

Lubicon Lake Indian Nation

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August 30, 2005 (By fax)

Susan McDonald
Alberta Energy and Utilities Board
Facilities Group - Applications Branch
640 - 5th Avenue, SW
Calgary, Alberta T2P 3G4
Fax: 403-297-7336

Dear Ms. McDonald:

Re: Well proposed by Deep Well/Surge Global Energy et al.
at 01-36-091-13W5M (EUB application 1411327).

As indicated in my attached letter of July 18, 2005, the Lubicon people are concerned that major tar sands oil exploitation activity proposed by Deep Well/Surge Global Energy in the heart of the unceded Lubicon Territory -- and located immediately adjacent to a historically and culturally key area the Lubicon people intend to retain for reserve purposes -- will have disastrous affects on the health, safety, environment and property rights of the Lubicon people.

Although Deep/Well Surge have yet to provide the Lubicon people with promised information pertaining to the one well in their current EUB application or their overall intentions in unceded Lubicon traditional Territory, the Lubicon people have been able to piece together a picture of the activity Deep Well/Surge plan to undertake from various company publications. What we read in these company publications, referenced in my attached letter of July 18th, makes very clear that the one well which Deep Well/Surge is currently applying to the EUB for authorization to drill is only a very small integral piece of the overall tar sands oil exploitation activity which Deep Well/Surge plan to undertake. It is also very clear that assessing the potential affects of this one well is wholly inadequate to assess the extent of the hazard which this overall tar sands oil exploitation activity poses to the health, safety, environment and property rights of the Lubicon people.

The language of your August 17, 2005 letter makes clear that the EUB is only prepared to consider the affects of this one proposed well and is not prepared to consider the potentially disastrous affects which the major tar sands oil exploitation activity planned by Deep Well/Surge in the unceded Lubicon Territory will

have upon the health, safety, environment and property rights of the Lubicon people. It is also very clear that your August 17th letter has little to do with identifying and addressing concerns, as alleged in your letter, but is rather only a transparent political ploy intended to set the stage for denying the Lubicon people status before the EUB in the matter of the Deep Well/Surge application -- after which the Deep Well/Surge application will predictably be approved.

Denying that the Lubicon people have rights which may be "directly and adversely affected" by this major tar sands oil exploitation activity is an affront to legal and historical facts known to people across the country and around the world, and will rightly be viewed as such an affront by people across the country and around the world.

The real question to be answered prior to the EUB properly considering the Deep Well/Surge application is not whether the Lubicon people have status before the EUB in the matter of the Deep Well/Surge application, but whether the Alberta government, under whose enabling legislation the EUB exists and on whose behalf the EUB purports to regulate resource exploitation activity in the province of Alberta, has legitimate jurisdiction to regulate resource exploitation activity in the unceded Lubicon Territory.

The Alberta government claims to have obtained rights over lands and resources in northern Alberta, including unceded Lubicon lands, from the government of Canada by virtue of the 1930 land transfer agreement. The 1930 land transfer agreement, however, expressly provides that the lands transferred from federal to provincial jurisdiction were transferred "subject to any trusts existing in respect thereof, and (subject) to any interest other than that of the (Federal) Crown in the same (underlining added)."

The Canadian government in turn claims to have obtained rights to these lands and resources in northern Alberta in 1899, including unceded Lubicon lands, through negotiation of Treaty 8 with its original aboriginal owners. However the Lubicon people are the original aboriginal owners of traditional Lubicon Territory and, although there have been on-again, off-again discussions respecting Lubicon land rights between Canadian government and the Lubicon people going back to 1939 -- and effective acknowledgement of Lubicon land rights by both levels of Canadian government -- the fact remains that no treaty has yet been negotiated with the Lubicon people, and the Lubicon people have not ceded rights to our traditional Territory to anybody in any legally or historically recognized way.

Under these circumstances -- with Alberta government jurisdiction over unceded Lubicon Territory contested and under negotiation -- an agreement was made in 1986 between the Lubicon people and the EUB's predecessor organization, the ERCB (Energy Resources Conservation Board). That agreement provided that projects proposed for the unceded Lubicon Territory be vetted with the Lubicon people prior to being submitted to the ERCB for approval, and that Lubicon agreement not to oppose such projects be obtained prior to the ERCB processing an application regarding those projects. The purpose of that agreement was to facilitate peaceful co-existence by seeking to avoid confrontation on the ground over key Lubicon interests, such as sacred burial grounds, while the overriding issue of contested jurisdiction was hopefully being resolved politically through negotiation of treaty between the Lubicon people and the government of Canada.

In 1995, in the context of a hearing on an application to build a sour gas processing plant, which officials of a company named Unocal had falsely told the Lubicon people was merely an innocuous expansion of an existing oil battery station -- and under political pressure from Unocal to approve this sour gas processing plant despite the fact that Unocal had both lied about the nature of the project and had breached the 1986 agreement -- the ERCB first misrepresented the provisions of the 1986 agreement and then reneged on it altogether.

Fortunately for the pre-requisites of peaceful co-existence, most of the companies with interests in unceded traditional Lubicon Territory have continued to observe the procedures established by the 1986 agreement. Experience with a few errant companies, however -- like Deep Well and Surge Global Energy -- make clear that the terms of the 1986 agreement need to be revived by the EUB and honored if jurisdictional confrontation on the ground is to be avoided.

You already have the information you need to make a decision about whether Lubicon rights may be "directly and adversely" affected by the proposed project. The lands in which Deep Well/Surge propose to undertake major tar sands oil exploitation activity are located in the middle of lands which the Lubicon people have never ceded to anybody in any legally or historically recognized way.

You already know -- from the companies' own materials -- that Deep Well/Surge have much more in mind than just drilling one well "to evaluate crude bitumen in the Bluesky Formation".

And you already know that it is not possible to assess the potentially disastrous affects of what Deep Well/Surge plan to do on the health, safety, environment and property rights of the Lubicon people merely by looking at whether this one well meets technically questionable provincial environmental standards.

The question is thus not one of additional information from the Lubicon people intended only to create the illusion of a legitimate provincial regulatory process, but whether the EUB is going to take the more than adequate information it already has and deal with that information responsibly in the public interest.

How the EUB handles the matter of the Deep Well/Surge application will contribute gist to growing public controversy regarding recent EUB decisions favoring industrial activity over human health and safety, and to growing public scrutiny of whether the EUB is truly an effective provincial regulatory process or just a rubber stamp for the gas and oil industry set up and operated by the Alberta government to give the public false assurance that the gas and oil industry in Alberta is being regulated in the public interest.

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 Quebecois
Nathan Cullen, Environment Critic, New Democratic Party
Pat Martin, Environment Critic, New Democratic Party
Bernard Cleary, Aboriginal Affairs Critic, Bloc Quebecois
Jim Prentice, Aboriginal Affairs Critic, Conservative Party of Canada
Dr. David Swann, Environment Critic, Liberal Party of Alberta
David Egger, Environment Critic, 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