party. They've been delegated to do the consultation with First Nations … I'm saying "how am I going to negotiate my Treaty rights through this consultation process when you're industries – you have no way of talking about my Treaty rights". And they say "that is right – why don't you go back to Government". (First Nations Elder, Aboriginal culture and TEK expert)

> Our policy does delegate procedural aspects of consultation to the proponent – where it makes sense, and then we judge the adequacy of that consultation. Now is that working, we think so, but we recognize there are still challenges out there. (Alberta Government traditional land use and consultation expert)

Although the 'duty to consult' is not legally the responsibility of industry, the Crown has delegated the procedural aspects of this responsibility to industry. This Government/industry collaboration however, does not fulfill the Crown's duty to consult and accommodate Aboriginal people and although Supreme Court rulings have recognized this, little has been done in Alberta to change the status quo:

> [First Nations] win a lot of court cases, and then the Government just completely ignores all that. I recall last summer, [the First Nations] won, and they found four Federal departments negligent in consultation. They were faulted, and Dené Thai won the case, and yet, what does the Federal Government do – they have made no moves to be at the negotiating table right now, so consultation is third party. (First Nations Informant)

Within the current situation, the Energy and Utilities Board (EUB) acts as a Provincial regulatory body, responsible for assessing whether stakeholders, including the First Nations, are effected by a single development in the area. However, since the Board relies on the Association to assess cumulative environmental effects, this, although indirectly, implies that the Association is being used by the Provincial Crown as a consultation apparatus:

> The EUB is in fact responsible now, because the more recent decisions by the court, and in fact, some legislation has been passed by the Alberta Government, which empowers the EUB to deal with Constitutional issues, including Aboriginal rights and the effect on Aboriginal rights by developers and development. So, the EUB is now very, very responsible to determine whether or not Aboriginal people have been affected, not just as a stakeholder, but as Aboriginal rights holders. This is a very onerous duty, to assess whether they have been appropriately consulted or not, and the EUB probably isn't quite equipped to do this yet. Maybe they're trying to gear up to get themselves to be able to do this.
>
> The problem is that CEMA, being created under the auspicious of the Provincial Government, has been pointed to by the companies in their applications, as being a way in which cumulative effects can be measured. Therefore, the EUB, in the past, has looked to CEMA and granted CEMA importance well beyond the original purpose of CEMA. So the EUB has said that these companies are obligated to participate in CEMA, and to contribute to CEMA, and to make recommendations within CEMA, and that those recommendations will then be considered to be part of the requirements of the EUB application for the EUB licenses that are issued to these companies. So in effect, it is almost like making CEMA into a regulatory

> body through the back door, by having the EUB assign it these powers, by obligating the companies to participate in the processes, and then abide by CEMA's recommendations.
>
> Now, the fact is, that when the EUB does that, the EUB is dictating that the company has to abide by certain of its decisions and therefore, CEMA becomes very important in actually making an impact, and therefore, if the First Nation is not involved, they miss out on being able to effect the way the company implements its license. And that is inadequate from the First Nations point of view. That is inappropriate reliance on the company as a body that's supposed to be doing consultation with First Nations, and it's reliance on CEMA to do consultation with First Nations, when in fact, at least two First Nations in the region have rejected CEMA and the CEMA process as being unconstitutional. (Aboriginal rights and Socio-economic expert)

In order for consultation to be considered adequate, companies and Governments would need to substantially integrate the concerns of the First Nations into their plans, including mitigation and compensation. The Association does not officially have the power or authority to do this. Therefore, there is no way that First Nation participation within the current process should be, or could be, considered adequate consultation in the eyes of the law, or the Aboriginal people (Aboriginal rights and Socio-economic expert):

> … the Government has to be at the table with the First Nations, otherwise it's not gonna go. I think the time is coming so that First Nations are gonna be saying "you know, you're not here at the table, it's just industry third party negotiations, and our rights cannot be discussed with them because it's a Federal responsibility – Federal and Provincial responsibility. So, if the two levels of Government are not there, then you might see more delays by court action, which I'll be recommending. (First Nations Elder, Aboriginal culture and TEK expert)

Although an effort was made by the Association's managing executive to clarify that participation within the Cumulative Environmental Management Association should *not* be considered Crown consultation, this did not occur until after the withdrawal of the First Nations (Non-government and environmental issues expert). The Provincial Government has now made it very clear that consultation within the Association is not adequate replacement for rights based consultation, and has put in place a number of initiatives to develop institutional arrangements

around the duty to consult including guidelines, policies, and various programs:

> There are a few processes where the First Nations are consulting with Government about the development in their region… there is the Protocol Working Group (PWG) that [First Nations] are involved with, and there are also some other process initiatives that [they] are involved with in respect to the Inflow Needs (IFN) for the Athabasca River, and the Muskeg River Management plan. These are Government to First Nation consultation initiatives.
>
> I think there is still an outstanding requirement by the Government to really consult with [First Nations] about the overall impact of development in the region. Not necessarily project by project, or anytime an environmental need arises, like for example, the IFN. Rather, they need to consult with [First Nations] about the whole plan for the oil sands, and I don't think that's been done. (First Nations Industry Relations expert)

The last documentation available regarding discussions of the Protocol Working Group (PWG) and the Athabasca Tribal Council (ATC) was the *First Nations Feedback regarding the Initial Phase of Consultation on the Land Use Framework Issues* (November, 2006); an initiative originated in response to Alberta's First Nations Consultation Guidelines on Land Management and Resource Development (September 1, 2006). Within this meeting, Treaty 8 and Grand Chief Arthur Noskey explained two key issues of the First Nations – the cultural and economic sustainability of Aboriginal people – that must be taken into account in the development of an agreeable land use framework for Alberta (Alberta Aboriginal and Northern Affairs, 2006):

1. As the Crown "takes up" Treaty 8 land for resource development, the Crown will maintain an environment within those Treaty 8 lands "not taken up" that can support ongoing traditional use activities of First Nations peoples.

2. As the Crown allocates resources within Treaty 8 lands for development, the Crown allocation processes used, and the actual patterns of resource allocation achieved through these processes have the result that First Nations peoples receive "equitable economic benefit" in relation to ongoing resource development activities within their traditional territories.

Alberta acknowledged that the issues of land use, consultation, and accommodation were of paramount importance to First Nations and committed to continually seek feedback from First Nations as the development of the Land Use Framework progressed:

> … we are having growing pains, our [consultation] policy is fairly new, our guidelines are fairly new; formalized and finalized and implemented in September, 2006. We have had a year of implementation, and during that year, we took feedback through our yearly quality assurance assessment process, basically asking all the stakeholders what was good, what was bad, what could be changed?
>
> It's an evolving document, we don't see it written in stone … we have implemented those changes for this winter season, and we will keep taking feedback. (Provincial Government Informant)

Because the First Nations did not accept these consultation guidelines, some of the First Nation communities had created their own individual guidelines and protocols to be used when consulting First Nations on development projects infringing upon traditional territories. According to informants, however, all Government agencies are still using the guidelines that were rejected by the First Nations, as the backbone for Aboriginal consultation in the oil sands region.

The fact that timely and adequate Crown consultation with respect to Aboriginal rights did not occur, was a major factor for the First Nations withdrawal from the Cumulative Environmental Management Association process.

## Summary

### What are the factors that led to the First Nations withdrawal from the Cumulative Environmental Management Association?

The results of this study suggest that hypothesis one was not a major factor contributing to the withdrawal. Although there was a perception that the individuals working on the Association's sub-committees and conducting cumulative effects research did not really value

the Traditional Knowledge that was being provided, results of this research suggest this was of major importance to the First Nations, but not the reason for their withdrawal from the process. Results do, however suggest that hypotheses two, three, and four were major factors that led to the First Nations withdrawal from the Cumulative Environmental Management Association.

Factor 1: The First Nations withdrew from the Cumulative Environmental Management Association monitoring process because the Association's management framework was not effective at generating recommendations that address cumulative environmental effects for land and resource use in northern Alberta.

There are so many stakeholders and contentious issues within the Athabasca oil sands region that, although well intended, the consensus based multi-stakeholder design of the Association has not been an effective method for environmental decision-making or making recommendations. Because the Energy and Utilities Board uses the Association's recommendations (or lack thereof) when making decisions on lease approvals, any stakeholder, was able to use the consensus based framework to slow down or block decision-making in their favour.

In order for effective recommendations to be made, First Nations believed that the Association needs to re-prioritize in order to focus on the most immediate, relevant, and important issues. This became particularly apparent with the Associations failure to develop an Instream Flow Needs (IFN) framework. For the Athabasca Chipewyan, the deciding factor to withdraw from the Association was based upon water issues, and in particular, the inflow needs and integrity of the Athabasca river system. The Band prioritizes water as imperative to the maintenance of their culture and livelihood, and explained that 'water' would be the deciding factor in all future negotiations.

The Association was being used as a catchall[33] for a number of environmental issues, which made it unable to meet deadlines. There was a general concern that the pace of oil sands development was unchecked by anything – and the Association did not instill confidence that they had the ability to assess potential cumulative effects of large scale development in a timely manner, and therefore, should not be considered the 'environmental check' in this region.

Factor 2: The First Nations withdrew from the Cumulative Environmental Management Association because they did not have power or influence in the Association commensurate with their perceived rights to protect the environment.

A five-member First Nation representation sitting at a negotiating table of up to fifty other stakeholders made it difficult at best to address Aboriginal concerns, and to direct or influence environmental decision-making. Although their issues were presented, often, they were diluted by the concerns of other stakeholders, particularly industry, because of an imbalance of representatives and resources. Results show that industry is over-represented in the Association compared to other stakeholders, therefore First Nation communities and organizations believed that the agenda tends to be industry driven. This increased the powerlessness of First Nations to address change regarding environmental issues and concerns regarding their traditional culture and livelihood.

The First Nations did not have leverage, influence, power, or authority within the Association; nor did they have the manpower to fully participate especially, when as explained by informants, there were up to 200 Association meetings per year. While industry and Government have departments of qualified people to attend these sessions, First Nations may

---

[33] The term catchall refers to something that covers a wide variety of items or situations (dictionary.com, n.d.).

have only one or two qualified people with environmental backgrounds available to partake in these negotiations. The First Nations simply did not have enough resources to compete within this process in order to achieve their goals and objectives. Therefore, First Nations lack of capacity**,** along with the Association's lack of initiatives to ensure adequate Aboriginal capacity and participation, were major factors for withdrawal.

Factor 3: The First Nations withdrew from the Cumulative Environmental Management Association process because timely and adequate Crown consultation with respect to Aboriginal rights did not occur.

A lack of adequate Government to First Nations consultation also was a deciding factor to the withdrawal. Moreover, when the First Nations participated in the Association, they were implicated in a consultation process that was not based on Aboriginal rights, but could be considered as consultation. Their position was that this compromised their legal right to Crown/First Nation consultation outlined in the Constitution and articulated in recent court decisions that provide the means by which they can protect their traditional lands, livelihood, and culture.

The results of this research show there has been a lack of recognition and understanding of Aboriginal and Treaty rights within the Association. The fact that First Nation representation within the Association was considered the same as any other stakeholder was an indicator of this, and was a major contributor to the withdrawal of the First Nations. The First Nations view themselves as priority users and the Association did not recognize this, thus making it impossible to address issues of major concern within this forum. Both Bands concluded that their limited capacity could be better utilized in other areas.

# CHAPTER 5: CONCLUSION

This chapter summarizes the key research findings uncovered in this research and makes connections between the hypotheses, data collection, and current issues between the First Nations and the Cumulative Environmental Management Association. This thesis concludes with possible recommendations to improve this situation and future research opportunities.

The Cumulative Environmental Management Association was the result of the Regional Sustainable Development Strategy, a planning strategy that was developed by the Alberta Provincial Government for the northeast region of Alberta. This initiative began with an invitation to various stakeholders from the Alberta Government to participate in a goal identifying session, which resulted in a specific list of environmental priorities that needed to be dealt with. The Association and many of its objectives were then developed, making the Association an organization designed *by* the Provincial Government to make recommendations *to* the Provincial Government – a Government which, until recently, has shown little obligation toward First Nations traditional land use rights or the duty to consult. Although the concept and framework of this forum may have considered possible cumulative environmental effects in the region, I would argue that it did not adequately consider the cumulative environmental impacts on the general population or the Aboriginal population within this region.

The Association was created based on a consensus based multi-stakeholder design, which means that, in order for it to do anything, it required consensus among all of the stakeholders. With such a variety of stakeholder interests represented within the Association, few consensus decisions have been made. To be sure, the Association was able to make six framework recommendations. However, on most issues considered by the Association, they were not able to reach a consensus. Therefore, it has been difficult for the Association to make recommendations

to the Provincial Government – recommendations that are critical to determining the cumulative effects of current large scale development projects in the region and critical to the Energy and Utilities Board assessment process when determining the environmental sustainability posed by future development and lease applications. If the Association's duty was to produce timely and effective recommendations on cumulative environmental effects, it is failing to meet the mandate outlined by the Regional Sustainable Development Strategy. Although the Association has been able to make some recommendations to the Government that have resulted in acceptance, for example, revisions to its reclamation manual (CEMA Online, 2006), these were on the less contentious issues, and evolved around the interests and concerns of stakeholders, rather than First Nations concerns and Aboriginal rights.

When a consensus based structure is used in this kind of stakeholder body it can work, but there has to be a provision in place for the variation of stakeholder interests resulting in a non-consensus situation - an agreed upon method that ensures the expression of all views. While one of those methods is the 'minority and majority report' currently in place within the Association, it was not working because the member representation was skewed in favour of one sector – industry. There are many other methods however, that may be more effective at dealing with different stakeholder interests that can assist in addressing and reconciling different issues brought up at the Association's negotiating table. Therefore, the Association's inability to be effective was not the fault of consensus but rather the improper application of the process.

The multi-stakeholder aspect of the Association has been debilitating to the progression of Aboriginal rights and the goals and objectives of the First Nations in this region. For the Association, a stakeholder is somebody who is a member of the Alberta public, whether an environmental group, a citizens group, a municipality, or a company. As such, any member of

the public is entitled to have input into a stakeholder process. With the massive development projects occurring within this region, this is certainly an important and necessary forum to have. But it must be reiterated that this Association was not designed to take into consideration Aboriginal 'rights holders' and treating First Nation members the same as any other stakeholder did not work. The current make-up of this Association does not represent the priority rights of the First Nations, for example, to maintain their culture and livelihood as outlined in Treaty 8, the Constitution, and the rulings of the Supreme Court of Canada.

As clarified throughout this thesis, First Nations have, although indirectly, the right to protect the environment as it pertains to their traditional lands. Their right is to maintain their culture and a modest livelihood through their right to hunt, fish, and trap. In order to do that, they need to have an environment that will continue to produce the animals they can hunt and trap, fish they can catch and eat, and plants they can harvest. These rights take priority over any other use of the land, because they are rights established by their original occupation of the land and subsequently enshrined in Treaty 8. If the First Nations are to exercise these rights, they must have the ability to protect the environment. However, because the Association was not set up with Aboriginal rights in mind, it did not have the power or influence within that process to protect the environment, and preserve Aboriginal traditional livelihood.

This is not to say that the environment in this region is not, to some extent, being monitored, assessed, or even protected. The point that needs to be addressed here, however, is that the cumulative environmental effects impacting the culture and livelihood of the Aboriginal people in this region are *not* being assessed or evaluated by the Association, nor are recommendations being passed. This issue is in urgent need of review, before the consideration of additional oil sands lease approvals. One might argue that it is probably illegal for the private

sector and/or Government to continue to issue leases or development permits because neither the private sector nor the Government have engaged in appropriate consultation processes; processes that would effectively assess the cumulative impacts on Aboriginal culture and their ability to continue their traditional hunting, fishing, and trapping activities.

Because large-scale development in this region has significantly infringed upon the ability of the First Nations to exercise their Aboriginal rights, there is a legal onus on the Federal Government to consult. This duty to consult must be timely and occur *before* oil sands developments are approved, and *before* any of the impacts of development are felt by the First Nations. In short, it has to occur when there is an application to develop, for example, a lease purchase proposal, long before any actual development takes place. To date, there has been next to no Crown consultation in the oil sands region. The only consultation that has occurred has been third party, initiated by companies or unfortunately, through the Association - both of which are inadequate in the eyes of the law or First Nations in this region. This would indicate that both the Federal and Provincial Crown are violating the decision set down by the Supreme Court. Other than participation in some of the Instream Flow Needs groups, as of January 2008, there has been no proposal by the Federal Government to improve their consultation process; and although there have been proposals made by the Provincial Government, they have been considered inadequate and unconstitutional in the eyes of the First Nations.

Current consultation guidelines followed by Alberta and industry are failing to honour the Federal Crown's duty to provide adequate and meaningful consultation regarding First Nation concerns, rights, and traditional lands in the oil sands region. This has been a source of frustration for the Aboriginal communities in this region and a potential factor to the withdrawal of the First Nations from the Cumulative Environmental Management Association. An adequate

consultation scheme should prescribe consultation processes that recognize the First Nations as priority 'rights' holders, rather than any other stakeholder taking part in a public participation process.

Stakeholder processes can become very problematic when First Nations become part of the decision-making body, often because these processes do not recognize or understand Aboriginal rights – this was certainly the case with the Cumulative Environmental Management Association. To the First Nations, the Association is a relatively powerless body that provides recommendations on cumulative effects to the Provincial Government from a group of stakeholders - not rights holders. It provides a vehicle for Government and companies to co-opt and involve First Nations in a process that does not adequately consult or address Aboriginal concerns, or the rights that accompany them.

In the end, both the Athabasca Chipewyan and the Mikisew Cree First Nation believed that participation within the Association was not beneficial for their people. In fact, participating within the Association was actually harmful because it implicated the Bands in a consultation process that was not based on rights, and therefore compromised their position to be adequately consulted in another, more appropriate forum.

# Postscript

As a postscript to this research, two other First Nations, the Chipewyan Prairie Dené First Nation (CPDFN) and the Fort McMurray First Nation (FMFN) have also withdrawn their support from the Association, leaving only Fort McKay as the remaining First Nation actively participating in the Association:

> … the overall impression of First Nations is that the only one really honoring CEMA is Fort McKay, because Fort McKay gets all the dollars, all the development, and everything they want – of course. But there is no more land around for them to practice Treaty rights or anything, it's all development now. They want to be the richest Band in Canada – and they are, right now, probably the richest Band in Canada - but you need traditional lands. (First Nation Elder, Aboriginal culture and TEK expert)

There are significant differences between Fort McKay and the other First Nations in the Athabasca region. Of all the First Nation Bands, Fort MacKay is the only group with financial interests in oil sands development, and has entered into an agreement with Shell to develop oil sands projects directly on their reserve. Within this agreement, Fort McKay exchanged the lands received through Treaty land claim settlement by leasing it to Shell for potential incorporation into the Athabasca Oil Sands Project (AOSP), and receiving royalty payments on production. At the same time, the agreement facilitates the First Nation's entry into the oil sands business through an option to acquire and work with Shell on the development of Lease 90 (Shell Canada Inc., 2006). Other than the Moose Lake area in northwestern Alberta, all of Fort McKay's traditional lands are used by industry for oil production.

The next section provides recommendations to improve the current structure of the Cumulative Environmental Management Association and improve the current relationship between the First Nations, Government and oil sands developers in the region. This thesis then concludes with suggestions and direction for future research opportunities on this topic.

## Recommendations

These recommendations recognize First Nations as unique, while continuing to include them within the larger citizenry. As in the past, segregation is not the answer. Culturally, this is an important element to this situation because many Canadians do not understand Aboriginal issues, their connectedness to the land, their traditional uses, their Treaty rights and their Constitutional rights - their culture. Any forum that allows the cross communication of information so we can better understand each other, is something that, as Canadians, we need to promote (Alberta Government traditional land use and consultation expert).

Recommendation 1. The initial function of the Association should be altered to accurately reflect the current functions of the organization - a way for industry in the region to collaborate on science to more effectively manage their ecological footprint and the cumulative environmental effects of oil sands development.

Recommendation 2. Within this 'new structure', sub-committees would be rearranged in a manner that promotes equal representation at negotiating tables. This new design would provide groups that currently have less capacity with equal power and influence over decision-making within the Association. This would create more balanced and meaningful stakeholder participation, so that issues are not directed or overpowered by industry representation. For this to occur, Government must to take a leadership role within the Association.

Recommendation 3. A First Nations Committee also needs to be created. Unlike the current TEK Working Group, this committee will be formed by Aboriginals, with the power to

bring the Aboriginal voice to the table in a meaningful way. This group could meet with the Association two times a year (not 200) to discuss work plans and develop recommendations. These forums would be equitable – ten industry and ten First Nations, so there would be a more meaningful exchange of information, ideas, and understanding. This would not constitute Crown consultation, nor would it fulfill industry's duty to consult. It is simply participation, providing information regarding Traditional Knowledge and cumulative environmental effects.

Recommendation 4. All future Aboriginal involvement within the Cumulative Environmental Management Association be modeled in the spirit of the Supreme Court rulings relating to aboriginal rights.

Recommendation 5. Separate from this 'information sharing group,' a new and completely separate process needs to be created to provide Crown to First Nation consultation and accommodation that would address First Nations issues regarding development in and around their lands, and recognize First Nations as "rights holders" rather than "stakeholders". The Government of Alberta and oil sands developers need to understand and address the constitutionally protected Aboriginal and Treaty rights that are of great concern to the Aboriginal groups within this region. This is an important and essential step to healing and trust building.

Recommendation 6. The Provincial Governments policy on 'deferring procedural aspects of consultation' to industry must change. While industry/Aboriginal consultation is still a major requirement when development may infringe upon traditional lands and Treaty rights, Crown consultation must also occur – over and above industry discussions with First Nations.

Recommendation 7. Revising the current Traditional Environmental Knowledge process in good faith would encourage greater involvement, participation, and trust on the part of Aboriginal groups. Revisiting the consultant recommendations made in 2003 is a good place to start. Currently, there is little interest within First Nations to partake in the Cumulative Environmental Management Association, because the process and structure currently in place does not work for Aboriginal groups. Providing reasons for First Nation participation – meaningful, valued, and effective participation, could alleviate the overburden currently felt by the Association, allowing them to focus on major cumulative effects issues and improve their ability to make relevant and timely recommendations to the Energy and Utilities Board.

Recommendation 8. The current EUB approval process should be carefully reviewed to ensure that the Association does not become an apparatus utilized by industry as a method for meeting the licensing requirements in the oil sands.

Recommendation 9. Government and industry must collaborate with First Nations in projects to build capacity for accommodating the rights and participation of Aboriginal peoples. When a common vision and strategy is available to support First Nations in their lead responsibility for building capacity in order to implement their rights and increase their participation in natural resource management in the oil sands, the benefits of this will accrue to all of Canadian society.

## Future Research

There is a great opportunity for this research to continue now that the Government of Alberta has acknowledged its duty to consult First Nations where land management and resource development on Provincial Crown land may infringe First Nations rights and traditional uses (Alberta Government, International, Intergovernmental and Aboriginal Relations, March 2005). This is a monumental step toward understanding and preserving First Nation culture in Canada and the monitoring and initiation of sustainable development practices within the Athabasca Oil Sands region of Alberta.

1. Although the Government of Alberta was a willing participant in this study, the absence of a Federal Government perspective was noticed. Future research should include Government of Canada representation, especially from the Department of Fisheries and Oceans (DFO) who are involved with the Association, the concerns of the Aboriginal community, and cumulative effects in this region.

2. Inclusion of the Fort McKay First Nation would also add a new and relevant dimension to future research since they are the only remaining First Nation member active within the Association.

3. Inclusion of other Aboriginal communities effected by cumulative effects in the oil sands region would also have been beneficial to the overall analysis of this research.

4. Inclusion of the Cumulative Environmental Management Association executive and sub-committee members would also have been a great benefit to this project. I recommend that further attempts be made to incorporate Association perspectives in future research.

5. There have been other industries in this region that have been negatively affected by oil sands development projects, such as the natural gas industry. I would recommend their inclusion in future research. Conversely, including data and perspectives from those in the tourism, construction, and real estate areas that have expanded due to tar sand development projects, would contribute to data regarding both positive and negative socio-economic impacts of oil sands development.

Perhaps it is time for both Aboriginal and non-Aboriginal parties to critically examine current management policies and practices in order to develop innovative approaches that will create the space required for the meaningful and equitable inclusion of Aboriginal people in decisions made in respect to their lands and resources (Stevenson, 2006):

> The interest in Indigenous systems is not merely academic. The lessons of Traditional Knowledge, especially of the ecological kind, have practical significance for the rest of the world. There is a growing line of thought that we are moving in the new millennium toward different ways of seeing, perceiving, and doing, with a broader knowledge base than that allowed by modernist Western science. (Berkes, F., 1999, p. xi)

# REFERENCES


Agius, P., Davies, J., Howitt, R., Jarvis, S., & Williams, R. (2004). Comprehensive native title negotiations in South Australia. In Langton, M., Teehan, M., Palmer, L., & Shain, K. (Eds.) *Honour among nations? Treaties and agreements with Indigenous people*. pp. 203-219. Melbourne: Melbourne University Press.

Agrawal, A. (1995). Indigenous and scientific knowledge: Some critical comments. *Indigenous Knowledge Monitor*, 3(3), 1-6. Retrieved September 20, 2007 from http://nufficcs.nl/ciran/ikdm/3-3/articles/agrawal.html.

Alberta Aboriginal Affairs and Northern Development. (April 3, 1930). *The Alberta natural resources act,* chap. 21. Retrieved October 12, 2007 from http://www.international.gov.ab.ca/documents/NRA_Info_Sheet-Dec2003.pdf.

Alberta Aboriginal Affairs and Northern Development. (1996). *Little Red River Cree Nation-Tall Cree First Nation and the Government of Alberta Cooperative Management Agreement*. Memorandum of Understanding. Alberta, Canada.

Alberta Aboriginal Affairs and Northern Development. (August 31, 2004). *The Government of Alberta's First Nations consultation policy on land management and resource development.* Retrieved, December 11, 2007 from http://www.international.gov.ab.ca/.

Alberta Aboriginal Affairs and Northern Development. (November, 2006). *Aboriginal input on the provincial land use framework initiative – Summary report.* Retrieved December 09, 2007 from http://www.landuse.gov.ab.ca/docs/Aboriginal_LUF.pdf.

Alberta Chamber of Resources. (2006). Learning from experience: Aboriginal programs in the resource industries. Retrieved May 26, 2008 from http://www.acr-aboriginalproject.org/PDF%20Files/Publications/2006_ACR_Publication.pdf.

Alberta Energy. (August 10, 2006). *The Department of Energy's First Nations consultation guidelines.* Retrieved March 21, 2008 from www.energy.gov.ab.ca/AbRel/pdfs/Aboriginal_Consultation_Guidelines.pdf.

Alberta Energy. (2007). *Oil sands fact sheets*. Retrieved October 29, 2007 from http://www.energy.gov.ab.ca/oilsands/954.asp.

Alberta Energy. (2008). *Energy's history in Alberta*. Retrieved April 30, 2008 from http://www.energy.gov.ab.ca/About_Us/1133.asp

Alberta Energy. (2008b). *Alberta oil sands: Opportunity, balance.* Retrieved May 10, 2008 from http://www.energy.gov.ab.ca/OilSands/pdfs/Oil_Sands_Opp_Balance.pdf

Alberta Environment. (1997). *Northern River Basins Study Area Map*. Retrieved May 23, 2008 from http://www3.gov.ab.ca/env/water/nrbs/response/f1_1_1.gif.

Alberta Environment. (July, 1999). *Regional sustainable development strategy for the Athabasca oil sands area*. p. 39. Retrieved October 12, 2007 from http://www3.gov.ab.ca/env/regions/neb/rsds/rsds_final.pdf.

Alberta Environment. (2004). *A guide to the code of practice for pits.* Retrieved October 28, 2007 from http://environment.gov.ab.ca/info/library/5997.pdf.

Alberta Government. (2007a). *Alberta oil sands consultations: Fact sheet on traditional use studies*. Retrieved October 27, 2007 from www.oilsandsconsultation.gov.ab.ca.

Alberta Government. (2007b). *Oil sands discovery centre fact sheet: Oil sands projects in the Athabasca oil sands.* Retrieved October 28, 2007 from http://www.oilsandsdiscovery.com/oil_sands_story/pdfs/projects.pdf.

Alberta Government. (2007c). *Oil sands discovery centre fact sheet: The basics of bitumen.* p. 1. Retrieved November 2, 2007 from http://www.oilsandsdiscovery.com/oil_sands_story/pdfs/projects.pdf.

Alberta Government, International, Intergovernmental and Aboriginal Relations. (March, 2005). *First Nations consultation policy*. Retrieved January 11, 2008 from http://www.international.gov.ab.ca/579.cfm.

Alberta Government, International, Intergovernmental and Aboriginal Relations. (June, 2005). *First Nations consultation guidelines framework*. p. 11. Retrieved January 11, 2008 from http://www.international.gov.ab.ca/579.cfm.

Alberta Government – Multistakeholder Committee. (November 30, 2006). *Oil sands consultation – Multistakeholder committee interim report.* Retrieved November 20, 2007 from http://www.oilsandsconsultations.gov.ab.ca/index.html.

Alberta Online Encyclopedia. (n.d.). *The national energy program*. Retrieved October 30, 2007 from http://www.abheritage.ca/abpolitics/events/issues_nep.html.

Albertasource. (n.d.) *Area covered by Treaty 8*. Map. Retrieved April 30, 2008 from http://www.albertasource.ca/treaty8/eng/The_Treaty/i_treaty_8_map.html.

Albertasource. (2002) *The making of Treaty 8 in Canada's northwest.* Retrieved April 30, 2008 from http://www.albertasource.ca/treaty8/eng/The_Treaty/default.htm.

Assembly of First Nations Environment Stewardship Unit. (2005). *Overview of environmental issues facing First Nations: Context for participation in nuclear fuel waste management issues.* Background paper. Submitted to the Nuclear Waste Management Organization. Retrieved November 1, 2007 from http://72.14.253.104/search?q=cache:Z31bQWat3tYJ:www.nwmo.ca/adx/asp/adxGetMedia.asp%3FDocID%3D1005,1139,1002,988,20,1,Documents%26MediaID%3D2657%26Filename%3D11-AFN-

10%2BEnvironmental%2BBackground%2BPaper.pdf+first+nations+exclusion+in+co-management&hl=en&ct=clnk&cd=26.

Assembly of Treaty Chiefs. (September 14, 2006). *Assembly of Treaty Chiefs resolution: 14-09-06/#003R, 2006.*

Athabasca Chipewyan First Nation. (2003). *Footprints on the land: Tracing the path of the Athabasca Chipewyan First Nation.* A traditional land use study conducted by Fish Creek Consulting. Calgary. Unpublished document.

Athabasca Chipewyan First Nation. (2006). *Letter from Chief and council to CEMA*. Unpublished document.

Athabasca Regional Issues Working Groups. (2007). *Publications and information*. Retrieved October 12, 2007 from http://www.oilsands.cc/publications/faqs.asp.

Athabasca Regional Issues Working Groups. (2008). *Who we are.* Retrieved April 30, 2008 from http://www.oilsands.cc/.

Banuri, T. & Apffel-Marglin, F. (Eds.). (1993). *Who will save the forests? Knowledge, power and environmental destruction*. London: Zed Books.

Barnhardt, R., & Kawagley, A. O. (2005). Indigenous knowledge systems and Alaska native ways of knowing. *Anthropology and Education Quarterly*, 36(1), pp. 8-23. Retrieved May 22, 2008 from http://www.ankn.uaf.edu/Curriculum/Articles/BarnhardtKawagley/Indigenous_Knowledge.html.

Bartlett, R. (1988). *Aboriginal water rights in Canada*. Calgary: Canadian Institute of Resources.

Baskerville, G. L. (1997). Advocacy, science, policy and life in the real world. *Conservation Ecology [on line*].1(1), p. 9. Retrieved November 10, 2007 from http://www.consecol.org/vol1/iss1/art9.

Beckley, T., Martz, D., Nadeau, S., Reimer, B., Wall, E. (2004). *Community capacity: Understanding how things get done in rural communities.* Tweed: Presentation at the annual meeting of the Rural Sociological Society.

Berg, B. L. (2004). Introduction to content analysis. In *Qualitative research methods.* (5th ed.) Chap 11, pp. 267-287. Montreal: Pearson Education.

Berg, B. L. (2006). *Qualitative research methods for the social sciences*. (6th ed.). Long Beach: Allyn & Bacon.

Berkes, F. (1991). Traditional ecological knowledge in perspective. *International development research centre.* Retrieved August 25, 2007 from http://www.idrc.ca/en/ev-84401-201-1-DO_TOPIC.html.

Berkes, F. (1999). *Sacred ecology. Traditional ecological knowledge and resource management.* p. xi. Philadelphia and London: Taylor & Francis.

Berkes, F. (2007). Community-based conservation in a globalized world. *Proceedings of the National Academy of Sciences.* 104. 15188-15193.

Berkes, F., Berkes, M. K., & Fast, H. (2007). Collaborative integrated management in Canada's north: The role of local and traditional knowledge. *Coastal Management*. 35, pp. 143–162. Taylor & Francis Group.

Berkes, F., Colding, J., & Folke, C. (2000). Rediscovery of Traditional Ecological Knowledge as adaptive management. *Ecological Applications*, 10(5), pp. 1251-1262.

Best, J. W. (1970). Surveys, longitudinal, cross-sectional and trend studies. In Cohen L., Manion, L., & Morrison, K. *Research Methods in Education*. p. 169. (5th Ed.). London and New York: Routledge Falmer.

Beverly and Qamanirjuaq Caribou Management Board. (n.d.) Project Caribou: An educator's guide to wild caribou of North America. Retrieved May 22, 2008 from http://www.taiga.net/projectcaribou/pdf/activities/comanagement.PDF.

Beverly and Qamanirjuaq Caribou Management Board. (1982.) Beverly and Qamanirjuaq Caribou Management Board website. Retrieved May 24, 2008 from http://www.arctic-caribou.com/.

Bill, L. (1997). *Traditional knowledge research: Uses, effects, applications and choices.* Retrieved April 3, 2008 from http://www.eman-rese.ca/eman/reports/publications/nm97_abstracts/part-6.htm.

Blann, K. (2001). *What counts as knowledge in ecosystem management and restoration: Exploring the roles of scientific, local, and indigenous knowledge.* Retrieved January 15, 2008 from http://www.fw.umn.edu/individuals/klb/whatcountsasknowledge.pdf.

Bryman, A., & Teevan, J. J. (2005). *Social research methods: Canadian edition*. Oxford University Press.

Campbell, T. (March, 1996). Co-management of Aboriginal resources. Information north. *Arctic Institute of North America.* 22(1).

Capra, F. (1982). *The turning point: Science, society, and the rising culture*. p. 41. Simon and Schuster, Bantam paperback.

Carlos, A., Lewis, F. (1999). Property rights, competition, and depletion in the eighteenth-century Canadian fur trade: The role of the European market. *The Canadian Journal of Economics*, 32(3), pp. 705-728.

CEMA Online. (June 23, 2006). *Media Release. Consensus reached on two more initiatives: CEMA group submits key recommendations to Provincial regulators*. Retrieved May 10, 2008 from http://www.cemaonline.ca/index.php?searchword=recommendations&option=com_search&Itemid=76.

Chipewyan Prairie Dené First Nation. (2007). *Kai'Kos' Dehseh Dené: The Red Willow River (Christina River) people.* A traditional land use study conducted by Fish Creek Consulting. Calgary, Alberta. Unpublished document.

Clayoquot Sound Scientific Panel. (2005). *First Nations' perspectives relating to forest practices standards in Clayoquot Sound*. Retrieved October 12, 2007 from http://www.cortex.org/Rep3.pdf.

Climate Action Network Canada. (2005). *Climate Action Now!* Montreal: United Nations climate change conference. Retrieved October 28, 2007 from http://www.climateactionnetwork.ca/e/issues/climate-action-now.html.

Cohen, L., Manion, L., & Morrison, K. (2005). *Research methods in education* (5th Ed.). London and New York: Routledge Falmer.

Cumulative Environmental Management Association. (2007). *CEMA Online*. Retrieved September 12, 2007 from http://www.Cumulative Environmental Management Associationonline.ca.

Ecojustice. (2008). *Controversial tar sands project goes to court*. Retrieved February 7, 2008 from http://www.ecojustice.ca/media-centre/press-releases/controversial-kearl-tar-sands-project-goes-to-court/.

Einstein, N. (May 10, 2006). *Context map of Alberta, Canada oil sands*. Retrieved November 15, 2007 from http://images.google.ca/imgres?imgurl=http://upload.wikimedia.org/wikipedia/commons/thumb/7/7a/Athabasca_Oil_Sands_map.png/410px-Athabasca_Oil_Sands_map.png&imgrefurl=http://commons.wikimedia.org/wiki/Image:Athabasca_Oil_Sands_map.png&h=599&w=410&sz=160&hl=en&start=3&tbnid=AhSVR0drMovjsM:&tbnh=135&tbnw=92&prev=/images%3Fq%3Dmap%2Bof%2Balberta%2Boil%2Bsands%26gbv%3D2%26hl%3Den%26client%3Dfirefox-a%26rls%3Dorg.mozilla:en-US:official%26sa%3DG.

Energy and Utilities Board. (2005). Earth sciences report 2000-05. *Historical overview of the Fort McMurray area and the oil sands industry in northeast Alberta*. Retrieved October 29, 2007 from http://www.ags.gov.ab.ca/publications/ESR/PDF/ESR_2000_05.pdf.

Energy and Utilities Board. (2007). EUB Decisions, *Energy issues 2007*. Retrieved November 26, 2007 from http://www.eub.ca/portal/server.pt/gateway/PTARGS_0_0_257_229_0_43/http%3B/extContent/publishedcontent/publish/eub_home/industry_zone/decisions/decisions___energy_issues/2007/.

Energy and Utilities Board & Government of Canada. (February 27, 2007). Imperial Oil Resources Ventures Limited: Application for an oil sands mine and bitumen processing facility (Kearl oil sands project) in the Fort McMurray Area. *Joint panel report and EUB decision 2007-013*. Retrieved November 26, 2007 from http://www.eub.ca/portal/server.pt/gateway/PTARGS_0_0_257_229_0_43/http%3B/extContent/publishedcontent/publish/eub_home/industry_zone/decisions/decisions___energy_issues/2007/.

Energy and Utilities Board Online. (2007). *EUB Online*. Retrieved October 15, 2007 from www.eub.gov.ab.

Environment Canada. (1997). *The ecological monitoring and assessment network*. Third national science meeting. Saskatoon, Saskatchewan, January 21-25, 1997.

First Nations of Alberta Tribal Council. (2007). *Map of traditional territories in northern Alberta*. Retrieved December 1, 2007 from http://www.treaty8.ca/.

Feit, H. A. (1988). Self-management and state-management: Forms of knowing and managing northern wildlife. In Freeman, M. M., & Carbyn, L. N. (Eds.) *Traditional knowledge and renewable resources management in northern regions.* Occasional Publication No. 23, pp. 72-91. Edmonton: Boreal Institute for Northern Studies.

Feit, H. A. (1998). Reflections on local knowledge and wildlife resource management: Differences, dominance, and decentralization. In *Aboriginal environmental knowledge in the north: Definitions and dimensions*. Pp. 123-148. Groupe d'etudes Inuit et Circumpolaires. Quebec: University of Laval.

Fish Creek Consulting and Associates. (2003). Report on incorporating TEK into the Cumulative Environmental Management Association process. Commissioned by the CEMA TEK Standing Committee. Unpublished document.

Fort McMurray #468 First Nation. (2007). *Nistawayaw: Where three rivers meet*. A traditional land use study conducted by Fish Creek Consulting. Calgary, Alberta. Unpublished document.

FP-Foreign Policy. (2007). *Tar sands*. Photo. Retrieved November 26, 2007 from http://blog.foreignpolicy.com/taxonomy/term/41?from=70.

Fumoleau, R. (2004). *As long as this land shall last: A history of Treaty 8 and Treaty 11, 1870-1939*. Calgary: University of Calgary Press.

Geertz, C. (1973). Thick description: Toward an interpretive theory of culture. In *The interpretation of cultures: Selected essays*. pp. 3-30. New York: Basic Books.

Gillespie, B. C. (1975). Territorial expansion of the Chipewyan in the 18th century. Document 19, *eHRAF Collection of Ethnography*.

Gladstone v. Canada (Attorney General). (2005). Gladstone v. Canada (Attorney General). SCC 21, [2005] 1 S.C.R. 325. April 21, 2005. Docket 30137. *Judgments of the Supreme Court of Canada.* Retrieved May 22, 2008 from http://scc.lexum.umontreal.ca/en/2005/2005scc21/2005scc21.html.

Glenbow Museum. (1936). Fort McMurray Tar Sands. In *Glenbow Archives*. Photo number NA-3394-57. Retrieved December 13, 2007 from http://www.glenbow.org/collections/search/.

Glenn, J. M., and Drost, A. C. (1999). Aboriginal rights and sustainable development in Canada. *The international and comparative law quarterly*, 48(1), pp. 176-186.

Golder & Associates Ltd. (2005). Athabasca River & tributaries: Licensed surface water allocations pie chart. In *Pembina Institute: Oil sands in depth*. Retrieved November 27, 2007 from http://images.google.ca/imgres?imgurl=http://www.connectingthedrops.ca/images/250/oilsands3-dvh.jpg&imgrefurl=http://www.connectingthedrops.ca/river/stresses/oilsands&h=164&w=250&sz=33&hl=en&start=12&tbnid=qyCYEZprN2OfOM:&tbnh=73&tbnw=111&prev=/images%3Fq%3Doil%2Bsands%2Band%2Bathabasca%2Briver%26gbv%3D2%26svnum%3D10%26hl%3Den%26client%3Dfirefox-a%26channel%3Ds%26rls%3Dorg.mozilla:en-US:official%26sa%3DG.

Goliath. (2008). The meaning of subsection 35(1) of the Constitution Act, 1982: A comment on Mitchell v. Minister of National Revenue. *Aboriginal and Treaty rights Canada.* Retrieved March 8, 2008 from http://goliath.ecnext.com/coms2/gi_0199-997468/The-meaning-of-subsection-35.html#abstract.

Gordon, D. and the Conference Program Planning Committee [CPPC]. (1997). *Toward meeting the challenges of the new relationships between First Nations, public Governments, and the private sector.* Unpublished paper.

Grenier, L. (1998). What about Indigenous knowledge? In Markey, S., & Vodden, K. (Eds.) *Concepts, techniques and principles for CED practice: Community economic development.* Vancouver: Simon Fraser University.

Gupta, A. (1992). *Building upon people's ecological knowledge: Framework for studying culturally embedded CPR institutions*. Ahmedabad: Indian Institute of Management, Center for Management in Agriculture.

Haida Nation v. British Columbia (Minister of Forests). (2004). Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 S.C.R. 511. November 18, 2004. Docket 29419. *Judgments of the Supreme Court of Canada*. Retrieved May 22, 2008 from http://scc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html.

Hajer, M. (1997). *The politics of environmental discourse: Ecological modernization and the policy process.* Oxford University Press.

Halfway River First Nation v. British Columbia (Ministry of Forests). (1999). Halfway River First Nation v. British Columbia (Ministry of Forests), [1999] 4 C. N. L .R. 1. (B.C.C.A.). *British Columbia Court of Appeals.* Retrieved May 22, 2008 from http://scc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html.

Hawley, A., Sherry, E., & Johnson, C. (2005). Perspectives: A biologist's perspective on amalgamating traditional environmental knowledge and resource management. *B C. Journal of Ecosystems and Management.* Retrieved October 1, 2007 from http://web.unbc.ca/~johnsoch/Publications/Hawley%20et%20al%202004%20A%20biologists%20perspective%20on%20amalgamating%20TEK%20and%20resource%20management.pdf.

History of Fort McMurray. (2007). Retrieved October 29, 2007 from http://collections.ic.gc.ca/fortmc/home.htm#return.

Honda-McNeil, J. (2000). *Cooperative management in Alberta: an applied approach to resource management and consultation with First Nations*. M.Sc. Thesis. Edmonton: University of Alberta.

Hough, J. L. (1994). Institutional constraints to the integration of conservation and development: A case study from Madagascar. *Society & Natural Resources*, 7, pp. 119-124.

Howitt, R. (2001). *Rethinking resource management: Justice, sustainability, and Indigenous peoples.* New York: Routledge Press.

Hudson Bay Archives. (2007). *Manitoba culture, heritage and tourism*. Retrieved October 29, 2007 from http://www.gov.mb.ca/chc/archives/hbca/index.html.

Hydrocarbons Industry. (n.d.). *The Muskeg River Mine in northern Alberta*. Retrieved January 3, 2008 from www.hydrocarbons-technology.com/projects/athabasca/athabasca1.html.

Indian and Northern Affairs Canada. (1899 rpt 1966). *Treaty No. 8, made June 21, 1899, and adhesions, reports, etc.* Retrieved October 3, 2007 from http://www.ainc-inac.gc.ca/pr/trts/trty8_e.html.

Indian and Northern Affairs. (2003). Chapter 8: Transferring Federal responsibilities to the north. *2003 November report of the Auditor General of Canada*. Retrieved May 26, 2008 from http://www.oag-bvg.gc.ca/internet/English/aud_ch_oag_2003_8_e_12931.html.

Indian and Northern Affairs Canada. (2004). *Words first: An evolving terminology relating to Aboriginal peoples in Canada.* Retrieved April, 29, 2008 from http://www.ainc-inac.gc.ca/pr/pub/wf/index_e.html

Indian and Northern Affairs Canada. (2007). Petition No. 188 - Minister's response: Indian and Northern Affairs Canada. June 6, 2007. Retrieved March 2, 2008 from http://www.oag-bvg.gc.ca/domino/petitions.nsf/viewE1.2/9f4b30d5f1c9867e8525730200528f08?OpenDocument&Click=.

International Institute for Sustainable Development. (1998). *Co-management background*. Retrieved November 12, 2007 from http://www.iisd.org/ic/info/Co-Management.htm.

Ives, J.W. (1993). The ten thousand years before the fur trade in northeastern Alberta. In P.A. McCormack and R Geoffrey (Eds.) *The uncovered past: Roots of northern Alberta societies.* Canadian Circumpolar Institute, University of Alberta.

Johnson, M. (2002). *LORE: Capturing traditional environmental knowledge.* Ottawa: Dené Cultural Institute and the International Development Research Centre.

Kawagley, A., Barnhardt, R. (2007). Education indigenous to place: Western science meets Native reality. *Alaska Native Knowledge Network*. Retrieved May 26, 2008 from http://www.ankn.uaf.edu/Curriculum/Articles/BarnhardtKawagley/EIP.html.

Kennett, S. (2007). Next steps for cumulative effects management in Alberta's Athabasca oil sands region. *Canadian Institute of Resources Law RESOURCES*. No. 96.

Kepkay, M. (2007). *Building capacity of Aboriginal peoples in Canada's forest sector: Rationale, models, and needs*. Retrieved April 1, 2008 from http://www.nafaforestry.org/forest_home/documents/CapacityDisc-final-30mar07.pdf.

Knudtson, P., & Suzuki, D. (1992). *Wisdom of the Elders*. pp. 13-15. Toronto: Stoddart Publishing, Ltd.

Krippendorf, K. (2004). *Content analysis: An introduction to its methodology.* (5th ed.). Thousand Oaks, California: Sage Publications.

Krugly-Smolska, E. (1994). An examination of some difficulties in integrating western science into societies with an Indigenous scientific tradition. *Interchange*, (25)4, pp. 325-334.

LaDuke, W. (1994). Traditional Ecological Knowledge and Environmental Futures. *HeinOnline. Colorado Journal of International Environmental Law and Policy*. 5: 127. Retrieved May 22, 2008 from http://scholar.google.ca/scholar?q=info:hTHbF5-EAUYJ:scholar.google.com/&hl=en&lr=&output=viewport.

Leedy, P. D. & Ormrod, J. E. (2005). *Practical research: Planning and design*. (8th ed.). Upper Saddle River, N. J.: Pearson Prentice Hall.

Lertzman, D., & Vredenburg, H. (February, 2005). Indigenous peoples, resource extraction and sustainable development: An ethical approach. *Journal of Business Ethics*. 56(3), pp. 239-254. Retrieved October 11, 2007 from http://www.springerlink.com/content/l84uw23t1428k820/.

Library and Archives Canada. (2007). Peter Ponds search for fortune. In *Pathfinders and passageways: The exploration of Canada.* Retrieved November 3, 2007 from http://www.collectionscanada.ca/2/24/h24-1620-e.html.

Lofland, J., & Lofland, L. (1995). *Analyzing social settings: A guide to qualitative observation and analysis*. Belmont: Wadsworth.

Management and Solutions in Environmental Science [MSES]. (September, 2005). *A review of Albian Sands' Muskeg River mine expansion project regulatory application.* Prepared for the Mikisew Cree First Nation. Calgary: MSES. Retrieved November 12, 2007 from http://www.ceaa.gc.ca/050/documents_staticpost/cearref_16259/MK-FN-0006.pdf.

Marcel, P. (2006). Chair of the ACFN TEK Elders Committee – Personal Comments.

Marker, M. (2006). After the Makah whale hunt: Indigenous knowledge and limits to multicultural discourse. *Urban Education*, 41(5), pp. 482-505. Retrieved October 25 from http://uex.sagepub.com/cgi/content/abstract/41/5/482.

Marten, R. (2008). Traditional Environmental Knowledge. Retrieved May 22, 2008 from http://www.cemaonline.ca/content/view/27/74/.

Mascarenhas, M., Scarce, R. (2004). The intention was good: Legitimacy, consensus-based decision making and the case of forest planning in British Columbia, Canada. *Society & Natural Resources.* 17(1). pp. 17-38.

Maxwell, J. A. (1992). Understanding and validity in qualitative research. *Harvard Educational Review*, 62 (3).

McClaren, M., & Morton, G. (2003). *Making sense 10: Qualitative research 2 – Interviews*. Retrieved April 10, 2007 from http://learner.royalroads.ca/moodle/mod/resource/view.php?id=36711.

Mikisew Cree First Nation. (2008). *Ayapaskowinowak: Acknowledging the past, securing the future.* A traditional land use study conducted by Fish Creek Consulting. Calgary, Alberta. Unpublished document.

Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage). (2005). Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), SCC 69, [2005] 3 S.C.R. 388. November 24, 2005. Docket 30246. *Judgments of the Supreme Court of Canada.* Retrieved May 22, 2008 from http://scc.lexum.umontreal.ca/en/2005/2005scc69/2005scc69.html.

Millar, H. (1980). Guswhenta: The two row wampum treaty of alliance. In *Turtle – Native American Centre for the living arts.* Quarterly Edition Newspaper. Trans. by Huron Millar. Retrieved November 7, 2007 from http://hometown.aol.com/miketben/miketben.htm.

Mittman B., (2001). Qualitative methods and rigorous management research: How are they compatible? White paper prepared for MDRC workshop, Management Research in Virginia. Retrieved May 24, 2008 from http://www.mdrc.research.med.va.gov/mgt_research/mittman-rev.doc.

Mulvihill, P., Baker, D., and Morrison, W. (2001). A conceptual framework for environmental history in Canada's north. *Environmental History*. 6(4) pp. 611-626. Retrieved May 22, 2008 from http://www.jstor.org/pss/3985257.

National Energy Board. (2007). *Canada's oil sands - Opportunities and challenges to 2015: An update questions and answers*. Retrieved October 28, 2007 from http://www.Neb.Gc.Ca/Clf-Nsi/Rnrgynfmtn/Nrgyrprt/Lsnd/Pprtntsndchllngs20152006/Qapprtntsndchllngs20152006-Eng.html.

National Energy Board. (2007b). *Energy futures project 2007: NEB consultation sessions-commodities.* Retrieved May 10, 2008 from www.neb.gc.ca/.../cnslttnsssn02-eng.html.

National Round Table on the Environment and the Economy [NRTEE]. (2005). *Boreal futures: Governance, conservation and development in Canada's boreal*. October, 2005. Ottawa: NRTEE.

Northern River Basins Study Report to the Ministers. (1996). Nautilus Publications.

Nelson, S. (2006). *The utilization of traditional knowledge, land use and occupancy studies: A case study from western Alberta, Canada*. M.A. Thesis. Edmonton: University of Alberta.

Neuendorf, K. A. (2002). *The content analysis guidebook.* Thousand Oaks, California: Sage.

Niamir, M. (1990). Herder' decision-making in natural resource management in arid and semi-arid Africa. *Community Forestry Note 4.* Rome: Food and Agriculture Organization.

Norton, S., & Zwicker, S. (2005). *The Aboriginal role in the development of Albertan oil and gas reserves.* Retrieved November 1, 2007 from http://www.beg.utexas.edu/energyecon/thinkcorner/Aboriginal%20Role%20in%20the%20Development%20of%20Albertan%20Oil%20and%20Gas%20Reserves.pdf.

Notzke, C. (1995). A new perspective in Aboriginal natural resource management: Co-management. *Geoforum,* 26(2), pp. 187-209.

Nowlan, L. (2004) *Customary water laws and practices in Canada*. Retrieved March 21, 2008 from http://www.fao.org/Legal/advserv/FAOIUCNcs/Canada.pdf.

Oil Sands Truth. (n.d.). *OilSandsTruth.org.* Map. Retrieved January 2, 2008 from http://oilsandstruth.org/maps.

Oil Sands Watch. (Summer, 2007). *Athabasca expedition: Connecting the drops video* (Five Episodes) by Quantum Shift TV & Pembina Institute. Retrieved December 12, 2007 from http://www.oilsandswatch.org/videos.

Organization for Economic Co-operation and Development [OECD]. (1996). *OECD: For a better world economy*. Retrieved October 13, 2007 from http://www.oecd.org/home/0,2987,en_2649_201185_1_1_1_1_1,00.html.

Passelac-Ross, M., & Potes, V. (June, 2007). Crown consultation with Aboriginal peoples in oil sands development: Is it adequate, is it legal? *Canadian Institute of Resources Law.* Calgary: University of Calgary.

Pembina Institute. (2008). *Backgrounder – Imperial Kearl oil sands mine hearings: Affidavit extracted from Federal Court of Canada*. Affidavit of Simon Dyer. Retrieved January 18, 2008 from http://pubs.pembina.org/reports/OS-Kearl-backgrounder.pdf.

Perreault, P. and Stevenson, M. (2008). Sustainable forest management network project: Capacity for what? Capacity for whom? In the *National Aboriginal Forestry Association/Sustainable Forest Management Network Conference*. Harbourside, B.C.

Petroleum Society. (2004). Asian-pacific markets – A new strategy for Alberta oil. *Canadian International Petroleum Conference*. Retrieved October 28, 2007 from http://www.technology.gov.ab.ca/objects/content_revision/download.cfm/item_id.129216/workspace_id.128427/Asian-Pacific%20Markets%20-%20A%20new%20Strategy%20for%20Alberta%20Oil.pdf/.

Pinkerton, E. (1993). Co-management efforts as social movements. *Alternatives,* 19(3), pp. 33-38.

Randsco. (2007). *Roaring dinosaurs*. Retrieved November 1, 2007 from http://randsco.com/index.php/2006/02/05/Roaring_Dinosaurs-Prosperous_Alberta.

Regional Municipality of Wood Buffalo. (2007). Retrieved October 29, 2007 from http://www.woodbuffalo.ab.ca/municipal_government/index.asp.

Regional Municipality of Wood Buffalo Council Report. (November 13, 2007). *Regional Municipality of Wood Buffalo.* Map. Retrieved January 31, 2008 from http://www.woodbuffalo.ab.ca/municipal_government/agendas+minutes/pdf_2007/agendas/nov13/reportF_REDS_terms_of_ref.pdf.

Robyn, L. (2002). Indigenous knowledge and technology. *American Indian Quarterly,* 26(2), pp. 198-220.

Royal Alberta Museum. (2006). *Archaeology: Alberta Aboriginal history timeline*. Retrieved May 21, 2008 from http://www.royalalbertamuseum.ca/human/archaeo/aspects/timeline.htm.

Royal Roads University. (2007). *MAEEC thesis handbook, 2007*. Retrieved June 11, 2007 from http://learn.royalroads.ca/thesis/.

Scott, C. (2003). Co-management and the politics of Aboriginal consent to resource development. Conference speech. *Reconfiguring Aboriginal-state relations/Canada: The state of the federation 2003.* November 1-2, 2002. Kingston: School of Policy Studies, Queens University.

Selin, S., Chevez, D. (2006). Developing a collaborative model for environmental planning and management. *Environmental Management.* 19(2).

Sewell, M. (2004). *How to use qualitative interviewing; Appendix 3.1.* Retrieved April 10, 2007 from http://ag.arizona.edu/fcs/cyfernet/cyfar/Intervu5.htm.

Shell Canada Inc. (2005). *Notice of application Albian Sands Energy inc. Muskeg River mine expansion project*. Retrieved September 17, 2007 from www.eub.ca.

Shell Canada Inc. (2006). *Shell and Fort McKay sign innovative land agreement*. Retrieved May 11, 2008 from http://www.shell.com/home/content/ca-en/news_and_library/press_releases/2006/unindex/april19_land_agreement.html?LN=/news_and_library/press_releases/2006.

Sherry, E., Halseth, R., Fondahl, G., Karjala, M., & Leon, B. (September, 2005). Local-level criteria and indicators: An Aboriginal perspective on sustainable forest management. *Forestry*, 78(5), pp. 513-539. Retrieved November 1, 2007 from http://forestry.oxfordjournals.org/cgi/content/abstract/78/5/513.

Sherry, E., & Myers, H. (2002). Traditional environmental knowledge in practice. *Society and Natural Resources*.15, pp. 345-358.

Smith, J. G. E. (1975). The ecological basis of Chipewyan socio-territorial organization. Document 20, *eHRAF, Collection of Ethnography*.

Smith, J. G. E. (1978). The emergence of the micro-urban village among the caribou-eater Chipewyan. *Human Organization*. 37(1), pp. 38-49.

Spak, S. (2002). *Canadian resource co-management boards and their relationship to Indigenous knowledge: Two case studies*. PhD Dissertation. Toronto, Ontario: University of Toronto.

Spaling, H., Zwier, J., Ross, W., & Creasey, R. (2000). Managing regional cumulative effects of oil sands development in Alberta, Canada. *Journal of Environmental Assessment Policy and Management*. 2(4), p. 513.

Statistics Canada. (September 14, 2006). *Study: The Alberta economic juggernaut*. Retrieved October 30, 2007 from http://www.statcan.ca/Daily/English/060914/d060914c.htm.

Stevenson, M. (1996). Indigenous Knowledge in environmental assessment. *Arctic.* 49(3). pp. 278-291. Retrieved May 22, 2008 from http://pubs.aina.ucalgary.ca/arctic/Arctic49-3-278.pdf.

Stevenson, M. (2006). The possibility of difference: Rethinking co-management. *Human Organization*. Summer 2006; 65(2).

Stevenson, M. (2007). Traditional Knowledge and forest management. *Innovation Alberta*. Retrieved May 22, 2008 from http://www.innovationalberta.com/article.php?articleid=129.

Stevenson, M., & Webb, J. (2003) Just another stakeholder? First Nations and sustainable management in Canada's boreal forest. In Burton, P., Messier, C., Smith, D. & Adamowicz, W. (Eds.) *Towards sustainable management of the Boreal forest*. pp. 73-77. Ottawa: National Research Council Research Press.

Syncrude Canada Ltd. (n.d.). *About Syncrude: Oil sands history*. Retrieved January 12, 2008 from http://www.syncrude.ca/users/folder.asp.

Tailing Ponds. (2004). *Wikipedia*. Retrieved December 13, 2007 from http://en.wikipedia.org/wiki/Tailing_pond

Thrupp, L. (1989). Legitimatizing local knowledge: Scientized packages or empowerment for third world people. In Warren, D. M., Slikkerveer, J., & Titilola, S. (Eds.) *Indigenous knowledge systems: Implications for agriculture and international development: Studies in technology and social change.* No. 11. pp. 138-153. Ames: Iowa State University, Technology and Social Change Program.

Tough, F. (1996). *As their natural resources fail: Native peoples and the economic history of northern Manitoba 1873 – 1930*. pp. 14-43. Vancouver: UBC Press.

Treaty 8 First Nations of Alberta. (2005). First Nations consultation policy and guidelines framework. Unpublished document.

United Nations Framework Convention on Climate Change. (1992). *Multi-stakeholder processes*. Retrieved March 10, 2008 from. http://unfccc.int/files/adaptation/methodologies_for/vulnerability_and_adaptation/application/pdf/multistakeholder_processes.pdf.

United Nations Environment and Development [UNED]. (2007). *UNED forum: A framework for multi-stakeholder processes.* Retrieved December 20, 2007 from http://www.earthsummit2002.org/msp/.

University of Saskatchewan. (2004). *History of the Denesuline (Dene) in Northern Saskatchewan*. Retrieved May 21, 2008 from http://scaa.usask.ca/gallery/northern/content?pg=ex04-1.

University of Toronto Tyrell Collections. (1884). Natives at Fort McMurray. In *Tyrell images*. Photo number P1017. Retrieved January 21, 2008 from http://digital.library.utoronto.ca/Tyrrell/.

Usher, P. J. (1986). Devolution of power in the Northwest Territories: Implications for wildlife management. *In Native people and renewable resource management.* p. 71. Edmonton: Alberta Society of Professional Biologists.

Wallerstein, I. (1974). *The modern world system I.* New York: Academic Press.

Warren, D. M. (1990) Using Indigenous knowledge in agricultural development. *World Bank discussion paper.* No. 127. Washington D.C.: World Bank.

Water is Life. (2006). *Final report on water scarcity offers solutions*. Retrieved October 28, 2007 from http://water-is-life.blogspot.com/2006_08_01_archive.html.

Webb, J. (2006). *Special reserves & the intent of the crown to protect Treaty 8 livelihood interests (1925-1939): Unfinished business, reconciliation, & the honour of the crown*. Unpublished paper.

Weber, R. P. (1990). *Basic content analysis*. (2nd ed.). Newbury Park, California: Sage Publications.

Wenig, M. (2006). Alberta's river management. In Epp. H., & Ealey, D. (Eds.) *Water: science and politics*. Proceedings of the conference held by the Alberta Society of Professional Biologists on March 25-28, 2006, in Calgary, Alberta. p. 6. Edmonton: Alberta Society of Professional Biologists.

Wenig, M., Kwasniak, A., & Quinn, M. (2006). Water under the bridge? The role of instream flow needs determinations. In Epp. H., & Ealey, D. (Eds.) *Water: science and politics*. Proceedings of the conference held by the Alberta Society of Professional Biologists on March 25-28, 2006, in Calgary, Alberta. Edmonton: Alberta Society of Professional Biologists.

Wetherell, D.G., Schwartz, B., Kmet, I., Kmet, R.A. (2000). *Alberta*'s *North: A history, 1890-1950.* Northern Alberta Research Series. University of Alberta Press.

Woynillowicz, D. (2007). Government protects oil sands industry: Fails to protect Athabasca River. *Pembina Institute Media Release*. Retrieved October 10, 2007 from http://www.pembina.org/media-release/1384.

Woynillowicz, D., Severson-Baker, C., Raynolds, M. (2005). Oil Sands fever: The environmental implications of Canada's oil Sands rush. p. 29. Retrieved May 24, 2008 from http://pubs.pembina.org/reports/OilSands72.pdf.

Wolf, E. (1982) *Europe and the people without history.* Berkeley: University of California Press.

Wolfe, J., Bechard, C., Cizek, P., & Cole, D. (1992). Indigenous and western knowledge and resource management systems. In *Rural Reportings*. Native Canadian Issues Series, 1. Guelph: University of Guelph.

World Wildlife Fund-United Kingdom. (2008). Open pit mining photo. *Oil Sand photo gallery*. Retrieved May 22, 2008 from http://www.wwf.org.uk/researcher/programmethemes/oilgasandmining/0000000293.asp.

Wood Buffalo National Park. (2007). *Wood buffalo national park, Canada: Background information*. Case Study Number 4. Retrieved October 29, 2007 from http://www.iucn.org/bookstore/HTML-books/BP4%20-%20Indigenous_and_Traditional_Peoples_and_Protected_%20Areas/casestudy4.html.

World Commission on Protected Areas. (2000). Indigenous and traditional peoples and protected areas principles: Guidelines and case studies. In Beltrán, J., & Phillips, A. (Eds.) *Best Practice Protected Area Guidelines.* Series No. 4. Retrieved December 6, 2007 from http://www.iucn.org/themes/wcpa/pubs/guidelines.htm.

Yerbury, J. C. (Summer, 1976). The post-contact Chipewyan: Trade rivalries and changing territorial boundaries. *Ethnohistory*, 23(3), p. 248.

# APPENDICES

## A: Petition No. 188 from Treaty 8 First Nations of Alberta

18 December 2006

Commissioner of the Environment and Sustainable Development
Office of the Auditor General of Canada
Attention: Roger Hillier
**********
Ottawa, Ontario
K1A 0G6
Fax: *********
E-mail: **********

**RE: Petition to Conduct a Joint Federal—Provincial Assessment of Resource Development (including new Heavy Oil and Tar Sands) in Northern Alberta pursuant to various Provincial and Federal Statutes and Policies, including the *Auditor General Act*.**

Dear Mr. Hillier,

I would like to take this opportunity to clarify the aforementioned Petition that was recently sent to your Office and would appreciate if you would consider this clarification as part of the Petition.

I want to begin by reiterating the primary concern of the Treaty 8 First Nations of Alberta that resource development in Northern Alberta, especially heavy oil and tar sands developments, are proceeding at an unsustainable pace that threatens the environment upon which First Nations people rely upon to pursue their constitutionally protected Treaty Rights. We have concluded that a regional assessment (strategic) of the effects of these developments (cumulative and induced), involving all interested parties and jurisdictions, offers the best hope to ensure that future developments proceed in a sustainable manner that respects our Treaty Rights and allows the Federal and Provincial governments to fulfill their respective legal obligations.

The Treaty 8 First Nations of Alberta are petitioning to obtain your assistance:

- in securing answers from Ministers and Departments of the Government of Canada* who have a statutory, policy or other interest in relation to the proposed regional assessment [usefulness, need, support, willingness to participate, willingness to lead, resources, etc.]; and, if its an appropriate role for your Office;
- coordinating inter-Departmental, inter-Jurisdictional, and multi-party meetings to discuss the Petition and how it might be advanced so that development important to the Governments of Canada and Alberta can proceed in a sustainable manner.

The Treaty 8 First Nations have the following specific questions for these Ministers and Departments:

**A. For All Department and Agencies:**

1. Do you think that a regional assessment of resource development in Northern Alberta (as proposed) would contribute to more sustainable development?

2. Do you think that this regional assessment could assist you in making better informed decisions?

3. Would you be willing to participate in a multi-party and multi-jurisdictional process to implement this regional assessment?

4. Who is your contact for this file (name, address, phone and email)?

5. Would your Department or Agency be willing to facilitate or lead this process?

6. If not, which Department or Agency would you recommend playing the lead role?

7. Would your Department or Agency be willing to contribute financial resources to advance the regional assessment process?

8. Would you Department or Agency be willing to lobby your Provincial counterparts in Alberta to support the development and implementation of the regional assessment process?

9. Would your Department or Agency be willing to lobby your key stakeholder groups to support the development and implementation of the regional assessment?

**B. For Specific Departments or Agencies:**

10. Canadian Environmental Assessment Agency (CEAA)—Do you agree that your current approach to cumulative effects assessment is inadequate in capturing the potential cumulative and induced effects of the planned for (based on leases) heavy oil and tar sands developments in Northern Alberta?

11. Canadian Environmental Assessment Agency (CEAA )—Do you agree that a regional assessment would contribute to improved project-specific environmental assessment outcomes?

12. Canadian Environmental Assessment Agency (CEAA)—Do you agree that a regional assessment would provide the opportunity to more effectively assess environmental effects, particularly cumulative effects, and identify environmental limits (i.e., carrying capacities and acceptable thresholds of change) on a regional level?

13. Canadian Environmental Assessment Agency (CEAA)—Based upon your experience with regional studies identified on your Web Site (Northern River Basins, Banff–Bow Valley, Oak Ridges Moraine Area Planning, Regional Sustainable Development Strategy for the Athabasca Oil Sands Area and the Cumulative Effects Assessment and Management Framework for the NWT), do you think that a regional (strategic and

cumulative) assessment would be beneficial and lead to more sustainable development of the heavy oils and tar sands?

14. Department of Justice (DOJ), Indian and Northern Affairs Canada (INAC), National Energy Board (NEB), Natural Resources Canada (NRCAN)—In light of recent court decisions (Mikisew and Dené Tha), do you intend to change your consultation procedures with First Nations in Alberta? If so, when? How do you see this affecting consultations related to environmental assessment done under CEAA or the issuance of *Fisheries Act* authorizations?

15. Department of Justice (DOJ), Indian and Northern Affairs Canada (INAC), National Energy Board (NEB), Natural Resources Canada (NRCAN)—Do you agree that a collaborative and cumulative regional assessment with the Treaty 8 First Nations of Alberta would contribute to your being better able to fulfill your legal obligations towards First Nations in Alberta?

16. Department of Fisheries and Oceans (DFO)—Have any recent studies being done that look at the upstream and downstream effects on fish in the Peace and Athabasca Rivers? If so, what are the results?

17. Department of Fisheries and Oceans (DFO)—Are any studies being done that model the potential upstream and downstream effects (both direct and induced) of future heavy oil and tar sands developments (all potential Projects for which leases have based issued by the Government of Alberta) (see Attachment 1)?

18. Environment Canada—Have Species at Risk Act (SARA) recovery plans been developed for those listed species requiring such a plan in the area of current and future heavy oil and tar sands development in Northern Alberta (see Attachment 1)?

Yours sincerely,

*[Original signed by Arthur Noskey, Chief, Treaty 8 First Nations of Alberta]*

[*] CEAA, Environment Canada, Fisheries and Oceans Canada (Fish Habitat and Protection), Health Canada, Indian and Northern Affairs Canada, Industry Canada, Department of Justice, Natural Resources Canada, Western Economic Diversification, PMO, National Energy Board.

B: Research Consent Letter

My name is Traci Tanner, and this research project is part of the requirement for my Master of Arts in Environmental Education and Communication (MAEEC) at Royal Roads University in Victoria, British Columbia. My credentials with Royal Roads University can be established by telephoning Dr. Rick Kool at ********** **or by e-mail at **********.** Dr. James Frideres of the University of Calgary will be my thesis Supervisor and is available by telephone at ********** **or by e-mail at** **********.

The objective of my thesis is to investigate why the First Nations withdrew from the Cumulative Environment Management Association process and I thought that your perspective would be relevant to this work. My research project will consist of open-ended interview questions foreseen to last approximately one hour.

Information will be recorded in hand-written format and audiotape and, where appropriate, summarized, in anonymous format, in the body of the final report. If you are uncomfortable with the audiotape, I will take hand-written notes only. At no time will any specific comments be attributed to you. All documentation will be kept strictly confidential.

You are not compelled to participate in this research project. If you do choose to participate, you are free to withdraw at any time without prejudice. Similarly, if you choose not to participate in this research project, this information will also be maintained in confidence.

By signing this letter, you give free and informed consent to participate in this project.

Name: (Please Print): _____

Signed: _____

Date: _____

Interviewer (Print name and sign): _____

Thank you for your kind consideration

Traci Tanner

## C: Final Interview Questions

PART A

As I'm sure you are aware, two of the major stakeholders within CEMA, the ACFN and the MCFN have withdrawn from the process.

1. One of the factors that may have contributed to their withdrawal could pertain to the collection and use of their Traditional Knowledge. How has the CEMA process included TEK within the cumulative environmental effects analysis?

2. Do you believe that this current process of TEK inclusion is adequate or effective? Why or why not?

3. Because Aboriginal people are tied to the environment, scholars have suggested that extracting certain parts of Traditional Knowledge out of context could render it incomplete and meaningless. Have you found this to be true with TEK and CEMA?
If you could change the way TEK is being collected and used, what would you do differently?

4. Another factor that may have contributed to their withdrawal could pertain to an imbalance of power within the co-management structure itself. Do you believe that the First Nations had power or influence within this association that was commensurate with their rights to protect the environment?

5. Is First Nation participation and capacity promoted within CEMA? If so, how? If not, why?

6. Do you believe that CEMA's current framework allows First Nations to effectively participate and achieve their objectives? Why or why not?
In your opinion, what would need to be changed?

7. Another possible factor contributing to the First Nations withdrawal could pertain to CEMA's seemingly inability to produce tangible results envisioned by the RSDS. Do you believe that CEMA has been effective at generating recommendations that address cumulative environmental effects for land and resource use in northern Alberta? Why or why not?

8. Do you believe that the consensus based structure of the Cumulative environmental Management Association hinders or enhances its effectiveness? How?

9. With the unexpected 'explosion' of development in the Athabasca region, it has been suggested that development approval be stopped or at least slowed down, until cumulative environmental effects can be assessed. How do you feel about this idea?
In your opinion, what changes could CEMA implement in order to meet their deadlines and timelines?

10. The final possible factor I'd like to discuss pertains to consultation. Do you believe that timely and adequate Crown consultation with respect to Aboriginal Rights is occurring in the oil sands? Why or why not?

11. Is CEMA supposed to be aiding in consultation? Why or why not?

12. Isn't it true that the EUB acts as a regulatory body, responsible for assessing whether stakeholders (like the First Nations) are affected. Since the EUB relies on CEMA to assess cumulative environmental effects, would that not imply that CEMA is being indirectly used by the Crown as a consultation apparatus?

> 12b. If YES, then shouldn't First Nations involvement in CEMA be modeled after Supreme Court rulings on consultation?

13. Do you believe that the First Nations are participating appropriately in the proposed consultation process in this region? Why or why not?

PART B

14. So, from your perspective, what are the factors that led to the First Nations withdrawal from CEMA?

15. What do you think will happen to CEMA if the First Nations continue to withdraw from the process?

16. What changes do you believe are needed for the First Nations to resume participation with CEMA?

17. Do you believe that Aboriginals and cumulative effects would be better served if the First Nations had their own separate consultation process prioritizing them as 'rights holders', rather than including them with other stakeholders in organizations such as CEMA?

Thank you for your participation in this study!

# D: CEMA Management Refusal Correspondance

Email **********
On 9/10/07 2:13 PM, "Traci Tanner"********** wrote:

Executive Director CEMA

Dear Mr. McEachern

As you are aware, I have been in contact with Dan Stuckless regarding my thesis project and my intent to research the current disconnect within the CEMA TEK Standing Committee and the factors contributing to the resignation of the MCFN and the ACFN from the group. It is my understanding that my research intentions were brought forth in the CEMA Management meeting last week. I was surprised, however, to discover that CEMA has no interest in this project and declined the position of “official sponsor” for this important educational endeavor.

Mr. Stuckless was unwilling to expand upon the reasons for the sponsorship rejection other than the fact that this is a “hot” and “explosive” topic. This in itself indicates the relevance of this research and justifies the need for greater understanding of the issues affecting those involved. Perhaps further detail and clarification of my qualifications, methodology and project objectives would help clarify my intent and direction for this thesis. Please note that I am available to discuss or present these, or any other issues you deem relevant in order that CEMA reconsider their position and support this opportunity

I strongly believe (as do others) that this situation warrants further exploration, and the outcome of my work would be extremely insightful and beneficial to all parties involved. I appreciate any clarification you can provide regarding this management decision and look forward to your response.

Thank you

Traci Tanner
MA student (Royal Roads University)
**********
---

Dear Ms Tanner,

Your initiative in contacting us with your proposed research is appreciated. However, after careful review, CEMA’s Management Committee at their September 6th meeting decided not to collaborate or participate in the proposed research.

CEMA has its own channels of communication on a number of levels to evaluate and foster stakeholder relationships.

Thank you for your interest and I wish you success in your studies.

John m
--
John McEachern
CEMA Executive Director
**********
Fort McMurray, AB T9H 4A4
Tel **********
Fax **********

E: ACFN Letter of Support

**ATHABASCA CHIPEWYAN FIRST NATION**
**INDUSTRY RELATIONS CORPORATION**

333-9816 HARDIN STREET, FORT MCMURRAY, ALBERTA T9H 4K3 • TEL 780-791-9131 • FAX 780-791-9102

September 12, 2007

To Whom It May Concern:

**Re: Tracey Tanner Thesis Proposal**

I received a call from Tracey Tanner this morning and she discussed her idea for a proposed thesis topic with me. Tracy is looking at examining the Cumulative Environmental Management Association (CEMA) lack of understanding and integration of Traditional Environmental Knowledge (TEK) into their environmental studies and frameworks conducted through CEMA.

The ACFN IRC worked with CEMA over a number of years and also sat on the Management Committee (Board) of CEMA trying to pursue the work and implement TEK ultimately without success which culminated in the withdrawal of the ACFN from CEMA in September 2006.

The ACFN IRC thinks the thesis that Tracy is proposing would be very useful and are writing this letter of support for her to undertake her chosen thesis topic. I hope the end product becomes a helpful tool in stimulating change in the region towards the incorporation of TEK into environmental frameworks.

Please contact me at the above address or phone numbers if you need any further clarification.

Sincerely

{signed}

Blair Whenham
Director

F: MCFN Letter of Support

FEB-08-2008 FRI 09:36 AM MCFN IRC OFFICE FAX No. 7807154098 P 002

**MIKISEW CREE FIRST NATION** Industry Relations - IRC
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5
Phone: (780) 714-6500 Fax: (780) 715-4098

February 6, 2008

To whom it may concern:

Re: Letter of support for research study

I am pleased to write this letter in support of Ms. Tanner's project, "Dysfunction and Disillusion: Why the First Nations left the Cumulative Environmental Management Association (CEMA)". The Mikisew Cree First Nation (Mikisew Cree) has long advocated for changes in CEMA to recognize First Nations as priority land users and to expedite the development of ecological thresholds for managing cumulative effects associated with oil sands development. Unfortunately, our efforts have largely gone unheeded and has led to our withdrawal from CEMA. I believe the research will provide practical insights on how CEMA must improve so that the environment is protected for the betterment of the First Nations in the region.

I look forward to receiving a copy of the final research report upon its completion.

Please contact me at the IRC should you have any questions or require more information..

Respectfully,

[redacted]

Melody Lepine
IRC Director
MIKISEW CREE FIRST NATION

# G: Government of Alberta Letter of Support

Alberta International, Intergovernmental and Aboriginal Relations

**Resource Consultation and Traditional Use**
**Office of the Executive Director**

[redacted]

September 20, 2007

To Whom It May Concern:

I am pleased to provide a letter of support for Traci Tanner towards her Masters of Arts Thesis. I'd like to congratulate her on her efforts to conduct research in the oil sands area, specifically involving First Nation consultation issues. This project would help find ways to move forward in an innovative way on issues of common interest between oil sands development and Aboriginal people in Canada.

I personally support Traci in her goals and wish her all the best in her endeavours.

Sincerely,

[redacted]

Graham Statt
Acting Executive Director

Printed on recycled paper

H: Pembina Institute Letter of Support


February 13, 2008

To Whom It May Concern,

**Re: Tracey Tanner's Thesis Proposal**

On behalf of The Pembina Institute, I am pleased to provide this letter of support for Traci Tanner's Thesis, which examines the performance of the Cumulative Environmental Management Association (CEMA). The Institute has been a long-standing member of CEMA and other multi-stakeholder forums in the region of Wood Buffalo. In depth examination of the track record of CEMA and its utility to Aboriginal communities in the region is helpful and needed.

Regards,

Chris Severson-Baker
Policy Director
The Pembina Institute
P: **********
Email: **********

I: ACFN Resignation Letter

**ATHABASCA CHIPEWYAN FIRST NATION**
**INDUSTRY RELATIONS CORPORATION**

333-9816 HARDIN STREET, FORT McMURRAY, ALBERTA T9H 4K3 • TEL 780-791-9131 • FAX 780-791-9102

November 6, 2006

Sue Lowell

Cumulative Environmental Management Association President
**********

Fort McMurray, AB
**********

Dear Mrs. Lowell:

**RE: ACFN INVOLVEMENT WITH CUMULATIVE ENVIRONMENTAL MANAGEMENT ASSOCIATION**

The Athabasca Chipewyan First Nation (ACFN) consists of Denesuline people who have occupied these traditional lands since time immemorial. The Denesuline have a unique relationship with the earth and have a high regard for the universal law of respect for *all* life. The pace and magnitude of development throughout our traditional lands has created significant additional threats to the health of the land, air, water, flora, and fauna. This is creating additional pressures on us to ensure this land and its natural resources are sustained for our future generations. The ACFN acknowledges that the Cumulative Environmental Management Association (CEMA) also stewards to a similar role as outlined in your mandate; **to make recommendations on how to best manage cumulative impacts from development and protect the environment in the Regional Municipality of Wood Buffalo.**

As you are aware, the ACFN has withdrawn from CEMA. Our representative, ACFN Elder Pat Marcel, expressed his frustration and concern with regards to the IFN at the September 25, 2006 general meeting of CEMA. However, the ACFN's reasons for leaving CEMA are much broader and deeper than the lack of progress on the IFN alone. The ACFN has doubt as to whether the organizational structure of CEMA enables the organization to be effective and achieve its goals.

The ACFN understands that there is confusion as to why our First Nation withdrew our support from CEMA. The ACFN is providing you this letter to help bring clarity around our decision. The following is a list of some of the pertinent reasons that compelled our First Nation to withdraw from your organization:

1. Members of CEMA are participating for the interest of their organization not for the health and sustainability of the environment;

2. CEMA has not delivered tangible results envisioned by the RSDS;

3. Government and industry control the agenda, committee chairs and resources of CEMA, therefore, having a disproportionate level of decision making influence;

4. Industry funding of CEMAN is dictating what work is undertaken; rather than the focus being on managing key issues by developing management frameworks;

5. TEK is not being paid the respect it deserves by being incorporated at the earliest possible states of plan development within the CEMA working groups;

6. Stakeholders need to have access to the capacity and resources their organization require to fully and competently participate in CEMA;

7. CEMA has become a "parking lot" for both government and industry to default regional environmental concerns as opposed to having to show how the regional environment is being affected by the proliferation of industrial development within the region;

8. Environmental thresholds have not been identified for the region thus leaving our environment vulnerable and unprotected. Why should stakeholders have to prove the environment needs protection? It should be inherent upon government and industry to prove that development can be sustained by the environment;

9. CEMA is unable, or unwilling, to respond to new or emerging issues; and

10. Lack of government or regulatory 'backstoppng' of the CEMA and RSDS priorities and the regulators abdicating their responsibilities by deferring to industry.

The circumstances around the draft IFN management framework solidified for the ACFN the fact that CEMA is unable to meet its mandate. The ACFN believes that the approach taken by industry members of CEMA and Alberta is inconsistent with their professed goal of good faith, consultive transparent processes and belies a claimed commitment to protection of critical regional environmental resources. Thus the ACFN withdrew from CEMA.

The ACFN has one recommendation that we would like to propose for CEMA the regulators (Alberta Environment, Energy and Utilities Board and the Canadian Government), and industry to consider and act upon:

*An independent assessment be conducted of the effectiveness of CEMA and the Regional Sustainable Development Strategy (RSDS) in managing the cumulative environmental effects in the region, and implementation of changes to make CEMA more effective and responsive.*

The ACFN hope you will seriously consider accepting and acting upon our recommendation, the health of our environment depends on it. On behalf of my council and the IRC, I accept your invitation to meet with the CEMA management committee. Please contact the ACFN IRC to arrange a date, time, location, and briefing on the protocols for such a meeting to take place.

Sincerely,

*(signature on original)*

Chief Archie Cyprien
Athabasca Chipewyan First Nation

Cc ACFN IRC