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VIA EMAIL

**April 18, 2013**

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**Attention: Karin Buss**  
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Osler LLP  
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**Attention: Martin Ignasiak**  
[mignasiak@osler.com](mailto:mignasiak@osler.com)

Dear Counsel,

**RE: Dover Operating Corp.  
Application No. 1673682  
Dover Commercial Project  
Hearing commencing April 23, 2013**

Witten LLP  
Suite 2500 Canadian Western Bank Pl.  
10303 Jasper Avenue  
Edmonton AB T5J 3N6

**Attention: Keltie L. Lambert**  
[klambert@wittenlaw.com](mailto:klambert@wittenlaw.com)

Alberta Justice – Aboriginal Law  
10<sup>th</sup> Floor, City Centre Place  
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Edmonton AB T5J 2Z2

**Attention: Doug Titosky**  
[doug.titosky@gov.ab.ca](mailto:doug.titosky@gov.ab.ca)

This is Exhibit "H" referred to in the  
Affidavit of

Daniel Stuckless  
Sworn before me this 4<sup>th</sup> day  
of September A.D. 2013  
T. D. Ali  
A Commissioner for Oaths in and for  
the Province of Alberta

On March 28, 2013, the Fort McKay First Nation ("FMFN") submitted to the Energy Resources Conservation Board ("Board/ERCB") a Notice of Question of Constitutional Law ("NQCL") with regard to the above noted application (the "Application"). The NQCL was also served on Dover Operating Corp. ("Dover"), the applicant, on the Province of Alberta ("Alberta") and on the Attorney General of Canada ("Canada").

In the NQCL, FMFN provided notice that it intends to raise the following questions of constitutional law:

**Question 1**

Would the approvals sought by Dover Operating Corp. ("Dover") in Application #1673682 (the "Approvals") if granted, constitute a *prima facie* infringement of the rights guaranteed by Treaty 8, s. 35 of the *Constitution Act, 1982*, ("s. 35") and the *Indian Act* so as to be of no

force or effect or otherwise inapplicable by virtue that the Province of Alberta ("Alberta" or the "Crown") has no jurisdiction over Indians and Lands Reserved for the Indians under s. 91(24) of the *Constitution Act, 1867* ("Interjurisdictional Immunity Argument")?

## Question 2

Has the Crown discharged its duty to consult and accommodate Fort McKay with respect to adverse impacts arising from the proposed project upon the rights guaranteed to Fort McKay pursuant to Treaty 8, s. 35, and the *Natural Resources Transfer Agreement* (the "NRTA") ("Inadequate Consultation Argument")?

On April 9, 2013 the Board panel assigned to this matter (the "Panel") advised FMFN, Dover and Alberta that it would like to receive submissions regarding its jurisdiction to consider the above constitutional questions.<sup>1</sup>

Submissions were received from Alberta and from Dover on April 11, 2013. Both Dover and Alberta submitted that the Board did not possess the jurisdiction to consider FMFN's constitutional questions. On April 16, 2013, FMFN provided the Board with its reply submission indicating that the Board has the clear jurisdiction to determine FMFN's two constitutional questions.

The Panel has considered the NQCL submitted by FMFN and the submissions described above. The Panel has determined that the Board does not possess the jurisdiction to consider the questions contained in FMFN's NQCL. Accordingly, the NQCL is dismissed.

The Panel's written reasons will be provided in due course.

Yours truly,



**Meighan G. LaCasse**  
Board Counsel

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<sup>1</sup> Canada advised the Board that it would not be intervening in this matter.