



AGREEMENT To Establish a Joint Panel for the Kearl Oil Sands Project

Between
The Minister of the Environment, Canada

- and -

The Alberta Energy and Utilities Board

PREAMBLE

WHEREAS the Alberta Energy and Utilities Board (the EUB) has statutory responsibilities pursuant to the *Alberta Energy and Utilities Board Act* and the *Energy Resources Conservation Act*; and

WHEREAS the Minister of the Environment, Canada (the Federal Minister of the Environment) has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act*; and

WHEREAS the Kearl Oil Sands Project (the Project) requires a public hearing and approvals from the EUB pursuant to the *Alberta Energy and Utilities Board Act*, the *Energy Resources Conservation Act*, and the *Oil Sands Conservation Act*, and is subject to an assessment under the *Canadian Environmental Assessment Act*; and

WHEREAS the Minister of Fisheries and Oceans has requested, in accordance with section 25 of the *Canadian Environmental Assessment Act*, that the Federal Minister of the Environment refer the Project to a review panel; and

WHEREAS the Federal Minister of the Environment has referred the Project to a review panel in accordance with section 29 of the *Canadian Environmental Assessment Act*; and

WHEREAS the Government of the Province of Alberta and the Government of Canada established a framework for conducting Joint Panels through the *Canada-Alberta Agreement on Environmental Assessment Cooperation* (2005) signed on May 17, 2005; and

WHEREAS the EUB and the Federal Minister of the Environment have determined that a Joint Panel review of the Project will ensure that the Project is evaluated according to the spirit and requirements of their respective authorities while avoiding unnecessary duplication, delays and confusion that could arise from individual reviews by each government or the EUB; and

WHEREAS the EUB and the Federal Minister of the Environment have determined that a Joint Panel review of the Project should be conducted in a manner consistent with the provisions of Appendix 2 of the *Canada-Alberta Agreement on Environmental Assessment Cooperation* (2005); and

WHEREAS the Federal Minister of the Environment has determined that a Joint Panel should be established pursuant to paragraph 40(2) of the *Canadian Environmental Assessment Act* to consider the Project;

THEREFORE, the EUB and the Federal Minister of the Environment hereby establish a Joint Panel for the Project in accordance with the provisions of this Agreement and the Terms of Reference attached as an Appendix to this Agreement.

1. Definitions

For the purpose of this Agreement and of the Appendix attached to it,

"Agency"

means the Canadian Environmental Assessment Agency established by the *Canadian Environmental Assessment Act*.

"EIA Report"

means an environmental impact assessment report prepared in accordance with the Terms of Reference issued for the Project by the Director of Alberta Department of the Environment.

"Environment"

means the components of the Earth, and includes a. land, water and air, including all layers of the atmosphere; b. all organic and inorganic matter and living organisms; and c. the interacting natural systems that include components referred to in (a) and (b).

"Environmental Effect"

means, in respect of the Project,

- a. any change that the Project may cause in the Environment, including any change it may cause to a listed wildlife species, its critical habitat or the residence of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,
- b. any effect of any change referred to in paragraph (a) on
 - i. health and socio-economic conditions
 - ii. physical and cultural heritage
 - iii. the current use of lands and resources for traditional purposes by aboriginal persons, or
 - iv. any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or
- c. any change to the Project that may be caused by the environment,

whether any such change or effect occurs within or outside Canada.

"Federal Authority"

refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

"Final Report"

means the document produced by the Joint Panel, which contains decisions pursuant to the *Energy Resources Conservation Act* or the *Oil Sands Conservation Act*, and the Joint Panel's conclusions and recommendations pursuant to the *Canadian Environmental Assessment Act* with respect to the environmental assessment of the Project.

"Follow-up Program"

means a program for

- a. verifying the accuracy of the environmental assessment of the Project, and
- b. determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the Project.

"Joint Panel"

refers to the Joint Review Panel established by the EUB and the Federal Minister of the Environment through this Agreement.

"Mitigation"

means, in respect of the Project, the elimination, reduction or control of the adverse environmental effects of the Project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means.

"Parties"

means the signatories to this Agreement.

"Responsible Authority"

refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

2. Establishment of the Panel

2.1. A process is hereby established to create a Joint Panel, pursuant to section 22 of the *Energy Resources Conservation Act* with the authorization of the Lieutenant Governor in Council of Alberta, and Sections 40, 41 and 42 of the *Canadian Environmental Assessment Act*, for the purposes of the review of the Project.

2.2. The EUB and the Agency will make arrangements to coordinate the announcements of a joint review of the Project by both Alberta and Canada.

3. Constitution of the Panel

3.1. The Joint Panel will consist of three members. Two members, including the Joint Panel Chair, will be appointed by the Chair of the EUB with the approval of the Federal Minister of the Environment. The third Joint Panel member will be appointed by the Federal Minister of the Environment in accordance with article 3.2 of this Agreement.

3.2. The Federal Minister of the Environment will select the third Joint Panel member and recommend the selected candidate as an individual who may serve as a potential acting member of the EUB. If acceptable to the Lieutenant Governor in Council of Alberta and the Chairman of the EUB, the Lieutenant Governor in Council of Alberta will nominate this candidate to serve as an acting member of the EUB and the Chairman of the EUB will appoint this candidate as a member of the Joint Panel. The selected candidate will then be appointed by the Federal Minister of the Environment as a member of the Joint Panel.

3.3. The Joint Panel members shall be unbiased and free from any conflict of interest relative to the Project and are to have knowledge or experience relevant to the anticipated environmental effects of the Project.

4. Conduct of Assessment by the Panel

4.1. The Joint Panel shall conduct its review in a manner that discharges the responsibilities of the EUB under the *Alberta Energy and Utilities Board Act* and the *Energy Resources Conservation Act*.

4.2. The Joint Panel shall conduct its review in a manner that discharges the requirements set out in the *Canadian Environmental Assessment Act* and in the Terms of Reference attached as an Appendix to this Agreement and that were fixed and approved by the Federal Minister of the Environment.

4.3. All Joint Panel hearings shall be public and the review will provide opportunities for timely and meaningful public participation.

4.4. The Joint Panel shall have all the powers and duties of a panel described in Section 35 of the *Canadian Environmental Assessment Act* and of a division of the EUB described in Section 10 of the *Alberta Energy and Utilities Board Act*.

5. Secretariat

5.1. Administrative, technical, and procedural support requested by the Joint Panel shall be provided by a Secretariat, which shall be the joint responsibility of the EUB and the Agency.

5.2. The Secretariat will report to the Joint Panel and will be structured so as to allow the Joint Panel to conduct its review in an efficient and cost-effective manner.

5.3. The EUB will provide its offices for the conduct of the activities of the Joint Panel and the Secretariat.

6. Record of Joint Review and Final Report

6.1 Subject to sections 55.1, 35(4), and 35(4.1) of the *Canadian Environmental Assessment Act*, the public registry will include all submissions, correspondence, hearing transcripts, exhibits and other information received by the joint panel and all public information produced by the joint panel relating to the review of the Project.

6.2 The responsible authority under the *Canadian Environmental Assessment Act* will make necessary arrangements with the Agency for the maintenance of the internet site component of the federal public registry, when the Joint Panel is announced. The internet site

component of the registry will be maintained by the Agency during the course of the joint panel review in a manner that provides for convenient public access, and for the purposes of compliance with section 55 to 55.5 of *Canadian Environmental Assessment Act*. The Agency's co-responsibility for the Secretariat will include the Agency's obligation to maintain the internet site.

6.3. A public registry will be maintained by the Secretariat during the course of the review in a manner that provides for convenient public access, and for the purposes of compliance with section 55 and 55.4 of the *Canadian Environmental Assessment Act*. This registry will be located in the offices of the EUB.

6.4. On completion of the assessment of the Project, the Joint Panel will prepare a Final Report that will be published.

6.5. Once completed, the Final Report will be conveyed simultaneously in both official languages by the Joint Panel to the Government of Alberta and the Federal Minister of the Environment and will be made available to the public.

6.6. Once the Final Report is submitted, the responsibility for the maintenance of the public registry will be transferred to the responsible authority. The EUB will continue to maintain records of the proceedings and the Final Report, as per the EUB Rules of Practice.

6.7. The Agency will be responsible for the translation of key documents prepared by the Joint Panel, including public notifications and releases and the Final Report, into both of the official languages of Canada. The Agency will use all reasonable efforts to expedite the translation of the Final Report in an effort to meet the EUB's ninety day timeframe for the release of EUB decisions.

7. Other Government Departments

7.1. At the request of the Joint Panel, federal authorities and provincial authorities having specialist information or knowledge with respect to the Project shall make available that information or knowledge in a manner acceptable to the Joint Panel.

7.2. Nothing in this Agreement will restrict the participation by way of submission to the Joint Panel by other federal or provincial government departments or bodies, subject to article 7.1, above, section 12(3) of the *Canadian Environmental Assessment Act* and the EUB Rules of Practice.

8. Participant Funding

8.1. Decisions regarding participant funding by the Agency under the federal Participant Funding Program, and decisions on intervenor funding by the EUB as provided for in the *Energy Resources Conservation Act*, EUB Rules of Practice and the EUB Guidelines for Energy Cost Claims (Guide 31A) will, to the extent practicable, take into account decisions of the other party.

9. Cost Sharing

9.1. The EUB, as lead party, will develop a budget estimate of expenses agreeable to both parties prior to initiation of the Joint Panel activities.

9.2. The costs of the review will be apportioned between the EUB and the Agency in the manner set out in articles 9.3, 9.4 and 9.5.

9.3. The EUB will be solely responsible for the following costs:

- salaries and benefits of the Joint Panel Chairman and the member of the Joint Panel not appointed in accordance with article 3.2; and

- salaries and benefits of EUB staff involved in the joint review.

9.4. The Agency will be solely responsible for the following costs:

- per diems of the Joint Panel member appointed in accordance with article 3.2;

- salaries and benefits of Agency staff involved in the joint review;

- all costs associated with the federal Participant Funding Program;

- translation of records and documents into the official languages of Canada other than translation required as outlined in section 9.5 of this Agreement; and

- costs associated with the public registry established pursuant to section 55.1 of the CEEA.

9.5. The EUB and the Agency agree to share equally all those costs listed below, incurred as part of the Joint Panel review from the signing of this Agreement to the date the Final Report is issued by the Joint Panel. The shareable costs are as follow:

- travel-related expenses associated with the review incurred by Joint Panel members and Panel Secretariat staff;

- per diems and associated expenses of independent/non-government expert consultants, analysts and communications specialists retained by the Secretariat;

- language translation and interpretation services and facilities related to the evidence of applicants, participants and local interveners as required by the joint panel, but not including translation service referred to in Section 6.7 of this Agreement;

- printing of any reports and documents distributed by the Joint Panel necessary for the Panel's work;

- the publication of notices and releases;

- photocopying, including the reproduction of documents contained in the public registry, and postage related to the review;

- court reporting and transcripts as required by the Joint Panel;

- rental of hearing, public meeting and public information office facilities and equipment;

- audio and audio-visual services at the hearing and public meetings; and

- miscellaneous expenditures up to a maximum of five percent (5%) of the total budget for the review.

9.6. The Agency may only be responsible for contributing to shareable costs within the allowable limits of Treasury Board Secretariat directives.

9.7. Shareable costs of the joint review as detailed in article 9.5 will be incurred at the sole discretion of the Joint Panel with due regard to economy and efficiency.

9.8. All expenses not listed above will need prior approval of both parties if they are to be equally shared.

10. Invoicing

10.1 The EUB will be responsible for advancing funds for the payment of the shareable costs and will invoice the Agency for the amounts owed under this Agreement, except for travel-related expenses of the Agency's staff which will be advanced by the Agency. In the event that the Agency is required to advance shareable funds directly, it will advance funds for payment and will invoice the EUB as determined under this Agreement.

10.2 The invoicing will be done either at the end of each month or quarterly at the discretion of the EUB. The invoice will cover all shareable costs paid by the EUB.

10.3 Each invoice will be accompanied by a summary description of the shareable costs actually incurred and paid for the period covered by the invoice, in a form satisfactory to both Parties and will be certified by an official acceptable to both Parties. Detailed information about incurred costs will be retained and made available to either Party upon request.

10.4 Subject to compliance with the above requirements the Agency will pay to the EUB the amount stated as being owed to it in the invoice within sixty (60) days of having received such invoice.

10.5 With respect to invoices covering the last period of any fiscal year (ending March 31), and the last invoice to be produced for the joint panel review, each Party may review and deduct from the invoice, any incurred shareable costs that have not been previously recovered, so as to determine a net transfer of shared costs from one Party to another. The payment will be made within thirty (30) days of having received such invoice. An accounting of the shared expenses incurred by the Agency will be sent with the year-end and final payments, or earlier as may be requested by the EUB.

11. Audit

11.1 Subject to this Agreement, both Parties will keep open to audit and inspection by the Agency or the EUB, or their duly authorized representative, all invoices, receipts, vouchers and documents of any nature or kind whatsoever that have been relied on by either of the two Parties to calculate the shared cost of conducting the public review.

11.2 The Party exercising its option to audit will be responsible for the cost of the audit.

11.3 Where an audit conducted by either Party in connection with this Agreement reveals discrepancies regarding the amount billed to the

Agency, and where prompt resolution between the Parties is unattainable, an independent auditor acceptable to both Parties will resolve the issue.

12. Amending this Agreement

12.1. The terms and provisions of this Agreement may be amended by written memorandum executed by both the Federal Minister of the Environment and the Chairman of the EUB. Subject to section 27 of the *Canadian Environmental Assessment Act*, upon completion of the joint review, this Agreement may be terminated at any time by an exchange of letters signed by both parties.

13. Signatures

WHEREAS the parties hereto have put their signatures this 13th day of July 2006.
(Original signed by)

The Honourable Rona Ambrose
Minister of the Environment

Neil McCrank, Q.C.
Chairman
Alberta Energy and Utilities Board

Appendix Terms of Reference

Part I - Project Description

Imperial Oil Resources Ventures Limited and ExxonMobil Canada Properties are proposing to construct and operate an oil sands mining and extraction facility in the Fort McMurray area. The proposed Kearn Oil Sands Project is to be located approximately 70 kilometers north of Fort McMurray in Townships 95 to 99, Ranges 6 to 10, West of the 4th Meridian. The project includes four open pit, truck and shovel mines, three trains of ore preparation and bitumen production facilities, a cogeneration plant consisting of three 85-megawatt gas turbine generators, one external tailings area for all three trains, associated utilities and infrastructure, and a development and reclamation plan. The proposed project is designed to produce approximately 48,000 cubic metres per day of partially deasphalted bitumen (clean bitumen). The project, if approved, could begin construction in 2007, with mining expected to occur in the period 2010 to 2060.

Part II - Scope of the Environmental Assessment

1. The Joint Panel will conduct an assessment of the environmental effects of the Project based on the Project Description (Part I).
2. The assessment will include a consideration of the factors listed in subsection 16(1)(a) to (d) and 16(2) of the *Canadian Environmental Assessment Act*, namely:
 - a. the environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative

- environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
- b. the significance of the effects referred to in paragraph a);
 - c. comments from the public that are received during the review;
 - d. measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project;
 - e. the purpose of the Project;
 - f. alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means;
 - g. the need for, and the requirements of, any follow-up program in respect of the Project; and
 - h. the capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future.
3. Pursuant to subsection 16(1)(e) of the *Canadian Environmental Assessment Act*, the assessment by the Joint Panel will also include a consideration of the additional following matters:
 - a. the need for the Project;
 - b. alternatives to the Project; and
 - c. measures to enhance any beneficial environmental effects.
 4. The Review will consider the environmental effects of the proposed Project within spatial and temporal boundaries which encompass the periods and areas during and within which the Project may potentially interact with, and have an effect on, components of the environment. These boundaries may vary with the issues and factors considered, and with the different phases in the life cycle of the Project. The boundaries will reflect:
 - the natural variation of a population or ecological component;
 - the timing of sensitive life cycle phases in relation to the scheduling of the Project;
 - the time required for an effect to become evident;
 - the time required for a population or ecological component to recover from an effect and return to a pre-effect condition, including the estimated degree of recovery;
 - the area affected by the Project; and
 - the area within which a population or ecological component functions and within which a Project effect may be felt.

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