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December 2, 2008

Mr. Jim Ellis  
Deputy Minister  
Alberta Environment  
10<sup>th</sup> floor, Petroleum Plaza  
9915 – 108 Street  
Edmonton, Alberta T5K 2G8

Mr. Pat Marriott  
Acting District Approvals Manager,  
Northern Region  
Alberta Environment  
#111 Twin Atria  
4999 – 98 Avenue  
Edmonton, Alberta T6B 2X3

Dear Sir:

**Re: Monitoring and Reporting of Oil Sands Mining Water Management Agreement**

We are writing on behalf of Water Matters, WWF-Canada, the Pembina Institute, the Sierra Club-Prairie Chapter and Keepers of the Athabasca with regards to the management of instream flow needs in the Lower Athabasca River. All of the above-named organizations are non-profit organizations with offices in Alberta who have an interest in the protection of the aquatic ecosystem of the Athabasca River.

In February 2007, Alberta Environment and Fisheries and Oceans Canada released the *Water Management Framework: Instream Flow Needs and Water Management System for the Lower Athabasca River* (the "*Framework*"). As you are aware, the *Framework* established three management zones as defined by flow conditions within the river: green, yellow and red. The *Framework* indicates that in the red management zone, as defined by the 95% flow exceedance level, low flows may limit fish habitat availability. The *Framework* establishes a target of maximum withdrawals of 5.2% of historical median flow in each week and maximum winter withdrawals of 15 m<sup>3</sup>/s when in the red management zone.

In response to the *Framework*, a number of oil sands operators entered into a letter of agreement dated January 31, 2007 which established an approach to managing water withdrawals in times of low flow. The implementation of this approach was further developed in an *Oil Sands Mining Water Management Agreement for the 2007-2008 Winter Period* (the "*Agreement*") dated December 7, 2007 which established maximum peak instantaneous withdrawals for the winter period for each of the signatories. It is our understanding that the oil sands operators intend to enter into a similar agreement for the 2008-2009 winter period.

Although the *Agreement* specifies a weekly maximum instantaneous withdrawal rate for each oil sands operator that is required to meet the maximum cumulative diversion rate, it does not specify how withdrawals will be monitored or reported other than the indication that companies must report any withdrawal exceedances to Alberta Environment. We understand that, based on the terms and conditions of their water licences, the oil sands operators who are signatories to the agreement are currently only required to report their actual water withdrawals on an annual basis (on or before January 31<sup>st</sup> in each year for Suncor and Syncrude; March 31<sup>st</sup> for Albion/Shell and Canadian Natural Resources Limited). Without weekly monitoring and reporting in place, neither the public nor Alberta Environment can be assured that signatories are adhering to the intent of a weekly maximum cumulative diversion rate.

We are aware that the Athabasca River flows below Fort McMurray are currently significantly below long term average levels and that this may be a critical winter for maintaining instream flow needs. We are therefore requesting a clarification from Alberta Environment when the oil sands mining water management agreement for the 2008-2009 winter period is issued and determined, on how maximum instantaneous withdrawal rates will be monitored and reported to ensure that the cumulative diversion rate specified by the *Framework* is observed. Furthermore, as the *Agreement* does not refer to any existing regulatory process, we are also requesting a clarification from Alberta Environment as to the legal basis for the implementation of the *Agreement*.

We look forward to a commitment from Alberta Environment to the monitoring and enforcement of withdrawal rates during the sensitive winter period in order to protect the instream flow needs of the Lower Athabasca River.

Sincerely,  
Ecojustice

Barry Robinson  
Staff Lawyer

On behalf of: Water Matters  
WWF-Canada  
The Pembina Institute  
Sierra Club – Prairie Chapter  
Keepers of the Athabasca

cc: Danielle Droitsch, Water Matters  
Mathieu Lebel, WWF-Canada  
Terra Simieritsh, Pembina Institute  
Harvey Scott, Keepers of the Athabasca  
Lindsay Telfer, Sierra Club – Prairie Chapter