To: Impact Assessment Agency of Canada

From: Otipemisiwak Métis Government – District Council of Fort McMurray Métis District

Re: Comments on Draft Co-operation Agreement on Environmental and Impact Assessment Between: Alberta as represented by the Minister of Environment and Protected Areas ("Alberta") and Canada as represented by the Minister of Environment, Climate Change and Nature ("Canada")

Date: March 27, 2026

The following comments are provided to the Impact Assessment Agency of Canada (IAAC) from the Otipemisiwak Métis Government – District Council of Fort McMurray Métis District (McMurray Métis) with respect to the Draft Co-operation Agreement on Environmental and Impact Assessment Between: Alberta as represented by the Minister of Environment and Protected Areas ("Alberta") and Canada as represented by the Minister of Environment, Climate Change and Nature ("Canada") (the draft agreement).

McMurray Métis is strongly opposed to the draft agreement in its present form, which appears largely to abdicate the federal role in impact assessment and Crown consultation, and risks creating the conditions for much greater regulatory and legal uncertainty for major projects through its overreliance upon Alberta's established processes, which are badly out-of-step with federal law and Supreme Court decisions. Please revise and consult directly with McMurray Métis on the submitted comments.

1. Preamble 1 states "WHEREAS Alberta and Canada signed a Memorandum of Understanding to…negotiate a co-operation agreement on impact assessments…that reduces duplication through a single assessment process that respects federal and provincial jurisdictions…" It is unclear what previous practice – where one project was subject to multiple impact assessments – this clause is alluding to. Nor is it clear why this cooperation agreement fails to reference and utilize the existing mechanisms for cooperation within the *Impact Assessment Act* (the Act), for example substitution or harmonization. In reality, we have mechanisms for federal-provincial cooperation in impact assessments, for instance through the use of Joint Review Panels. This agreement should build upon those, rather than jettisoning them for a one-sided cessation of federal authority to Alberta.
2. Preamble 2 states: "AND WHEREAS Alberta has exclusive legislative jurisdiction over the development, conservation and management of non-renewable resources in the province, and decisions related to the management of those resources in the province as well as jurisdiction over local works and undertakings, property and civil rights, local matters of a private nature, provincial Crown lands and the generation of electricity…"

McMurray Métis is troubled by Canada's acceptance of the absolutist language of "exclusive legislative jurisdiction over the development, conservation and management of non-renewable resources." Given that this language was *not* used by the Supreme Court of Canada in its *Reference re Impact Assessment Act*, 2023 SCC 23, and the question of what 'exclusivity' in this context might mean, we are opposed to the inclusion of this language in any cooperation agreement with Alberta. It is likewise noteworthy that while areas of provincial jurisdiction are clearly laid out in the preamble, there is no corresponding assertion of areas of federal jurisdiction, or even mention of the bases of federal jurisdiction. McMurray Métis requests that a new paragraph be inserted to describe Canada's areas of legislative jurisdiction, for example with respect to Indigenous peoples, migratory birds, species at risk, navigable waters, heritage river designation, environmental obligations and commitments to climate change.

3. Preamble 5 states: "AND WHEREAS Canada and Alberta have each established robust processes for the high-quality assessment of the effects of certain types of projects, informed by rigorous science, Indigenous consultation, public participation, and community knowledge;". This clause is particularly troubling given the considerable evidence of the deficiencies of Alberta's regulatory regime, whether with respect to Crown consultation (the Alberta Energy Regulator is presently being sued by Mikisew Cree Nation in relation to the adequacy of its Crown consultation procedures), the assessment of impacts to Indigenous rights (which is not required in Alberta despite the Supreme Court's decision in *Clyde River*), cumulative effects management (Alberta has approved only two of the six regional plans since the passage of the *Alberta Land Stewardship Act* in 2009, and both plans have been heavily criticized by Indigenous peoples for the absence of any mechanism to assess the cumulative effects to Indigenous rights), oil and gas liabilities (which are massively underfunded according to all calculations, including Alberta's), tailings management and transparency (for instance the AER's failure to report on the Imperial Oil's 2023 tailings spill), and the disregard of regulators' own rules and procedures (see the recent decision by the AER not to apply its own conflict of interest policy with respect to a complaint filed by Dwight Popowich). Moreover, this clause does not address the breadth of requirements under Section 22 of the Act, factors to be considered, specifically *(g) Indigenous knowledge provided with respect to the designated project;.* McMurray Métis requests that this clause be modified to read:, "AND WHEREAS Canada and Alberta have committed to establishing robust processes for the high-quality assessment of the effects of certain types of projects, informed by rigorous science **and Indigenous knowledge**, Indigenous consultation, public participation, and community knowledge".
4. Preamble 11 states: "AND WHEREAS Alberta continues to act in a manner that is consistent with treaties, the Canadian Constitution, and Alberta law and views UNDRIP as non-binding…" Again, this agreement should not acknowledge that Alberta "continues to act in a manner consistent with treaties, [and] the Canadian Constitution…" when

Alberta is presently being sued for Treaty infringement and failure to uphold the duty to consult as interpreted by the Supreme Court of Canada. It is similarly troubling that the agreement acknowledges that Alberta views UNDRIP as non-binding, when in fact UNDRIP the United Nations Declaration of the Rights of Indigenous Peoples Act (UNDA) has been incorporated into Canadian common law by the Supreme Court of Canada, and Canada has affirmed its commitment to UNDRIP (with Alberta, to date, remaining part of Canada). Alberta's position on UNDRIP makes it even more puzzling as to why Canada is willing to assert in the agreement that Alberta is able to fulfill Canada's duties and responsibilities under the Canadian Constitution and federal law. McMurray Métis requests that this section be rewritten as follows: "AND WHEREAS Alberta commits to acting in a manner that is consistent with treaties, the Canadian Constitution, and federal and Alberta law."

5. Section 1 (1) states: "When a proposed project is primarily within provincial jurisdiction, Canada will recognize Alberta as best placed to undertake an assessment and will rely on Alberta's environmental assessment or regulatory processes to assess the effects of the project including, as applicable, to address adverse effects within federal jurisdiction, as defined in the IAA, as outlined in this Agreement." There is no definition for when a proposed project is "primarily" within provincial jurisdiction. Given other clauses in the draft agreement, this term needs to be defined and cannot be left to discretion. Otherwise, the agreement could potentially create the conditions that federal jurisdiction becomes unduly limited to interprovincial projects or federal works/projects on federal land. Similarly, there is simply no good reason for Canada to recognize that Alberta is "…best placed to undertake an assessment…to address adverse effects within federal jurisdiction." See above comments on the abundant evidence of Alberta's deficient regulatory regime. This clause should be removed from the agreement entirely and rewritten to ensure that any project with joint federal-provincial jurisdiction be conducted jointly, with Alberta responsible for areas of provincial jurisdiction and Canada responsible for areas of federal jurisdiction. Where Alberta is allowed to conduct assessments and consultation in areas of federal jurisdiction, Alberta must commit in the agreement to uphold federal law and Supreme Court decisions, and there must be clear federal oversight and provincial accountability integrated into the agreement.
6. Section 2 (3) states: "IAAC and the applicable Alberta Regulator will work with each other and proponents, as early as possible, to ensure that federal and provincial assessment and permitting/regulatory responsibilities, legislative authorities, and potential requirements are identified." This clause is inadequate and neglects to address the inclusion of Indigenous Peoples in early planning. McMurray Métis requests that this clause be modified to read, "IAAC and the applicable Alberta Regulator will work with each other, proponents, **and Indigenous Peoples**, as early as possible, to ensure that federal and provincial assessment and permitting/regulatory responsibilities, legislative authorities, and potential requirements are identified."

7. Section 2 (4) states: “The applicable Alberta Regulator will share with IAAC information about means that would allow Alberta to address adverse effects within federal jurisdiction that may be caused by the proposed project and IAAC will share information that is relevant to the applicable Alberta Regulator; and”. In order for the Alberta Regulator to comprehensively identify ‘adverse effects within federal jurisdiction’, the Alberta Regulator must consult with Indigenous Peoples. McMurray Métis requests that this clause be modified to read, “The applicable Alberta Regulator **will consult with Indigenous Peoples and** will share with IAAC information about means that would allow Alberta to address adverse effects within federal jurisdiction that may be caused by the proposed project and IAAC will share information that is relevant to the applicable Alberta Regulator; and”.
8. Section 2 (5) states: “IAAC and the applicable Alberta Regulator will undertake to inform Indigenous groups as early as possible, and share information where possible, regarding projects subject to this Agreement.” This clause is wholly inadequate because of the use of the non-committal phrases ‘as early as possible’ and ‘where possible’. As noted above, McMurray Métis is requesting that IAAC and the Alberta Regulator be required to include Indigenous Peoples in the early planning stages in request number 5. McMurray Métis requests that this clause be modified to read, “IAAC and the applicable Alberta Regulator **will undertake early planning with Indigenous groups, and consult with Indigenous Groups to ensure Indigenous Knowledge is informing the early planning** regarding projects subject to this Agreement.” This modification will be in line with IAAC’s principles for early planning recommended by the Technical Advisory Committee on Science and Knowledge (see Advice to Agency at this website: https://www.canada.ca/en/impact-assessment-agency/advisory/advisory-groups/technical-advisory-committee-science-knowledge.html; specifically Pre-Planning (2021-2022) and Alternatives (2023-2024).
9. Section 3 (1) states: “…IAAC commits to avoiding duplicative decision-making processes related to assessments by relying on the provincial environmental assessment or regulatory processes in circumstances where Alberta confirms that those processes will address adverse effects within federal jurisdiction…” It is troubling that Canada seems to be ceding federal jurisdiction based upon Alberta’s confirmation that its process will address adverse effects within federal jurisdiction. This is particularly true given the aforementioned deficiencies in Alberta’s regulatory regime and the fact that Alberta refuses to commit to upholding federal law in the agreement itself. For this agreement to work, Alberta must commit to upholding federal law and standards, and adhering to the decisions of the Supreme Court of Canada. In addition, any delegation to Alberta of impact assessment and Crown consultation in areas of federal jurisdiction must come with clear mechanisms for federal oversight and provincial accountability.
10. Section 4 (1) refers to co-operative assessments. This section does not address the option under the *Impact Assessment Act* for Indigenous Co-Administration Agreements to enable partnership with Indigenous Peoples throughout the federal impact

assessment process. McMurray Métis submitted comments in 2024 on the discussion paper related to the Indigenous Impact Assessment Co-Administration Agreement Regulation and is waiting for the IAAC to issue the What We Heard Report. No cooperative agreement between Alberta and Canada can be finalized until there is provision for Indigenous Impact Assessment Co-Administration Agreements through a regulation.

11. Section 5 (1) states: "Any impact assessment determined to be required under this agreement will be completed within a maximum of two years…" IAAC is presently endeavouring to reduce the timeline for its impact assessment process by more than half. This is an extraordinarily ambitious objective, given IAAC's stated commitments to upholding the duty to consult and Indigenous rights, among other things. McMurray Métis does not agree to applying a two-year timeline to the impact assessment process as it is clear from years of regulatory processes, two years is not sufficient for a proponent to conduct consultation with Indigenous peoples in a meaningful way to collect sufficient data to identify and quantify adverse effects to Indigenous rights. Forcing a two-year timeline will result in inadequate consultation and lack of comprehensive impact assessment with regard to impacts to Indigenous rights. Given these facts, this statement should be conditioned as such: "Any impact assessment determined to be required under this agreement will be endeavoured to be completed within a maximum of two years…"
12. P.3, Section 6, (2) should be edited to read, "~~**Where practical and appropriate,**~~ IAAC and the applicable provincial public interest decision-maker or regulatory approval decision-maker(s) will coordinate the opportunity for proponents, Indigenous Peoples, and the public to review potential assessment conditions." McMurray Métis position is that Indigenous Peoples must be allowed to review and comment on all potential conditions, and that Indigenous input on conditions should be submitted with the final recommendation report to the Minister.
13. Section 7 (1) states: "When a proposed project is primarily within provincial jurisdiction, Canada will recognize Alberta as best placed to consult with Indigenous Peoples…" Again, there needs to be a clear definition for when a project is "primarily" within provincial jurisdiction. In addition, given that Alberta is presently being sued by a First Nation for its inadequate consultation policies and procedures, this clause is totally unacceptable. Any such delegation requires a commitment from Alberta to uphold federal laws and regulations, and to implement faithfully the decisions of the Supreme Court of Canada. Moreover, any such delegation must be accompanied by clear federal oversight mechanism and accountability measures to ensure Alberta is meeting its commitments.
14. Section 8 (2-3) state: "Canada will work with Indigenous Peoples with respect to the sharing and protection of Indigenous knowledge" and "Alberta commits to receiving, sharing, and considering Indigenous knowledge in accordance with Alberta's legislation, policies, and practices." These two clauses together betray a fundamental fact: that

Alberta is simply not committed to upholding federal laws and standards in areas of federal jurisdiction. If Alberta is not able to commit to upholding federal laws and standards, then they simply cannot be allowed to conduct impact assessments and Crown consultation in areas of federal jurisdiction, which includes the rights and interests of Indigenous peoples.

15. Section 10 (4) states: “Should a proposed project be located on or cross a boundary with another province or territory with a portion of the project in Alberta, the Parties would seek to apply the principles and approaches contained herein…” The clause potentially undermines one of the few areas where the agreement does acknowledge federal jurisdiction: cross-border projects. If cross-border projects are now subject to this agreement as constituted, it is very possible that the *only* projects in Alberta that would be subject to a federal assessment would be federal works or projects on federal lands. This would represent an unacceptable cessation of federal authority. As such, this clause should be removed, and all inter-provincial projects should be under federal jurisdiction.

Conclusion: McMurray Métis is strongly opposed to the draft agreement in its present form. As constituted, this draft agreement risks eliminating the federal role in regulatory and impact assessment projects in Alberta almost entirely. Canada appears to be abdicating its constitutional authority and jurisdiction to a province with a deeply inadequate record of regulatory oversight and Crown consultation, without extracting any meaningful commitments from Alberta in relation to upholding federal law and the rulings of the Supreme Court of Canada. Any draft agreement with Alberta must ensure that Alberta commits to upholding federal laws and standards, as well as the decisions of the Supreme Court of Canada (which they are not doing at this time), must include commitments with respect to the assessment and management of cumulative effects, particularly to Indigenous rights, and must incorporate meaningful federal oversight and accountability mechanisms to ensure that Alberta is in fact honouring its commitments. It is totally inadequate for Canada to hand over jurisdiction and authority for these matters on Alberta’s word and without meaningful oversight and accountability. To do so will not provide regulatory certainty for investment in the province; rather, it may initiate greater regulatory and legal uncertainty, and potentially bog major projects down in the courts for years if not decades, as a result of Alberta’s inadequate regulatory and Crown consultation regimes.