

# Lubicon Lake Indian Nation

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Alberta Energy and Utilities Board  
640 - 5<sup>th</sup> Avenue, SW  
Calgary, Alberta T2P 3G4

To Whom It May Concern:

The Lubicon Lake Indian people have never ceded our traditional Territory in any historically or legally recognized way. Our traditional lands and the natural resources they contain are the subject of a long-standing jurisdictional dispute between the Lubicon people and both levels of Canadian government. For many years we have been attempting to negotiate a land rights settlement with Canada and Alberta which would resolve the outstanding question of land ownership and allow for the regularization of development activity in our area. Until such time as the dispute over ownership of our traditional lands is resolved the Lubicon people assert continuing unextinguished aboriginal title to our entire traditional Territory.

While we attempt to negotiate the issue of land rights, the Alberta government has been selling leases, licenses and permits to resource companies to exploit the very lands and resources under negotiation. These illicit resource exploitation activities have destroyed our traditional hunting and trapping economy, badly damaged our traditional way of life and had a devastating effect upon the health and well being of our people.

Until Canada and Alberta conclude a land rights settlement with the Lubicon people, neither Canada, Alberta nor the Alberta Energy and Utilities Board have any legitimate authority to issue leases, licenses and permits authorizing anybody to extract natural resources from the unceded Lubicon Territory. The Lubicon Lake Indian people are the only rightful owners of our traditional lands and the resources they contain.

We are advised that Surge Global Energy has made application to the Alberta Energy and Utilities Board (AEUB) for a license to drill a single well at Sawn Lake right in the heart of unceded Lubicon Territory. Even if the outstanding jurisdictional question were resolved, which it is not, the Lubicon people would oppose this application for a single well because it is clear from the company's own materials that this one well is only part of a much larger project. The social, economic and environmental impacts of the whole project must be taken into account before any part of it can properly be assessed.

The proponents of this proposed project -- Deep Well Oil and Gas (Northern Alberta Oil), Surge Global Energy, Pan Orient Energy and Paradigm Oil and Gas -- say quite openly that they plan to extract almost 820 million barrels of oil from unceded Lubicon Territory through an initial group of up to 512 wells. Once they have extracted the small percentage of oil (approximately 8%) that can be produced through conventional oil extraction methods, these companies have indicated that they plan to inject large quantities of steam and/or superheated water into the tar sands formation in which the majority of the oil resource is embedded.

Other resource companies have conducted conventional oil and gas exploitation in our traditional Territory with horrific consequences for our people. But this is the first time a company has proposed to conduct a large-scale oil sands operation in the heart of unceded Lubicon Territory. The Lubicon people have serious concerns about the social, environmental and economic impacts of this proposed large-scale oil sands project in our unceded traditional Territory. It is unacceptable for this proposed project to proceed without first dealing with the unresolved jurisdictional issue, without consulting us and without a truly independent assessment of the full social, environmental and economic impacts of the total proposed project.

Should the AEUB consider this application from Surge Global Energy and only assess the company's compliance with Alberta's environmental regulations for each well the company asks to license, each well could hypothetically be approved, one at a time, without addressing the potential cumulative effect of the other wells and supporting infrastructure planned as part of the overall project. The involved companies could hypothetically drill up to 512 wells, build whatever roads, pipelines and other infrastructure they require, and begin pumping 4 barrels of high temperature vaporized water into the fragile boreal subsurface for every barrel of oil they extract -- all without any proper assessment of the cumulative impact of all of these activities on our lands, our subsurface water resources, our environment and our people. By the time the potentially disastrous effects of this piecemeal-approach to approving a large-scale oil sands operation are fully understood, effective remediation may also be no longer possible.

The politically well-connected companies proposing this massive oil sands development were so certain that they would have no difficulty obtaining approval from the AEUB that they began clearing trees and moving in a drilling rig before even applying to the AEUB for a drilling license. They treated attempts by our people to discuss their proposed project with equal disdain.

We first heard about this proposed oil sands project on August 21, 2004 when we read about it in the Edmonton Journal. Our legal counsel wrote to Deep Well Oil and Gas on September 1, 2004 regarding the proposed project and proposing a meeting with senior officials of the company to discuss our concerns. Company officials never responded.

On March 2, 2005 Lubicon members discovered contractors clearing a large area at 1-36-91-W5M on behalf of Deep Well Oil and Gas. The contractors were asked to stop their activities pending the holding of a meeting with officials of Deep Well Oil and Gas. Lubicon representatives then made further efforts to contact officials of Deep Well Oil and Gas to arrange a meeting. Phone calls were made. Messages were left. Again Deep Well officials didn't respond.

On March 3, 2005 Lubicon legal counsel received a phone call from Deep Well lawyer Robert Hladun falsely alleging that Lubicon members were "blockading" the work site and claiming that the blockade was costing Deep Well Oil and Gas "\$100,000 a day". Mr. Hladun gave our lawyer a cell phone number where we could reach a senior Deep Well Oil and Gas official named John Brown. After a number of calls we were finally able to reach Mr. Brown and a meeting was arranged for later that afternoon. Mr. Brown was unavailable to meet earlier because he was meeting with the local RCMP seeking police protection for work in our unceded area which had not been discussed with us and for which Deep Well had failed to obtain a required provincial drilling license.

Mr. Brown claimed to only be a consultant to Deep Well with no authority to make agreements or commitments. However he did agree to set up a meeting the following week with senior company officials. He promised to phone us back with a date and time for a meeting with senior company officials. (We learned later that Mr. Brown was Deep Well's former Chief Operating Officer and a major investor in Deep Well through a numbered company nominally held by his daughters. Notably the ubiquitous Mr. Brown is also the named contact man for Surge Global Energy in Surge Global Energy's current application to the AEUB.)

Mr. Brown failed to phone us back as promised with a date and time for a meeting with senior officials of Deep Well. Deep Well officials continued ignoring repeated efforts on our part to arrange for a meeting.

On March 11, 2005 our lawyer wrote to Surge Global Energy -- at that point a partner of Deep Well but not the lead player in the proposed project -- explaining Lubicon concerns with the proposed Deep Well project and advising Surge Global Energy of Deep Well's continuing lack of response to our repeated requests for a meeting. Our lawyer received no reply from Surge Global Energy either.

On March 30, 2005 Walter Whitehead, the Lubicon member on whose traditional trap line the project is proposed, wrote to then Deep Well President Steven Gawne advising Mr. Gawne that he'd never been consulted about the proposed project and expressing his concerns about the proposed project. A noted copy of the letter was sent to Surge Global Energy President Frederick Kelly. Neither Mr. Gawne nor Mr. Kelly ever responded to Walter Whitehead's letter.

Between March and June 2005 we let it be known through the media that the Lubicon people have serious concerns about the proposed project and that we are seeking a meeting with the companies involved. Not one of the involved companies contacted us.

On March 31, 2005, a wholly owned subsidiary of Deep Well named Northern Alberta Oil Ltd. issued a news release claiming falsely that "all (provincial) regulations and legal requirements with respect to drilling and recovery of heavy oil have been complied with". We were not sent a copy of the press release but obtained a copy through other channels.

On July 8, 2005 Walter Whitehead received a letter from Surge Global Energy President Frederick Kelly. The letter is dated June 22<sup>nd</sup> and gives Walter Whitehead "10 day notice as requested of Surge by Alberta Environmental Protection" that Surge has "recently applied to Alberta Environment for access onto the lands covered...on the attached survey plan". The letter informs Walter Whitehead that "Traps and trap lines affected by this disposition should be removed/relocated at this time to prevent accidental damage".

Walter Whitehead faxed a reply to Mr. Kelly on July 11<sup>th</sup> telling Mr. Kelly that "it's a little late to warn me about potential damage to traps and trap lines when your contractors already cleared a large site on my trap line without any notification or consultation". Walter Whitehead reminded Mr. Kelly that "the lands you are proposing to tear apart are at the heart of the Lubicon Lake Indian Nation's unceded traditional Territory". With the support of Lubicon Chief and Council, Walter Whitehead advised Mr. Kelly that "your project will not be allowed to go ahead while you continue to ignore the Lubicon Nation's request to meet and discuss the proposed project". Walter Whitehead has received no reply to his July 11<sup>th</sup> fax communication to Mr. Kelly.

The Lubicon people have been able to piece together a picture of the proposed project from various company publications. What we see alarms us and makes very clear that review of this single well is a wholly inadequate assessment of the plans these companies have for our unceded traditional Territory.

Page 14 of Surge Global Energy's May 16, 2005 10QSB Report to the Security Exchange Commission indicates that Surge has a "farmout" agreement with Deep Well Oil and Gas which "covers 63 square miles (63 sections or a total of 40,320 acres)". Surge's working interest will be 16,128 acres. Surge is obligated to pay 80% of the first ten wells drilled. Two non-affiliated third parties each own a 10% working interest. "Using an average of four wells per section", the Surge Report continues, Surge "could be able to drill over 250 wells on the property".

A 2004 Welwyn/Pan Orient Annual Information Form says:

"Development of the Sawn Lake Property is to be conducted in two phases...Phase 1 consists of drilling 10 pilot wells, currently scheduled for 2005. Phase 2 consists of the drilling of 64 wells between December 2006 and June 2007...The drilling and production from the first two phases of drilling are only a fraction of the entire reservoir development plan. Using Seal as an analogy where the exploitation planned is based on the drilling of 16 horizontal wells per section, the initial 74 wells only account for the full development of about 5 sections: if the first two phases are successful another 50 or more sections of the reservoir could be developed".

On August 6, 2004 a Swiss research firm paid by Deep Well to track Deep Well stocks (presumably for stock promotional purposes) reported "Through acquisition (of the Sawn Lake leases), Deep Well will control an 80% working interest in 32 contiguous sections (20,480 acres) in the Peace River Sawn Lake Oil Sands Project with a potential of 512 wells to be drilled on this property".

A March 28, 2005 Surge news release says:

"Recently the Surge Board of Directors approved an operating budget that will enable Surge to drill at least 15 horizontal wells in the Sawn Lake area over the next 12 months once additional financing has been obtained. With Surge's 40 percent undivided working interest in the properties covered by the farmout agreement, there are estimated to be a total of 328 million barrels of oil reserves in place, of which we expect that the primary recovery, using only conventional cold pumping methods, would yield at least 10% or 32.8 million barrels of heavy oil ranging from 9-11 API. The total project has been estimated by Ryder Scott, one of the leading engineering firms to contain a total of 820 million barrels of oil reserves in place (328 million applicable to Surge's 40% working interest)"

Surge does not intend to stop at primary recovery using conventional extraction methods. They intend to pump massive quantities of steam and/or superheated hot water into the fragile boreal subsurface beneath out lands, streams and lakes. The Surge website says:

"Primary production will probably recover 10% to 20% of the original oil in place while in future water flooding and possibly thermal application will most likely increase the ultimate recovery significantly"

In a June 16<sup>th</sup> news release, Surge "announced that it has entered into a formal agreement with Edward A. Howard...to assist the existing team of Petroleum engineers and Geologists to further develop and refine our drilling and thermal recovery program that is currently in progress at our Sawn Lake, Alberta properties".

Deep Well Oil and Gas, in a posting that was that was on the Deep Well Oil and Gas website on April 4, 2005 but has since been removed, says:

"Initially, the heavy oil at Sawn Lake is anticipated to be primary produced, meaning that it is cold producible at existing reservoir conditions much the same as conventional oil, without the use of heat...the Company anticipates that during later stages of the Sawn Lake production it will attempt to maximize the formation recovery factor of the oil originally in place by applying heat to the formation as steam or very hot water."

Moreover, according to June 15, 2005 news release, Surge has entered into an agreement with Genoil Inc. to "jointly build the first major 10,000 barrel per day Commercial Upgrader in North America" at the Sawn Lake site. Surge President Frederick Kelly is quoted in the news release as saying:

"By implementing the Genoil GHU (Genoil Hydro Conversion Upgrader) process we can upgrade our heavy oil in the field where we are planning to build a gathering system from each well to a central collection system that will be co-located to the planned GHU. This will then be connected to the existing high pressure 8-inch sales line that connects to Edmonton."

Clearly this proposed project involves a lot more than one well. Just as clearly the social, environmental and economic impact of this proposed project cannot be properly assessed without taking into account the cumulative effects of this massive new oils sands project on top of all of the conventional gas and oil activity which is already being conducted in the area.

The Lubicon people are concerned about the legal effect of the Alberta government continuing to authorize projects in our unceded traditional Territory. We are concerned about the effect that unbridled resource exploitation activity will have upon negotiation of a full and just settlement of our unceded aboriginal land rights.

The Lubicon people are concerned about the environmental effects of this proposed project. We are concerned that it may contaminate the air, water and land upon which we depend to survive.

The Lubicon people are concerned that this proposed project may damage the fisheries in Sawn Lake and nearby lakes, especially since Deep Well has been given oil sands leases beneath almost all of Sawn Lake.

The Lubicon people are concerned about the use of large amounts of water for oil sands exploitation and upgrading. We are concerned that it may deplete already threatened water systems in our area and damage underground reservoirs. We are concerned that toxic contaminants may find their way into underground reservoirs as they have in other oil sand projects. We are concerned about the unknown impacts of pumping large quantities of steam and/or superheated water into the fragile boreal muskeg ecosystem.

The Lubicon people are concerned about the disposal of contaminated wastes such as drilling muds.

The Lubicon people are concerned about significantly increasing the amount of air borne pollutants which will unavoidably be emitted by the many wells, batteries and trucks required to proceed with this massive project.

The Lubicon people are concerned about the potential consequences of using our traditional Territory to experiment with development of a new process for upgrading on site significant quantities of heavy oil.

The Lubicon people are concerned about the effects of so much surface disturbance on the plants and animals critical for our survival and way of life.

The Lubicon people are concerned about the roads, leases, pipelines and oilfield camps further damaging our forests.

The Lubicon people are concerned about the effect of this planned project upon our future reserve lands and upon the Lubicon settlement already located in the area. The 63 sections of land leased by these companies from the province include lands which are immediately adjacent to lands the Lubicon people intend to retain post-settlement for reserve purposes. They also include a one-mile buffer zone around that proposed Lubicon reserve where the Alberta government agreed no resource exploitation activity would be allowed pending settlement of Lubicon land rights.

These are Lubicon lands where our people have historically hunted, fished, trapped, gathered medicines and food, been born, lived, died and been buried. Our people have traditionally taken fish from Sawn Lake and the nearby Haig (Fish) Lake. Fish Lake is the site of a traditional Lubicon community where our people have lived since before the arrival of western Europeans in our part of North America. The trap line on which this proposed project is located has been held by members of Walter Whitehead's family since before the arrival of Western Europeans in our part of North America.

We have been trying very hard to co-exist with others who claim rights and interests in our unceded traditional Territory while we negotiate a settlement of Lubicon land rights with the governments of Canada and Alberta. To that end in 1986 we made an agreement with your predecessor organization the Alberta Energy Resources Conservation Board (ERCB) which provided that companies wishing to pursue resource exploitation activities in our unceded traditional Territory would consult with us before making application to the ERCB. If agreement could be reached with the company regarding Lubicon wildlife, environmental and economic development concerns the Lubicon people advised the ERCB that we would not oppose an application by the company to the ERCB.

The 1986 agreement between the Lubicons and the ERCB put the onus on the Lubicons and the company to come to a mutually acceptable accommodation and effectively took the political heat off the ERCB to support one side or the other. That agreement worked to the benefit of all concerned until 1995 when a company named Unocal abused the established procedure and lied about construction of a sour gas processing plant telling us it was only an expansion of an existing battery station. Before we caught Unocal in its lie we had informed the ERCB that we would not oppose construction of the supposed expansion of the battery station and the ERCB had granted the Unocal application. The Lubicons consequently objected to construction of Unocal's proposed sour gas processing plant resulting in a hearing of the matter by the ERCB. Forced to take sides the ERCB predictably reaffirmed their approval of the misrepresented sour gas processing plant and, taking a page from Unocal tactics, first misrepresented the 1986 agreement and then unilaterally breached the misrepresented 1986 agreement.

The only reason this potentially contentious situation has not resulted in confrontation since is that the majority of the companies wishing to exploit resources in our unceded traditional Territory have continued to observe the consultation procedure established by the 1986 agreement. Another company called Blackrock ignored it as well but Blackrock's operation is on the periphery of our unceded traditional Territory although clearly headed our way. Deep Well, Surge and their associated companies are proposing to proceed with a massive steam injection oil sands project, complete with an untried on-site Upgrader, right in the middle of our unceded traditional Territory.

In sum Deep Well undisputedly proceeded with construction of their proposed project without having a license to operate in Canada, without consulting the Lubicon people and without obtaining the provincially required drilling license from you. They are now trying to go through one of their partners in applying for a well license but they have still not consulted us regarding the proposed project. The application for a single well in isolation from the much larger project of which it is clearly a part obviously makes proper environmental assessment of the total project impossible. The Lubicon Lake Indian Nation strongly objects to the granting of this drilling license and will not accept construction of this large-scale oil sands facility in our unceded traditional Territory without consultation and without our agreement not to oppose its construction.

Sincerely,

**ORIGINAL SIGNED BY**

Bernard Ominayak  
Chief, Lubicon Lake Indian Nation

cc: The Hon. Stéphane Dion, Minister of the Environment, Canada  
The Hon. Andy Scott, Minister of Indian Affairs, Canada  
Robert Mills, Environment Critic, Conservative Party of Canada  
Bernard Bigras, Environment Critic, Bloc Québécois  
Nathan Cullen, Environment Critic, New Democratic Party  
Pat Martin, Environment Critic, New Democratic Party  
Bernard Cleary, Aboriginal Affairs Critic, Bloc Québécois  
Jim Prentice, Aboriginal Affairs Critic, Conservative Party of Canada  
Dr. David Swann, Environment Critic, Liberal Party of Alberta  
Ray Martin, Alberta New Democratic Party  
Elizabeth May, Executive Director, Sierra Club of Canada  
Bruce Cox, Executive Director, Greenpeace Canada  
Dr. David Suzuki  
Alex Neve, Secretary General, Amnesty International, Canada