

Via Email Only

October 11, 2017

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Boughton Law Corporation
**Attention: James Coady Q.C.
Tarlan Razzaghi**

Osler, Hoskin & Harcourt LLP
Attention: Sander Duncanson

MLT AIKINS LLP
Attention: Meghan Conroy

Dear Sir/Madam:

**Re: Proceeding ID 350
Prosper Petroleum Ltd (Prosper) Rigel Project**

On September 25, 2017, the Alberta Energy Regulator (AER) received Prosper's responses to information requests (IR's).

In its response to IR #11, Prosper acknowledged that there is information required for a groundwater licence application for the 16-20 water source well, necessary for the proposed Rigel project, under the *March 2011 Alberta Environment Guide to Groundwater Authorizations* (the *Guide*). It advised that if its applications are approved, this information with respect to the 16-20 WSW will be provided after related approvals under the *Environmental Protection and Enhancement Act* (EPEA), *Water Act*, and *Oil Sands Conservation Act* (OSCA) are issued. Prosper stated that the information will be compiled and submitted to the AER once the subject well has been drilled and tested.

On September 27, 2017, the AER wrote to Prosper asking Prosper to advise how it proposed to handle the apparent discrepancy in the amount of water required for the Rigel project and the amount that would be authorized by the applications made to the panel under the *Water Act*.

On September 29, 2017, Prosper replied to the AER indicating it was not submitting a groundwater licence application for the 16-20 WSW. Rather, it plans to "drill the proposed 16-20 WSW, and complete the outstanding well specific requirements for a *Water Act* licence under the applicable guidelines" if and when it receives all the other approvals applied for in relation to the Rigel project. It also provided a "revised application form reflecting the scope of the *Water Act* licence" it seeks in this proceeding.

On October 3rd and 4th respectively, Fort McKay First Nation and Fort McKay Métis Community submitted their comments about Prosper's letter. Both said that they each considered that the hearing of this matter should be adjourned until Prosper provides the information required under the *Guide* or an application that meets the regulatory requirements.

On October 6, 2017, Prosper responded to the submissions of Fort McKay First Nation and Fort McKay Métis Community. Prosper disagreed with those submissions and said the revised *Water Act* application does allow the AER and the parties to understand the project effects, including those related to water withdrawals. It stated that Prosper has demonstrated a proven water source to meet the project's water requirements. Prosper indicated it included the full water volume required for the project in its applications so that the AER could fully understand the environmental effects of the proposed project when considering if the project is in the public interest. It also provided a table of previous oil sands applications which Prosper submitted demonstrates that its "proposed approach to drilling and testing the 16-20 WSW after the Project receives regulatory approvals under the OSCA, EPEA and *Water Act* (for the WSWs that have been drilled and tested already) is common industry practice and has been found to be acceptable by the AER in past proceedings."

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The panel has asked me to convey its response to the parties submissions.

The panel is left in the situation where Prosper is seeking approval for an in situ scheme which requires certain volumes of water; however, the *Water Act* application does not include the full volume of water required for the proposed scheme. Prosper says it will provide information which will allow the panel to decide the applications in front of it, even in the absence of the 16-20 WSW application, and in essence undertakes to apply for the 16-20 WSW at a later date.

The panel is not satisfied with Prosper's proposal to file the 16-20 water well licence application after it receives a favourable decision in this hearing. All of the applications referenced in the table contained in the October 6 Prosper submission, except the January 2017 application, were filed with the ERCB under a different regulatory regime and are not helpful. Unlike the ERCB, the AER has jurisdiction over *Water Act* and EPEA applications related to energy resource activities. While integrated applications are not mandated, they are preferable. Prosper acknowledges this in its reply submissions.

More importantly, in this case, issues relating to water are clearly the focus of Fort McKay Métis Community's participation and are important to Fort McKay First Nation. The testing information for the water sources relied on in Prosper's OSCA application and that is required by the *Guide* is not available. That information is necessary to allow the panel to consider whether the complete *Water Act* application would support the volume of water required by the project as applied for and any related impacts from the requested diversion. In the circumstances, the panel cannot adequately assess the merits of the Rigel project without that information. Without that information modified OSCA and EPEA applications are required.

In addition, by splitting its water licencing applications, Prosper creates the likelihood that further proceedings would be required to fully consider the impacts of the water diversions needed for the project, especially given the nature of the concerns raised by the other parties. This duplication of proceedings is costly for all parties involved, including the AER and should be avoided where possible.

Given the above, pursuant to section 55 of the *AER Rules of Practice* the panel requires Prosper to either:

1. Submit a complete *Water Act* application for the Rigel project that would licence all the water required for the proposed project – which at this time would include the 16-20 WSW; or inquiries 1-855-297-8311
24-hour emergency 1-800-222-6514
2. Amend its *Oil Sands Conservation Act* and *EPEA* applications so they are consistent with and accurately reflect the impact of sourcing water from the two wells for which a complete application has been provided.

Prosper should also advise the panel of the amount of time required for it to complete the option it chooses.

The panel does not believe that either option can be completed in time to commence the hearing of this matter on October 17, 2017. For this reason, the hearing is adjourned. A new hearing date will be set once the panel hears from Prosper on these issues and has consulted with all participants about timing.

Finally, the panel has decided to grant the Fort McKay Métis Community's request made on October 5th, 2017 to file new evidence in this proceeding. Specifically, Fort McKay Métis Community's request to file emails exchanged between the Senior Municipal Engineer for the Municipality of Wood Buffalo and a representative of the Community. Those emails relate to water supply issues. Prosper may file reply submissions; a final date for those submissions will be set when the new hearing date is set.

Thank you.

Sincerely,

<original signed by>

Tara Wheaton,
Hearing Coordinator

cc: Robert Kopecky, Charlene Richards, Toni Hafso, Vince Biamonte, ACO
Susan Foisy, Sarabpreet Singh, ACO
Meighan LaCasse, AER
Barbara Kapel Holden, AER