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Overview of Applicants' Reply Submissions

1. The Applicant First Nations and the ENGO Applicants (together, the "Applicants") provide these joint Reply submissions in response to procedural developments that have arisen since the time they filed their Memoranda of Argument, and in response to arguments the Respondents raise in their Memorandum. Please note that defined terms in these Reply submissions are used in the same sense as in the Applicants' original Memoranda.
2. These Reply submissions will address the following matters in turn:
 - a) The Applicants' entitlement to declaratory relief with respect to the delayed final recovery strategy for Boreal Caribou: the reasons provided by the Respondents for missing the statutory deadline are inaccurate and irrelevant. A declaration would send a message to the federal government that it is unacceptable to miss the mandatory deadlines in SARA.
 - b) The Minister's incorrect interpretation of s. 80(2) of SARA: in interpreting "survival" and "recovery" the Minister has ignored the draft recovery goal and objectives for Boreal Caribou, which Environment Canada has been relying upon for several years and which represent the best available science regarding the meaning of recovery for Boreal Caribou. The draft recovery objectives require the recovery of all herds in Canada throughout their current distribution. Applying the Minister's interpretation of s. 80(2) would mean that every Boreal Caribou herd in the country would have to be in jeopardy before the Minister is required to do anything. Because Cabinet's s. 80 powers depend on the Minister making a recommendation, Cabinet would similarly have no power to act until every herd in the country is at risk.
 - c) The Minister's incorrect interpretation of his duties under SARA: the Minister interprets s. 80(2) to mean that he may or must recommend an emergency order **only** if there is a threat to the "national" survival or recovery of the species. This artificially limits the Minister's duties under the Act.

d) The Respondents' misguided submissions with respect to Treaty Rights and the honour of the Crown: the Applicant First Nations do not claim in this case that the federal Crown has a fiduciary duty with respect to the Herds. Rather, they rely on the honour of the Crown and the Crown's duty to respect its treaty promises. The Minister has an existing legislative duty under s. 80(2) of SARA to recommend an emergency order in situations where a species faces imminent threats to its survival or recovery; the honour of the Crown requires that this statutory duty be interpreted and exercised (to the extent reasonably possible) in a manner that respects the Crown's central treaty promise to maintain First Nations' meaningful right to carry on important traditional hunting practices in their traditional territories.

e) The Applicants' entitlement to the relief they seek with respect to the Minister's refusal to recommend an emergency order: in particular, the Applicants respectfully submit a *mandamus* order should be granted in the circumstances of this case.

New procedural developments: Minister's formal refusal to recommend an emergency order protecting the Herds from further decline

3. By Order of Case Management Judge Lafrenière, dated December 13, 2010, the Applicants were required to file their Records by February 2, 2011; the Respondents were required to file their Record by March 16, 2011.

December 13, 2010 Order [FN Applicants' Record Vol. 1, Tab 3]

4. The Applicants' Records were filed on or before February 2, 2011.

5. On March 8, 2011, eight days before the Respondents were required to file their Record, the Respondents informed the Applicants that the Minister had decided not to recommend the making of an emergency order under s. 80 of SARA in relation to the Herds.

Affidavit #2 of Jamie Zyla, Exhibit "A", at p. 9 [Supplemental Record, Tab A]

6. To avoid further delay in the proceedings that might otherwise have been caused by the timing of the Minister's formal refusal to recommend an emergency order, the Applicants proposed to address new arguments and materials in the Respondents' Record by filing a Supplemental Record and Reply submissions, if necessary.

Affidavit #2 of Jamie Zyla, Exhibit "A", at pp. 7-8 [Supplemental Record, Tab A]

Minister's reasons for refusal – concessions of the Respondents

7. The Minister's refusal to recommend an emergency order under s. 80 of SARA in relation to the Herds is set out in the first document in the Respondents' Record (Tab A), titled "Memorandum to Minister". In this document, the Minister indicates that he concurs with his department's recommendation, namely: "It is recommended that you decide that there are no imminent threats to the **national** survival or recovery of boreal caribou in Canada [emphasis added]." The document also states: "If the Minister forms the opinion that the survival or recovery of the species is not imminently threatened then the matter ends here and there is no recommendation to [Cabinet]."

Respondents' Record, Tab A, pp. 5-7

8. Tab B of the Respondents' Record sets out the full, certified record before the Minister at the time he formally refused to recommend an emergency order in relation to the Herds. The certified record includes a document (at Tab B15) titled *Scientific Assessment of the Predicted Impact of Additional Disturbance in Seven Alberta Boreal Caribou Ranges on Survival and Recovery of Boreal Caribou in Canada* (the "Scientific Assessment").

9. The Memorandum to the Minister and the certified record show that there are no significant factual disputes between the Applicants and the Respondents. The Respondents concede that the Herds are at an elevated risk of extirpation (i.e. local extinction), that loss of the Herds would increase the risk to recovery of Boreal Caribou throughout Canada, and that loss of the Herds would constrain national recovery objectives that might be included in the final recovery strategy for Boreal Caribou.

Respondents' Record, Tab A, pp. 3-6; and Tab B15 (*Scientific Assessment*)

10. The central issue in this case is whether this state of affairs – in combination with the Minister’s ongoing failure to produce a final recovery strategy and the federal Crown’s obligation to respect its treaty promises – imposes an enforceable duty on the Minister to recommend a s. 80 emergency order in relation to the Herds.

Respondents’ concessions

11. The Respondents do not dispute that the situation for the Herds is dire. In particular, the Minister concedes that “all 13 local populations of boreal caribou in Alberta are at an elevated risk of extirpation given current levels of habitat disturbance and population conditions” and that the current population and habitat conditions of the Herds are insufficient for those populations to be self-sustaining. Five out of the seven herds comprising the Northeastern Herds “were estimated to have less than a 10% chance of persisting over 100 years based solely on their current trajectories without considering the effect of additional future disturbance which would increase the risk of extinction of these local populations and the probability that extinction would occur earlier...”. The Minister also concedes that “[m]aps of current boreal caribou distribution show a developing gap centred on northeastern Alberta / northwestern Saskatchewan...”.

Respondents’ Record Tab A, pp. 3-5, Tabs B2-B4 (Annexes 2-4) and Tab B15, pp. 360 & 363-363

12. The Memorandum to the Minister references an updated (2010) Alberta government woodland caribou status report, which “outlines the continued decline of Woodland Caribou in the province”. The status report also confirms that the Herds “are likely to be extirpated in less than 4 decades if [the] current trend of development continues into the future.” The Memorandum to the Minister notes that an endangered species scientific subcommittee in Alberta “is recommending that Woodland Caribou be uplisted from Threatened to Endangered in Alberta.”

Respondents’ Record Tab A, p. 9 and Tab B15, pp. 360, 362-63 and 373

13. The Minister concedes that industrial development in northeastern Alberta is continuing, and that the “full extent of activities in caribou ranges in Alberta over the next 12-18 months is not known.” As set out in the Memorandum to the Minister,

existing disturbance in many local population ranges in Alberta exceeds the threshold that leads to declines of Boreal Caribou (Annex 5). As of July, 2010, there were approximately 34 current or approved oil sands projects and 12 proposed projects within the Herds' ranges (Annex 6).

Respondents' Record, Tab A, pp. 5 and 10-11; Tab B5 (Annex 5); and Tab B6 (Annex 6)

14. The Minister concedes that there is a significant lag time in restoring caribou habitat, noting that “[h]abitat restoration will take time to become effective since caribou habitat consists of 80+ year-old forests...”. The *Scientific Assessment* also notes the lag time between habitat disturbance and the resulting decline in caribou population numbers: “Research indicates that there are time lags in the demographic response of boreal caribou to disturbance such that the effects of current disturbance may not manifest themselves at the population level for two or more decades...”.

Respondents' Record, Tab A, pp. 3-5 and Tab B15, p. 359

15. Crucially, the Minister admits that the loss of the Herds would have significant negative impacts on the remaining Boreal Caribou in Canada and would both increase the risk of extinction for the species and further increase the risk to recovery of Boreal Caribou in Canada. The *Scientific Assessment* notes the following about extinction risk:

The geographic extent of a species has been well-established to be one of the best predictors of extinction risk... [A]llowing for erosion of a species' natural [extent] of occurrence translates into incremental increases in extinction risk for the species overall.

Further, the Memorandum to the Minister concedes that the extirpation of the Herds will increase the risk to the recovery of the national population of Boreal Caribou:

... achieving recovery of many of these caribou populations [in Alberta] will be extremely challenging given the current status and trend.

If the [Herds] are extirpated (i.e. no longer existing in Alberta), the existing gap in national boreal caribou distribution will widen. This would have potential negative consequences due to disruption of genetic and demographic processes that would further increase the risk to recovery of boreal caribou in Canada. This would also represent a further range retraction for caribou in Canada. **Clearly, if all Alberta herds were extirpated, the challenge to recovery would be exacerbated. Given that there is some migration between local populations, Alberta's actions (or**

lack thereof) have implications beyond their jurisdiction. Specifically, boreal caribou populations in Saskatchewan, Northwest Territories and British Columbia that border Alberta are affected by declines/extirpation of the Alberta population and in the case of Saskatchewan would be directly impacted by the extirpation of the [Herds]. Saskatchewan's, NWT's and BC's ability to recover their portion of shared populations will be constrained by Alberta's approach to recovery [emphasis added].

Respondents' Record Tab A, pp. 4 and Tab B15, p. 361

16. The Minister further admits that the Alberta government has failed to manage the cumulative effects of industrial development in northeastern Alberta on Boreal Caribou and their habitat:

Overall, Alberta has not, to date, effectively managed the cumulative effects [of development] within caribou range and has not applied appropriate mitigation (eg habitat restoration, minimizing footprint) in a coordinated landscape-level approach to conserve caribou. **The level of habitat disturbance is above 45% for 12 of the 13 local populations [in Alberta]. This level of disturbance is beyond the biologically acceptable threshold for self-sustaining local populations as evidenced by the continued decline of most boreal caribou local populations in the province [emphasis added].**

Respondents' Record Tab A, p. 5

Minister's formal refusal to recommend an emergency order

17. Notwithstanding these concessions, the Minister has refused to recommend a section 80 emergency order in relation to the Herds.

18. The Minister takes the position that there are no imminent threats to the *survival* of Boreal Caribou because the current range and conditions are sufficient for 27 out of the remaining 57 herds in Canada.

Respondents' Record Tab A, p. 3

19. As for imminent threats to *recovery* of Boreal Caribou, the Minister takes the position that threats to recovery would have to be assessed against the population and distribution objectives in a final recovery strategy. Because of the Minister's admitted failure to produce a final recovery strategy for Boreal Caribou within the mandatory statutory deadlines established in SARA, the Respondents take the position that there are

no fixed objectives against which to measure threats to recovery. The Memorandum to the Minister makes no mention of the draft recovery objectives for Boreal Caribou that Environment Canada has been relying on for several years.

Respondents' Record, Tab A, pp. 3-4; SARA, s. 41(1)(d)

20. In the absence of any established recovery objectives in a final recovery strategy for Boreal Caribou, the Minister takes the position that it may be *possible* for caribou herds in eastern Canada to provide the basis for meeting a constrained subset of potential national recovery objectives:

Although the extirpation of [the Herds] would result in further range retraction in the middle of the range of boreal caribou, it is possible to maintain a self-sustaining population of boreal caribou in eastern Canada. As such, **even though the national recovery objectives and approaches would be constrained by the extirpation of the [Herds], the [remaining herds in eastern Canada] could provide the basis for achieving the national recovery objective** [emphasis added].

Respondents' Record, Tab A, p. 6

21. On this basis, the Minister takes the position that there are no imminent threats to recovery of Boreal Caribou.

22. The Minister admits that he may have to revisit his decision whether to recommend a s. 80 emergency order once the recovery objectives for Boreal Caribou are posted as part of the "proposed national recovery strategy". That is, the Minister's opinion about threats to recovery of Boreal Caribou is dependent on the nature and content of the recovery objectives.

Respondents' Record, Tab A, p. 6

23. The Minister also takes the position that potential impacts of the decline of Boreal Caribou on the Applicant First Nations' Treaty Rights, and the Crown's duty to act honourably, "are not relevant in considering whether or not the species' survival or recovery is imminently threatened under s. 80."

Respondents' Record, Tab A, pp. 2 and 10

Submissions of the Applicants

24. The Applicants' Reply submissions will address the following matters in turn:

- a) The Applicants are entitled to the relief they seek with respect to the Minister's ongoing failure to produce a final recovery strategy for Boreal Caribou;
- b) The Minister erred in his interpretation of "imminent threats to survival or recovery" in s. 80(2);
- c) The Minister erred in interpreting his duties under s. 80(2) of SARA;
- d) The Respondents' submissions with respect to Treaty Rights and the honour of the Crown are fundamentally misguided; and,
- e) The Applicants are entitled to the relief they seek with respect to the Minister's refusal to recommend an emergency order.

A. The Applicants are entitled to the relief they seek with respect to the Minister's ongoing failure to produce a final recovery strategy

25. The Respondents admit that the Minister did not prepare a final recovery strategy for Boreal Caribou within the mandatory statutory deadline established under SARA. The Respondents submit that the posting of a recovery strategy was delayed "to allow for further scientific studies and to work with Aboriginal organizations and stakeholders affected by the recovery strategy, because it was found that there was not enough information to identify critical habitat for boreal caribou." The Respondents do not submit any evidence in support of this statement; they appear to take the purported reasons for the Minister's ongoing delay from a "Preface" that was inserted into Environment Canada's 2008 *Scientific Review*.

Respondents' Memorandum at para. 32; see also "Preface" to *Scientific Review* [ENGO Applicants' Record, Vol. 4, Tab 8C, p. 001233]

26. The reasons provided by the Respondents in an attempt to justify missing the statutory deadline are irrelevant. SARA is a *mandatory* statute that sets out a series of steps that must be accomplished within a legislated timeframe in order to address the urgent problem of loss of biodiversity in Canada. SARA does not provide exceptions to

the deadline for producing a recovery strategy in circumstances where meeting the deadline is difficult or inconvenient. If the federal government is allowed to miss these important deadlines without any consequences, the purposes of SARA will be undermined. Canada's species at risk and the various ecological, cultural and social interests that rely on Canada's species at risk and biodiversity will suffer as a result.

SARA, preamble, and ss. 6 & 42-43

David Suzuki Foundation v. Canada (Fisheries and Oceans), 2010 FC 1233 (TD) at paras. 175 and 184 [ENGO Authorities, Tab 16]

27. Further, even if the Respondents' purported rationale for the delay in producing the recovery strategy were relevant, the rationale is inaccurate. As set out by the Applicants in uncontested affidavit evidence, the information necessary to identify Boreal Caribou critical habitat in the recovery strategy was contained in Environment Canada's 2008 *Scientific Review*, as confirmed by two of the scientists who sat on the Scientific Advisory Group for the *Scientific Review*. As stated by Dr. Justina Ray:

At the time that the *Scientific Review* was published, it was the [Scientific Advisory Group's] understanding that sufficient scientific information already existed to justify identifying the entire Current Range of each of the Herds as Critical Habitat, without need for further scientific research.

ENGO Applicants' Memorandum at para. 20; Ray Affidavit at para. 48 [ENGO Applicants' Record Vol. 4, Tab 8]; Boutin Affidavit at para. 15 and Boutin Report at pp. v and 18 [FN Applicants' Record Vol. 3, Tabs 6 and 6A]

28. The federal government's delays in producing recovery strategies for SARA-listed species are a chronic and systemic problem; as of October 21, 2010, the statutory deadlines for 198 species' recovery strategies were overdue. A declaration that the Minister has missed the deadline for producing the caribou recovery strategy would send a clear message to the federal government and to the Canadian public that it is not acceptable for responsible ministers to continue to miss mandatory deadlines established by Parliament. The Court's order may also motivate the federal government to improve or rectify its record of non-compliance with SARA.

Affidavit of Susan Pinkus at para. 5 [ENGO Applicants' Record Vol. 3, Tab 6]

29. Accordingly, the Applicants respectfully submit they are entitled to a declaration that the Minister has failed to prepare a recovery strategy for Boreal Caribou and to include it on the public registry within the time period mandated by s. 42(2) of SARA.

Applicant First Nations' Notice of Application, p. 3 [FN Record Vol. 1, Tab 1]

B. The Minister erred in his interpretation of “imminent threats to survival or recovery” in s. 80(2).

30. The Applicants maintain that the Minister misinterpreted the phrase “imminent threats to survival or recovery”; however, for the purposes of this Reply, the Applicants will focus on the Minister’s error in his interpretation of “imminent threats to recovery”.

31. The Minister’s interpretation of “imminent threats to recovery” is incorrect for several reasons, outlined below.

i. The Minister erred in deciding that threats to recovery must be assessed by reference to recovery objectives in a final recovery strategy

32. First, the Minister erred in deciding that a threat to recovery of Boreal Caribou must be assessed by reference to the recovery objectives in a final recovery strategy. This error is particularly egregious where the Minister is already in violation of SARA by failing to produce a final recovery strategy that would include such recovery objectives.

Memorandum to Minister [Respondents’ Record, Tab A, pp. 3-4 & 6]; SARA s. 41(1)(d)

33. The Minister’s reasons for refusing to recommend an emergency order based on “imminent threats to recovery” are roughly as follows:

- a) threats to recovery of Boreal Caribou would have to be assessed against the population and distribution objectives in a final recovery strategy;
- b) because of the Minister’s admitted failure to comply with mandatory statutory deadlines in SARA, there is no final recovery strategy for Boreal Caribou;
- c) in the absence of a final recovery strategy, the Minister can subjectively and unilaterally determine what “recovery” means (in this case, by determining

that it may be possible to meet a constrained subset of recovery objectives even if all Boreal Caribou herds in Alberta are allowed to disappear);

d) based on the Minister's subjective and unilateral determination about the meaning of "recovery", there are no imminent threats to the recovery of Boreal Caribou.

Through this circular logic the Minister, in effect, seeks to shield himself from his mandatory duties in s. 80(2) of SARA. In the absence of a final recovery strategy, the Minister has determined that the meaning of recovery is open to him to define unilaterally, and without reference to the purposes and scheme of SARA or to the best available science about the meaning of recovery for Boreal Caribou. The Minister's interpretation is self-serving, as it relies on the Minister's delay in producing a final recovery strategy as a primary reason for refusing to recommend an emergency order. Such an interpretation is incorrect, is contrary to the purposes of SARA, and is an error of law.

Respondents' Record, Tab A, pp. 3-6

34. Emergency orders are intended, at least in part, to be put in place before a recovery strategy is finalized and implemented. This allows the federal government to provide interim protection for a listed species and its critical habitat in situations where the listed species (or some subset of the listed species) could be harmed by delay in the production and implementation of a recovery strategy. If, as the Respondents submit, recovery objectives must be defined in a recovery strategy before threats to recovery can be assessed, the Minister could only recommend an emergency order *after* a recovery strategy is posted. Such a conclusion goes against the purposes of SARA and the legislative intent in drafting s. 80(2).

See submissions of federal government set out in *Environmental Defence Canada v. Canada (Minister of Fisheries & Oceans)*, 2009 FC 878, 349 F.T.R. 225 ("*Environmental Defence*") at para. 50 [ENGO Authorities, Tab 18]

35. The Minister's position that threats to recovery can only be assessed after a recovery strategy is finalized is also contrary to basic principles of statutory interpretation. The presumption against tautology requires that "courts should avoid, as

much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant.” Once a recovery strategy is finalized and implemented, SARA gives the federal government various duties and powers to protect a listed species and its critical habitat; at this point, the s. 80 emergency order provisions will in many cases be redundant or duplicative.

R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (“Sullivan”) at p. 210 [Supplemental Authorities at Tab 8]; SARA, ss. 58 and 61

ii. *Failure to base the meaning of recovery on the best available science*

36. The Minister also erred in failing to interpret the meaning of “recovery” based on the best available scientific information about the meaning of recovery for Boreal Caribou. As the Applicants have previously submitted, and as the Respondents concede, the meaning of recovery must be based on the best available science.

ENGO Applicants’ Memorandum at paras. 45-48; FN Applicants’ Memorandum at para. 69; Respondents’ Memorandum at para. 15

37. The best available science on the meaning of recovery for caribou is contained in Environment Canada’s 2007 draft *Recovery Strategy for Woodland Caribou (Rangifer tarandus caribou), Boreal Population, in Canada*. As outlined in the Applicants’ Record, the scientific community and the federal government have relied on the draft recovery goal and objectives set out in this draft recovery strategy for more than three years, including during the development of Environment Canada’s 2008 *Scientific Review*. The draft recovery goal and objectives are as follows:

2.4.1 Goal

Boreal Caribou are conserved, and recovered to self-sustaining levels, throughout their current distribution (extent of occurrence) in Canada.

2.4.2 Population and Distribution Objective

Maintain existing local populations [i.e. herds] of boreal caribou that are self-sustaining and achieve population growth of local populations that are not currently self-sustaining, to the extent possible, throughout the current distribution (extent of occurrence) of boreal caribou in Canada [emphasis added].

ENGO Applicants' Memorandum at paras. 73 and 76-77;
Scientific Review, pp. i and 2 [ENGO Applicants' Record, Vol. 4, Tab 8C]

38. The Applicants submit that the correct interpretation of “recovery” in s. 80(2) is one that aims to conserve and recover all of the Boreal Caribou herds in Canada to self-sustaining levels throughout their current ranges (i.e. their current distribution or “extent of occurrence”). As such, where there are imminent threats to the recovery of the Herds (or any of them), there are imminent threats to the recovery of the species. If any herd is lost, it will by definition be impossible to conserve and recover existing local populations (herds) of Boreal Caribou “throughout [their] current distribution... in Canada.” Loss of the Herds in northeastern Alberta would particularly undermine the objective of maintaining herds throughout their current distribution in Canada; as set out in the Respondents' materials, the Herds act, in effect, as a bridge to maintain genetic and demographic flow between the eastern and western populations of Boreal Caribou in Canada – their loss will create a gap that will negatively impact the herds in the surrounding provinces and territories and “further increase the risk to recovery of boreal caribou in Canada.”

Respondents' Record Tab A, pp. 4; and Tab B15, p. 361

39. Given the long-standing recovery objective of conserving and recovering all Boreal Caribou herds in Canada throughout their current distribution, and given the Minister's concessions in the present case (see e.g. paras. 9-16 above), the Minister erred in law in concluding that there are no imminent threats to the recovery of Boreal Caribou.

iii. Minister must act under s. 80(2) to prevent an ongoing and substantial decline in the condition of a listed species

40. In the alternative, if the Court does not agree that the draft recovery goal and objectives should form the basis for interpreting s. 80(2), then the Applicants submit it would be incorrect to interpret “imminent threats to recovery” under s. 80(2) of SARA in a manner that would allow the Minister to do nothing while he continues to violate the timelines for producing a final recovery strategy for the species and while there is an ongoing and substantial decline in the condition of Boreal Caribou. A meaning of

recovery that allows for the loss of the Herds, and the potential consequential loss of herds in neighbouring provinces, would be absurd and contrary to the purposes of SARA.

41. The dictionary definition of “recovery” includes the following:

Recover: “Return to health or consciousness or to a normal state or position” and “retrieve or make up for (a loss, setback, etc.)”.

Canadian Oxford Dictionary, 2nd ed., s.v. “recover” [Supplemental Authorities, Tab 7]

42. This definition makes it clear that “recovery” is about returning to some better, healthier state. An interpretation of recovery in s. 80(2) that would allow continued federal inaction in the face of the preventable loss of the Herds, and consequential harm to or loss of herds in neighbouring provinces, would be contrary to the ordinary meaning of recovery, as it would take the species further away from a healthy state (i.e. a state where it is no longer threatened). Such an interpretation would also be contrary to the purposes of SARA, which seek to “prevent wildlife species from being extirpated” and “provide for the recovery of wildlife species”. An interpretation that defeats the purpose of enacting the legislation would be absurd.

SARA, s. 6; Sullivan, *supra* at p. 309 [Supplemental Authorities, Tab 8]

43. However, that is exactly the interpretation of recovery that the Minister applied in coming to his decision. The Minister concludes that there are no threats to the recovery of Boreal Caribou even though the evidence (led by the Respondents) clearly indicates that the extirpation of the Herds is likely and that the loss of the Herds would constrain the recovery objectives for Boreal Caribou. The evidence further indicates that loss of the Herds would “further increase the risk to recovery of boreal caribou in Canada” and have a negative impact on the national population of Boreal Caribou. This is, by any definition, an ongoing and substantial decline in the condition of Boreal Caribou and a “threat” to their recovery. (The Applicants have already set out their submissions, at paras. 61-63 of the ENGO Applicants’ Memorandum, about why the “imminence” of threat to survival or recovery needs to be considered over a biologically appropriate timescale.)

44. Finally, the Applicants submit the Minister erred in law by interpreting “imminent threats to recovery” under s. 80(2) of SARA in a manner that allows him to do nothing while he continues to violate the timelines for producing a final recovery strategy for the species. This ongoing violation of the Act is contributing to the ongoing and substantial decline in the condition of Boreal Caribou, and must inform the Minister’s interpretation of his duty under s. 80(2).

C. The Minister erred in interpreting his duty to recommend an emergency order under s. 80(2).

i. Recommendation required “only if” the Minister is of the opinion

45. The Respondents interpret s. 80(2) to mean that the Minister may or must recommend an emergency order *only if* he is of the opinion that there are imminent threats to the survival or recovery of the species. The position set out in the Memorandum to the Minister is that: “If the Minister forms the opinion that the survival or recovery of the species is not imminently threatened then **the matter ends here** and there is no recommendation to [Cabinet] [emphasis added].”

Respondents’ Record, Tab A, pp. 3 & 5; Respondents’ Memorandum at paras. 4, 70-73

46. The Respondents’ interpretation defies both the modern, contextual approach to statutory interpretation and the plain meaning of s. 80(2) of SARA, which reads, in relevant part: “The Minister *must* recommend an emergency order *if* he is of the opinion...”. The language of section 80(2) sets out that the Minister “must do X if Y”. The subsection does not – as the Respondents submit – set out that the Minister “must do X *only if* Y” or “may *only* do X if Y”.

Environmental Defence, supra at para. 32 [ENGO Authorities, Tab 18]; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (“*Baker*”) at para. 67 [FN Authorities, Tab 4]; Sullivan, p. 69 [Supplemental Authorities, Tab 8]

47. The Respondents’ interpretation of s. 80(2) defies Parliament’s intent in drafting the subsection by artificially limiting the ambit of the Minister’s duty to recommend an emergency order (and thus Cabinet’s power to make such an order on the Minister’s

recommendation). This is an error in interpreting the statute, to which the correctness standard applies.

ii. Interpretation based on threats to “national” survival or recovery

48. The Respondents have also limited the interpretation of s. 80(2) by reading the word “national” into the section:

It is recommended that you decide that there are no imminent threats to the **national** survival or recovery of boreal caribou in Canada [emphasis added].

Respondents’ Record, Tab A, p. 6

49. In doing so, the Respondents erroneously interpret the Minister’s duty to mean that he can *only* recommend an emergency order in circumstances where the *national* survival or recovery of the species is at issue. Such an interpretation would artificially limit the Minister’s duty to act and is an error of law.

50. Further, given the Minister’s position that remaining herds of Boreal Caribou in Eastern Canada could provide the basis for achieving a constrained subset of potential national recovery objectives (see para. 20 above), the Minister seems to interpret “national recovery” to mean that he has no duty to act so long as any population of Boreal Caribou remains anywhere in Canada.

51. The Respondents’ interpretation – requiring a threat to “national” survival or recovery before the Minister may or must recommend an emergency order – is undermined by s. 80(4) of SARA. Under s. 80(4)(c), an emergency order on provincial land may “identify habitat that is necessary for the survival or recovery of the species **in the area to which the emergency order relates** [emphasis added]”. An emergency order need not apply in the whole of a listed species’ range or habitat in Canada – s. 80 specifically contemplates that an emergency order could apply to a subset of a listed species that relies on a particular area as its key habitat. For example, a species that ranges over several provinces may face an imminent threat to its survival or recovery because one particular province has failed to protect the species or its habitat within provincial borders; an emergency order under s. 80(4)(c) may be made to apply to all or

part of the species' range within that province. The Respondents' interpretation in the present case – requiring an imminent threat to *national* survival or recovery of the listed species before the Minister has the power or duty to recommend an emergency order – is contradicted by s. 80(4)(c), and would undermine the intent of that subsection.

See Environmental Defence, supra at para. 60 [ENGO Authorities, Tab 18]

52. Further, under s. 2(1) of SARA “wildlife species” is defined in a flexible way to mean “a species, subspecies, variety or **geographically or genetically distinct population** of animal, plant or other organism... [emphasis added]”. The Minister’s interpretation of s. 80(2) must be informed by this definition, and by consideration of whether the Minister’s ongoing inaction in protecting Boreal Caribou critical habitat will further fragment the species, or lead to the creation of endangered geographically or genetically distinct populations (i.e. adding to the roster of listed wildlife species in SARA). This is a real possibility in the present case: the Respondents admit that the Herds are generally declining to the point of endangerment, that there is a “growing gap” in the distribution of the species centred on the area surrounding the Herds’ ranges, and that loss of the Herds would cause a disruption of Boreal Caribou’s genetic and demographic processes. The creation of new endangered subpopulations of a listed wildlife species would be inconsistent with the purposes of the Act.

Respondents Record, Tab A, p. 9; see also Edmonton Journal article at Affidavit #2 of Jamie Zyla, Exhibit “B” [Supplemental Record, Tab A, pp. 10-12]

53. The Respondents’ limited interpretation of the Minister’s s. 80(2) duties would prevent the Minister and the federal Crown from accomplishing the statutory purposes of SARA and from fulfilling their constitutional obligations to the Applicant First Nations and others. The Minister is not intended to act as a vigilant “gatekeeper” to keep Cabinet from considering an emergency order in circumstances where such an order could fulfil the purposes of SARA and the federal Crown’s constitutional obligations.

54. Rather, the Minister’s recommendation under s. 80(2) is a necessary pre-condition before Cabinet can even consider whether to issue such an order under s. 80(1); section 80(1) sets out that Cabinet “may, **on the recommendation of the [Minister]**, make an

emergency order to provide for the protection of a listed wildlife species”. This demonstrates the importance of the Minister making a recommendation whenever the objective test in s. 80(2) is met, and whenever a recommendation would help fulfill the Minister’s and federal Crown’s statutory and constitutional duties. If the Minister defines the statutory and constitutional limits of his s. 80(2) duty too narrowly, he precludes Cabinet from exercising its powers under the remainder of s. 80. In these circumstances, the Court owes no deference to the Minister and can substitute the correct interpretation of the Minister’s duties under the Act.

Dunsmuir v. New Brunswick, 2008 SCC 9 at para. 50 [ENGO Authorities, Tab 17]

D. The Respondents’ submissions with respect to Treaty Rights and the honour of the Crown are fundamentally misguided.

55. The Respondents’ submissions with respect to Treaty Rights and the duties that arise from the honour of the Crown are fundamentally misguided. At paragraphs 62 and following of their Memorandum, the Respondents inaccurately characterize the Applicant First Nations’ submissions as suggesting “perhaps even a fiduciary duty” on the part of the Minister. The Respondents then spend several paragraphs explaining the limits to fiduciary duty, and explaining why the Minister’s s. 80(2) SARA decision is not influenced by such a duty.

56. For clarity, the Applicant First Nations have never claimed in these proceedings that the federal government has a fiduciary duty to protect the Herds, and they take no position on the issue. Rather, the Applicant First Nations submit that the honour of the Crown and the Crown’s duty to respect its treaty promises must inform and may extend the Minister’s and the federal government’s **existing** statutory obligations under SARA. That is, the honour of the Crown informs and may extend the Minister’s and the federal Crown’s duties under **existing legislation** to protect threatened species and to provide for their recovery. The Supreme Court of Canada made it clear in *Haida* that the honour of the Crown must still inform the Crown’s duties and conduct, even in circumstances that do not give rise to a fiduciary duty.

SARA, ss. 6, 37, 41-43, 58, 61 & 80; *R. v. Badger*, [1996] 1 S.C.R. 771 (“*Badger*”) at para. 41 [FN Authorities, Tab 11]; *Beckman v. Little Salmon/Carmacks First Nation*,

2010 SCC 53 (“*Little Salmon*”) at paras. 42, 45 & 48 [FN Authorities, Tab 5]; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511 (“*Haida*”) at para. 18 [Supplemental Authorities, Tab 3]

57. The Respondents also seem to suggest, at paragraphs 63 to 67 of their Memorandum, that the principle of the honour of the Crown is limited in the same way that courts have limited the application of the doctrine of fiduciary duty. This is simply wrong. The Supreme Court of Canada has held on numerous occasions that the honour of the Crown “is **always** at stake in its dealings with aboriginal people”. The Crown cannot pick and choose those instances where it is required to honour its treaty promises and its constitutional obligations.

See e.g. *Badger, supra* at para. 41; *Haida, supra* at para. 16; and *Little Salmon, supra* at paras. 42, 52 & 61-62

58. Fiduciary duty is but one of the duties that may arise from the honour of the Crown: the honour of the Crown gives rise to different duties in different circumstances. In the context of interpreting statutory provisions that may affect treaty rights, it gives rise to a duty to interpret and apply those provisions in a manner that maintains the integrity of the Crown and helps fulfil the Crown’s treaty promises. As the Supreme Court of Canada held in *Badger*, “**Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown.** It is always assumed that the Crown intends to fulfil its promises [emphasis added].”

Haida, supra at paras. 18-19; *Badger, supra* at para. 41

59. The Respondents’ submissions about the limits the courts have imposed on fiduciary duty are thus simply irrelevant to the present case. The Applicant First Nations are not asserting a “discretionary private-law relationship” or a duty “to act solely in [their] interests” (see Respondents’ Memorandum at paragraph 67). As the Supreme Court of Canada held in *Haida*, “It is a corollary of s. 35 that the Crown act honourably in defining the rights it guarantees and in reconciling them with other rights and interests.” The Minister is not required to act “solely in the interests” of the Applicant First Nations; however, he is required to interpret his statutory duties in a manner that

upholds the honour of the Crown and allows the Minister and the federal government to satisfy their constitutional obligations (to the extent that the statute can reasonably support such an interpretation).

Haida, supra at para. 20; *Badger, supra* at para. 41; *Little Salmon, supra* at para. 45; see also *Baker, supra* at para. 54 [FN Authorities, Tab 4]; see also *R. v. Conway*, [2010] 1 S.C.R. 765, 2010 SCC 22 at paras. 41-46 (“*Conway*”) [FN Authorities, Tab 12]

60. The Respondents also suggest that the honour of the Crown can give rise only to a “negative duty” to attempt to minimize harm when the Crown contemplates a decision or course of conduct that may negatively affect treaty rights. The Respondents state that, in the present case, “No order is in contemplation that could result in a restriction of treaty harvesting rights.” The Respondents’ submission appears to be that, where no such order is in contemplation, the Crown’s treaty obligations are simply irrelevant.

Respondents’ Memorandum at para. 69

61. This presents an impoverished view of the honour of the Crown. The Minister’s ongoing delay in finalizing and implementing a recovery strategy – and failure to do anything in the interim to protect Boreal Caribou and their critical habitat – threatens the very basis of the Applicant First Nations’ Treaty Rights. The Respondents argue, in essence, that ongoing violation of federal statutory duties and federal inaction in the face of the preventable and irreversible loss of Boreal Caribou in northeastern Alberta is entirely consistent with the honour of the Crown. If accepted, the Respondents’ interpretation of the honour of the Crown would allow the government to avoid meeting its treaty obligations by refusing to take any reasonable, positive action (even pursuant to existing statutory duties) that might preserve the basis for the ongoing exercise of First Nations’ treaty rights. This would be a perverse result indeed; it would be unlikely to fulfil either the Crown’s treaty promises or the “grand purpose” of s. 35(1) of the *Constitution Act, 1982*.

Little Salmon, supra at para. 10 [FN Authorities, Tab 5]; SARA, ss. 37(1) and 42(2)

62. The Applicant First Nations submit that the Crown’s treaty promises and the honour of the Crown give rise to something deeper than a mere duty to try cause “less damage” in the context of government decisions or actions that stand to further

compromise the exercise of treaty rights. In some circumstances – for example, where there is an existing statutory duty to prevent the extirpation of a species important for the exercise of treaty rights – it may give rise to a duty to take reasonable, practical steps to **actively** prevent harm that would otherwise be caused by continued inaction. The Crown’s duty to take positive steps to respect its treaty commitments is all the more pressing where, as here, government decisions to authorize development over the years have significantly compromised the right, and where the Crown has adopted legislation that contemplates taking the very action that is required to help protect the Treaty Rights at stake. The Crown’s treaty obligations must at a minimum give rise to an obligation to interpret and apply existing legislation (to the extent reasonably possible) in a manner that does something *positive or helpful* to protect resources that are integral to the meaningful exercise of treaty rights.

Badger, supra at para. 41; by analogy (re: artificial distinction between constitutional scrutiny of government action vs. inaction), see *Vriend v. Alberta*, [1998] 1 S.C.R. 493 at paras. 50-64 [Supplementary Record Tab 6] and *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016, at paras. 19-22 [Supplementary Record, Tab 2]; see also *Marshall* at paras. 49-50 & 52 [FN Authorities, Tab 14] and *West Moberly First Nations v. British Columbia (Ministry of Energy, Mines and Petroleum Resources)*, [2010] B.C.J. No. 488 (QL), 2010 BCSC 359 at paras. 51-53, 55, 59 and 63 [FN Authorities, Tab 19]

63. The Applicant First Nations do not claim (as argued in paragraph 69 of the Respondents’ Memorandum) that the federal government has a positive duty to ensure the survival of Boreal Caribou for all time and in any circumstances – that duty may indeed be impossible to meet if a species is declining for reasons that are beyond the federal government’s control. However, the Applicant First Nations submit that the Minister and the federal Crown have a duty to make **reasonable efforts** through the application of existing federal legislation to preserve the basis for the ongoing exercise of the Applicant First Nations’ Treaty Rights.

Badger, supra at para. 41

64. The Applicants submit that the Crown’s duty of honourable conduct has not been met in the present case. The federal government is now nearly four years past the mandatory statutory deadline for preparing a final recovery strategy for Boreal Caribou;

the federal government admits that the situation for the Herds is dire, and they admit that Alberta is doing little or nothing to prevent the ongoing decline of the Herds. In spite of these admissions and in spite of the Applicants' plea for federal intervention, the federal government has taken none of the steps contemplated by federal legislation to prevent the Herds' ongoing and alarming decline towards local extinction – they have failed to finalize and implement a recovery strategy, and they have refused to implement any interim emergency protection for the Herds while they continue their unlawful delay in meeting their statutory duties. With respect, the honour of the Crown must compel a higher standard of conduct in the circumstances.

65. The Applicant First Nations are not claiming in the present case that the honour of the Crown gives rise to a “stand-alone” duty to protect the Herds; rather, they rely on the Minister's and the federal Crown's existing statutory duties under SARA, as informed by the Crown's constitutional obligations. The Minister's decision that herds in Eastern Canada could provide the basis for meeting national recovery objectives does nothing for the Applicant First Nations' ability to maintain their traditional way of life, and represents an impoverished view of the Minister's statutory and constitutional duties. If this Court agrees that the Minister failed to respect the legal and constitutional limits of his duties and powers under s. 80(2), his refusal to recommend an emergency order is reviewable on a correctness standard and no deference is owed to the Minister.

Badger, supra at para. 41; *Baker, supra* at paras. 53-54; *Conway, supra* at paras. 41-46; *Little Salmon, supra* at paras. 42, 45 & 48

E. The Applicants are entitled to the relief they seek with respect to the Minister's refusal to recommend an emergency order

i. Mandamus

66. The Respondents submit that *mandamus* is not available in the present case because, in their view, s. 80(2) confers a discretionary power on the Minister that he cannot be compelled to exercise in a particular way. The Applicants respectfully submit that an order of *mandamus* is available and should be granted by this Court.

Respondents' Memorandum at paras. 10 and 74-75

67. The Respondents claim in paragraph 21 of their Memorandum that there is “no provision in SARA for a party to petition the Minister, or to unilaterally impose a deadline within which the Minister must form an opinion.” In reply, the Applicants note that there is no provision in SARA for the Minister to violate the mandatory statutory deadlines for producing and implementing a recovery strategy; the Applicants tried to suggest a reasonable interim solution (namely, an emergency order) that would help address the Minister’s ongoing violation of his duties under SARA and protect the Herds from further decline during that violation. They petitioned the Minister because he was failing to comply with federal law, and because a request for compliance with a mandatory duty is a prerequisite to a *mandamus* order. The Applicants come before this Court because the Minister, in effect, ignored their request for a reasonable interim solution that would protect the Herds pending completion and full implementation of the final recovery strategy.

68. In response to paragraphs 10 and 75 of the Respondents’ Memorandum, the Applicants do not seek to compel the Minister to form a certain opinion; rather, they seek to compel him to recommend an emergency order based on concessions he has made about the status of the Herds and about the threat this poses to the survival or recovery of Boreal Caribou. Given the correct interpretation of s. 80(2), as outlined by the Applicants, and given the Respondents’ factual admissions, it is clear that there are imminent threats to survival or recovery of the Herds and imminent threats to the survival or recovery of Boreal Caribou, such that the Minister had a mandatory duty to recommend an emergency order. Further, as set out above and in the Applicant First Nations’ original Memorandum, treaty rights and the honour of the Crown must inform, and can extend, the Minister’s duties under s. 80(2) of SARA.

69. Even in cases where decision-makers’ powers are found to be discretionary, courts have held that *mandamus* is available. For example, in *Trinity Western University*, the Supreme Court of Canada held that the Federal Court of Appeal’s decision in *Apotex* “clearly acknowledges that bodies having a discretionary decision-making power may still be faced with a court order for *mandamus* in certain circumstances.” In that case, the Supreme Court of Canada upheld an order of *mandamus* compelling the B.C. College of

Teachers to come to a particular decision, on the basis that the College's exercise of discretion was limited or fettered by the object of the College as set out in the relevant legislation, and that the College had denied Trinity Western's application on the basis of irrelevant considerations.

Trinity Western University v. British Columbia College of Teachers, [2001] 1 S.C.R. 772 (“*Trinity Western*”) at paras. 41 and 43 [Supplemental Authorities, Tab 5]; *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742 (FCA) [ENGO Authorities, Tab 12]

70. In the present case, if this Court finds that there is a discretionary element to the Minister's decision under s. 80(2) of SARA, the Applicants submit that any such discretion is fettered or limited by the purposes of SARA, by the objective nature of the phrase “imminent threat to survival or recovery”, by the Minister's ongoing failure to complete a recovery strategy, and by the Minister's constitutional obligations to the Applicant First Nations. In the circumstances of the case, and given the Minister's factual concessions, the Applicants submit that any discretion under s. 80(2) can be exercised lawfully only by recommending an emergency order. For the Minister to decide otherwise would mean that he failed to act within the statutory and constitutional confines of his duties and powers under s. 80(2). In the circumstances, the Court can compel the Minister “to do the very thing authorized by the Legislature”.

BC v. BC Workmen's Compensation Board, [1942] 2 W.W.R. 129 (B.C.C.A) at paras. 62 & 110 [Supplemental Authorities, Tab 1]; *Nguyen v. Canada (Minister of Employment & Immigration)*, [1994] 1 F.C. 232 (F.C.A.) at para. 40, leave to appeal to SCC ref'd (1994) 17 Admin LR (2d) 67(n) [Supplemental Authorities, Tab 4]; D. Jones and A. de Villars, *Principles of Administrative Law*, 5th ed (Toronto: Carswell, 2009), p. 644 [FN Applicants' Authorities, Tab 20]

71. The Applicants submit that an order of *mandamus* is the remedy most likely to protect the Herds, and most likely to achieve the relevant purposes of SARA, namely to protect Boreal Caribou from being extirpated and to provide for their recovery. If the Court decides instead to send the matter back to the Minister for reconsideration, this will cause further delay and will undermine the purposes of SARA by allowing the continuing decline of Boreal Caribou and ongoing destruction of caribou critical habitat. Remitting the matter to the Minister would be a recipe for further harm to the population, critical habitat, and opportunity for recovery of the Herds and of Boreal Caribou in general. A

mandamus order requiring the Minister to make a recommendation to Cabinet would fulfil the first step in the s. 80 emergency order process, and would ensure that the federal government could protect caribou and their habitat in northeastern Alberta while the Respondents continue to delay in finalizing and implementing a recovery strategy (and while they continue to delay in protecting caribou critical habitat through other sections of SARA).

ii. Declaratory relief generally

72. The Applicants agree that it is no longer necessary for the Court to declare that the Minister's delay in relation to his s. 80(2) decision should be deemed a refusal to recommend an emergency order. The Minister has now formally refused to recommend an emergency order in relation to the Herds or in relation to a wider grouping of Boreal Caribou herds.

73. In addition or in the alternative to a *mandamus* order, the Applicants seek a declaration that the Minister's refusal to recommend an emergency order to provide for the protection of Boreal Caribou in northeastern Alberta is unlawful or unreasonable, or both, for the reasons set out above and in the Applicants' original Memoranda.

FN Notice of Application, p. 3, para. 3(b) [FN Applicants' Record Vol. 1, Tab 1]; ENGO Notice of Application, p. 3, para. 1(b) [ENGO Applicants' Record Vol. 1, Tab 3]

iii. Alternative declaratory relief – failure to consider relevant factors

74. In the alternative to a *mandamus* order, the Applicant First Nations seek a declaration that, in refusing to recommend an emergency order, the Minister erred in law or acted unreasonably, or both, by failing to consider the following factors adequately or at all:

- a) the Applicant First Nations' Treaty Rights;
- b) the honour of the Crown;
- c) the Minister's ongoing breach of his mandatory obligation to prepare a recovery strategy for Boreal Caribou and include it on the Public Registry within the time period mandated by section 42(2) of SARA;

- d) the potential impacts on the Applicant First Nations' Treaty Rights from the Minister's ongoing failure to identify and protect Boreal Caribou critical habitat in northeastern Alberta; and/or,
- e) the purposes of SARA, which include: to prevent wildlife from being extirpated or becoming extinct; and to provide for the recovery of wildlife species that are threatened as a result of human activity.

FN Notice of Application, p. 3, para. 3(c) [FN Applicants' Record Vol. 1, Tab 1]

75. In particular, the Minister took the position in his s. 80(2) decision that potential impacts of the decline of the Herds on the Applicant First Nations' Treaty Rights, and the Crown's duty to act honourably, "are not relevant in considering whether or not the species' survival or recovery is imminently threatened under s. 80." The Respondents claim that the Minister fulfilled any constitutional obligations to the Applicant First Nations by including their July 2010 Letter "in the information that was before the Minister for consideration." Given the Minister's position set out above, including the Applicant First Nation's letter for possible consideration by the Minister was little more than an empty, mechanical gesture. The Minister's position amounts to a concession that he did not consider Treaty Rights, the honour of the Crown, or potential impacts on First Nations as part of his s. 80(2) decision. If the Court agrees that these factors should have been considered, the Minister erred in law.

Respondents' Record, Tab A, pp. 2 and 10; Respondents' Memorandum at para. 68; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539 [FN Authorities, Tab 8]; see also *Baker, supra* at paras. 73-74

76. However, an order remitting the matter to the Minister to reconsider his decision in light of these factors would (as set out above) be a recipe for further delay and for further harm to the Herds and Boreal Caribou. The Applicants thus respectfully submit that, while they are entitled to this relief in the alternative to their request for a *mandamus* order, a *mandamus* order is the most appropriate relief in the circumstances of this case.

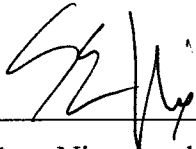
Conclusion

77. The Applicants submit that the Minister has disregarded his duties under SARA. The Minister is nearly four years past the mandatory statutory deadline for finalizing a recovery strategy for Boreal Caribou. Further, the Minister has refused to recommend an

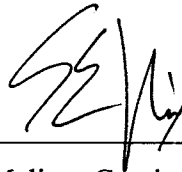
emergency order protecting the Herds and their habitat in northeastern Alberta during his ongoing violation of the Act. The Respondents' failure to protect Boreal Caribou and their critical habitat has consequences: it is contributing to the ongoing decline of the species, and it is threatening the meaningful exercise of treaty-protected hunting rights in northeastern Alberta.

78. In the circumstances, continued delay and inaction is not an option. The Applicants respectfully submit that this Court must hold the Minister to his mandatory duties under Canadian law.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of May, 2011.



Sean Nixon and Jack Woodward
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Allan Adam *et al.*



Per: Melissa Gorrie
Solicitor for the ENGO Applicants,
Alberta Wilderness Association *et al.*

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