

SUBMISSIONS TO THE OIL SANDS PANEL ON PHASE II PROPOSED OPTIONS FOR STRATEGIES AND ACTIONS FOR OIL SANDS DEVELOPMENT IN ALBERTA

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I. Introduction

The Environmental Law Centre (the “ELC”) is a charitable organization, incorporated in 1982, to provide Albertans with an objective source of information on environmental law and natural resources law. The ELC provides services in legal education, assistance, research and law reform to achieve its mission to ensure that laws, policies and legal processes protect the environment.

The ELC has provided assistance to the public and submissions to government on energy related issues since 1982. In September 2006, we provided written and oral submissions to the Oil Sands Panel (the “Panel”) on a vision and principles for oil sands development during Phase I of this consultation process.¹ Accordingly, we have prepared submissions to assist the Panel during Phase II in choosing strategies and actions to guide the long-term development of the oil sands.

This submission is a compilation of the ELC’s four submissions which were presented to the Panel in Edmonton, Bonnyville, Peace River and Calgary. This compilation addresses Vision 3, Strategies 1-11 and Vision 9, Strategies 1 and 2 as identified in the Multi-Stakeholder Committee’s (the “MSC”) report entitled *Phase II Proposed Options For Strategies and Actions For Discussion/Feedback* (the “MSC’s Options Paper”). At the conclusion of this submission, we have added recommendations as to how non-consensus items should be handled in the MSC’s final report to the Alberta government.

For ease of reference, we have appended a chart which summarizes our positions on the strategies and actions outlined in this submission. As instructed by the MSC, this chart summarizes which actions we agree with, what we do not agree with, and any gaps, additions or alternatives we have proposed.

II. Vision 3, Strategy 1: Use planning and regulatory instruments to encourage sound environmental practices

Effective planning is the keystone for ensuring the long term economic, social and environmental sustainability of the oil sands. The current pace and scale of oil sands development has revealed the failings in the incremental, case-by-case approach to energy development. The major failing of this approach is its inability to address the problem of cumulative impacts. When stresses on public infrastructure and regional ecosystems are caused by the combined impacts of multiple projects, simply ensuring that each project complies with regulatory requirements is no longer sufficient to guarantee acceptable outcomes.

It is the ELC's position that the most pro-active and effective way to manage cumulative impacts is through the use of integrated landscape management (Action 1.8), which is implemented through provincial and regional scale planning initiatives (Action 1.3). The need for regional planning objectives based on cumulative impacts was also recently acknowledged in the provincial government's Oil Sands Ministerial Strategy Committee Report (the "Radke Report").²

Although the MSC agreed that we need to "create a comprehensive plan" to manage the environmental effects in the oil sands (Action 1.1), this general direction is too vague to be useful. If "the plan" is not structured properly, it will not address cumulative impacts and incremental decision-making. The only effective way to deal with cumulative effects is by creating a plan based upon integrated landscape management which is carried out at a provincial and regional scale.

To be clear, integrated landscape management is used here to describe a holistic approach to land and resource management.³ Integrated landscape management is sometimes used interchangeably with terms such as "ecosystem management," "integrated resource management" or "watershed management." The common factor in all these approaches is that they all encourage a more integrated, whole system approach to planning, conservation and management. Integrated landscape management is not simply a process of coordinating activities in order to reduce industrial footprints on the landscape (as indicated in Action 1.8),⁴ it is a planning strategy that is based upon setting and prioritizing landscape-scale objectives.

Before outlining what an integrated landscape management planning approach to oil sands development would look like, the ELC will first outline reasons why this approach makes sense to adopt. There are at least three compelling reasons why a proactive, planning-based approach to oil sands development is necessary.⁵ First, this approach will provide regulators with the landscape objectives and regulatory tools that they need in order to address cumulative impacts that are not caught by the project-specific environmental impact assessment ("EIA") process. Second, this approach will address incremental, project-by-project decision-making and fragmentation by ensuring that a full range of activities on the landscape are regulated in a manner that is consistent with an

overarching framework. Third, this approach will establish a forum for defining planning goals and regional thresholds relating to land and resource use.

Integrated landscape management in relation to oil sands activities must occur at all stages of the energy decision-making continuum. The key elements to enable the successful application of integrated landscape management in Alberta are:⁶

- 1) **A legal and policy framework** – the emphasis here is on identifying overarching objectives and priorities for the provincial land base that can provide direction to decision-makers. The framework must not simply be based on the “multiple use” of landscapes; it must be an agreement on values, objectives and priorities. This approach will require an institutional champion, with defined roles and responsibilities, so that other regulatory agencies and government departments know what to do when they encounter regionally significant landscape issues.
- 2) **Land-use planning** – planning provides the legal mechanism to translate broad directions in the framework into specific decisions for specific regional landscapes. Decisions at this stage should set clear parameters for land and resource use in the area covered by the plan. Specific planning tools include:⁷
 - setting ecological objectives and limits of acceptable ecological impacts;
 - setting limits on the extent and characteristics of development footprints;
 - setting limits on the intensity of activities;
 - land-use zoning; or
 - phasing development.

Preferably, land-use planning would be based upon identifying ecological thresholds and limits. Ecological thresholds would specify maximum levels of activity for a given area, as well as maximum levels of effective habitat loss through alteration, removal and fragmentation of the landscape. These thresholds would provide the yardstick by which proponents, the public and decision-makers should assess proposed development and evaluate the potential impacts on the region.⁸

- 3) **Rights dispositions** – this is the stage where the specific legal rights are acquired for oil sands development to occur. This includes the sale of mineral rights (or “mineral dispositions”) and the issuance of water rights. These decisions must be incorporated into the overall land-use planning process, which requires these decisions to be made with explicit and transparent consideration of landscape level objectives and ecological thresholds. In particular, mineral dispositions are the critical decision point in directing the timing, location and intensity of oil sands development; they are also the basis on which significant investments are

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made. Currently, Alberta's mineral rights are sold to the highest bidders, and these mineral disposition decisions are made with little or no integration across sectors, without thorough environmental reviews, or direct public involvement.⁹ This process needs to be reformed. These reforms will be further detailed later in this submission under Vision 9, Strategy 1.

- 4) **Project review** – at this stage, project applications should be measured against ecological thresholds to determine whether they are within the limits of acceptable ecological impacts and can be approved. Currently, decisions at the project approval stage are being made in a policy vacuum because there is no overarching planning framework in place and there are no ecological thresholds against which to measure current project applications.

As outlined in further detail later in this submission, this approach to planning also incorporates the need to:

- assemble environmental baseline data for the oil sands area (Vision 3, Strategy 3, Action 3.1);
- continue to focus research and put forward environmental management frameworks for ecosystem components (Vision 3, Strategy 3, Action 3.2);
- enhance knowledge and science capacity to more effectively manage environmental and resource information at multiple scales (Vision 3, Strategy 3, Action 3.4);
- recognize limits on the amount of land that can be disturbed at one time and a maximum level of disturbance within each area (Vision 3, Strategy 7, Action 7.1); and
- establish protected areas in the oil sands (Vision 3, Strategy 7, Actions 7.3 and 7.5).

In order to properly implement any type of planning approach to the oil sands, it is necessary to temporarily suspend the issuance of further mineral leases and project approvals until such time as the planning process has had a chance to “catch up” to the pace of development. A pause in development is needed in order to ensure that we have the planning tools in place (such as ecological thresholds, and integrated planning at the mineral dispositions stage) in order to achieve the MSC's vision of “ensuring a healthy environment.” This will also serve to create the impetus for work to be done to implement the components for responsible planning. Accordingly, the ELC supports a moratorium on new mineral leases and project approvals until environmental limits and standards have been adequately created in the planning process to apply to oil sands development (Vision 9, Strategy 1, Action 1.18).

As noted above, the ELC generally agrees with the use of regional scale planning (Action 1.3) because cumulative impacts often occur across broad landscapes and a regional approach is needed in order to set appropriate landscape objectives. However, the ELC cautions about the sole reliance on “regional EIAs” (Action 1.8) as the answer to addressing cumulative impacts. In the absence of an overarching planning framework, regional EIAs could be undermined by policy decisions made elsewhere, such as at the mineral disposition stage. The pace and intensity of development may be difficult to control at the regional level when control over key decisions, such as mineral dispositions, are not included in the regional assessment process.

III. Vision 3, Strategy 2: Use economic instruments to encourage sound environmental practices

The ELC is strongly opposed to further tax or royalty reductions in the oil sands in order to meet minimum environmental requirements (Action 2.3). Sound environmental practices should be part of the cost of doing business, not an extra that is subsidized by the government and Alberta taxpayers. If royalty incentives continue to be offered, we believe that this money should go towards encouraging innovation which exceeds environmental regulatory requirements (Action 2.4).

The ELC strongly believes that Alberta’s future prosperity depends on forward-looking policies that integrate social and environmental costs into market prices. The ELC believes that a variety of economic instruments could be used to achieve environmental policy goals. For example, the ELC supports the use of market instruments, in the form of full cost accounting, as a way to improve water conservation and consumption patterns (Action 2.6). In recognition of private companies’ use of public resources, such as water, the pricing schemes should reflect the full cost of consuming and using this public resource. We recognize that while ascertaining a suitable metric for establishing water pricing may be complex, the use of economic instruments should not be abandoned for this reason. The *status quo* of water valuation perpetuates the externalization of environmental impacts, thereby marginalizing the objectives of maintaining healthy ecosystems.¹⁰

The ELC also supports conducting a natural capital assessment of the oil sands area (Action 2.5). The Alberta Energy and Utilities Board (“EUB”) and Joint Panels use a cost/benefit analysis to determine whether a project is in the public interest, weighing the economic benefits to all Albertans against the localized social and environmental costs or risks of the project. For better or for worse, this is a quantitative calculation. Trade-offs may be better assessed if we can identify the economic value of ecological goods and services provided by the boreal forest, peatlands, wetlands and water resources to insert into this equation. The ELC views this as one potential method to protect non-economic values in a political climate which favours market-driven approaches. Work has already begun on calculating natural capital in the boreal region and this work needs to be enhanced and better incorporated into decision-making approaches.¹¹

IV. Vision 3, Strategy 3: Improve cumulative effects management process for oil sands

As mentioned under Vision 3, Strategy 1, the ELC views integrated landscape management as the key to effectively managing cumulative impacts in the oil sands. Identifying and assessing the cumulative impacts is arguably the essence of land-use planning. While the ELC agrees with Actions 3.1-3.4, we note that they are very general in nature and do not provide enough guidance to manage cumulative effects in a meaningful way. To improve these actions, the ELC recommends the following two modifications.

First, the ELC recommends that the provincial government make it a top priority to identify and set ecological thresholds, and to establish management frameworks for the oil sands by a set timeframe (e.g. by 2010). While we agree that environmental baseline data for the oil sands area needs to be assembled (Action 3.1), we need to enhance our knowledge and science capacity (Action 3.4), and management frameworks for ecosystems need to be put forward (Action 3.2), these actions have failed to be completed under the current process. In 1999, the Alberta government created the Regional Sustainable Development Strategy (“RSDS”) for the Athabasca Oil Sands Region. A key component of the RSDS was to collect scientific data to identify environmental thresholds that would limit impacts in order to protect the region’s ecosystems and would guide decision-makers in issuing oil sands project approvals. Eight years have passed and these thresholds have not yet been established. In the interim, mega oil sands projects continued to be approved. In order to address this failing, the government needs to make it a priority to set ecological thresholds in the oil sands region. As mentioned earlier in our submission, a moratorium on further oil sands development would create the necessary incentive for this work to be done (Vision 9, Strategy 1, Action 1.18).

Second, the actions put forward must address who will complete this work. The ELC recommends that the role of the Cumulative Effects Management Association (“CEMA”) be clarified so that it can complete this work in a timely manner (Vision 9, Strategy 2, Actions 2.1-2.4). It has been noted in the Radke Report and in oil sands decisions that CEMA has not been effective in its current form and has missed its deadlines in completing management frameworks for the oil sands.¹² Specific recommendations with respect to clarifying the role of CEMA are addressed under Vision 9, Strategy 2 of this submission.

Again, the ELC cautions that cumulative impacts should be viewed as a general issue for land-use planning rather than simply as an add-on to the EIA process (Actions 3.5 and 3.6). Although the use of regional EIAs may be better than the current approach, this is a band-aid solution; it will not address the underlying problems that are creating cumulative impacts. These project reviews cannot serve as a surrogate for the planning framework. Identifying and managing cumulative effects requires, by definition, a focus on the total ecological impact of human activities across a specified landscape.¹³ Specifically, using regional EIAs will not solve the need for baseline criteria for assessing the significance of cumulative impacts or resolving the issuance of mineral dispositions

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without consideration of the pace of development or the impact on social and ecological infrastructure.

V. Vision 3, Strategy 4: Develop and implement limits and standards to protect human and ecosystem health

As outlined in our Phase I submission to the Panel in September 2006, the ELC strongly supports the use of the precautionary principle in setting environmental limits (Action 4.1). Oil sands decisions are either largely or completely irreversible in the short-term with respect to their environmental effects and result in significant long-term environmental impacts. Once public land is allocated to these uses, there are often significant economic, technical and ecological obstacles to returning the affected areas back to their natural state or to an equivalent land capability.¹⁴ These land use decisions cannot easily be undone if they are later found to be based on faulty assumptions or incomplete information.¹⁵ The range of options available to future generations will also be significantly affected or irrevocably narrowed by our current choices and chosen limits. For these reasons, environmental limits must be precautionary in nature (Action 4.1); when the environmental limits are established they must be based on proven science (Action 4.8).

The ELC notes that there are two different actions with respect to benchmarking Alberta's environmental standards (Actions 4.5 and 4.6). The ELC's position is that "benchmarking" is the process used to evaluate processes in relation to the best practice¹⁶ so it seems logical that Alberta's environmental standards should be benchmarked against the most stringent relevant standards whether that be United Nations standards or otherwise. Alberta's standards must be tested against standards of excellence.

The issue of establishing caps for air emissions will be addressed in the next section.

VI. Vision 3, Strategy 5: Become a leader in reducing greenhouse gas emissions

To begin, the ELC supports the strategy that states that Alberta should become a leader in reducing greenhouse gas emissions ("GHGs"), rather than a laggard in reducing GHGs. The alternative strategy is premised upon "balancing" reductions in GHGs with economic development. This is another way of advocating for intensity-based emission targets. The ELC is opposed to intensity-based emission targets (Action 5.4). Intensity-based emission targets will not result in real emission reductions and will not assist Canada in meeting its international commitments under the Kyoto Protocol.

The ELC supports GHG targets that will cap emissions for industry and that will lead to reductions consistent with Canada's international obligations under the Kyoto Protocol (Action 5.5). To date, the federal government has failed to regulate the release of GHGs; this failure to regulate has not relieved Canada from meeting its international obligations. It is the ELC's position that the Alberta government's proposed legislative scheme to require a 12% intensity-based emissions target for "established" large final emitters (those operating before the year 2000) will be totally ineffective in reducing total GHG emissions, which is the currently the best solution to climate change.¹⁷ Therefore, at this

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time, the ELC cannot support oil sands industries meeting GHG targets set by the federal and provincial governments (Action 5.7) because these targets are either non-existent or totally inadequate as compared with Canada's international obligations and the actions needed to avoid dangerous climate change impacts.

Both the Pembina Institute and the David Suzuki Foundation have demonstrated that if Canada is to fulfill its global responsibilities to prevent the adverse effects of climate change, it must reduce its annual GHG emissions to 25% below 1990 levels by 2020 and to reduce emissions to 80% below 1990 levels by 2050.¹⁸ This will require deep emission reductions. However, to date Canada's and, more specifically, Alberta's energy strategies have supported the rapid expansion of highly GHG intensive activities such as oil sands production. These strategies are contrary to a responsible climate change policy that is consistent with the need for deep, long-term GHG reductions.

Oil sands producers have an opportunity to become a leader in showing that they can become a part of deep GHG emissions. The Pembina Institute has published a report that sets out how the oil sands can become carbon neutral by the year 2020 through a combination of actual reductions and genuine emission offsets.¹⁹ The ELC agrees that this is an action that should be adopted with respect to oil sands development (Action 5.5).

VII. Vision 3, Strategy 6: Manage oil sands development and growth within the capacity of individual watersheds

Determining the capacity of a watershed to accommodate industrial activity is essential to ensure sustainable resource availability for future generations and to ensure present and future environmental and societal health. Actions under Strategy 6 must provide the information and management guidance to current and future oil sands development that will be necessary to sustain essential watershed functions. These watershed functions include maintaining hydrological and flow regimes to maintain or restore the ecological integrity of an area, and ensuring water quality is not adversely impacted. The proposed actions outlined in the MSC's Options Paper are measured against the maintenance of watershed and ecological integrity of the region.

Buffer zones

The ELC supports the creation of buffer zones around the Athabasca River and its main tributaries (Action 6.1). Buffer zones around water bodies are important for erosion minimization, aquatic ecosystem health, and providing a filtering function for runoff.²⁰ Further, the variety of potential accidental releases from oil sands facilities (such as tailings ponds) require that a significant buffer around the Athabasca River be in place. A buffer is one step towards minimizing the risk of the river being compromised by pollution events.²¹ Establishing a buffer along the Athabasca River and its tributaries is an important precautionary measure that will ensure long-term river stability and assist in minimizing point and non-point source impacts associated with oil sands development.

In-stream flow needs (IFN) determination

The ELC supports those actions aimed at continued establishment and implementation of IFNs as tools for protecting the aquatic environment (Actions 6.5, 6.6 and 6.7). There has been minimal success to date in identifying and protecting water quality and quantity to ensure aquatic ecosystem health and sustainability. Assessing the IFN of the Athabasca River and its tributaries is essential to ensuring intergenerational equity and river health in the short and long-term. The Government of Alberta has recommended actions along this line in the Radke Report, where it states “every effort should be made to complete, publish and enforce water management schemes that will protect the ecological integrity of the aquatic ecosystem of the lower Athabasca River, to be implemented on a phased-basis beginning no later than July 1, 2007.”²²

Actions around IFN determinations have been ongoing in the oil sands area, resulting in the *Water Management Framework: Instream Flow Needs and Water Management System for Specific Reaches of the Lower Athabasca River* (the “Athabasca Water Policy”). However, this document acknowledges that further work needs to be done, stating “a more restrictive withdrawal regime may be required to achieve protection of the River in Phase 2 with greater water withdrawals.”²³ Further, while the *Athabasca Water Policy* represents some progress being made in determining the IFN (under Action 6.7) the water management policy proposed in the document is inadequate, allowing for continued diversions and degradation of fish habitat in highly sensitive flow times. As a short-term, interim approach this policy may be acceptable if the alternative is to allow unhindered withdrawals to occur even at minimum flows. Policy clarity is required regarding how the IFN will impact future licensed diversions and how licences will be held to account for maintaining ecological function in the river system. Further, the scientific analysis involved in arriving at the IFN must be open to public scrutiny.

As of March 15, 2007 the flow rate of the Athabasca River below Fort McMurray was nearing the 10th flow percentile, well below the historic median discharge rate.²⁴ Failure to properly and transparently assess the IFNs for aquatic ecosystems will result in degradation of riparian and river health, compromising current and future generations’ ability to live and work in the watershed.

With respect to IFNs, the ELC strongly encourages the Panel to include as an action the requirement to review and develop legislative and policy tools for IFNs that outline how they will be determined and implemented as a tool for protecting the aquatic environment.

IFN timeliness and adaptive management

The ELC supports limiting further water withdrawals until the IFNs are set (Action 6.6). The ELC also supports setting timelines of two years to arrive at relevant IFNs (Action 6.5). Arriving at the IFNs for the Athabasca River and other oil sands related rivers in a timely manner is very important, as continued delays in arriving at the IFNs simply add to the likelihood of irreparable harm befalling the watershed. Precaution and the risk of irreparable harm to the aquatic ecosystem also warrant prohibiting water withdrawals in the absence of science based protective mechanisms being established.

Alberta Environment should, at least temporarily, cease accepting licence applications as the *Water Act* prioritization and allocation system has minimal flexibility to allow for water management responses where the aquatic environment has been degraded. While the *Water Act* provides some tools to address impacts to the aquatic environment,²⁵ a legacy of priority licences for significant amounts of water makes adaptive management difficult. Continued granting of licences (even with conditions) therefore represents a significant threat to the long-term integrity of the river.

Baselines for aquatic ecosystem protection

The ELC is supportive of actions that are focused on arriving at baseline standards for protection of watersheds. Due to the lack of clarity in Action 6.2, the ELC cannot support this action as currently framed. Baseline information about watersheds and aquatic ecosystems has not been obtained in a timely manner through current policy mechanisms, such as the CEMA process. Insofar as the current actions are not arriving at results, other actions must be pursued.

The wording of Action 6.2 appears to leave open the option of having no level of protection for the river and watershed. It is the ELC's position that environmental and aquatic health must be sustained and protected if the vision and principles enunciated by the MSC are to be achieved. In particular, the social and economic benefits accruing to current and future generations from oil sands development will be curtailed if the ecological integrity of the area is undermined. As outlined above, a more appropriate approach to determining baseline protection for aquatic ecosystem protection is by using scientifically based mechanisms such as the IFN for a given water body.

Inter-jurisdictional impacts

The ELC agrees that inter-jurisdictional agreements regarding water quality and quantity should be pursued in an expedited manner (Action 6.3). The Athabasca and the greater Mackenzie watershed encompass several political jurisdictions. This implies a strong federal government role to be played in oil sands development (along with cross border impacts and international impacts from pollution, trade and GHG emissions). To this end, provincial, territorial and federal governments should ensure that water quality and quantity agreements currently being negotiated between neighboring provinces and territories are completed in a timely fashion. However, a timely resolution of these agreements should not occur at the expense of procedural and substantive outcomes. The water quality and quantity impacts of oil sands development on surrounding jurisdictions are significant. If final agreements cannot be reached in a timely fashion, interim agreements should be sought. Any interim agreement must have a sunset provision directing when its contents must be reviewed and replaced by a permanent agreement.

Watershed management planning

The ELC supports the pursuit of watershed management planning in the oil sands areas (Action 6.4). There is a need to ensure fairness and equity in the planning process, something that has yet to be broadly established in watershed management planning processes in Alberta. Further, there must be isolation and clear delineation of environmental impacts separate and apart from any balancing process that is proposed in the watershed management planning process. Failure to clearly separate environmental

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and social impacts of decisions from the economic considerations obfuscates the tradeoffs that are being made and is generally a method of maintaining the *status quo* under the rubric of a balancing process.

Any balancing process must be accompanied by sufficient transparency to allow the public to understand how disparate outcomes are balanced and compared. Further, balancing requires analysis and discussion of how economic and environmental considerations are to be reconciled when environmental features are rarely attributed monetary values.

Therefore, with respect to watershed management plans, the ELC's recommends as an additional action item that the Government of Alberta review and amend legislative and policy tools to ensure that watershed management plans in the oil sands are legally feasible and enforceable.

Water demand side management versus maintaining supply through storage

Supply side management of water resources has significant resource expenditures and environmental impacts associated with it. Storage through diversions and dams should therefore only be evaluated after a full plan and policy for demand side management of water consumption is produced. Demand side management minimizes the need for extremely costly capital projects and can result in efficiencies that are not realized through the supply side management system.

The ELC therefore gives qualified support to Action 6.8, this support being contingent upon aggressively pursuing plans and policies that focus on the oil sands demand for water. Plans should promote demand side management prior to relying on supply side (storage) water management.

Groundwater protection

The ELC supports completing an inventory of groundwater aquifers to establish their sustainable yield (Action 6.9). Gaps in information must be filled to ensure that groundwater quality and quantity is not undermined by continued diversions for oil sands and other uses. Climate impacts on groundwater supply make monitoring and inventories extremely important.²⁶ Concerns over water supply continue as annual runoff and precipitation have been decreasing with resulting decreases in the flows of some rivers.²⁷ SAGD projects continue to use significant amounts of fresh groundwater and historically the rate of water use has been much greater than originally projected.²⁸ Land use and climatic impacts on groundwater will have continued effects on water supply. Assessment of sustainable yield with these variables considered must occur if various land and water uses are to be maintained.

Monitoring and enforcement

The ELC supports water quality and quantity monitoring in support of social, environmental and economic objectives. Water quality and quantity monitoring is essential to effective environmental management in the development of the oil sands and is needed to address acute and cumulative impacts of development. The determination of what is an "appropriate" level for water quantity and quality must be determined based on

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the scientific needs of the watershed to sustain ecosystems and hydrological function in the long-term.

VIII. Vision 3, Strategy 7: Minimize the impact of oil sands development on boreal forests and biodiversity

In order to maintain biodiversity in the oil sands region in the face of widespread oil sands development, parts of the landscape will have to be set aside as protected areas. The ELC agrees that there should be new protected areas established in the oil sands as part of the land use planning process (Action 7.5).

There are several reasons why the establishment of protected areas is critically important. First, the establishment of a protected area represents a “conservation off-set measure” which is an action taken to off-set ecological losses resulting from intensive industrial activity in other areas.²⁹ This is a method of establishing a limit on the amount of land that can be disturbed in the oil sands areas (Action 7.1). Second, protected areas play a vital role in serving as ecological benchmarks.³⁰ Monitoring within these areas provides important baseline information that can be used to assess ecological changes in the industrial landscape and to establish maximum levels of disturbance within other areas (Action 7.1). These areas can also serve as benchmarks for ongoing reclamation of oil sands areas. Third, protected areas serve as important sites for traditional and recreational uses. Finally, the preservation of wilderness is needed to maintain the full complement of biodiversity, which is, of itself, a high priority for the public.³¹

In order to be consistent with the above reasoning, these protected areas must meet the following criteria. First, the sites must consist of an interconnected network of protected areas within the oil sands regions, including the McClelland Lake Wetland (Action 7.3) and other sites that provide full representation of Alberta’s boreal ecosystem and other important hydrological features of the landscape. The ELC will refer the Panel to work that has been done identifying priority areas for protection in the boreal region.³² Second, the sites must be large enough to support viable populations of native species and to maintain natural ecological processes. As other authors have pointed out, “this implies a size of several thousand square kilometers – sufficient to withstand the large fire events that are a key driver of ecological function in the boreal forest.”³³ Third, the sites must be fully protected from industrial use, including both energy development and forestry. It is suggested that the designation of these sites take the form of a hybrid designation incorporating aspects of both:

- wilderness areas under the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, which are protected from industrial development, logging and motorized access. This is the highest level of protection currently available in Alberta, but it prohibits all human activity with the exception of foot access;³⁴ and
- wildland provincial parks established under regulations pursuant to the *Provincial Parks Act*, which prohibits new industrial development, roads and new

commercial tourism facilities. However, this designation permits logging and industrial development on pre-existing leases.³⁵

In other words, the protected areas in the oil sands should allow for traditional uses but prevent industrial activities including activities associated with pre-existing leases.

Since the oil sands are situated largely on public lands, the responsibility for the establishment of new protected areas lies largely with the provincial government. As noted by other authors, since the end of the Special Places 2000 program, there has been no formal process in place to establish new protected areas in Alberta.³⁶ We see this as a gap in the current regime that needs to be addressed. Accordingly, the ELC recommends as an additional action that a formal process be developed and implemented for designating protected areas in the province.

While we agree that the establishment of new protected areas should also be part of the land-use planning process, we are not sure what is meant by the need for a “balanced review” as indicated in Action 7.5. In our view, the “balance” is best attained by fully protecting the ecological characteristics of an area where other areas are subjected to degradation.³⁷ While this protection may be subject to a prioritization and identification process, balance is best obtained through recognition of the importance of preserving representative landscapes.

Lastly, the ELC supports the use of studies and monitoring to determine the impacts of oil sands development on fish and wildlife (Action 7.8). Studies should also focus on oil sands impacts on water flow, water quality and related consequences for aquatic health. Monitoring and studying these impacts, and then altering management operations to address any harms, is required if fish and wildlife biodiversity are to be sustained into the future.

IX. Vision 3, Strategy 8: Review current reclamation process and identify how reclamation can better proceed throughout the region given current rates of disturbance

Recognition of the precautionary principle requires that comprehensive reclamation and mitigation plans be prepared and submitted to regulators at the onset of development (Action 8.2). The ELC notes that the *Environmental Protection and Enhancement Act (EPEA)* provides that operators must reclaim specified lands.³⁸ For this reason, the ELC considers that mitigation is not generally an acceptable alternative to reclamation. However, where mitigation is required, the ELC considers that mitigation plans must be submitted to regulators and considered prior to the issuance of a project approval. Further, mitigation must be based on proven technology and achievable goals. Given that the adequacy of mitigation plans is at issue in a recently filed application for judicial review of an oil sands approval, the ELC will not discuss the issue of mitigation in this submission and will instead focus on the provision of comprehensive reclamation plans.³⁹

Reclamation plans must be provided at the onset of development. Early identification of when and through what steps lands will be reclaimed is critical to developing a

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meaningful understanding of a project's ultimate impacts. Reclamation plans must be clear and must reflect reclamation objectives that are tied to rationally derived land-use objectives and comprehensive environmental quality standards.⁴⁰ Reclamation plans should describe all project facilities and activities as well as identify all areas to be reclaimed. Reclamation plans should describe all reclamation work to be completed and should include baseline environmental data and risk assessment.⁴¹ Reclamation plans should acknowledge the many areas of uncertainty that exist with respect to reclamation effectiveness using current technology and must address ecological components at risk should the identified uncertainties not be resolved. As an example, tailings management continues to be an unresolved reclamation issue. Both fluid fine tailings and consolidated tailings present their own challenges.⁴² Failure to adequately resolve those challenges may have ecological consequences. These consequences should be understood and acknowledged.

As already mentioned under Vision 3, Strategy 1, the ELC supports the use of integrated landscape management as a planning strategy that is based upon setting and prioritizing landscape-scale objectives. Achieving landscape-scale end-use objectives requires that reclamation plans be co-ordinated across lease boundaries and be on a landscape basis (Action 8.3). This requires that reclamation processes be stable, reasonable and consistently understood and applied (Action 8.4). The ELC stresses, however, that any requirement for reclamation planning on a broader scale cannot be a means to relieve individual operators of responsibility for appropriate reclamation on specific sites; rather, it is a tool to help regulators ensure better consistency between projects and to ensure the eventual reclamation of disturbed lands in a manner that respects land-use planning on a landscape scale.

The ELC supports the requirement for progressive, timely and seamless reclamation to a self-sustaining boreal forest ecosystem (Action 8.5). The ELC considers reclamation to a self-sustaining boreal forest ecosystem to be a laudable goal; however, as an action, this creates a requirement that is difficult to enforce effectively. The boreal forest ecosystem within which the Athabasca oil sands are wholly situated is a complex ecosystem composed of interconnected forests and wetlands. There is no certainty that this complex ecosystem, with its abundant biodiversity, can be recreated to a level that is self-sustaining.⁴³

However, in the absence of a certain ability to recreate the complex boreal forest ecosystem, it is not sufficient for operators to simply reclaim disturbed lands by creating fenced livestock pastures or dry forested hills dotted with end-pit lakes. It is the ELC's position that regulations should, using reclamation to a self-sustaining boreal forest ecosystem as an ultimate target, establish enforceable reclamation performance standards consistent with current technology but should also continue to put forward pressure on operators by requiring continuous improvement in reclamation technology. The ELC supports the enhancement of research into reclamation (Action 8.1). As technologies advance, opportunities for improved reclamation are created.

The development of alternative tailings technologies, such as dry tailings technology, is an example of progress that has been made in terms of identifying technology to improve

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reclamation, although the Pembina Institute has noted that dry tailings technology presents its own reclamation challenges.⁴⁴ The ELC takes the position that regulations must set specific reclamation performance standards and must require continuous improvement in the technology applied by operators of new and existing projects. The ELC does not consider it appropriate for regulations to mandate a specific technology for new or existing oil sands projects (Actions 8.6 and 8.7).

Reclamation plans should be based on a progressive reclamation approach and should include enforceable deadlines for the different phases of reclamation.⁴⁵ A requirement for progressive reclamation may be enforced by imposing limits on the total allowable amount of unreclaimed land that may exist at a project at a given time on the project lands.⁴⁶ As mentioned under Vision 3, Strategy 1 of this submission, the ELC has identified the setting of limits on the extent and characteristics of development footprints as a tool of integrated landscape management.⁴⁷

Seamless reclamation within and across lease boundaries is a necessary element of reclamation planning on a landscape scale and results in continuity of drainage, landforms and vegetation. Failure to ensure seamless reclamation will result in increased fragmentation of the boreal forest, and may negatively impact wildlife habitat.⁴⁸

The ELC considers timely reclamation to be a component of sound environmental practices. The issue of timeliness of reclamation and the time within which reclamation certificates are issued is directly linked to the issue of operator liability after reclamation certificates are issued. In the case of an oil sands mine, where an *EPEA* approval is held in respect of that activity, when a reclamation certificate is issued for the specified lands, regulations prevent ongoing operator liability for conservation and reclamation of the lands after the date upon which the reclamation certificate is issued. This means, in that case, that no environmental protection order regarding conservation or reclamation may be issued to an operator of a mine after the day upon which the operator has been issued a reclamation certificate in respect to those activities.⁴⁹ The ELC considers it appropriate that regulations require reclamation of lands within mandated timelines and that financial or other consequences should be imposed by regulators upon operators that fail to meet the mandated timelines. However, until reclamation techniques can deliver on the promise of restoration of lands to the level of self-sustaining ecosystems, care must be taken to not require final reclamation to occur too soon.

The ELC considers that a formal, multi-step reclamation process with measurable and enforceable performance criteria at each step and firm timelines for each step, such as land contouring and drainage design, soils replacement and revegetation/reforestation, is appropriate.

The ELC considers that financial incentives may be appropriate to encourage operators to accelerate the reclamation and return of lands to the public, First Nations and Métis (Action 8.8); however, financial incentives of this nature are only appropriate where operators demonstrate that they have exceeded regulatory expectations in terms of timing of reclamation and the degree of reclamation achieved. Operators should not be

subsidized by the government and Alberta taxpayers merely for meeting sound environmental practice requirements.

Regulations and approval conditions ought to impose mandatory reclamation planning schedules and timelines on operators. However, the ELC considers that commitments made by operators in applications or during hearings respecting reclamation planning schedules, to the extent that those commitments are not contrary to legislation, regulations or approvals, ought to be adhered to as well and that regulators have a responsibility to ensure adherence by creating meaningful consequences for failure to meet such commitments (Action 8.9). Commitments respecting reclamation schedules are frequently made to address concerns of stakeholders or regulators and such commitments form part of the cost/benefit analysis undertaken by all stakeholders determining whether to support or oppose a project and by regulators when considering applications in respect of a project.

X. Vision 3: Strategy 9: Develop formal and transparent processes and policy for financial management of reclamation liabilities

Vast amounts of land will be impacted by oil sands development. To date, oil sands mining development has resulted in the alteration of over 42,000 hectares of land.⁵⁰ While active reclamation has occurred on over 5,000 hectares of disturbed land, no reclamation certificates have been issued in respect of lands disturbed for oil sands development.⁵¹

Reclamation of these disturbed lands is and will be very costly. The ELC considers that the oil sands industry must be held responsible for these financial costs. This is generally consistent with the “polluter pays” principle, widely adopted as an international law principle⁵² and appropriately recognized among the purposes of the *EPEA*, which emphasizes the responsibility of those who engage in environmentally harmful conduct for the costs associated with their activity.⁵³

Financial guarantees held in 2005-2006 by Alberta Environment in respect of reclamation for oil sands mining projects exceeded \$350 million.⁵⁴ However, the Alberta Auditor General has, in the recent past, identified inconsistencies in the manner in which reclamation security is estimated for oil sands mining projects and has expressed concerns about potential under-funding for reclamation.⁵⁵

The ELC agrees that sufficient funds must be set aside for meaningful reclamation of oil sands areas (Action 9.1). However, this action is too broad and general to be helpful in providing true guidance. Sufficiency of funds must be ensured through formalized cost estimation processes that are consistently applied and must be based on the cost to fully reclaim the impacted lands. Further, these processes must provide for appropriate contingency amounts to recognize the very significant gap between the environmental impacts being created and the ability of current technology to reclaim the impacted lands. Current regulations require the Director of Alberta Environment to determine the sufficiency of reclamation security submitted by approval holders. However, this determination is based upon reclamation cost estimates provided by the operator for each

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project.⁵⁶ The cost estimates are not prepared by the regulator or by independent third parties. Currently, there are no regulations that ensure consistency in cost estimation processes. Further, Alberta Environment does not have a formal guideline that dictates the manner in which the cost estimate is to be prepared. As a result, there is potential that costs included or excluded from the calculation may vary depending on the operator. The ELC considers that cost estimation processes must be formally regulated to ensure consistency and enforceability.

Reclamation security cost estimates are not open for public review.⁵⁷ Albertans cannot have confidence as to the effectiveness of the reclamation security estimation process to adequately protect the province from unfunded reclamation costs because there is no transparency in the estimation or review process. Similarly, the method used for returning security to operators is not transparent. The ELC recommends increasing transparency and public participation in the financial security estimate and review process as well as the process through which reclamation security is returned to operators. The absence of such an action in the MSC Options Paper is a gap that should be addressed.

The ELC considers that full cost coverage for reclamation liability should be provided by operators (Action 9.3). While cost estimation inconsistencies may exist, as discussed above, the reclamation security program in place under the *EPEA* for oil sands mining projects is currently based on the full cost to reclaim the impacted area.⁵⁸ Given this, a requirement for industry to provide risk-adjusted security for reclamation liabilities (Action 9.2) can only serve to reduce the amount of security taken in respect of those projects. This has the potential to increase the risk that reclamation costs will be absorbed by the Alberta taxpayers in the event that an operator fails to reclaim lands as required. Risk-adjustment is used currently in respect of in-situ projects, which fall under the Orphan program administered by the EUB and the Orphan Well Association. This process takes security from a licensee only if the licensee's deemed liabilities exceed its deemed assets. Many in-situ operators are not required to provide security with the EUB.⁵⁹

The Alberta Government's 2006 Budget included a response to the Auditor General's public concerns about the adequacy of reclamation security taken in respect to coal mine and oil sands mine projects. In response to the recommendation that "the Ministry of Environment implement a system for obtaining sufficient financial security to ensure parties complete the conservation and reclamation activity that the Ministry regulates", Alberta Environment stated that it intended to "work with other ministries in developing a risk-focused asset to liability model to calculate the security needed in the mining and oil and gas sectors".⁶⁰

The ELC cautions that a risk-focused asset to liability security estimate mechanism must be carefully constructed to ensure consistency between operators and between projects. Environmental risk and business risk in respect of a project and operator must be calculated by regulators through a formalized process using common criteria or, where operators make such calculations, risk calculations must be reviewed and approved by the

regulator. In either case, risk determinations should be made in a manner that is transparent and that is open to meaningful public scrutiny and involvement.

In addition, financial backstopping by industry is critical to any form of risk-adjusted process as it helps to ensure that the province is not left with the financial liabilities associated with reclamation. Accordingly, if risk-adjustment is adopted for oil sands mining operations, the ELC considers it necessary that an industry-funded backstop be established to cover under-funded liabilities (Action 9.4).

XI. Vision 3, Strategy 10: Clearly identify standards, certification process and enforcement mechanisms for reclamation of all disturbances related to oil sands development

As outlined in our previous submission to the Panel on vision and principles for oil sands development in September 2006, the ELC's vision is that sound laws and policies that are protective of the environment are implemented and effectively applied to current and future oil sands development.⁶¹ The identification of clear reclamation standards, the creation of an accessible reclamation certification process and the consistent enforcement of reclamation requirements are all critical to achieving this vision.

It is necessary that a clear, multi-step reclamation process with enforceable regulatory achievement steps be defined by regulators and contain performance measures appropriate for each stage of reclamation (Action 10.2). In order to obtain regulatory sign-off on the reclamation of lands, operators should be required in all cases to have achieved the required reclamation objectives for each step and reclamation should be consistent with rationally derived landscape-scale land use planning objectives. The ELC noted under Vision 3, Strategy 4 with respect to developing and implementing limits and standards to protect human health, Alberta must benchmark itself against standards of excellence. Similarly, the ELC considers that the starting point for setting standards for reclamation must be standards of excellence. The standards must be clear and they must be enforceable. They must also be developed and applied in a consistent and transparent manner.

The ELC supports the notion of requiring operators to return disturbed areas to a natural state (Action 10.1) and takes the position that the reclamation achievement steps at each stage must be directed toward that action. However, the meaning of "natural state", in this context is not clear. The ELC considers that, to be meaningful, the terms "returning" and "natural state" must be considered in the context of the boreal forest lands that have been disturbed. The ELC does not consider an end-pit lake of unproven environmental impact to be in a natural state. Further, the ELC echoes here its concerns articulated above in respect of "self-sustaining boreal forest ecosystems". Some lands, such as wetlands, cannot currently with any certainty be restored to their natural state. Therefore, ongoing research into reclamation techniques must continue in order to overcome current inability to restore all components of the boreal forest, such as wetlands. Further, the ELC supports the requirement that new, proven techniques for reclamation are incorporated in project approvals within a reasonable timeframe (Action 10.3).

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The ELC considers that effective enforcement of environmental laws is critical to environmental protection and supports actively requiring compliance with reclamation requirements (Action 10.4). As stated in the ELC's submission to the Panel during Phase I of these consultations in September 2006:⁶²

The oil sands framework arising from this consultative process will embrace a number of policy goals in the public interest of Albertans. However, the mere adoption of these policy goals will not suffice to adequately protect the environment. Protection of the environment cannot be ensured through the establishment of voluntary targets or non-binding guidelines alone; an appropriate mix of regulatory tools and voluntary initiatives must be used. Policy goals must be appropriately implemented into legislation and regulation that is enforced.

Enforcement in the context of oil sands requires, among other things, the imposition of legally binding standards to provide a clear, consistent definition of compliance. This means that land-use plans, quantitative thresholds and reclamation requirements must be given legal status so that they are binding on government regulators and operators and, thus, cannot be easily modified by the exercise of administrative discretion. The ELC considers that the forfeiture of reclamation security held in respect of mining operations is a possible tool that may be used to ensure compliance with reclamation standards and progressive reclamation schedules.

The ELC agrees with Action 10.5 and takes the position that reclamation processes and approvals should, over the long-term, meet the pace of oil sands activity. This is consistent with a progressive reclamation requirement advocated above. The ELC takes the position that the development of a formal reclamation process that has mandatory timelines for each step and that is effectively enforced would result in the acceleration of reclamation. In any event, the ELC generally supports Action 10.8, the acceleration of reclamation to keep pace with oil sands activity. However, the ELC does not necessarily consider that the suspension of oil sands activity is required until industry has "caught up" with reclamation (Action 10.7). The creation of a formal reclamation process with enforceable timelines should render such a suspension unnecessary.

XII. Vision 3, Strategy 11: Alberta and industry have a joint responsibility to ensure that the reclamation predictions and policy statements made in EIAs and hearings or during consultation initiatives are delivered on

The ELC agrees that both industry and Alberta, through the actions of its applicable regulators, have responsibilities to ensure reclamation predictions and policy statements are met. As stated in the MSC's Options Paper, Strategy 11 is not really a strategy at all; rather, it is a statement of values. The statement acknowledges that there is value in ensuring that actions of industry align with their commitments and predictions and that policy statements issued by regulators are followed in a meaningful way. The context of this value expression is that of the EIA, hearing and consultation process that culminates in the issuance of development approvals from the EUB and Alberta Environment. Redrafting this as a strategy, the ELC asserts that Alberta and industry must recognize

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their respective responsibilities for ensuring that reclamation predictions and policy statements made throughout the regulatory process are met and each must be accountable for any failure to live up to that responsibility.

Industry applicants prepare EIAs, participate in consultations with stakeholders and appear before regulatory hearings with the expressed purpose of convincing regulators that a project is in the public interest. As noted by the Pembina Institute in the publication *Oil Sands Fever*, despite the many uncertainties that exist with respect to the ability to reclaim lands impacted by oil sands mining, operators take successful reclamation as a given.⁶³ Regulators assume that future research in reclamation techniques will address outstanding reclamation uncertainties and grant approvals based on that assumption.⁶⁴

In this context, regulators have a mandate to ensure that particular energy development projects are in the public interest and that environmental consequences of a project are understood and mitigated. It is the responsibility of regulators to set and enforce standards. The ELC considers that Action 11.5 is consistent with this responsibility. Alberta must take leadership over the development of reclamation practices and standards.

The ELC considers that the reclamation standards set by Alberta must ensure that that Actions 11.3 and 11.4. are achieved. Further, to ensure that reclamation is achieved on a landscape basis consistent with landscape-level planning as stated under Vision 3, Strategy 1, Alberta regulators should provide industry with a framework for integration of all reclamation approvals (Action 11.1) and should coordinate reclamation between adjacent mines and within common watersheds (Action 11.6).

The ELC does not support the adoption of Action 11.8 respecting the trading of reclamation objectives between mines. Once lands have been disturbed, there must be applied a consistent standard of reclamation to which all operators are held in order to obtain a reclamation certificate. While reclamation activities may differ to reflect the land capability necessary to achieve the integrated land management planning goals identified prior to development, the ELC considers that reclamation standards must be reflective of best practices and must utilize the most progressive technologies. Adoption of a reclamation objective trading mechanism assumes that some operators will reclaim beyond this level while others will fail to meet it. The very notion cuts against a requirement for continuous improvement by all operators.

XIII. Vision 9, Strategy 1: Establish an effective governance structure for oil sands development

Vision 9 relates directly to the process for overseeing oil sands development in Alberta, including the legal, regulatory and policy frameworks within which such development will proceed in the future. Our Phase I submission to the Panel included our vision for oil sands development, that: “Sound laws and policies that are protective of the environment are implemented and effectively applied to current and future oil sands development.” The ELC urges the Panel to continue to apply this vision as a guide in further refining the strategies and actions applicable to oil sands development, and particularly in relation to governance matters. Additionally, the ELC proposes the following overarching process criteria that should be applied to all aspects of oil sands development: transparency, public participation and enforceability.

The public’s role and participation

For sound development of Alberta’s oil sands, there must be an increased and clearly defined role for the public throughout the life cycle of oil sands development, from policy development such as this consultation initiative, through mineral disposition, regulatory approvals and operational oversight, to post-reclamation surveillance. To be effective, this role must be accompanied by transparency of processes. This includes broad access to information and written reasons for regulatory decisions, and the ability of the public to seek administrative and judicial review at key regulatory decision-making points, such as mineral disposition, and authorizations granted by provincial and federal authorities.

A reason supporting the importance of public participation in regulatory decision-making, which may be particularly relevant to Alberta and the current state of affairs in relation to oil sands development, is the notion of “agency capture” by regulated interests, where the loudest and most consistent voice heard and generally heeded by regulators is that of the parties that they regulate.⁶⁵ Agency capture is seen to arise out of three factors, all of which currently exist in Alberta. The first is that the limited resources of administrative and regulatory agencies lead to close cooperation between the regulator and the regulated industry, creating dependence by the agency on the industry as a source of information. The second is dependence of regulatory agencies on the regulated industries for political support. The third factor is agency deference to industry positions, which arises because open-ended agency mandates do not clearly define the public interest in any particular context, while industries have the capacity and involvement in the regulatory process to “consistently and coherently” provide their views to the regulatory agency. It is important to note that the notion of agency capture does not presuppose any actual or alleged bias on the part of public officials.

In relation to agency capture, there are benefits that flow to regulatory and administrative processes from increased public participation.⁶⁶ Public participation gives decision-makers a greater range of ideas and information to consider in making decisions, by bringing forward important facts and submissions and presenting perspectives not otherwise available to the decision-makers. It can also enhance public acceptance of agency decisions and provide broader bases of political support for regulatory agencies. Additionally, increased public participation enables the presentation of alternate views, leading to more thorough analysis and clearer reasons in agency decisions.

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The ELC agrees with and strongly supports Action 1.10 (eliminate “directly affected”), as the “directly affected” restriction has significantly limited public participation in regulatory processes and has been the long-term root of extensive litigation in Alberta.⁶⁷ The ELC would only agree with Action 1.11 (review “directly affected”) if Action 1.10 could not be implemented; in such a case, the ELC’s position is that Action 1.11 should go beyond review of the limitation to commit to action to expand the scope of standing.

In any event, the ELC suggests that a more appropriate threshold is to grant participation to any person or group who has a legitimate interest that ought to be represented in the proceeding or process, or has an established record of legitimate concern for the interest they seek to represent. This position is consistent with the test for public interest standing developed by the Supreme Court of Canada, and similar to a test recommended sixteen years ago by the Environmental Legislation Review Panel in relation to an early draft version of the *EPEA*, but not adopted by the provincial government.⁶⁸

The ELC agrees with Action 1.13 (consult prior to making land available for oil sands development) and Action 1.14 (ensure the mineral disposition process is clear and transparent). The current system of distributing Crown mineral dispositions is subject to a minimum of public scrutiny, with limited posting of public offerings, and no means for the public to provide input on land use, surface access and environmental concerns.⁶⁹ The mineral disposition should be one of the earliest opportunities for the public to provide input on oil sands development, at a stage before industry operators have invested significant time and resources and where a range of ideas can more easily be gathered and incorporated into future planning and development of the oil sands rights. The mineral disposition process should be revised to provide broad public notice of intended offerings, access to information about the intended offerings, and opportunity for the public to provide input and concerns. Alberta Energy should be legislatively required to take into account all such input in determining ultimately whether to offer mineral rights for sale and in placing explicit conditions on grants of those rights, and to provide written reasons for its decisions. Parties to the process should also be given the ability to pursue administrative and judicial review of these decisions.⁷⁰

While the ELC has consistently contended that public involvement in resource development and environmental regulation must be expanded, oil sands development is particularly amenable and appropriate for such expansion. The sheer scope of current and potential oil sands development, based on area, time span and financial considerations, demands a broad and comprehensive inclusion of perspectives. Decisions will be made in relation to a large proportion of Alberta’s land base, for a time period far exceeding most current industrial operations in the province, involving large financial investments and potential liabilities, with significant and far-reaching environmental impacts. A great deal of oil sands development takes place on public lands. Past application of the “directly affected” limitation has largely restricted participation to those who own and occupy land on which energy recovery and industrial activity take place or land immediately adjacent to such activities, which results in few or no voices qualifying as “directly affected” in relation to activities on public land.

For many years, Alberta Environment in particular has involved the public and interested stakeholders in policy development initiatives, stressing the importance and value of such participation. Recently, the province has sought to encompass this in a broader fashion through

Recycled Paper

the concept of “shared governance”. However, members of the public who have participated in these initiatives have found themselves frustrated and questioning the true value that government puts on their input when they are effectively prevented from participating in regulatory decision-making processes due to the “directly affected” limitation found in Alberta legislation. The provincial government must value Albertans’ opinions and expertise throughout the regulatory and policy spectrum by allowing involvement and meaningful participation at all stages.

The strains and pressures on provincial government agencies in dealing with current oil sands activities, including capacity concerns, has been a topic of much discussion during these consultations, as well as in various regulatory decisions and the Radke Report. These pressures and demands make it more difficult for the regulatory agencies to effectively deal with the broad public interest and more likely to be subject to agency capture, as discussed earlier in this submission, highlighting the importance of increased public participation and the enhanced value in decision-making that would ensue. To ensure world class governance in oil sands development, the Alberta government must pursue the best and most informed decision-making processes possible, of which broad and effective public participation must be an integral element.

The role of government

Government accountability, at both the provincial and federal levels, is an integral element of effective, sustainable oil sands development in Alberta. Both Alberta and Canada must recognize and fulfill their ultimate roles as the legal authorities responsible for those legislative powers assigned to them under the Constitution.⁷¹ In the instance of the province, this includes matters such as natural resources and public lands, with the federal government having responsibility for matters such as fisheries, transboundary issues, and First Nations. Both levels share responsibility for environmental matters. Constitutional responsibilities bind both levels of government and apply regardless of any “shared governance” or other arrangement that either level of government might make.

In this vein, all government departments and agencies with regulatory and legal responsibilities related to the oil sands must actively and fully undertake these roles. Governments cannot and should not be using mechanisms such as CEMA as an excuse or shield to deflect their constitutional responsibilities. Alberta and Canada must, within their fields of constitutional power, actively take on and complete those matters that cannot be resolved in a timely manner by CEMA, and ensure sufficient commitment of financial and staffing resources. The ELC agrees with Actions 1.2 (review role and accountability of EUB), 1.3 (role of Alberta Environment), 1.5 (coordinated work of all levels of government), and 1.7 (active engagement of other jurisdictions).

To achieve these responsibilities, relevant government departments and agencies must be adequately resourced and given an effective and persuasive voice at the Cabinet table. The ELC agrees with Action 1.6 (increased capacity for government departments), and also urges the Panel to adopt recommendation 10 of the Radke Report, which recommends substantial staffing increases for both Alberta Environment and Sustainable Resource Development to deal with cumulative effects, environmental impact assessments, research, policy development, monitoring and enforcement in the oil sands areas.⁷²

Government must also commit to undertake legislative and process reform necessary to ensure effective, sustainable oil sands development. In that vein, the ELC agrees with Action 1.4 (review legislation and policy and fill gaps), particularly in relation to our comments and recommendations earlier in this submission on directly affected status and mineral dispositions. We suggest that Action 1.2 also include a commitment to take action to ensure increased accountability and a broadened mandate of the EUB.

XIV. Vision 9, Strategy 2: Improve the cumulative effects management system for oil sands

Vision 9, Strategy 2 seeks to improve the cumulative effects management system for oil sands. The EUB, on its own and as part of joint panels with the federal government, has expressed increasing concerns in successive oil sands decisions about the limited effectiveness and slow progress of CEMA, particularly given the significance of the responsibilities that have been given to CEMA.⁷³ A joint panel recently stated:⁷⁴

The Joint Panel views the work of CEMA as vital in addressing the cumulative impacts of oil sands development on the region and notes that CEMA has been assigned responsibility to address most of the critical cumulative effects challenges. The existence of regulatory standards and thresholds is an important element in determining whether a project is in the public interest from a cumulative impacts perspective and whether the impacts need further mitigation if the project is to proceed. The work of CEMA in developing management frameworks for addressing cumulative effects is central to the sustainable development of the mineable oil sands over the longer term.

Given the importance of CEMA's work, the ELC agrees with Action 1.18 (moratorium on new oil sands development until environmental limits have been identified), to avoid continued regulatory decision-making without relevant environmental standards.

The ELC also agrees with Actions 2.1 (clarify the role of CEMA) and 2.2 (enhance CEMA) and suggests that recommendations formulated by the Pembina Institute, as set out below, be adopted by the Panel:⁷⁵

We recommend that the governments of Alberta and Canada

- Create the conditions for CEMA to successfully refine environmental limits and develop regional environmental management systems to guide decisions about future oil sands development. This will require the development of specific memoranda of understanding between government and CEMA that include clear deliverables and a firm schedule, the provision of additional human and financial resources, and clear statements of political expectations and support for meaningful outcomes.
- Assume responsibility for those issues that will not or cannot be addressed through the CEMA process in a timely fashion. Commit to a process to consult with

stakeholders and a schedule to implement new standards and systems to manage these issues.

The ELC conditionally agrees with Action 2.3 (consider cumulative effects management organizations for other oil sands areas). Conditions that must exist for this action to proceed are:

- CEMA must be reviewed and revised before any steps to create new cumulative effects management organizations are taken. It makes little sense to replicate those elements of a system that are not working; and
- Steps must be taken to distinguish between cumulative effects matters common to all three oil sands areas and those matters unique to a specific oil sands area. A revised CEMA should take responsibility for dealing with those matters common to all oil sands areas, to avoid duplication of effort and resources, with unique issues dealt with by the appropriate area-specific cumulative effects management organization.

The ELC agrees with Action 2.4 (review and upgrade the RSDS and modify CEMA's role). We further suggest that an upgraded RSDS be given legal status to ensure it has binding, enforceable effect. Such a step would further reinforce the province's accountability for fulfilling the strategy by enabling judicial review to be sought in instances of non-action or minimal action by the province.

XV. Conclusions regarding non-consensus items

At the provincial oil sands leaders summit held on April 18, 2007, Mr. MacNichol, chair of the Panel and the MSC, asked participants for input on steps the MSC should take with respect to non-consensus items. The MSC's Interim Report, produced after Phase I of the consultations, includes the principle that "(t)he best results will be achieved in oil sands development if stakeholders are: honest, inclusive, transparent, collaborative and effective in communications."

In that spirit, the final report to the provincial government should include all non-consensus items. An explanation of the reasons for non-consensus should be provided for each item, together with identification of the party or parties blocking consensus. As owners of the oil sands resource and the ultimate recipients of both benefits and detriments flowing from its development, Albertans deserve as complete a picture as possible of the results of the MSC's work. The MSC, and its individual members, must be accountable to the government and to their fellow citizens and must demonstrate that they have pursued their responsibilities in good faith.

The ELC thanks the Panel and the MSC for the opportunity to provide its submissions throughout this round of consultations.

¹ Jodie Hierlmeier & Dean Watt, *Submissions to the Oil Sands Panel On Developing A Framework For Oil Sands Development in Alberta* (Edmonton, Environmental Law Centre, 2006), online: Environmental Law Centre <<http://www.elc.ab.ca/ims/client/upload/Submissions%20to%20Oil%20Sands%20Panel%20-%20Sept%202026.pdf>>.

² Government of Alberta, *Investing In Our Future: Responding To the Rapid Growth of Oil Sands Development* (Edmonton: Government of Alberta, 2006) at 119, 134 (recommendation 13) [Radke Report].

³ The ELC generally supports the approach set out by Kennett in Steven A. Kennett, *Integrated Landscape Management in Canada: Getting from Here to There*, Occasional paper #17 (Calgary: Canadian Institute of Resources Law, 2006) [Kennett, paper #17].

⁴ This appears to be the definition of integrated landscape management advocated by the Alberta Chamber of Resources, see online: Alberta Chamber of Resources <<http://www.acr-alberta.com/ilm.htm>>.

⁵ Steven A. Kennett, *Towards a New Paradigm for Cumulative Effects Management*, Occasional paper #8 (Calgary, Canadian Institute of Resources Law, 1999) at 30 [Kennett, paper #8].

⁶ Kennett, paper #17, *supra* note 3 at 6-18.

⁷ *Ibid.* at 11.

⁸ Kennett, paper #8, *supra* note 5 at 37-42.

⁹ The only review that occurs prior to mineral allocation is by the multi-departmental Crown Mineral Disposition Review Committee, which is expected to highlight any environmental restrictions associated with individual land parcels. This process is closed to the public and does not solicit stakeholder input, see Michael M. Wenig & Michael S. Quinn, "Integrating the Alberta Oil and Gas Tenure Regime with Landscape Objectives: One Step Toward Management of Cumulative Effects" in Henry Epp, ed., *Access Management: Policy to Practice. Proceedings of a Conference Presented by the Alberta Society of Professional Biologists in Calgary, March 18-19, 2003* (Calgary: Alberta Society of Professional Biologists, 2004) [Wenig & Quinn].

¹⁰ See Government of Alberta, *Oil Sands Consultation – Multi-stakeholder Committee Interim Report*, 30 November 2006 at 7, online: Oil Sands Consultation <http://www.oilsandsconsultations.gov.ab.ca/docs/Interim_Report.pdf>; see also Government of Alberta, *Water for Life: Alberta's Strategy for Sustainability* (Edmonton: Alberta Environment, 2003), online: Alberta Environment <<http://www.waterforlife.gov.ab.ca>>.

¹¹ See e.g. Mark Anielski & Sarah Wilson, *Counting Canada's Natural Capital: Assessing the Real Value of Canada's Boreal Ecosystems* (Drayton Valley: The Pembina Institute, 2005).

¹² *Supra* note 2 at 134 (recommendation 12); see e.g. Decision 2007-013, *Imperial Oil Resources Ventures Limited Application for an Oil Sands Mine and Bitumen Processing Facility (Kearl Oil Sands Project) in the Fort McMurray Area*, 27 February 2007 (A.E.U.B. and Government of Canada) at 92-93 [Kearl Decision].

¹³ Kennett, paper #8, *supra* note 5 at 21.

¹⁴ Steven A. Kennett, *New Directions for Public Land Law*, Occasional paper #4 (Calgary: Canadian Institute of Resources Law, 1998) at 8.

¹⁵ *Ibid.*

¹⁶ See online: wikipedia <<http://en.wikipedia.org/wiki/Benchmark>>.

¹⁷ Alberta, Bill 3, *Climate Change and Emissions Management Amendment Act, 2007*, 3rd Sess., 26th Leg., Alberta, 2007 (Royal Assent 20 April 2007); see also *Specified Gas Emitters Regulation* (draft).

¹⁸ Matthew Bramley, *The Case for Deep Reductions: Canada's Role In Preventing Dangerous Climate Change* (Drayton Valley: The David Suzuki Foundation and the Pembina Institute, 2005) at 5.

¹⁹ Matthew McCulloch, Marlo Raynolds & Rich Wong, *Carbon Neutral 2020: A Leadership Opportunity in Canada's Oil Sands* (Drayton Valley: The Pembina Institute, 2006).

²⁰ See Seth Wenger, *A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation* (Athens, Georgia: Institute of Ecology, University of Georgia, 1999).

²¹ This buffer will not only be important for operations but for long-term reclamation impacts and the potential leaching from end-pit lakes.

²² *Supra* note 2 at 133-134 (recommendation 11(a)).

²³ Alberta Environment & Fisheries and Oceans Canada, *Water Management Framework: Instream Flow Needs and Water Management System for Specific Reaches of the Lower Athabasca River*, February 2007 at 6, online: Alberta Environment

<http://www3.gov.ab.ca/env/water/Management/Athabasca_RWMF/pubs/Athabasca_RWMF_Technical.pdf>.

²⁴ See online: Alberta Environment

<http://www3.gov.ab.ca/env/water/ws/data/hydro/figures/_RATHMCM.gif>.

²⁵ R.S.A. 2000 c.W-3. Through the use of water management orders under s. 97 (1)(i) of the *Water Act* where the diversion may result in a significant adverse effect to the aquatic environment and the ability to suspend licences under section 55(2) where there is a significant adverse effect to the aquatic environment that was not reasonably foreseeable. Arguably, both such actions are unlikely due to pressures for continued operations and development of oil sands and therefore the utility of these legislative mechanisms is minimized.

²⁶ See Komex International Ltd., *Phase II Beaver River Basin Landcover and Hydrology Study* (Calgary: Komex International Ltd, 2005), online: Lakeland Industry & Community Association <http://www.lica.ca/resources/Phase_II_Beaver_River_Basin_Landcover_Hydrology_Study_Komex.pdf>

²⁷ See Komex International Ltd., *Lakeland Region Watershed Study*, Powerpoint Presentation at slide 24, online: Lakeland Industry & Community Association <http://www.lica.ca/resources/Lakeland_WaterShed_Study_Presentation.pdf>.

²⁸ Mary Griffiths, Amy Taylor & Dan Woynillowicz, *Troubled Waters, Troubling Trends: Technology and Policy Options to Reduce Water Use in Oil and Oil Sands Development in Alberta* (Drayton Valley: The Pembina Institute, 2006) at 59-60. See also figures 2-18 and 2-19 which illustrate how fresh groundwater has been increasing significantly since 1999 and how predicted use in 2004 has been significantly outstripped by actual use (prediction at 2001).

²⁹ Richard Schneider & Simon Dyer, *Death By a Thousand Cuts: Impacts of In Situ Oil Sands Development on Alberta's Boreal Forest* (Edmonton: The Pembina Institute and the Canadian Parks and Wilderness Society, 2006) at 20 [Schneider & Dyer].

³⁰ *Ibid.*

³¹ *Ibid.*

³² See Simon J. Dyer, *High Conservation Value Forests (HCVF) Within the Alberta-Pacific Forest Management Agreement Area: A Summary Report* (Boyle, Alberta: Alberta-Pacific Forest Industries Inc., 2004).

³³ Schneider & Dyer, *supra* note 29 at 20.

³⁴ R.S.A. 2000, c. W-9, ss. 6-7.

³⁵ *Provincial Parks (Dispositions) Regulation*, Alta Reg. 241/1977, s. 2.1.

³⁶ Schneider & Dyer, *supra* note 29 at 21.

³⁷ As noted earlier the use of “balancing” has traditionally failed to adequately deal with maintaining environmental and social outcomes, in large part due to the inability to adequately compare these outcomes against economic outcomes.

³⁸ R.S.A. 2000, c. E-12, s. 137.

³⁹ Application, *Pembina Institute for Appropriate Development et al. v. Attorney General of Canada et al.*, Federal Court of Canada, Docket No. T-535-07 (filed 29 March 2007).

⁴⁰ Michael M. Wenig, Kevin O'Reilly & David Chambers, *The Mining Reclamation Regime in the Northwest Territories: A Comparison With Selected Canadian and U.S. Jurisdictions* (Calgary: Canadian Institute of Resource Law and the Canadian Arctic Resources Committee, 2005) at 6 [Wenig *et al.*].

⁴¹ *Ibid.*

⁴² Dan Woynillowicz, Chris Severson-Baker & Marlo Reynolds, *Oil Sands Fever: The Environmental Implications of Canada's Oil Sands Rush* (Drayton Valley: The Pembina Institute, 2005) at 38 [Woynillowicz *et al.*].

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Wenig *et al.*, *supra* note 40 at 6.

⁴⁶ *Ibid.* at 104.

⁴⁷ See also *supra* note 4.

⁴⁸ Woynillowicz *et al.*, *supra* note 42 at 40.

⁴⁹ *Conservation and Reclamation Regulations*, Alta. Reg. 115/93, s. 15. Where no approval is held in respect of the mining activity, ongoing operator liability is limited to five years after the date upon which the reclamation certificate is issued.

⁵⁰ Canada, Parliament, Standing Committee on Natural Resources, “The Oil Sands: Toward Sustainable Development” in Official Reports of Debates (Hansard), No 128 (March 26, 2007) at 48.

- ⁵¹ See online: Alberta Environment <www3.gov.ab.ca/env/soe/land_indicators/41_oilsands_reclamation.html>.
- ⁵² *Rio Declaration on Environment and Development*, 14 June 1992, 31 I.L.M. 874, Principle 16.
- ⁵³ *Supra* note 38, s.2.
- ⁵⁴ Alberta, Ministry of Environment, *Environmental Protection Security Fund Annual Report*, April 1, 2005 – March 31, 2006 at Sch. 1.
- ⁵⁵ Auditor General of Alberta, *Annual Report of the Auditor General of Alberta 2004-2005*, at 182.
- ⁵⁶ *Supra* note 49, s. 18.
- ⁵⁷ Decision 2006-128, *Albian Sands Energy Inc. Application to Expand the Oil Sands Mining and Processing Plant Facilities at the Muskeg River Mine*, 17 December 2006 (A.E.U.B and Government of Canada) at 65 [*Albian Sands Decision*].
- ⁵⁸ *Supra*, note 49, s. 18.
- ⁵⁹ Alberta Energy and Utilities Board, *Directive 006: Licensee Liability Rating (LLR) Program and Licence Transfer Process*, 20 September 2005 (Directive 006) at 2.
- ⁶⁰ Alberta, Legislature, *Budget 2006: Strengthening Today, Securing Tomorrow*, Alberta Hansard, 22 March 2006, at 155.
- ⁶¹ *Supra* note 1.
- ⁶² *Ibid.*
- ⁶³ Woynillowicz *et al.*, *supra* note 42 at 39.
- ⁶⁴ *Kearl Decision supra* note 12 at 43.
- ⁶⁵ Raj Anand & Ian G. Scott, Q.C., “Financing Public Participation in Environmental Decision-Making” (1982) 60 Can. Bar Rev. 81 at 91-92.
- ⁶⁶ *Ibid.* at 93-94.
- ⁶⁷ See Cindy Chiasson & Jodie Hierlmeier, *Public Access to Environmental Appeals: A Review and Assessment of Alberta’s Environmental Appeals Board* (Edmonton: Environmental Law Centre, 2006), for a discussion of “directly affected” in the context of the Environmental Appeals Board.
- ⁶⁸ *Report of the Environmental Legislation Review Panel* (Edmonton: 1991) at 37.
- ⁶⁹ Wenig & Quinn, *supra* note 9.
- ⁷⁰ *Ibid.* at 36.
- ⁷¹ *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, ss. 91-92A.
- ⁷² *Supra* note 2 at 133.
- ⁷³ See Decision 2006-112, *Suncor Energy Inc. Application for Expansion of an Oil Sands Mine (North Steepbank Mine Extension) and a Bitumen Upgrading Facility (Voyageur Upgrader) in the Fort McMurray Area*, 14 November 2006 (A.E.U.B); *Albian Sands Decision, supra* note 57; *Kearl Decision, supra* note 12.
- ⁷⁵ *Ibid.*, *Kearl Decision* at 92.
- ⁷⁵ Woynillowicz *et al.*, *supra* note 42 at 66-67.

Appendix I: Summary of Strategies and Actions

Vision 3: Ensures healthy environment		
Strategy 1. Use planning and regulatory instruments to encourage sound environmental practices		
Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>1.1 Create a comprehensive plan for the management of key oil sands environmental priorities</p> <p>1.3 Support inclusion of regional scale planning as part of the Alberta land use framework</p> <p>1.8 Integrated landscape management (as defined in our submission)^a</p>	<p>1.8 Use regional environmental impact assessments</p>	<p>We recommend planning be addressed at all four stages in the energy decision-making continuum:</p> <ul style="list-style-type: none"> • legal and policy framework; • land use planning; • rights dispositions; and • project approval. <p>In order to put this process in place, there must be a moratorium on new oil sands mineral leases and project approvals</p>

Vision 3: Ensures healthy environment		
Strategy 2. Use economic instruments to encourage sound environmental practices		
Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>2.4 Focus royalty incentives to encourage innovation and modification exceeding regulatory requirements^b</p> <p>2.5 Conduct a natural capital assessment of oil sands area and include value in decision-making</p> <p>2.6 Use market instruments to drive improvements to water storage and consumption patterns</p>	<p>2.3 Provide fiscal incentives, such as tax or royalty reductions</p>	

Vision 3: Ensures healthy environment		
Strategy 3. Improve cumulative effects management process for oil sands		
Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>3.1 Assemble environmental baseline data for the oil sands</p>	<p>3.5 Review and improve the assessment process</p>	<p>The ELC proposes as additional action items:</p>

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<p>areas</p> <p>3.2 Continue research and putting forward environmental management frameworks for various ecosystem components</p> <p>3.4 Enhance knowledge and science capacity to more effectively manage environmental and resource information at multiple scales</p>	<p>for regional cumulative environmental effects^c</p> <p>3.6 Conduct regional cumulative environmental assessments of oil sands development</p>	<ul style="list-style-type: none"> • that the province make it a top priority to identify and set ecological thresholds, and to establish management frameworks for the oil sands by a set timeframe (e.g. by 2010); • the role of CEMA must be clarified to do this work in a timely manner
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Vision 3: Ensures healthy environment

Strategy 4. Develop and implement limits and standards to protect human and ecosystem health

Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>4.1 Identify precautionary environmental limits to protect human and ecosystem health</p> <p>4.2 Establish caps for air emissions in the oil sands</p> <p>4.5 Benchmark Alberta's environmental standards against U.N.^d</p> <p>4.6 Benchmark Alberta's environmental standards against other oil producing nations</p> <p>4.8 Identify environmental limits based on proven science</p>		

Vision 3: Ensures healthy environment

Strategy 5. Become a leader in reducing greenhouse gas emissions

Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>5.5. Set GHG targets that will cap emissions for oil sands industry and will lead to reductions consistent with</p>	<p>5.4 Develop facility targets for energy efficiency measured by per barrel energy</p>	

Canada's international commitments	intensity	
5.6 Require carbon neutrality in all oil sands industry by the year 2020	5.7 Require oil sands industries to contribute to meeting GHG targets set by the federal and provincial government	

Vision 3: Ensures Healthy Environment....

Strategy 6. Manage oil sands development and growth within the capacity of individual watersheds

Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>6.1 Buffer zone for Athabasca River</p> <p>6.3 Expedite and complete inter-provincial/territorial water quality and quantity agreements</p> <p>6.4 Develop a water management plan, based on science, with appropriate balance of economic and environmental considerations</p> <p>6.5 Within 2 years, establish IFN for rivers that will ensure healthy aquatic ecosystems</p> <p>6.6 Prohibit further water withdrawals until IFNs have been established</p> <p>6.7 Implement the federal/provincial interim IFN framework</p> <p>6.8 Investigate establishment of common off stream water storage areas^f</p> <p>6.9 Complete mapping and inventory of groundwater aquifers in order to establish sustainable yield</p>	<p>6.2 Determine the extent of protection for rivers^g</p>	<p>Review and develop legislative and policy tools regarding IFNs to outline how they will be determined and implemented as a tool for protection of the aquatic environment</p> <p>Review and amend legislative and policy tools to ensure watershed management plans in the oil sands are legally feasible and enforceable</p> <p>Develop policies and plans for promotion of demand side management prior to relying on supply side (storage) water management</p>

6.10 Undertake regular water quality and quantity monitoring throughout region to ensure appropriate levels are maintained		
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Vision 3: Ensures Healthy Environment....

Strategy 7. Minimize the impact of oil sands development on boreal forest and biodiversity

<p>7.1 Establish a limit on the amount of land that can be disturbed and a maximum level of disturbance</p> <p>7.3 Establish an inter-connected network of protected areas within the oil sands regions, including the McClelland Lake Wetland^c</p> <p>7.5 Establish new protected areas in oil sands after a balanced review of all factors during land use planning (see how we define “balance” in our submission)</p> <p>7.8 Undertake studies and monitoring to determine the impacts on fish and wildlife</p>		<p>With respect to protected areas, additional actions should include:</p> <ul style="list-style-type: none"> • specifying that the sites are large enough to support viable populations of native species and to maintain natural ecological processes; • ensuring the sites are fully protected from industrial use, including both energy development and forestry; and • developing a formal process for designating protected areas in the province
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Vision 3: Ensures healthy environment

Strategy 8. Review current reclamation process and identify how reclamation can better proceed throughout the region given current rates of disturbance

Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>8.1 Enhance research into reclamation</p> <p>8.2 Require comprehensive reclamation and mitigation plans from the onset of development</p> <p>8.3 Plan and co-ordinate reclamation across lease</p>	<p>8.6 Require all new oil sands mines to use alternative tailings technology such as dry tailings technologyⁱ</p> <p>8.7 Require existing oil sands operations to convert to alternative tailings technologies such</p>	

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<p>boundaries on a landscape basis</p> <p>8.4 Ensure that reclamation processes are stable, reasonable and consistently understood and applied</p> <p>8.5 Require progressive, timely and seamless reclamation to a self-sustaining boreal forest ecosystem</p> <p>8.8 Establish financial incentives/disincentives to accelerate the return of reclaimed land to the public^h</p> <p>8.9 Ensure commitments on reclamation are met on a planned schedule and land is returned to public, First Nations and Métis</p>	<p>as dry tailings technology in ten years^j</p>	
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Vision 3: Ensures healthy environment

Strategy 9. Develop formal and transparent process and policy for financial management of reclamation liabilities

Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>9.1 Ensure sufficient funds set aside for meaningful reclamation of oil sands areas</p> <p>9.3 Require industry to provide full cost coverage for reclamation liability</p> <p>9.4 Establish a backstop fund to cover liabilities that are unfunded^k</p>	<p>9.2 Require industry to provide risk-adjusted security for reclamation liabilities</p>	<p>Require Alberta Environment to establish formal regulations to be followed by all operators for the estimation of reclamation security costs</p> <p>Reform reclamation security estimate process to allow for greater transparency and public involvement in the security estimate and review process as well as the process through which security is returned to operators</p>

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Vision 3: Ensures healthy environment		
Strategy 10. Clearly identify standards, certification process and enforcement mechanisms for reclamation of all disturbances related to oil sands development		
Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>10.1 Restore disturbed areas to a natural state (e.g. spruce, willows, medicines, bogs, etc.)</p> <p>10.2 Define a clear multi-step reclamation process with regulatory achievement steps at the landscape, soils, vegetation establishment and final certification stage</p> <p>10.3 Ensure that new proven techniques for reclamation are incorporated in project approvals within a reasonable timeframe</p> <p>10.4 Actively require compliance with reclamation requirements</p> <p>10.5 Ensure reclamation process commitments and approvals meet pace of oil sands activity</p> <p>10.6 Define a reasonable standard for reclamation attainment required to obtain a Closure Certificate; and certify reclaimed lands in a timely manner¹</p> <p>10.8 Accelerate reclamation to keep pace with oil sands activity</p>	<p>10.7 Suspend oil sands activity until catch up with reclamation^m</p>	

Vision 3: Ensures healthy environment		
Strategy 11. Alberta and Industry have a joint responsibility to ensure that the reclamation predictions and policy statements made in EIAs and hearings or during consultation initiatives are delivered on		
Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions

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<p>11.1 Alberta regulators should provide industry with a framework for integration for all reclamation approvals</p> <p>11.2 Reclamation objectives critical to the treaty rights of First Nations need to be described and objectives and progress reported on annually</p> <p>11.3 Ensure reclamation meets soil requirements that will support a sustainable ecosystem</p> <p>11.4 Ensure that the land will not require long- term maintenance by future generations</p> <p>11.5 Alberta should lead the establishment of a group to cooperatively develop best management practices through science based adaptation to continue the improvement of reclamation practices</p> <p>11.6 Coordinate reclamation between adjacent mines and within common watersheds through a joint plan</p> <p>11.7 Ensure that the first priority for reclamation is First Nations and Métis traditional uses and forests for both commercial and non commercial values including species specific replacement of wildlife habitat</p> <p>11.9 Require reclamation to ensure the evolution of productive natural ecosystems consistent with pre-disturbance conditions</p>	<p>11.8 Pursue the trading of reclamation obligations between mines so that the regional objectives are met</p>	
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Vision 9: Demonstrates leadership through world class governance		
Strategy 1. Establish an effective governance structure for oil sands development		
Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions
<p>1.2 Review the role and accountability of the EUB</p> <p>1.3 Alberta Environment should lead development of environmental management system for oil sands areas</p> <p>1.4 Review legislation, policies and institutions and address gaps</p> <p>1.5 Coordinated work of all levels of government</p> <p>1.6 Increased capacity for government departments and agencies</p> <p>1.7 Active engagement of other jurisdictions</p> <p>1.10 Eliminate “directly affected”</p> <p>1.13 Consult prior to making land available for oil sands development</p> <p>1.14 Ensure clear and transparent mineral disposition process</p> <p>1.18 Declare a moratorium on new oil sands development (no new leases, no new approvals) until environmental limits have been identified and infrastructure and labour concerns have been addressed</p>	<p>1.11 Review “directly affected” – this is acceptable only if Action 1.10 cannot be implemented and must include a commitment to act to expand standing</p>	<p>All aspects of oil sands development should be subject to overarching process criteria of transparency, public participation and enforceability</p> <p>Action 1.2 should also include a commitment to act to ensure increased accountability and a broadened mandate of the EUB</p> <p>In conjunction with Action 1.6, the MSC should adopt recommendation 10 of the Radke Report, dealing with substantial staffing increases for Alberta Environment and Sustainable Resource Development</p> <p>Actions 1.13 and 1.14 should include a commitment to revise the mineral disposition process to provide for public scrutiny and participation, including rights of administrative and judicial review</p>

Vision 9: Demonstrates leadership through world class governance		
Strategy 2. Improve the cumulative effect management system for oil sands		
Actions ELC agrees with	Actions ELC disagrees with	Gaps/alternatives/additions in actions

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<p>2.1 Clarify the role of CEMA to achieve more timely outputs and decisions</p> <p>2.2 Bring forward recommendations for the improved management of cumulative environmental effects by enhancing CEMA</p> <p>2.4 The RSDS should be reviewed and the role of CEMA should be appropriately modified</p>	<p>2.3 Consider cumulative effects management organizations for other oil sands areas. Conditions for agreement are: (1) review and revise CEMA before moving to create new cumulative effects management organizations; and (2) distinguish between cumulative effects matters common to all oil sands areas (which should be dealt with by CEMA) and those unique to a specific oil sands area (which should be dealt with by an area-specific cumulative effects management organization)</p>	<p>In conjunction with Actions 2.1 and 2.2, the MSC should adopt the recommendations related to CEMA as set out by the Pembina Institute in its report <i>Oil Sands Fever: The Environmental Implications of Canada's Oil Sands Rush</i> (pp. 66-67)</p> <p>To supplement Action 2.4, an upgraded RSDS should be given legal status to ensure binding, enforceable effect</p>
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^a Integrated landscape management is defined in our submission as a holistic planning strategy based upon setting and prioritizing landscape-scale objectives; it is not simply a process of coordinating activities in order to reduce industrial footprints on the landscape.

^b This is agreed to on the basis that if royalty incentives continue to be offered, then that money should go towards encouraging innovation that exceeds regulatory requirements. The ELC's starting position is that royalty incentives should not be offered.

^c The caution here is that cumulative impacts should not be viewed as simply as an add-on to the EIA; it should be part of a larger, broader planning process.

^d The ELC's position is that Alberta's environmental standards should be benchmarked against the most stringent relevant standards whether that be United Nations standards or otherwise. Alberta's standards must be tested against standards of excellence.

^e In our submissions, we refer the reader to other work that has been done which identifies priority areas for protection, see *supra* note 32 and accompanying text.

^f Water storage should only be considered once up stream demand management promotion through policy and planning is in place.

^g The lack of clarity in this action makes it unsupportable. The action may be re-worked to "determine the baseline protection required to sustain aquatic and terrestrial ecosystem health and diversity".

^h The ELC considers that timely reclamation is consistent with sound environmental practices and that financial incentives are only appropriate where operators' reclamation performance in terms of time and level of reclamation exceeds the requirements imposed by regulation.

ⁱ The ELC considers that regulations should identify specific enforceable reclamation performance criteria, however, it should be left to operators to determine how to best achieve those targets.

^j The ELC considers that existing operators should be required to continually improve the reclamation techniques they use; however, the regulations should identify specific enforceable reclamation performance criteria, rather than impose particular processes.

^k The ELC considers that the use of an industry-funded backstop is necessary only if a risk-adjusted security regime is put in place.

^l The ELC supports the return of reclaimed lands in a timely manner but, noting that ongoing liability for operators is limited once a reclamation certificate is issued, cautions against the issuance of reclamation certificates too soon.

^m The ELC considers that reclamation should be timely and progressive. While suspension of oil sands activity in a particular case may be appropriate as an enforcement measure to ensure compliance with approved reclamation objectives and timelines, the ELC does not consider it necessary or appropriate to suspend all oil sands activity until reclamation is “caught up”.