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Sovereignty and indigenous resistance in the modern world: The case of Athabaskan oil sands development¹

La soberanía y resistencia indígena en el mundo moderno: el caso del desarrollo de las arenas petrolíferas de Athabasca, Canadá

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Abstract: Indigenous peoples throughout the Americas have long been threatened by unsustainable development in their traditional territories and are today on the forefronts of resistance against harmful development projects. Underlying some of the efforts of indigenous peoples in the United States and Canada is the notion that Tribes or First Nations might somehow make development good for indigenous people by exercising “sovereignty”. Sovereignty and development, however, are imposed regimes. Settler states and corporations have been the ones to define and exercise sovereignty to direct development. Wresting labor and natural resources from indigenous peoples and other exploited populations has been essential to capitalist development. Transformative politics is impossible when indigenous peoples conform to values and systems of governance that have long been the means for their exploitation. Aspiring to “legitimize” their control over lands and resources has precluded indigenous autonomy and anti-systemic struggle. Competition between communities and indigenous leaders for advantages and opportunities promised by developers undermines pan-indigenous organizing and divides communities. This chapter presents an overview of the exploitation of oil sands bitumen that threatens the peoples and ecosystems of the Athabasca River basin in the Canadian province of Alberta. It sets forth some of the responses of Algonquin and Athabaskan communities and First Nations organizations. The objectives are to illustrate that sovereignty is a key component of a losing game for indigenous peoples and to inspire further consideration of how indigenous resistance might be constructed to provide greater protection to peoples and ecosystems being sacrificed to capitalist development.

Resumen: Entre los recursos para resistir el desarrollo explotador, los pueblos indígenas han contado con la "soberanía". Pero son los estados colonizadores y las empresas transnacionales que definen y ejercen la soberanía para controlar el desarrollo. Cuando los pueblos indígenas adoptan los valores y los sistemas de gobierno que han sido los medios de su explotación, la resistencia se hace imposible. Este capítulo describe la explotación de las arenas bituminosas que amenaza los ecosistemas y las comunidades Athabaskan y Algonquin de la cuenca del río Athabasca en la provincia canadiense de Alberta, y las reacciones de los pueblos indígenas y sus organizaciones. Los objetivos son mostrar que la soberanía es un componente clave de un juego ya perdido por los pueblos indígenas e iniciar un proceso exploratorio para determinar cómo la resistencia indígena se podría construir para mejor proteger a los pueblos y los ecosistemas que se sacrifican al desarrollo capitalista.

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Introduction

With the intensifying crisis of the modern world-system, we see a re-energized interest in the United States in examination of the problems of injustice, poverty, environmental degradation, and the inability of those who govern to solve related problems. Critical scholars and activists are focusing attention on what happens to marginalized peoples in order to better understand systemic processes that account for their marginalization. Speaking at “Remaking America: From Poverty to Prosperity” (see Smiley 2012) about the summer 2011 “Poverty Tour: Call to Conscience”, Cornel West said “We started on the [Lac Courte Oreilles] Indian Reservation because it is always fascinating to look at America through the lens of the original peoples...a very important starting point: the original people”.

The lives and homelands of the original peoples of the Americas are expropriated for the same reasons whenever it happens: to empower those who do the taking economically and politically. Throughout the course of the evolution of the modern world-system, from expansion of redistributive world-empires through the emergence of the capitalist world-economy, monopolies of production, supported now globally by states and most international development organizations, have competed for power by control of the processes of transforming nature and labor into capital. Kingdoms, empires, states, and corporations have struggled for monopolistic control of the exploitation of natural resources for consumption as capitalism has gone global. Meanwhile, indigenous peoples’ economies, political institutions and practices, ideologies and knowledge (or the presumed absence thereof) have been regarded as causes of their marginalization.

“Development” here refers to the processes of natural resource commodification and the exploitation of labor for profit. Inherent is competition for control of the processes. Development

is accomplished through the imposition of political, economic, and social institutions, and the values and systems of knowledge that support them. Development is supposed to be capable—if not immediately, then ultimately—of supporting ongoing economic growth needed to increase wealth. The wealth created might “trickle down” to those who must sacrifice their own wellbeing to make it possible. Despite efforts of international organizations like the United Nations Development Programme, sustainable development is a contested abstraction and remains beyond reach.

Many contemporary initiatives to make sustainable development possible begin with definitions and approaches such as those formulated by the Brundtland Commission in the 1980s. The Commission’s report, “Our Common Future,” asserts that it is possible to “make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs.” It defines sustainable development as “a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs.” This is somehow to be accomplished at the same time that capitalist development continues in a “new era of growth.” Economic, social and environmental problems are conceptualized not as incompatibilities between the ever-expanding capitalist world-economy and nature and human wellbeing, but, in large part, as consequences of failure to broadly enough share benefits and costs of development.

Whether or not development is sustainable, it requires that developers direct processes of natural resource commodification and exploitation of labor. Throughout the course of globalization, indigenous communities whose claims to traditional territories are most forcibly and strategically asserted have sometimes been offered the status necessary to engage in development

by states. In the U.S., Tribes aspire to control development through the assertion of treaty-based rights to exercise sovereignty in recognized territories and engage in internal self-governance. Indigenous self-governance has been permitted to the extent that it facilitates imposed development, but indigenous systems of productive activity, crucial elements of indigenous cultures, are usually precluded when resources upon which traditional economies depend are taken for development. Native American activists have struggled to make of this loss one for which there is recourse.

In Canada, some of the remaining indigenous communities that continue to eke out survival in homelands fractured and disappearing under development may be offered opportunities to benefit by development. Many First Nations endeavor to benefit by development through participation in the commodification of their own peoples' labor and what remains to them of nature. Economic and political elites, indigenous and non-indigenous alike, are compelled to compete to make best "rational use" of resources. At the same time, many indigenous leaders, organizations, and entrepreneurs continue to express hope that self-determination and sustainable development based to some degree on traditional knowledge, values, and understandings of human-nature relations will be possible despite some presumably necessary degree of assimilation.

First Nations in Canada demand recognition of their status as sovereign in order to increase self-determination and control over development. Their claims to sovereignty and any kind of autonomous control over development in traditional territories are not granted. Given the increasing inability of capitalism to meet human needs (even in the present) and the violence inherent in the commodification of nature, the focus on sovereignty itself becomes increasingly problematic. At risk of overgeneralization, I argue that efforts of indigenous peoples to achieve recognition of their sovereignty amount to negotiations of the terms of their assimilation into a

world-system that is increasingly destructive as it falls into deepening crisis². Recognition of indigenous sovereignty amounts to permission of semi-autonomous internal governance by states and directed engagement in intergovernmental relations and.

The Notion of “Sovereignty”

Sovereignty has a very broad range of definitions and applications³. What is important to recognize is that these emerge from political philosophy and legal scholarship⁴ developed throughout the course of the evolution of the modern world-system. The extension of the capitalist world-economy’s transnational commodity chains has depended on sovereignty (Wallerstein 1997). What follows here is a presentation of some of the aspects of sovereignty I believe to be

² For a theoretical discussion of the structural crises of the world-system, see Wallerstein 2010. For a concise and relatively up-to-date discussion of crises of capitalism more generally, see Tabb 2008.

² Sovereignty has been treated as a political concept and as a legal axiom in different bodies of scholarship. For an interesting exploration of its changing meanings as the basic functional concept of international law and its relevance to human dignity and international security problems, see Sourgens 2006.

³ The reader should know that my treatment of sovereignty has been based in scholarship in social contract theory and American Indian studies in the United States. In the U.S., the state has simultaneously recognized tribes as sovereign and defined tribal nations as “domestic dependent nations”, subordinate to the federal government.

⁴ Sovereignty has been treated as a political concept and as a legal axiom in different bodies of scholarship. For an interesting exploration of its changing meanings as the basic functional concept of international law and its relevance to human dignity and international security problems, see Sourgens 2006.

most relevant to aspirations of indigenous peoples to autonomy and self-governance in the face of development.

When the Spanish began their imperial endeavor in the Americas, they were granted the right of discovery by the Inter Caetera Papal Bull of 1493, which essentially defined as uninhabited any lands not ruled by a Christian prince. Originally a theological notion about the transcendent power of a god, sovereignty was eventually secularized by Jean Bodin in the 16th century to describe political power (Flanagan 2000; Churchill 2002; Wirth and Wickstrom 2002). For Bodin, sovereignty was absolute and permanent and meant being able to implement law and remain above it (though not above natural law, established by his god).

The supreme power of the state, conceptualized initially as commonwealths or republics, emerged in international relations with the Peace of Westphalia in 1648 (which ended the Thirty Years' and the Eighty Years' Wars in Europe). Governing political elites agreed to respect one another's territorial and administrative sovereignty, delimited by borders negotiated and re-negotiated throughout the course of international relations—typically by war.

European social contract theory brought into consideration the concept of popular sovereignty and the understanding that state sovereignty is legitimized and limited by the consent of the governed. Within nation-states, constitutions delineate shares of sovereignty exercised by different manifestations of the body politique. By the Treaty of Versailles at the end of World War I, conquered peoples in defeated-empires-become-states could assume the identity of nations. However, nations within states are not autonomous. Typically they are granted “sovereignty” in the form of some tenuous level of regional administrative control over delimited populations (their own communities or national or ethnic groups). The sovereignty of citizens and nations is validated or invalidated by dominant political cultures and states.

Throughout the process of conquest and settlement of the Americas, corporations participated in the colonial endeavor through engagement in resource extraction, infrastructure development and industry. They exercised sovereignty directly by administering territorial governing regimes and indirectly by participating in the construction of national and international regimes of governance. For example the Governor and Company of Adventurers of England trading into Hudson's Bay, aka the Hudson's Bay Company, were chartered by the British Crown in 1670 as the "true and absolute" lords and proprietors in the entire Hudson Bay drainage area (Government of Manitoba n.d.). In more recent times, since the establishment of the Washington Consensus, governments of peripheral states and internal nations negotiate terms of development directly with corporations, which are even granted personhood by some states (including the United States).

States coerce compliance with established systems of governance and development. They impose order necessary for the maintenance of market conditions that facilitate corporate control over key commodities and economic sectors. However, with the advancement of globalization, capitalists are becoming more adept at employing the interstate system to their advantage "to circumvent states that get too big for their britches, by seeking the patronage of other states, or using one state mechanism to curb another state mechanism" (Wallerstein 1997). Economic elites are often both state officials and corporate leaders who employ the interstate system to their benefit, directing the exercise of sovereignty by states to increase capital accumulation and disempower other capitalists competing for control of development.

Indigenous Peoples and "Sovereignty"

Pursuant to the logic of sovereignty, the imagined superior capacity of dominant religious, political, and economic institutions to facilitate wellbeing justifies disempowerment and

dispossession of indigenous peoples. Conquest has been justified by misrepresenting indigenous peoples' traditional territories as unsettled, presuming indigenous peoples to be incapable of self-government or engagement in international relations, defining genocide as international war, and the use of other creative machinations bound up in notions of sovereignty.

In the “developing world”, where marginalized peoples have most obviously been denied enjoyment of the benefits of development and sacrificed to facilitate these for others, anti-systemic struggle has been a means to survival. Throughout centuries of resistance, this has helped preserve indigenous cultures and maintain or create alternative understandings of politics, intercultural relations, and human-nature relations. Alternative understandings of power call into question sovereignty as a viable means to facilitate wellbeing or justice in international relations. Indigenous movements in Latin America seem more capable of making radical demands for self-determination and redefinition of what has been characterized as “development” than are most in Canada. The cooperative definition and promotion of critical interculturalidad by indigenous movements in Latin America from 1990 onwards is an important example⁵.

In the U.S. and Canada, most tribal and First Nations leaders who embrace sovereignty are crippled by conflict between beliefs about it imposed by the dominant culture and the reality of

⁵ The study of critical interculturalidad is becoming more widespread, being undertaken by more Latin American studies scholars, and is interpreted and approached from a variety of perspectives. Critical interculturalidad employed by indigenous movements is different from approaches to educational reform also termed interculturalidad, but which might be more accurately described as neoliberal multiculturalism promoted by the state. (Thanks to John Stolle-McAllister for his ongoing work on interculturalidad that seeks to clarify these differences.) Recommended sources on interculturalidad include Dembicz 2004, Saavedra 2007, Viaña Uzieda et al. 2009.

their own experiences. Whether sovereignty of Indian nations is endowed in traditional times by the Creator, established by treaties made with empires and states, or recognized in jurisprudence of the dominant political culture, its instrumentality is limited. Boldt and Long suggest that sovereignty's outward-looking instrumentality is most useful. It frames conflict with external forces that are exercising sovereignty to exploit indigenous peoples. But, they ask whether Indian leaders have paid insufficient attention to the cultural consequences of employing it internally. Sovereignty is rooted in European notions of authority, hierarchy, statehood and territoriality which may not be compatible with traditional political cultures (Boldt and Long 1984). As opposed to states, Tribes and First Nations cannot use coercive force to protect and pursue their interests. Their sovereignty, however intact it may be in theory, is accorded legitimacy in practice only when it is not used for resistance.

In the U.S., tribal sovereignty amounts to a measure of permitted internal self-governance and status to engage in intergovernmental dialogue. The decision of the U.S. Supreme Court in the case of the *Cherokee Nation vs. the State of Georgia* in 1831 made tribes “domestic dependent nations,” and wards of the federal government. This bears no resemblance at all to sovereignty (even inward-looking sovereignty) and is no basis for self-determination or autonomy, much less anti-systemic struggle that might transform understandings of the politics of development. It permits them to participate in politics to “ensure that the laws of the United States will be applied to the reservations in the least harmful manner” (Deloria and Lytle 1984, 243). Tom Flanagan, political science professor at the University of Calgary and former Chief of Staff of Conservative Prime Minister Stephen Harper, is a vocal critic of indigenous sovereignty, suggesting it poses a more “ominous” threat to development in Canada than in the U.S. because in the U.S. Congress exercises plenary power over Indians (Flanagan 2000).

In Canada, some aboriginal leaders claim sovereignty for First Nations, hoping to use it as a means to pursue autonomous economic development and improve their communities' standards of living. Others, such as Manny Jules of the First Nations Tax Commission, explicitly reject the notion of sovereignty for aboriginal peoples in favor of individual property rights (Radia 2012; Jules 2010).

Whether or not indigenous sovereignty is recognized, efforts of indigenous peoples to maintain or establish productive activities based in traditional understandings of human-nature relations and to govern autonomously are acts of resistance. As human rights, participatory democracy, environmental justice and traditional ecological knowledge are seen as increasingly relevant to transforming development, indigenous peoples' experiences responding to imposed development have begun to influence debates about development. In many places across the globe, indigenous organizations and communities are resisting development by forming pan-indigenous movements, working to establish genuine political and economic autonomy, and calling for critical intercultural cooperation in transforming the politics of development. These efforts facilitate some degree of cultural survival, but most indigenous communities can no longer subsist in their homelands. This means traditional systems of productive activities cannot sustain them and they must participate in imposed development. This is the key challenge they face in promoting cultural survival and remaining engaged in anti-systemic struggle.

Canada

In Canada there are between 60 and 80 "culturally and politically distinct" aboriginal peoples (e.g., Abele and Prince 2006). The property rights of aboriginal nations in what is today

Canada were recognized by the British Crown's Royal Proclamation of 1763⁶. Treaties with the Crown acknowledged aboriginal nations as independent and sovereign in their traditional territories (Royal Commission on Indigenous Peoples [1996] in Dacks 2004) and helped the Crown avoid conflict as development was initiated in earnest. Special status for aboriginal lands was incorporated into the British North America Act of 1867, which made the Dominion of Canada an autonomous polity (Clarke 2009; Dickason 2002). Treaties executed between 1871 and 1921 extinguished aboriginal title to the new lands being added to the Dominion of Canada (Helm, Rogers, and Smith 1981). Key instruments of Indian policy in Canada are the Constitution Act, 1982⁷, Supreme Court rulings, and the Indian Act⁸ (first enacted in 1876 and last amended in 2000), which determine how aboriginal peoples in Canada may engage in self-government⁹. The Canadian government has dismantled traditional aboriginal political cultures and imposed

⁶ This was issued at the end of the Seven Years' War when France's North American possessions were passed to the British.

⁷ Section 25 of the Canadian Charter of Rights and Freedoms and Section 35. Section 35 recognizes rights of "Indians", "Métis" and "Inuit" peoples.

⁸ The Indian Act applies only to "status" Indians that are officially registered and listed in the government's "band rolls". Métis and non-status Indians are accorded no special status.

⁹ Helpful sources of information on Indian policy and self-determination, in addition to Abele and Prince 2006 and Dickason 2002, include Belanger 2008; Dacks 2004; Légaré 2008; Dickason 2002; and Hedican 2008.

structures and systems of government. Bands, governed by chiefs and band councils, are the units of government recognized by Canada¹⁰.

As the government in Ottawa directs Indian affairs, the governments of the provinces direct natural resource management (see, for example, Fluet and Krogman in Adkin 2009). Most treaties establishing rights of First Nations in Canada did not accord them powers to control resources in their territories. As development has progressed, the resources sustaining traditional economies have been exploited and depleted and aboriginal people and communities have been used as labor in natural resource extraction endeavors (the fur trade, mining, logging and the like) undertaken by settler cultures in their homelands.

Entities exercising sovereignty and pursuing development in First Nations' homelands have characterized aboriginal peoples as incapable of self-determination and implemented aid programs that facilitate economic dependency. Anthropologist Edward J. Hecican explains:

The standard response to the Native dependency question is that, in the early colonial period of Canada's development, Aboriginal cultures and institutional structures were essentially in an "archaic" form and that in many Aboriginal communities today there has not been much change from a basic traditional structure. The assumption is that the underdevelopment of Aboriginal culture is the result of some peculiarity in the economic or social structure of Aboriginal communities that prevents, or retards, progress towards a rational capitalist system (Hecican 2008, 161).

¹⁰ A notable exception to this is the Nunavut Land Claims Agreement, executed in 1993 between Inuit representatives and the Canadian government, which led to the creation of the Nunavut Territory and the government of Nunavut. A comprehensive source on Canada's Nunavut "experiment" is Légaré 2008.

Oil Sands Development and Aboriginal Experience in the Athabasca River Watershed

Native peoples living around the oil sands used the bitumen (a dense form of crude oil resembling tar) as fuel and for waterproofing their canoes long before the first white man set foot in what are today the Canadian provinces of Alberta and Saskatchewan. White explorers in the region took notice of the “resource” and by 1875, the Canadian government had sent the first survey team to chart the Athabasca oil sands (see, for example, Marsden 2007). By the end of the 1880s, the federal government had characterized the bitumen-soaked sub-arctic sandstone of the Western Canadian Sedimentary Basin as the “most extensive petroleum field in America, if not the world” (Nikiforuk 2008, 7).

The presence of natural resources that could be exploited profitably was the impetus for the Canadian government’s treaty-making endeavors in the region. Charles Mair, who accompanied and documented the expedition of the Treaty No. 8 commission into the Athabasca River basin in 1899, commented on the development potential of the bitumen infused landscape:

These tar cliffs are here hundreds of feet high, of a bold and impressive grandeur.... That this region is stored with a substance of great economic value is beyond all doubt, and, when the hour of development comes, it will, I believe, prove to be one of the wonders of Northern Canada. We were all deeply impressed by this scene of Nature’s chemistry, and realized what a vast storehouse of not only hidden but exposed resources we possess in this enormous territory (Mair 1908, 121)

Treaty No. 8¹¹ ceded the lands of several aboriginal bands in the Athabasca River basin in what are today the provinces of Alberta and Saskatchewan and the Northwest Territories in exchange for 160 acres per person in reserve lands, annual compensation for each chief, headman

¹¹ For an account of the treaty-making expedition and a copy of the treaty itself, see Mair 1908.

and “every other Indian” ranging from \$25 to \$5 “afterwards for ever”. The Indians were assured by Commissioners that reserves would eventually be established for them. The treaty gave signatory bands access in perpetuity to natural resources upon which their traditional economies (“usual vocations”) depended, as well as teachers, and tools to engage in fishing and hunting and farming, when reserves were eventually established. The Report of Commissioners for Treaty No. 8 notes that it was necessary to “solemnly assure” the Indians that only laws that would protect their interests would be enacted and “they would be as free to hunt and fish after the treaty as they would be if they never entered into it” (in Mair 1908, 175). According to the treaty, however, access to resources was to be regulated by the government of Canada, by the authority of the Crown, to make possible the use of the ceded treaty lands for “settlement, mining, lumbering, trading and other purposes”. By signing the treaty, First Nations leaders were consenting to management of resources in their homelands by the government.

The Canadian oil sands are now thought to be the world’s second or third largest proven source of recoverable petroleum—besides the oil fields of Saudi Arabia and Venezuela (see, for example, (Government of Alberta 2007). Only about 10 to 12 percent of the raw material called oil or tar sands is bitumen. The rest is sand, clay, other minerals and water. Extraction of the bitumen for commercial exploitation was not considered to be a viable endeavor when Sidney Eells, a mining engineer who worked for the Canadian federal government’s Mining Branch, made the first research expedition into the region in 1913 (Marsden 2007), eight years after Alberta became a province in 1905. Eventually, however, as exploitation of petroleum and mineral resources became central to the economy of the region, relevant technological capabilities and global demand for petroleum increased, and prices rose commensurate with the consumption of the global

supply, large-scale extraction ventures became attractive—and provincial, federal policies facilitated the profit-making.

Alberta's energy ministry estimates there are 170.4 billion barrels of recoverable oil in Northern Alberta's oil sands (Alberta Energy 2011). Oil sands production, estimated to be about 1.5 million barrels/day in 2010, accounts for over half of Canada's crude oil production (Canadian Association of Petroleum Producers 2011). By 2018, government analysts predict that production will have increased to 3 million barrels/day (Government of Alberta 2007). Oil sands deposits cover an expanse of over 145,000 square kilometers—an area about the size of Florida (see, for example, (Marsden 2007; Anon. 2011; Nikiforuk 2008). The three major oil sands deposits are the Athabasca Oil Sands, Peace River Oil Sands and Cold Lake Oil Sands.

Oil sands development in Canada is central to the energy policies of the United States. The energy “self-sufficiency” called for by the 2005 U.S. Energy Policy Act is dependent on ongoing access to Canadian petroleum resources. The North American Free Trade Agreement facilitates the United States' access to petroleum resources from the oil sands by requiring both countries to allow the free exchange of goods across borders and limiting each country's control over vital energy resources, even in the case of “critical” shortages. Article 605, the proportionality clause, stipulates that the average percentage of exports from the previous three years must be maintained (Marsden 2007, 74). Marsden reports that Canada exports 60 percent of its oil and gas production to the U.S. The Keystone XL pipeline now in the headlines in the United States is to be constructed by the TransCanada Corporation to bring semi-processed oil sands crude 1,661 miles from Alberta

to Texas refineries and ports on the Gulf of Mexico, primarily for export to Latin America and Europe¹².

Some of those most directly impacted by oil sands development are Treaty No. 6 and Treaty No. 8 First Nations and Métis: Mikisew Cree First Nation, Athabasca Chipewyan First Nation, Fort McMurray First Nation, Fort McKay Cree Nation, Beaver Lake Cree First Nation, Chipewyan Prairie First Nation, and Métis communities who have long depended on the lands, waters, animals and plants of the sub-arctic boreal forest. Here I focus on the experiences of three of the Treaty No. 8 First Nations in the Athabasca Oil Sands region downstream from the operations discharging wastes into the Athabasca River: the Mikisew Cree First Nation and the Athabasca Chipewyan First Nation, on Lake Athabasca, and the Fort MacKay First Nation, up the Athabasca River from the Lake. The Cree are Algonquian people and the Chipewyans are Athapaskan or Dene people

¹² Despite intense debate in the U.S. about environmental consequences of the project, mention of oil sands development north of the border is too rare. Debate on the pipeline project has been suppressed and distorted. While politicians in the U.S. and Canada and oil industry think tanks were pressuring the U.S. government and the public to approve and accept the pipeline in late 2011, Cornell University's Global Labor Institute released an initial draft of a briefing paper that denies claims by TransCanada and the American Petroleum Institute that the project would create tens, if not hundreds, of thousands of jobs. Its authors estimate that the project would only create 2,500 to 4,650 two-year jobs and "will impede progress toward green and sustainable economic renewal", thereby preventing the creation of many more jobs in the longer-term. They also point out that the environmental consequences of the project are likely to create more costs than benefits and reduce the amount of public and private funds that could potentially fund jobs (Skinner et al. 2012, 2-3). The paper is available online at http://www.ilr.cornell.edu/globalaborinstitute/upload/GLI_KeystoneXL_012312_FIN.pdf.

(as are the Navajo of the southwestern United States). Métis people live in and around these communities. Some form part of the Fort McKay Métis Community.

The Athabasca River is a tributary to the Mackenzie River, which empties into the Arctic Ocean. Its drainage basin is the largest in Canada (Government of Canada, Natural Resources Canada 2010). The Peace-Athabasca Delta, where Mackenzie tributaries Athabasca and Peace Rivers come together at the western end of Lake Athabasca, is one of the world's largest freshwater deltas and extends approximately 100 km east to west and 70 km north to south (Marsden 2007, 173; Government of Canada, Parks Canada 2003). Lake Athabasca, situated in both Saskatchewan and Alberta, is Canada's eighth largest lake, with a surface area of approximately 7,700 square kilometers (Government of Alberta and University of Alberta 2004). The region is part of the world's subarctic boreal forest biome that encompasses parts of Alaska, Canada, Scandinavia, Siberia, and northern Mongolia. Forests trees include larch, spruce, fir, pine, birch, and aspen. Lichen and moss are also important in forest life. Lakes, rivers, bogs and peat lands are prominent features. Hundreds of species of migratory birds have nesting grounds in the boreal forests.

The Boreal Forest



(Natural Resources Defense Council 2004)

People have been living in subarctic boreal forests almost as long as the forests themselves have existed. Archaeological evidence suggests humans have lived in what is today Alberta for approximately 10,000 years (see, for example, Ives 1993). Traditional productive activities that sustained the Athapaskan and Algonquian linguistic-ethnic groups¹³ of the region were hunting, fishing and gathering. They depended on moose, caribou, woodchuck, beaver, muskrat, snowshoe hare, grouse, ptarmigan, geese and other migratory waterfowl and whitefish, trout, pike and other fish. Vegetal foods, mainly berries and roots, were less significant overall in their diets. They made their tools, weapons, medicines, homes and clothing from the plants and animals of biome and routinely used fire to manage forest biology. The region's waterways served as transport routes in the summer and when frozen in the winter, but made for a dangerous landscape during

¹³ Sources on the Cree and Dene (Chipewyan) peoples in the subarctic in Canada include Helm 1981; Helm 1965; McCormack 2010; Magocsi 2002; Carter 1999; McCormack and Ironside 1993.

spring, when the ice was breaking up. People traveled by canoe and on foot and used dogs for hunting and carrying loads. Families and local bands made up of families were the basic social units. Regional networks of bands were connected by kinship bonds and bands would come together at rendezvous sites in summer. Bands often depended on one another for survival in times of resource scarcity. There is evidence of raiding and ongoing enmity between Athapaskans and Algonquians and between Athapaskans and Eskimos (Gillespie 1981). Traditional political cultures of both groups were based in consensus-based decision-making, reciprocity and sharing, and leadership that “reflected an ongoing demonstration of personal competence and authority but did not confer coercive power” (McCormack 2010, 28). Their life ways and knowledge of their homelands were based in keen awareness of ecological processes and human-nature interactions.

Preceded by epidemics (tuberculosis, smallpox, venereal diseases, influenza, measles and scarlet fever) that wiped out a majority of the aboriginal peoples in the region, entrepreneurs eager to profit from the fur trade arrived in the Athabasca in the late 1700s. Fort Chipewyan was established, under the direction of Roderick McKenzie, in 1788 as a North West Company¹⁴ trading post. The Crees and Chipewyans settled permanently in the Fort Chipewyan region in the early 1800s to participate in the fur trade¹⁵. They supplied the traders with food, served as guides and worked as hunters, trappers, and traders. Not all aboriginal communities participated in the fur trade. Chipewyan bands that did not were known as “caribou eaters” (Moore 2002).

¹⁴ The North West Company did not have a royal charter, but moved in to the area and established forts as the French fur traders withdrew. In 1821, the North West Company and the Hudson’s Bay Company merged under pressure by the Crown to cease hostilities.

¹⁵ For more on the region’s geography, prehistoric and traditional cultures, and patterns of human settlement, see McCormack 2010; Helm 1965; Helm 1981.

Ultimately, their way of life became impossible as their food was wiped out by “post hunter” Indians engaged in the fur trade. Even fish populations were impacted, as dog-sled teams had to be fed and dried fish became a commodity central to the fur trade.

From the 1820s and into the 20th century, adaptations to the fur trade and other development initiatives in their homelands radically transformed aboriginal economies, political cultures, social relations, ideologies, knowledge, and human-nature relations. By the end of the 1800s, fishing, hunting and gathering could no longer sustain most aboriginal communities, given radical reduction in populations of fur-bearing animal species and new dependence on trade goods. Most people were living in permanent settlements and reserves and many had been converted to Christianity by missionaries. Mining, logging, oil and gas development, and hydroelectric development became the bases for the imposed economy as the fur trade came to an end, and most aboriginal people were excluded from the benefits, including jobs.

The Business of Oil Sands

Synchrude and Suncor are the energy companies that pioneered oil sands development. Corporations that have become involved in more recent years are ExxonMobil (as Imperial Oil in Canada), ConocoPhillips, Shell Oil and British Petroleum, several Canadian companies, including Canadian Natural Resources Ltd. and Petro-Canada (see, for example, Clarke 2009).

Much oil sands development to date has been surface mining, but most oil sands bitumen in Northern Alberta is deep enough in the crust of the earth that it must be brought to the surface by injecting steam into it and pumping it to the surface, via two different types of “in situ” extractive drilling, steam assisted gravity drainage and cyclical steam simulation (see, for example, Ko and Donahue 2011). Both are water-use intensive, cyclical steam simulation more so (Ko and Donahue 2011). Chemicals used in the processes escape into surrounding ground water. Surface

mining requires the destruction of all life on the surface of the bitumen-infused earth. Forests are cut, peat and soil are harvested (to be sold in large retail garden supply stores), aquifers are drained, and then some of the world's most massive mining equipment is used to dig up the bitumen-bearing earth. Hot water and steam are used to separate the bitumen from sand and clay. Then what is extracted is diluted, upgraded into synthetic crude, which can be piped away for further refinement (Clarke 2009). The processing is a water intensive endeavor that produces toxic waste stored as "tailings".

All are energy intensive operations. Most are now powered by natural gas piped in to the refineries and drilling facilities from gas deposits at the Alaska North Slope, the MacKenzie Delta and Colville Hills (Anon. 2007). Developers envision bringing liquid natural gas from the Pacific coast by pipeline and building nuclear reactors to provide power. Also to be brought in pipelines from ports on the Pacific would be a "diluent" shipped from Russia that would be used to reduce the viscosity of the bitumen to make it flow for travel in pipelines¹⁶.

Climate change and decreasing rainfall in the region has already diminished the flow of the Athabasca River and the oil sands operations are taking a significant amount of the basin's water for use in extracting bitumen and processing waste. According to a report published by the Pembina Institute, "existing and approved water licenses for oil sands mines represent almost two-thirds of surface water allocations in the lower Athabasca River reach" (Griffiths, Taylor, and Woyntillowicz 2006, 45). Marsden claims that withdrawals for the oil sands industry amount to

¹⁶ For more on these plans and coverage of other oil sands developments and aboriginal responses, an excellent source is the autumn 2007 issue of the *Dominion*, a pan-Canadian media cooperative. See *The Dominion: News from the Grassroots, Tar Sands Issue* (#48 – edited by Dru Oja Jay), available online at <http://www.dominionpaper.ca/tarsands> (Anon. 2007).

20 percent of the river's flow (Marsden 2007, 173). It takes up to 12 units of water to produce one of bitumen crude (Nikiforuk 2008) in surface mining (still more prevalent at this time than in situ mining). Up to 90 percent of the water used by the industry becomes waste (Clarke 2009).

Left over after mining and processing are toxic liquid tailings, stored in vast ponds that cover an area of up to 130 square kilometers along the Athabasca River (Nikiforuk 2008; Clarke 2009; Price 2008) and are visible from space. Contaminants in the waste water include residual bitumen, naphthenic acids, polycyclic aromatic hydrocarbons (PAHs), arsenic and other heavy metals, and salts. Birds that land on the ponds can be saturated with oil and poisoned by the toxins. Tailings pond operators now use propane cannons and scarecrows in an effort to keep birds from landing on the ponds (Clarke 2009). Tailing contamination and toxics from spills¹⁷ leaks back into the groundwater and the countless streams, rivers and lakes that make up the landscape of the delta and flow into the areas where First Nations have fished and hunted for ages. The region's fish, animals and plants are being poisoned and their habitats destroyed.

Remediation of environmental damage is not being implemented or enforced in any systematic way. Developers initially hoped that toxics and metals in tailings ponds would settle out, allowing the relatively clean surface water to return to the environment. It is now clear that this process will take decades (see, for example, Clarke 2009). After plowing over deforested open-pit mines, attempts are made to restore the landscape by creating rolling hills and reservoirs (where, it is hoped, toxins may sink to the bottom) with bulldozers, and overplanting with barley

¹⁷ In the 1980s, oil spills at Syncrude and Suncor poisoned the Athabasca River and impacted Fort MacKay and Fort Chipewyan communities downstream, where their fish "tasted like gasoline" (see, for example, Clarke 2009, 193).

crops, which then die off and fertilize the soil. The last step is to plant spruce, pin and aspen trees and “hope nature will eventually take over” (Marsden 2007, 169).

Impacts of oil sands mining are global. The industry is destroying significant expanses of the subarctic boreal forests and peat bogs that sustain global bird and insect populations, produce oxygen and serve as carbon sinks and is desiccating a region that helps sustain the planetary hydrological cycle. Greenhouse gas emissions from mining and processing bitumen contribute to global climate change. Some sources suggest that more energy is needed to produce and transport oil sands petroleum than this petroleum itself can produce. More conservative estimates suggest that one unit of oil is needed to process every two produced (Raymont and Radford 2008) or that about one-sixth of the energy provided by a unit of oil is expended to extract it (Oja Jay 2007).

Aboriginal Responses to Oil Sands Development

In Alberta, 81 percent of subsurface mineral rights are held by the provincial government, while the rest are held by the federal government (Marsden 2007, 81) by exercise of sovereignty in aboriginal lands. Federal and provincial governments are using sovereignty to make development in the region profitable for the energy corporations investing in extraction, refinement, and delivery of oil sands petroleum, externalizing costs to municipal governments¹⁸, First Nations and the environment. The governments of Alberta and Canada are subsidizing oil sands development through low provincial royalty rates and federal tax breaks (Clarke 2009). At the same time, federal and provincial agencies are failing to assess the industry’s social, health and environmental impacts as they pave the way for dramatic expansion of oil sands mining.

¹⁸ For more on how the exponential rates of expansion of economic activity impacts municipalities in the region, see, for example, Clarke 2009, chapter 6.

Today at Fort Chipewyan about 220 kilometers downstream from oil sands operations, the Indian population is just 1,200 Cree, Chipewyans and Métis, “with a few whites” (Marsden 2007, 182). The people there that live on Lake Athabasca where the Athabasca River feeds into it hunt wild game and depend on cold water fisheries for their food. They are developing rare cancers and autoimmune diseases linked to consumption of food and water laden with heavy metals and other contaminants released into the Athabasca River. While noticeable contamination of water, poisoning of fish, and concerns about human health effects have been ongoing for 30 years, government and industry representatives deny the problems and deny they are related to oil sands development¹⁹. Animals are also developing birth defects and diseases never before observed that are related to toxins in the environment. In addition, the hydrological cycle upon which the people, animal and plant communities at Lake Athabasca have relied for thousands of years is being

¹⁹ In its Internet publicity about health and aboriginal communities, for example, Suncor Energy claim that, according to a 2009 study of cancer rates in Fort Chipewyan, the “incidence of rare cancers is within the expected range” and that “an independent expert panel established by the Royal Society of Canada” issued a report on environmental and health impacts of oil sands development, finding no credible evidence of environmental contaminant exposures reaching Fort Chipewyan at levels that could increase human cancer risks (Suncor Energy 2011). In 2003, physician John O’Connor, who had worked in Fort Chipewyan since 1993, began to express concern publicly about disproportionate numbers of cases of cancer and other diseases not before encountered in the community. O’Connor and leaders in medicine in Alberta called into question the validity of a study done by Health Canada and Alberta Health and Wellness that found notion unusual in Fort Chipewyan (Clarke 2009, 194–5). It was not until 2009 that an Alberta Cancer Board study acknowledged some unusual trends at Fort Chipewyan (Poitras 2011). Dr. O’Connor and the Fort Chipewyan community continue to demand attention to the situation and Alberta Health and Wellness reportedly began taking steps toward organizing another study (CBC Canada 2011).

disturbed by water withdrawals upstream, making transportation and hunting increasingly difficult.

The Mikisew Cree and Athabasca Chipewyan First Nations are calling for a moratorium on oil sands development. They have not reached settlements with Canadian or provincial authorities or with corporations directing oil sands development. They want consultations on development supposedly guaranteed by Treaty No. 8 provisions and to negotiate settlement. The Athabasca Chipewyan First Nation has challenged the Alberta government's granting of tenures for development that encompass "survival areas" needed to ensure their cultural survival and called on the government to heed its duty to consult and accommodate First Nations' treaty rights when regulating development. Its 2008 case was dismissed, but the nation appealed to the Alberta Court of Appeal (Droitsch and Simieritsch 2010). It appears that case was dismissed in 2011, prompting the nation to appeal to the Supreme Court. The case the Nation eventually brought in the Supreme Court charged that leases to Shell UK were made without consultation. That case was dismissed on February 22, 2012 (Athabasca Chipewyan First Nation 2012a).

It seems that provincial and federal government courts are exercising their shares of state sovereignty in order to permit development while dismissing or ignoring the Nation's claims that governments have failed to perform duties related to past agreements made with the Nation. The Athabasca Chipewyan First Nation's claims are based in their status in the regime of governance, as well as in norms and agreements regarding indigenous rights that are recognized internationally. These, however, have not enabled them to substantively influence decision-making about development in their territories.

Farther upstream, 175 kilometers downstream on the Athabasca River from the mines and upgrader plants, Fort MacKay is home to about 500 residents (mostly Cree). The Fort MacKay

First Nation is trying to adapt to the presence of the burgeoning human population of Fort McMurray and the expanding oil sands industry. The Fort MacKay First Nation is participating in oil sands development.

In 2004, in hopes of securing “financial independence,” the Fort MacKay First Nation accepted \$41.5 million in compensation and the transfer of 23,000 acres of oil sands land to their reserve, to which they will have royalty rights (Marsden 2007, 183). Lauding the acknowledgement of the 2004 Treaty Land Entitlement Settlement Agreement with Indian Affairs and Northern Development, Alberta Environment, and Alberta Aboriginal Affairs and Northern Development, Fort McKay First Nation Chief Jim Boucher said, “We are now able to play a significant role in the oil sands exploration and regional economic development while ensuring that there are adequate reserve lands for our traditional way of life” (Government of Canada, Indian and Northern Affairs 2006). The Fort MacKay First Nation, now with acknowledged Treaty No. 8 rights and rights to additional reserve lands, is interested in establishing a joint venture with Shell (Stainsby 2007).

In 2007, according to provisions of the First Nations Commercial and Industrial Development Act, SC 2005, c 53²⁰, the Ministry of Indian and Northern Affairs, Province of Alberta, and the Fort McKay First Nation concluded the Fort McKay Oil Sands Intergovernmental Agreement. It governs the administration and enforcement of the Fort McKay First Nation Oil Sands Regulations. The regulations govern commercial and industrial activities on reserve lands (Government of Canada, Department of Justice 2007).

The Fort McKay First Nation appears to be engaging in internal self-government, but in cooperation with industry representatives. For example, the newly-appointed Director of Fort

²⁰ Text of the Act is available at <http://canlii.ca/en/ca/laws/stat/sc-2005-c-53/87375/sc-2005-c-53.html>.

McKay First Nation's Sustainability Department is Alvaro Pinto, an environmental engineer from the Colorado School of Mines who "has worked throughout North and South America, as well as South Africa, gaining extensive experience in health, safety, environment and community relations ... working for the oil and gas industry, as well as mining and consulting companies" (Bezzano 2011, 7). In addition, he has also "been instrumental in the management of institutional relations with federal, state and local ... agencies with respect to permitting and licensing matters as well as relations with non-governmental organizations (NGOs) and local communities" (ibid). Before coming to work in Fort McKay, Pinto was the Sustainability Corporate Director for Yamana Gold²¹, a Canadian company that operates in Brazil, Chile, Argentina, Mexico, the U.S. and elsewhere (ibid).

Resisting Aboriginal Resistance

Aboriginal communities and First Nations' attempts to resist development in their traditional territories in the Athabasca River watershed have been effectively managed by parties manipulating wealth and the exercise of sovereignty there. There are four key approaches: (1) Agents of development use the authority of the judiciary to undermine aboriginal legal claims that might delay or stop oil sands development projects; (2) Government agencies and official stakeholders groups that exist to protect the environment and promote sustainability in

²¹ In Latin America (in Argentina, Honduras, and elsewhere), indigenous rights and environmental organizations have denounced Yamana Gold and its subsidiaries for abuses against human rights, for environmental crimes, and for using profits to ensure impunity from laws that would prohibit their practices. The company also donates funds to universities and pursues other means to assuage criticism in the communities where its operations may cause problems. For more on this, see, for example, <http://www.miningwatch.ca>.

development permit First Nation participation in directing development, but according to imposed norms and institutional practices, many set by industry representatives; (3) Politicians, government officials, and oil sands developers manipulate First Nations politics and governance by influencing key leaders and undermining effectiveness of aboriginal interest groups and governing bodies; and (4) Industry groups offer First Nations and their leaders entrepreneurial opportunities and fund educational and social services aimed at improving standards of living.

The Legal System. From 1990 through 2005, four Supreme Court rulings recognized Indian rights granted under Treaty No. 8 and governments and energy companies began “courting local Native communities” (Marsden 2007, 183). The federal government has facilitated the courtship through initiatives such as the economic development programs of the Aboriginal Affairs and Northern Development Canada, which “encourages both the private and public sectors to add First Nations, Métis and Inuit peoples to their current workforce” (Government of Canada; Indian and Northern Affairs Canada, Communications Branch 2010).

As suggested by the Mikisew Cree and Athabasca Chipewyan First Nations’ failed attempts to have a moratorium imposed on oil sands development in their traditional territories, First Nations have enjoyed little success in using the legal system to resist development or hold the Canadian government accountable for failing to keep treaty promises to consult aboriginal communities and accommodate their interests as development of the oil sands intensifies. First Nations engaged in legal struggles receive support from legal organizations with legal expertise in environmental and aboriginal law. One, for example, is the Canadian Institute of Resource Law. Private firms also provide valuable assistance. One tactic used by those promoting oil sands development is to try to deny advocates for aboriginal communities participation in the legal process at crucial points in challenging the state or developers.

The Beaver Lake Cree Nation is another of the Athabasca River First Nations that has sued the governments of Canada and Alberta, as well as Shell UK (Droitsch and Simieritsch 2010; UK Tar Sands Network 2011; Athabasca Chipewyan First Nation 2012b). In *Alphonse Lameman on His Own Behalf and on Behalf of All Other Beaver Lake Cree Nation Beneficiaries of Treaty No. 6, and Beaver Lake Cree Nation v. Her Majesty the Queen In Right of the Province of Alberta and the Attorney General of Canada*, the Plaintiffs were offered pro bono support by “the Took barristers”, a team of lawyers from the U.K. The Defendants, however, “Her Majesty the Queen In Right of the Province of Alberta” and the “Attorney General of Canada”, backed by the Law Society of Alberta, which intervened in the case, convinced the court to deny the application for the “right of audience” of the Beaver Lake Cree Nations lawyers. This made it impossible for them to represent the Plaintiffs in court or to question witnesses. The Cree had asserted the “right to choose who should represent them,” and claimed they were “already ‘compromised’ by the massive asymmetry in resources favouring the Defendants” in the case (Court of Queen’s Bench 2011, I. Introductions [5])²².

Official Stakeholders Groups²³: The two stakeholders groups most involved in oil sands development are the Regional Aquatics Monitoring Program (RAMP) and the Cumulative Environmental Management Association (CEMA). RAMP calls itself a “science-based” and “results-focused” monitoring program that serves the needs of stakeholders in oil sands development (Regional Aquatics Monitoring Program n.d.). It was set up by industry

²² For more on the case, see, for example, Olynyk and Jamieson 2012.

²³ A report of the Office of the Auditor General of Canada (Government of Canada, Office of the Auditor General of Canada 2011) that includes information about stakeholders groups is available online at http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201110_e_35765.html

representatives and the Alberta government in 1997 (Clarke 2009). The Alberta government relies on its reports. Critics question the quality of the research and reporting of the industry-funded interest group (see, for example, Nikiforuk 2008; Clarke 2009; Anon. 2011; Athabasca Chipewyan First Nation 2012b). The RAMP website claims that the Program looks to “traditional knowledge” as an “invaluable” planning tool. The Mikisew Cree and the Athabasca Chipewyan no longer participate in RAMP and have called into question the validity of RAMP’s reports on water quality in the Athabasca River (Clarke 2009).

In 1999, the Alberta government and federal partners established the Regional Sustainable Development Strategy (RSDS) to develop frameworks for environmental policy related to oil sands development. The next step was the establishment of the Cumulative Environmental Management Association (CEMA), another stakeholders group, to study the oil sands industry’s impact on the boreal forests and to manage that impact. For example, the governments have assigned CEMA the task of setting flow rates for the Athabasca River downstream of the oil sands (Marsden 2007, 177). CEMA has been criticized for failing to deliver unbiased information (Nikiforuk 2008) and has delayed publishing reports for years, in part because oil sands development corporations have veto power (Clarke 2009). CEMA highlights participation of aboriginal and Métis groups, has an “aboriginal caucus” (Cumulative Environmental Management Association n.d.), and has actively sought the support of First Nations governments (Marsden 2007, 183). In 2007, the Mikisew Cree at Fort Chipewyan and the Athabaskan Chipewyan announced they would quit CEMA in protest (Marsden 2007; Clarke 2009). Archie Waquan, a Fort Chipewyan elder said, “The Alberta government has given away its regulatory responsibilities to a group of people controlled by industry” (Marsden 2007, 164).

In February 2012, Canada's Ministry of Environment and the Alberta government released a Joint Canada-Alberta Implementation Plan for Oil Sands Monitoring, which appears to be another RSDS. The Plan calls for the active participation of aboriginal communities (Government of Canada, Ministry of the Environment and Government of Alberta 2012), but some aboriginal communities are already raising concerns that the monitoring take place in a "non-partisan way" and that clear roles for aboriginal communities be established from the beginning (see, for example, Fort McKay Métis Community 2012).

First Nations Politics. Aboriginal peoples in Canada have been aware for centuries that imposed development is usually not in their best interests. Resistance to development became a primary motivator of First Nations political organizing in the 1970s. Pan-indigenous organizing at the national level had increased throughout the 20th century. The Assembly of First Nations (AFN), a representative body of bands and First Nations in Canada, came into being in 1985²⁴. Its leaders represent aboriginal peoples throughout Canada and it exists to promote aboriginal rights and interests within the framework of government in Canada, including "Aboriginal and Treaty Rights, Economic Development, Education, Languages and Literacy, Health, Housing, Social Development, Justice, Taxation, Land Claims, Environment, and a whole array of issues that are of common concern which arise from time to time" (Assembly of First Nations 2012). It receives most of its funding from the Canadian government's Department of Indian Affairs (ibid).

In 2008, the AFN passed a resolution stating that First Nations' treaty rights were not being respected and they were not being consulted by government and industry regarding oil sands development (Droitsch and Simieritsch 2010). In 2010, the AFN was raising concerns about impacts of oil sands development on aboriginal peoples and seeking involvement of impacted

²⁴ For more on the AFN, see www.afn.ca.

communities in establishing energy policies and recognition of constitutionally-protected rights to waters, lands and traditional economies (ibid). As these concerns were being raised, many AFN leaders were also establishing and strengthening alliances with industry representatives.

In January 2012, AFN National Chief Shawn Atleo emerged from a meeting between chiefs of the Assembly of First Nations and Prime Minister Stephen Harper calling it a “success” while acknowledging that the meeting resulted in no specific commitments relating to resource “sharing”, only in the statement of a need to “look to ‘education and opportunity’ to improve success among First Nations and create conditions to speed up economic development” in their homelands (Payton 2012). Atleo, who believes First Nations should be involved in “shaping of future major resource development and the energy sector” (Penty 2012), is facing opposition from AFN regional chiefs in Saskatchewan and Manitoba who reject an “outcome statement” issued at the January meeting endorsing an action plan that lays out steps to be taken for promoting First Nations “prosperity”, set forth in the summer of 2011 by the AFN and Aboriginal Affairs Minister John Duncan (Galloway 2012a; Galloway 2012b).

At a meeting of Federation of Saskatchewan Indian Nations, where a motion rejecting the Canada-First Nations Joint Action Plan was unanimously endorsed, Chief Wallace Fox (Onion Lake Cree Nation) suggested that the action plan was driven by interests of aboriginal leaders in British Columbia (Galloway 2012a). (Atleo is a hereditary chief of the Ahousaht First Nation on the west coast of Vancouver Island in B.C.) Transportation of oil sands crude to markets requires the construction of pipelines to the Pacific, ports and other transportation infrastructure, as well as transport to Alberta of the tremendous volume of supplies needed for ongoing expansion of oil sands mining. This promises to have a huge impact on B.C.’s provincial economy. Some of the chiefs speaking out against the AFN outcome statement have expressed concern that prominent

political leaders like Atleo are being pressured by the federal government to endorse oil sands mining and infrastructure construction, such as the proposed \$5.5 billion Enbridge Inc. Northern Gateway pipeline (see, for example, Penty 2012), and are hoping to gain economic advantage through such endorsements and, eventually, participation in the energy sectors of regional economies as oil sands development expands. These conflicts are fracturing the leadership and the potential effectiveness of the AFN.

The Athabasca Tribal Council is another pan-indigenous organization. It represents the Athabasca Chipewyan First Nation, Chipewyan Prairie First Nation, Fort McKay First Nation, Fort McMurray No. 468 First Nation, and Mikisew Cree First Nation, most of which are already heavily impacted by oil sands development. The Council is concerned with monitoring environmental change in their region and also appears to be interested in securing opportunities for aboriginal people to work in development²⁵.

Corporate Indians. Oil sands developers have exercised control over perceptions that oil sands development has negative impacts on aboriginal communities²⁶ by partnering with receptive First Nations leaders and entrepreneurs, working with government agencies responsible for aboriginal affairs, and organizing “aboriginal friendly” public relations campaigns, both as company endeavors and through industry groups such as the Canadian Association of Petroleum

²⁵ The Website of the Athabasca Tribal Council is at <http://atc97.org/>.

²⁶ Oil sands developers also employ strategies to counter negative perceptions of environmental impacts of their industry. A recent trans-industry organizing effort is the Canada’s Oil Sands Innovation Alliance (COSIA), devoted to technological innovation and collaborative action to improve environmental performance (Canada’s Oil Sands Innovation Alliance 2012).

Producers (CAPP)²⁷. Regional economic growth will turn the tide against marginalization of aboriginal people. It will provide jobs for those living nearby the mines in Fort McMurray and Fort MacKay who want to work. It also creates opportunities for First Nations people (especially young “achievers”) to start businesses that provide services to the industry. The *Alberta Oil Magazine* recently profiled First Nations entrepreneurs, whose stories provide examples that “providing First Nations with meaningful opportunities is good business” (Snyder 2012).

An example of First Nation cooperation with industry representatives is the Aboriginal Pipeline Group Ltd. (APG). It is a member of the Mackenzie Gas Project consortium, which exists to promote development of the Mackenzie Gas Pipeline that would deliver natural gas to fuel oil sands development (McCullum and Canadian Centre for Policy Alternatives 2006). APG is “composed of representatives from the Inuvialuit people of the Mackenzie Delta and Arctic coast, the Sahtu First Nation from around Great Bear Lake, and the Gwich’in First Nation who live south of the Inuvialuit.” It was “backed by a loan from TransCanada Pipelines Ltd.” and “organized to represent the interests of some of the Aboriginal peoples of the NWT” (Clarke 2009, 200).

Some engaged in promoting oil sands development simply deny that aboriginal communities are negatively impacted by the industry. For example, climate change denier and oil sands development promoter Alistair Sweeny has suggested:

Most of the cleanup will involve dumping gypsum into the [tailing] ponds and then burying the solid remains. Presto, for about a buck a barrel, the ugly face of the oil sands, those nasty toxic lakes that you can see from space which threaten the whole Athabasca Mackenzie Valley ecosystems [sic], will soon disappear. In their place will grow a home where the wood buffalo can roam. The best thing these miners can do is

²⁷ For more on CAPP, see Canadian Association of Petroleum Producers 2009.

set up a fund for the local aboriginal and Métis people, so they can start up a profitable buffalo business on top of the old oil sands mines. Now *that* would be good public relations (Sweeny 2010, 196) (emphasis in the original).

In fact, Syncrude and Shell use the wood buffalo image to impress upon anyone who might be watching that they are friends of First Nations.

Anti-systemic Struggle?

It is clear that aboriginal communities and First Nations employ a number of approaches to resisting oil sands development. The notion of sovereignty is inherent in their recourse to treaty rights. Some measure of sovereignty was recognized initially in order to accord First Nations the status necessary to enter into treaties with the Crown or the state. Treaty No. 8, however, provides only that the state consult with First Nations about imposed development and that such development permit aboriginal people to participate in regional economic development. There would appear to be no provision entitling First Nations to direct or challenge development. Demands for internationally-recognized aboriginal rights and appeals to Canadian aboriginal and environmental law have not so far empowered aboriginal communities of the boreal forests in Canada to resist development.

Anti-systemic struggle does not appeal to, but rather challenges the legitimacy of existing regimes of governance and power. The closest thing to anti-systemic struggle in the oil sands controversy is activism. What follows is a brief description of some of what is taking place in the way of activism. First, it is important to note that some of the most vocal opposition to oil sands development is being led by members of some of the same First Nations whose governments support the expansion of oil sands development. It is also important to reflect more on how the ongoing efforts of these activists might continue to be based in resistance.

A number of advocacy organizations with aboriginal and Métis staff are reporting and otherwise focusing public attention on aboriginal concerns. R.A.V.E.N. (Respecting Aboriginal Values and Environmental Needs) is one example²⁸. Pan-indigenous organizations calling for a moratorium on oil sands development have passed a number of resolutions in support of impacted First Nations. One important pan-indigenous initiative is the Keepers of the Water. It is a public forum held annually in Fort Chipewyan by Mikisew Cree and Athabasca Chipewyan First Nations and elders from other communities discuss water issues with scientists and activist groups (which, in 2007, included David Schindler, the Indigenous Environment Network, Sierra Club, the Pembina Institute, Environmental Defence, the Polaris Institute and the Natural Resource Council) (Clarke 2009).

The Indigenous Environment Network has led resistance to oil sands development in Canada and abroad through its Canadian Indigenous Tar Sands Campaign (CITSC), directed by Clayton Thomas-Muller, of the Mathais Colomb Cree Nation in Northern Manitoba. Another prominent figure is George Poitras, former Chief of the Mikisew Cree First Nation. The organization has raised international attention and opposition to the oil sands energy and pipeline projects, is working to establish alliances between aboriginal communities that live along the routes proposed for future pipeline construction, and has built relationships with other prominent environmental organizations opposed to development of petroleum resources, including 350.org,

²⁸ R.A.V.E.N., for example, reports on the Beaver Lake Cree Nation case discussed above. See R.A.V.E.N. 2011.

which has been a leading organization in opposing the Keystone XL pipeline project in the United States²⁹.

Networking with international environmental organizations opposed to oil sands development is a predominant form of activism. In 2010, James Cameron, director of “Avatar”, toured the oil sands region and implored decision-makers to consult with First Nations about development. One international coalition of indigenous and environmental organizations includes Keepers of the Athabasca, Greenpeace, the Indigenous Environmental Network, Sierra Club Prairie, Pembina, Council of Canadians, International Indigenous Treaty Council, the AFN’s Northwest Territories Regional Office, Carrier Sekani Tribal Council, Dene Nation, Platform, London Mining Network, UK Tar Sands Network, People & Planet, Rising Tide, and Shell to Sea (UK Tar Sands Network 2011). In 2010, the Indigenous Environmental Network hosted a meeting between aboriginal leaders and members of the European Parliament to draw attention to the harmful impacts of oil sands development in order to get oil sands petroleum designated a “dirty fuel” in the EU Fuel Quality Directive³⁰ (see, for example, Global Justice Ecology Project 2010). Efforts also include informing the European public about oil sands development and opposing the Canadian government’s “Pan European Oil Sands Advocacy Strategy (Thomas-Muller 2012) and lobbying EU embassies in Ottawa (Global Justice Ecology Project 2012).

²⁹ Unfortunately, much less information is provided by 350.org and other groups opposing the pipeline about oil sands development and its impacts on aboriginal communities north of the border than they do about environmental, economic and political problems posed by construction of the pipeline in the United States.

³⁰ For more on this, see Directorate-General for the Environment 2012.

Conclusions

Expansion of oil sands mining continues. Monitoring of environmental damage and even health impacts in aboriginal communities is directed by industry representatives, stakeholder groups, and government agencies with little public scrutiny. Systems of accountability have proven largely ineffective in regulating oil sands development. Oil sands developers are commodifying and destroying the land and water of the Athabasca River watershed. It seems that energy corporations are the political actors most effectively exercising sovereignty.

The peoples of the Athabasca River watershed can no longer sustain themselves by traditional productive activities and the plant and animal communities they have lived with for millennia are suffering and being wiped out. Their territories, cultures, and collective identities are threatened by this development, but even semi-autonomous survival apart from the capitalist world-economy is now impossible for them. The Fort MacKay First Nation and others, including the Fort MacKay Métis Community, are now using their very minimal Treaty No. 8 rights to position themselves to benefit from the development and engage as stake-holders in resource management, led in the effort by federal and provincial level administrative agencies and industry representatives that determine the terms upon which aboriginal aspirations may (or may not) be fulfilled. The Fort Athabasca Chipewyan and the Mikisew Cree First Nations are attempting to use their treaty rights to restrict oil sands development and protect their traditional territories and life ways. Theirs seems, at least in the short term, a losing battle, in spite of their sustained efforts and solidarity with other indigenous and environmental movements in Canada, the U.S., and around the world.

How might they avoid co-optation and sustain resistance to capitalist development? It cannot be done by taking part in it. Some aboriginal leaders and activists concerned with cultural

survival and protection of the environment in the Athabasca River watershed appreciate the importance of anti-systemic struggle. Their efforts may help delay the construction of pipelines to the oceans from the oil sands, but these are likely to be built in spite of sustained opposition by impacted communities, scientists, and international environmental and indigenous rights organizations. Much of the pipeline on the Keystone XL route has already been laid and more is ready to be laid as soon as permits are granted.

It may be that companies like Syncrude, Suncor, Petro-Canada, ConocoPhillips, Chevron, TransCanada and Enbridge have determined that the profit-making must take place in the shorter-term. The increasing scarcity of water may make oil sands development prohibitively costly. Far(ther)-sighted energy corporations, given increasing momentum in European nations and China in shifting to renewable energy, could direct their investments away from it. Even if it is profitable now to manipulate systems of power to control the extraction of petroleum from the oil sands, its refinement and transportation to markets, these activities are unsustainable. When producing a barrel of oil requires consumption of at least 1/6 and perhaps up to two units of energy produced by a barrel of oil, and up to 24 barrels of water taken from a dying river, exploitation of this resource may not long be possible, much less profitable, even if energy costs are subsidized by governments and environmental costs are externalized.

Systems of power driving oil sands exploitation in Canada will shift as environmental destruction accelerates and the world-system falls into deepening crisis. Sovereignty as we know it has not worked well to facilitate equilibrium in human-nature relations and it is becoming increasingly difficult to distinguish it from violence in the pursuit of self-interest. In this context, aboriginal peoples who have rejected the values and systems of governance of the dominant culture, resisted development, established ties of solidarity regionally and internationally, and

honored their traditional cultures may be empowered to help conserve parts of the boreal forests and live better through transitional times. In the end, ecology will determine the viability of political and ecological models that emerge throughout transition. What is happening in Alberta to the peoples and life systems of the subarctic boreal forests of Canada is a powerful illustration of the deadly consequences of a model that has failed: a capitalist world-economy and the political constructs that sustain it, including sovereignty.

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