COURT OF APPEAL OF ALBERTA

Form 49
[Rule 13.19]

COURT OF APPEAL FILE NUMBER: 2501-0258AC

Registrar's Stamp

TRIAL COURT FILE NUMBER:	N/A
REGISTRY OFFICE:	CALGARY
PLAINTIFF/APPLICANT:	ALBERTA WILDERNESS ASSOCIATION and CANADIAN PARKS AND WILDERNESS SOCIETY, NORTHERN ALBERTA
STATUS ON APPEAL:	APPELLANTS
STATUS ON APPLICATION:	APPLICANTS
DEFENDANT/RESPONDENT:	ALBERTA ENERGY REGULATOR and SUMMIT COAL INC.
STATUS ON APPEAL:	RESPONDENTS
STATUS ON APPLICATION:	RESPONDENTS
DOCUMENT:	**AFFIDAVIT IN SUPPORT OF APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:

Napoli Shkolnik Canada
Attention: Adam Bordignon
Suite 400, 1000 - 7 Avenue SW
Calgary, AB T2P 5L5
Tel: (519) 984-6339
Email: abordignon@napolilaw.ca

AFFIDAVIT OF GLORIA WOZNIUK

Affirmed on September 19, 2025

I, GLORIA WOZNIUK, of Calgary, Alberta, AFFIRM AND SAY THAT:

1. I am a legal assistant with Napoli Shkolnik Canada and as such have personal knowledge of the matters hereafter deposed to except where stated to be based upon information and belief and where so stated I have indicated the source of my information and believe the same to be true.

2. This application for permission to appeal arises from Alberta Energy Regulator ("**AER**") Proceeding 449. The Exhibits to this proceeding are publicly available at the following link: https://apps.public.aer.ca/hearing/proceeding/449?tab=6.

3. On October 3, 2024, the Executive Vice President Law and General Counsel of the AER wrote a letter to the Chief Hearing Commissioner of the AER advising that the AER's executive team had accepted Summit Coal Inc.'s ("**Summit's**") Mine 14 project applications and directed the Chief Hearing Commissioner to assign a panel of hearing commissioners to the matter (attached as **Exhibit "A"**).

4. On October 7, 2024, the Chief Hearing Commissioner wrote a letter to Summit advising of the AER's decision to set its Mine 14 project applications down for a hearing and assign a panel of hearing commissioners (attached as **Exhibit "B**").

5. On November 26, 2024, the panel of hearing commissioners assigned to Proceeding 449 ("**Hearing Panel**") issued a Notice of Hearing for the following Mine 14 applications and set out how interested parties could apply to participate in the hearing (attached as **Exhibit "C"**):
    a. *Coal Conservation Act* – 1945552 and 1945553;
    b. *Environmental Protection and Enhancement Act* – 001-00496728;
    c. *Water Act* – 001-00496729 and 001-00496730; and
    d. *Public Lands Act* – 32212208 and 32903389.

6. On February 7, 2025, the Hearing Panel issued its decisions granting full participation status to the Alberta Wilderness Association ("**AWA**") and Canadian Parks and Wilderness Society, Northern Alberta ("**CPAWS**") to participate in AER Proceeding 449 (attached as **Exhibit "D"** and **Exhibit "E"**, respectfully).

7. On June 27, 2025, Summit filed a motion with the Hearing Panel seeking to immediately cancel the scheduled hearing and all other procedural steps in AER Proceeding 449 and have the applications decided without a public hearing. AWA and CPAWS submitted written submissions opposing the motion.

8. On July 23, 2025, the Hearing Panel issued its decision denying Summit's motion and directing the parties to comply with an updated submissions schedule (attached as **Exhibit "F"**).

9. On July 28, 2025, the President of Valory Resources Inc. (Summit's parent company) sent a letter to Minister of Energy and Minerals, Brian Jean, expressing Valory's disappointment with the Hearing Panel's July 23, 2025 decision not to cancel the public hearing (attached as **Exhibit "G"**).

10. On July 29, 2025, Summit's filed a motion requesting that the Hearing Panel adjourn the public hearing in Proceeding 449 *sine die*. (attached as **Exhibit "H"**).

11. On August 6, 2025, Summit submitted a reconsideration request of the AER Panel's July 23, 2025, to the Chief Executive Officer ("**CEO**") of The AER, Rob Morgan (attached as **Exhibit "I"**).

12. On August 8, 2025, the Hearing Panel issued its decision partially granting Summit's motion to adjourn by agreeing to adjourn the hearing to February 9, 2026 (attached as **Exhibit "J"**).

13. On August 11, 2025, the AER Regulatory Appeals Coordinator issued a letter to AER Proceeding 449 full participants inviting written submissions on Summit's reconsideration request (attached as **Exhibit "K**").

14. On August 11, 2025, the Municipal District of Greenview submitted its written submissions in support of Summit's reconsideration request (attached as **Exhibit "L"**).

15. On August 15, 2025, AWA and CPAWS submitted written submissions opposing Summit's reconsideration request (attached as **Exhibit "M"**.)

16. On August 21, 2025, the CEO issued a decision in which he decided he was the proper authority to hear the reconsideration request and reconsidered the Hearing Panel's July 23, 2025 decision by canceling the remaining procedural steps in AER Proceeding 449,

including the public hearing, and transferring the entirety of the AER Proceeding 449 record to the AER's Regulatory Applications Branch for a decision (attached hereto as **Exhibit "N"**).

17. I make this Affidavit in support of an application for permission to appeal the AER CEO's August 21, 2025 decision on Summit's reconsideration motion.

AFFIRMED BEFORE ME at Calgary, Alberta, this 19th day of September, 2025.

(Commissioner for Oaths in and for the Province of Alberta)

PRINT NAME AND EXPIRY OR LAWYER/STUDENT-AT-LAW

HON. JONATHAN DENIS K.C. PROVINCE NOTARY PUBLIC OF ALBERTA BARRISTER & SOLICITOR

Gloria Wozniuk

This is exhibit "A" referred to in the affidavit
of Gloria Wozniuk affirmed before me on
September 19, 2025.

Commissioner for Oaths in and for
the Province of Alberta

PRINT NAME AND EXPIRY OF
LAWYER/STUDENT-AT-LAW

Alberta Energy Regulator

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

October 3, 2024

By email only

Mr. Alex Bolton
AER Chief Hearing Commissioner
1000, 250 5 Street SW
Calgary AB T2P 0R4

RE: Summit Coal Inc.
Applications No.: CCA 1945552 / 1945553, EPEA 001-00496728,
WA 001-00496729 / 001-00496730, PLA 32212208 / 32900389

Mr. Bolton,

The purpose of this letter is to inform you that the AER has accepted the above captioned applications from Summit Coal Inc. (Summit) and has determined they should be decided by a panel of hearing commissioners.

The AER determined that the Category 4 lands upon which the above captioned application activities have been proposed are subject to an 'advanced coal project' as defined in Ministerial Order 002/2022 (the MO) (Attachment 1). In coming to this conclusion, the AER found that a project summary was previously submitted for Summit's Mine 14 project to the AER by Summit on December 10, 2021, for the purposes of determining whether an environmental impact assessment (EIA) was required.

The AER also received interpretive clarification on the MO and the definition of an advanced coal project in a letter from the Minister of Energy on November 16, 2023 ('Minister's Letter' - Attachment 2). The Minister in his letter confirmed his understanding that Summit's Mine 14 project is an advanced coal project, having had a project summary previously submitted for the purposes of determining whether an EIA is required. Bearing in mind that it is the AER that must decide whether to accept the application, the Minister's Letter carried significant weight in making its determination.

The AER has also determined pursuant to section 33(1) of the REDA, that the applications should be set down for a hearing. Accordingly, I request that you assign a panel of hearing commissioners as soon as possible to conduct a hearing of the Applications and adjudicate any costs applications in connection with the hearing.

Yours truly,

Sean Sexton, EVP Law & General Counsel,
On behalf of the Executive Leadership Team,
Alberta Energy Regulator

cc: Summit Coal Inc. (Martin Ignasiak KC, Bennett Jones, ignasiakm@bennettjones.com)

Alberta
Energy

Office of the Minister

324 Legislature Building
Edmonton, Alberta
Canada T5K 2B6

Telephone 780/427-3740
Fax 780/422-0195

GOVERNMENT OF ALBERTA

DEPARTMENT OF ENERGY

RESPONSIBLE ENERGY DEVELOPMENT ACT
S.A. 2012, c. R.17.3

MINISTERIAL ORDER 002/2022

I, **SONYA SAVAGE,** Minister of Energy, pursuant to section 67 of the *Responsible Energy Development Act*, make the Coal Development Direction, in the attached Appendix.

DATED at Calgary, in the Province of Alberta, this 2nd day of March, 2022.

Honourable Sonya Savage
Minister of Energy

APPENDIX
COAL DEVELOPMENT DIRECTION
PURPOSE

WHEREAS, the Minister of Energy and Minister of Environment and Parks are authorized by section 67 of the *Responsible Energy Development Act* (REDA) to give directions to the Alberta Energy Regulator (the AER) for the purpose of:

(a) Providing priorities and guidelines for the AER to follow in the carrying out of its powers, duties and functions, and
(b) Ensuring the work of the AER is consistent with the programs, policies and work of the Government of Alberta in respect of energy resource development, public land management, environmental management and water management.

AND WHEREAS, on March 29, 2021, the Government of Alberta established the Coal Policy Committee (the Committee) to hear from concerned parties about future coal development in Alberta, and the Committee has completed that mandate.

AND WHEREAS, the Committee has provided recommendations to the Minister of Energy based on the concerns expressed by Albertans and Indigenous communities.

AND WHEREAS, the Government of Alberta has heard perspectives from many Indigenous communities across the province about the management of coal resources.

AND WHEREAS, the Government of Alberta has confirmed that the restrictions in place in respect of the exploration for and development of coal within categories of lands as described in the 1976 A Coal Development Policy for Alberta (the 1976 Coal Policy) remain in effect.

AND WHEREAS, all existing legislation related to coal exploration and development remains in place and is unchanged.

AND WHEREAS, Albertans expect coal exploration and development in the Eastern Slopes (as defined in the 1976 Coal Policy and depicted in Annex 1) to remain suspended until such time as sufficient land use clarity has been provided through a planning activity.

THEREFORE, pursuant to s. 67 of REDA, and to the land use categories in the 1976 Coal Policy, the Minister of Energy hereby directs the AER to take steps to ensure that:

DIRECTION TO THE AER

1) No exploration or commercial development activities related to coal will be permitted within Category 1 lands, in accordance with the 1976 Coal Policy.

2) All approvals (as defined by REDA) for coal exploration on Category 2 in the Eastern Slopes shall continue to be suspended and no new applications will be accepted until such time as written notice is given by the Minister of Energy and/or Minister of Environment and Parks.

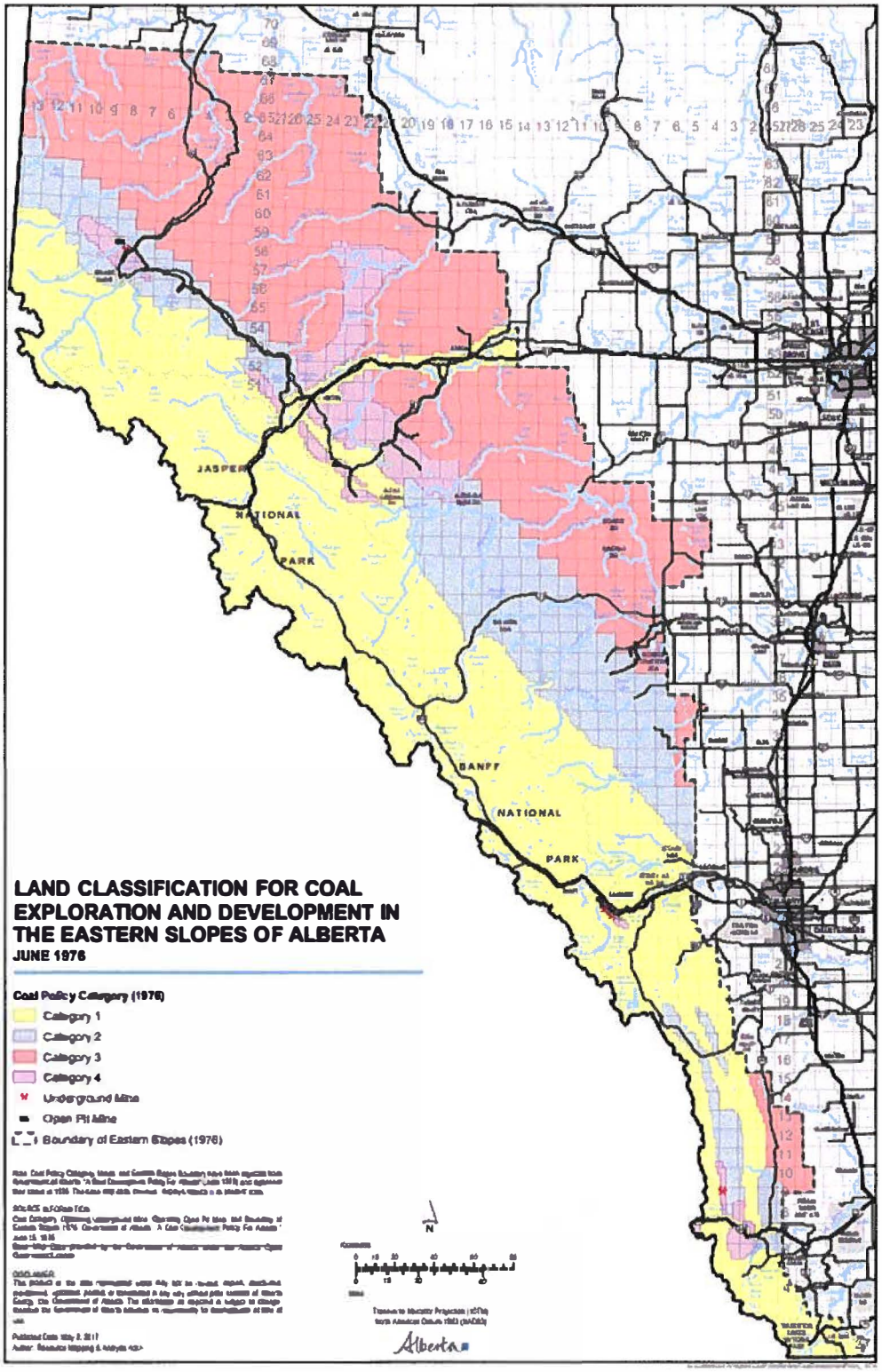
3) With the exception of lands subject to an advanced coal project or an active approval for a coal mine, all approvals (as defined by REDA) for coal exploration or development on Category 3 and 4 lands in the Eastern Slopes shall be suspended and no new applications will be accepted until such time as written notice is given by the Minister of Energy and/or Minister of Environment and Parks.

4) Nothing in this direction restricts abandonment and reclamation or security and safety activities at active coal mines or related to coal exploration.

5) For the purposes of this Directive, an 'active approval for a coal mine' is a licence under the *Coal Conservation Act*.

6) For the purposes of this Directive, an 'advanced coal project' is a project for which the proponent has submitted a project summary to the AER for the purposes of determining whether an environmental impact assessment is required.

Annex 1: Eastern Slopes



ALBERTA
Energy and Minerals

Office of the Minister
MLA, Fort McMurray - Lac La Biche

November 16, 2023

Laurie Pushor,
President and CEO of the Alberta Energy Regulator.
laurie.pushor@aer.ca

Dear Mr. Pushor,

Currently, the Alberta Energy Regulator (AER) is in the process of reviewing applications that meet the criteria of "advanced coal project" under Ministerial Order 002/2022. The ministerial order was signed by then Minister of Energy, Sonya Savage, on March 2, 2022.

The purpose of this letter is to provide my interpretation regarding appropriate application of the definition of "advanced coal project" under that order. It is my understanding that four projects met and meet the definition of "advanced coal project" under clauses 3 and 6 of the Ministerial Order 002/2022: Mine 14, Vista Coal Mine Phase 2, Grassy Mountain, and Tent Mountain. Each of these four coal projects had submitted a project summary to the AER for the purposes of determining whether an environmental impact assessment is required at the time the ministerial order was signed.

The ministerial order does not require an active regulatory application tied to the project description to qualify a project as an advanced coal project. Once a project is considered an advanced project it remains as one regardless of the outcome of regulatory applications submitted before it was declared an advanced project.

As with all applications submitted to the AER, it is my expectation that the AER will review any applications related to these advanced coal projects following all applicable legislation and AER regulatory processes. This includes the AER's requirements for 1) community involvement in the regulatory process, 2) ensuring the required Indigenous involvement with the project proponent, and 3) high environmental standards, particularly where protection of Alberta's valuable water resources is required.

/2

324 Legislature Building, Edmonton, Alberta T5K 2B6 Canada Telephone 780-427-3740 Fax 780-644-1222

Thank you for your attention to this matter and the AER's continued commitment to regulatory excellence.

Sincerely,

Brian Jean.

Brian Jean, K.C., ECA
Minister

cc: Honourable Rebecca Schulz
Minister of Environment and Protected Areas

cc: Larry Kaumeyer
DM, Energy and Minerals

cc: Kasha Piquette
DM, Environment and Protected Areas

This is exhibit "B" referred to in the affidavit of Gloria Wozniuk affirmed before me on September 19, 2025.

Commissioner for Oaths in and for the Province of Alberta

PRINT NAME AND EXPIRY OR LAWYER/STUDENT-AT-LAW

Alex Bolton, P.Geo.
Chief Hearing Commissioner
alex.bolton@aer.ca

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cell 403-660-8921
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AER Proceeding 449

Applications 1945552 / 1945553 (*Coal Conservation Act*), 001-00496728 (*Environmental Protection and Enhancement Act*), 001-00496729 / 001-00496730 (*Water Act*), and MLS 32212208 / LOC 32900389 (*Public Land Act*)

October 7, 2024

By Email only

Bennett Jones LLP.

Attention: Martin Ignasiak, KC

Applications for the Summit Mine 14 Project

The Alberta Energy Regulator has determined that the seven applications associated with the Summit Mine 14 Project should be set down for a hearing and has requested that I assign a hearing panel to conduct a hearing. A hearing will be held unless the issues are resolved in some other manner, such as by alternative dispute resolution (ADR). Hearings are led by hearing commissioners who are independent from the day-to-day operations of the AER. I assign one or more hearing commissioners to sit on hearing panels to decide matters sent to them by the AER. Their decisions may only be reviewed by the Court of Appeal of Alberta and they must adhere to the Hearing Commissioner Code of Conduct.

This is not a notice of hearing. Once a hearing panel is assigned they will decide any procedural matters related to the hearing such as issuing a notice of hearing and determining who may participate in the hearing. Before a notice of hearing can be issued AER staff must compile the application file consisting of all application materials filed with the AER. The hearing coordinator will contact you shortly to verify the contents of the application file. Once the application file is complete it will be placed on the public record. The hearing panel will then decide the timing of a notice of hearing after reviewing the application file and statements of concern.

When a notice of hearing is issued it will give directions to interested parties about how to view the application file and explain how to request to participate. For more information about the AER hearing process please see Manual 003: Participant Guide to the Hearing Process. This manual provides an

overview of the hearing process and tries to answer common questions. The requirements for hearings are set out in the *Responsible Energy Development Act* and the *Alberta Energy Regulator Rules of Practice*.

I may assign, or parties may request, a hearing commissioner who is not on the hearing panel to explore alternative dispute resolution (ADR) with you. ADR is a confidential process which gives parties an opportunity to engage in meaningful discussions for the purpose of reaching mutually agreeable resolution of the issues. It is conducted separately from the hearing and all discussions in ADR, including offers to settle, proposals, and concessions, are subject to settlement privilege and remain confidential and cannot be used in the hearing unless all parties agree otherwise. The ADR by Hearing Commissioner brochure and Manual 004: Alternative Dispute Resolution Programs and Guidelines for Energy Industry Disputes have information on ADR. If you would like to request a hearing commissioner be assigned to conduct ADR for this matter, please send your request to the Hearing Commissioners' Office at HCO@aer.ca.

Elaine Arruda is the Hearing Coordinator for this proceeding and will be your main point of contact during this process. Once the AER assembles the application file, Elaine will contact you to verify its contents. If you have any questions, please contact Elaine at 403-297-7365 or by e-mail at hearing.services@aer.ca.

Regards,

Alex Bolton

Chief Hearing Commissioner

cc: Shaun McNamara, Summit Coal Inc.
Kennedy Halvorson, Alberta Wilderness Association
Tara Russell, Canadian Parks and Wilderness
Tracy Friedel, Lac Ste. Anne Metis Community Association
Amyn Lalji, MLT Aikins LLP
Blair Feltmate, JFK Law LLP
Shauna Gibbons, Counsel, AER
Doug Koroluk, Application coordinator, AER
Corey MacGarva, Application coordinator, AER
Ken Bullis, Application coordinator, AER
Jennifer Filax, Application coordinator, AER
Tara Wheaton, Hearing coordinator, AER
Elaine Arruda, Hearing coordinator, AER

This is exhibit "C" referred to in the affidavit
of Gloria Wozniuk affirmed before me on
September 19, 2025.

Commissioner for Oaths in and for
the Province of Alberta

PRINT NAME AND EXPIRY OR
LAWYER/STUDENT-AT-LAW

Alberta Energy Regulator

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

Notice of Hearing

Proceeding ID 449
Summit Coal Inc.
Mine 14 Underground Coal Mine

The Alberta Energy Regulator (AER) will hold a public hearing for applications submitted by Summit Coal Inc. (Summit) for the Mine 14 Underground Mine Project.

This notice sets out how to request to participate in the hearing. The hearing will be scheduled later or, if there are no participants, the AER may cancel the hearing and decide on the applications without further notice.

The AER's decision that the applications should be decided by a panel of hearing commissioners is available on the Participatory and Procedural Decisions landing page on https://www.aer.ca/.

Description of the Application

Summit has submitted an integrated application under the *Environmental Protection and Enhancement Act (EPEA),* the *Water Act (WA)*, the *Coal Conservation Act (CCA)*, and the *Public Lands Act (PLA)* to both update active approvals and for new approvals for the Mine 14 Underground Coal Mine, Mine Permit C 2009-6 and Mine License C 2011-9.

- ***Coal Conservation Act* – 1945552 / 1945553** Amendment applications to increase the Mine Permit C 2009-6 boundary by 130 ha and increase the Mine Licence C 2011-9 boundary by 82 ha. These changes are required to ensure all previously approved mining areas as well as the access road are wholly contained within the approval boundaries.

- ***Environmental Protection and Enhancement Act* – 001-00496728** An application for a new EPEA approval for the construction, operations and reclamation of the Mine 14 Underground Mine Project comprising the mine portal area, sedimentation ponds and associated water management structures and the access road.

- ***Water Act* – 001-00496729 / 001-00496730** The WA approval application is for a new approval to construct and operate the water management systems at the mining project to capture, contain, reroute and otherwise manage water at the project location. The WA licence application is for a new licence for the diversion and use of 55,000 m3 of water per year, consisting of 31,500 m3 per year from groundwater sources (groundwater pumped during mining operations), and 23,500 m3 per year from surface water sources (stormwater and snowmelt collected from the surface water management structures at the project location). The water will be used for mining operations.

- ***Public Lands Act* – 32212208 / 32903389** Applications to replace expired Mineral Surface Lease (MSL) 131303 and License of Occupation (LOC) 131361 which expired in June 2021.

The nearest urban center is the Hamlet of Grande Cache located approximately 3.2 km southwest of the proposed project.

Where can I find information about the application and the hearing?

All hearing submissions, including the applications filed in relation to proceeding 449 are publicly available and can be found on the AER's website using the public records system found at https://apps.public.aer.ca/hearing/.

To find out more about AER hearing procedures, see Manual 003: Participant Guide to the Hearing Process or contact the hearing coordinator.

Contacts

Elaine Arruda, Hearing Coordinator
Alberta Energy Regulator
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Email: Hearing.Services@aer.ca
Phone: (403) 297 7365

Summit Coal Inc.
c/o Bennett Jones LLP.
Attention: Martin Ignasiak, KC
4500 Bankers Hall East
855 2 Street SW
Calgary, Alberta T2P 4K7
Email: ignasiakm@bennettjones.com
Phone: (403) 298 3121

How can I apply to participate in the hearing?

You must file a written request to participate, even if you have already filed a statement of concern with the AER. Requests to participate are placed on the public record of this proceeding.

Your request to participate must contain

a) a copy of your statement of concern or an explanation why you did not file one;

b) a concise statement indicating

i) why and how you may be directly and adversely affected by the AER's decision on the application, or

ii) if you will not be directly and adversely affected by a decision on the application, explain

- what the nature of your interest in the matter is and why you should be permitted to participate,
- how your participation will materially assist the AER in deciding the matter that is the subject of the hearing,
- how you have a tangible interest in the subject matter of the hearing,
- how your participation will not unnecessarily delay the hearing, and
- how you will not repeat or duplicate evidence presented by other parties;

c) the outcome of the application that you advocate;

d) the nature and scope of your intended participation;

e) your contact information;

f) if you are acting on behalf of a group or association of people, the nature of your membership in the group or association; and

g) your efforts, if any, to resolve issues associated with the proceeding directly with the applicant.

Send one copy of the request to Summit and one copy to the hearing coordinator. Submissions should be PDF documents with bookmarks, page numbers (with the first page in the document being numbered page one), and optical character recognition.

Filing deadlines

December 17 2024	Final date to file a request to participate.
January 6, 2025	Final date for response from the applicant on any requests to participate.

Is this a public process?

Yes. Section 49 of the *Rules of Practice* requires that all documents and information filed for a proceeding be placed on the public record. You must not include any personal information that you do not want to appear on or are not authorized to put on the public record. You should assume that anything you submit will be available online to the public. Section 49(2) of the *Rules of Practice* states how to apply to the AER for an order to keep information confidential.

If my request to participate is approved, can I apply to get reimbursed for hearing-related costs?

If you are participating in a hearing, you may be eligible to have some of your costs paid. *Directive 031: REDA Energy Cost Claims* explains how and when to apply.

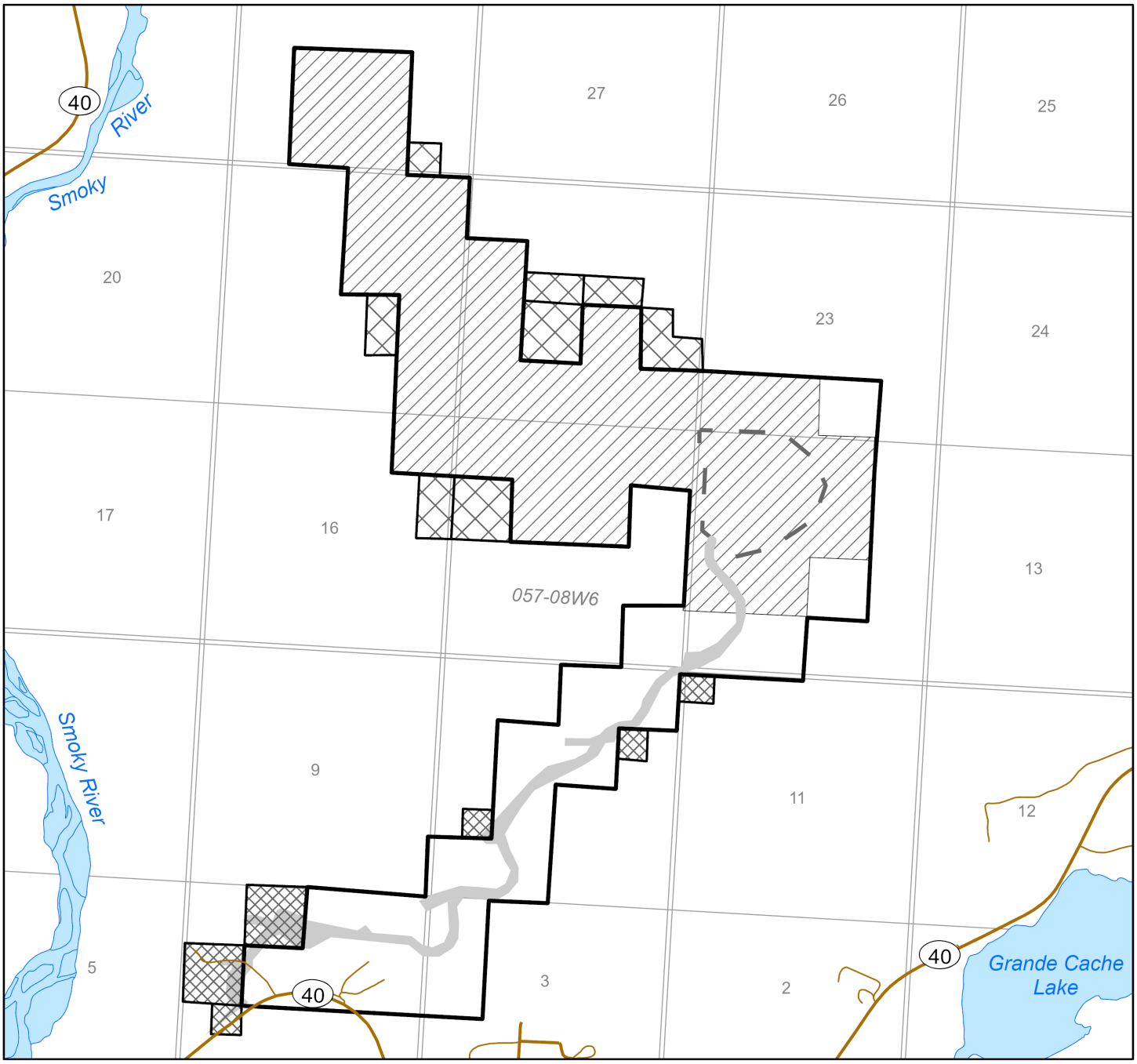
What is outside of the AER's jurisdiction?

Compensation for land use is not dealt with by the AER and should be referred to the Land and Property Rights Tribunal (formerly the Surface Rights Board).

Crown consultation with Alberta's First Nations and Métis settlements and assessment of its adequacy are managed by the Aboriginal Consultation Office.

Issued at Calgary, Alberta, on November 26, 2024

ALBERTA ENERGY REGULATOR



Legend

- Existing mine permit area
- Proposed mine permit extension
- Proposed mine permit and license extension
- Existing mine license area
- Existing mine portal area
- Existing access road
- Roads
- Lakes and rivers

0 0.5 1 2 km

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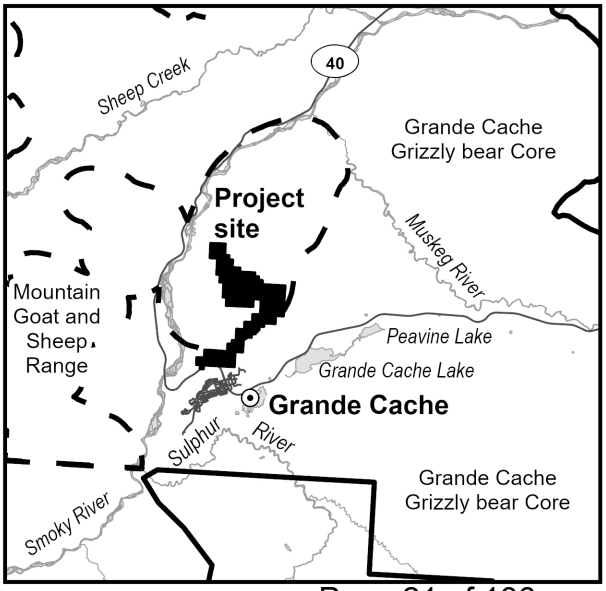

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Projection and Datum: 10TM AEP Forest, NAD83
Publication/Data Date: November 20, 2024

This is exhibit "D" referred to in the affidavit
of Gloria Wozniuk affirmed before me on
September 19, 2025.

Commissioner for Oaths in and for
the Province of Alberta

PRINT NAME AND EXPIRY OR
LAWYER/STUDENT-AT-LAW

Alberta Energy Regulator

Hearing Commissioners' Office

Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

tel 403-297-8311

aer.ca

Proceeding 449
February 7, 2025

To: Kennedy Halvorson
For: Alberta Wilderness Association

[By email only]

Re: Summit Coal Inc., Mine 14 Underground Coal Mine (Summit)
Applications 1945552, 1945553, 001-00496728, 001-00496729, 001-496730, 32212208 and 32900389 (the "Mine 14 Applications")
Participation Decision for Alberta Wilderness Association (AWA)

Kennedy Halvorson:

We are the Alberta Energy Regulator (AER) panel of hearing commissioners (the panel) presiding over proceeding 449 and we write to inform you that AWA is granted full participation in the hearing.

Background

The AER will hold a public hearing to decide on an integrated application submitted by Summit. Summit made the application under the *Environmental Protection and Enhancement Act* (*EPEA*), the *Water Act* (*WA*), the *Coal Conservation Act* (*CCA*), and the *Public Lands Act* (*PLA*), to both update active approvals and for new approvals for the Mine 14 Underground Coal Mine (the Project).

On November 26, 2024, the panel issued a notice of hearing for proceeding 449 and set a filing deadline of December 17, 2024, for requests to participate. On December 17, 2024, the AWA filed its request to participate in the hearing. On January 6, 2025, Summit responded to requests to participate.

Submission of Parties

AWA opposes the Applications and requests full participation in the hearing. AWA stated the following:

- It is an Alberta-based conservation group with more than 7,000 members across the province.
- It seeks the good stewardship of Alberta's public lands, waters, and biodiversity.
- Its advocacy focuses on increasing protections for wild places and wildlife, improving habitat quality and quantity, and promoting the wise and informed management of important and significant ecosystems.

- Its mandate includes ensuring that development of public resources is regulated in a manner that is consistent with the maintenance of wilderness values.
- It seeks the completion of a connected, ecologically representative protected areas network in the province.
- It has identified Areas of Concern throughout the province, which are places of largely intact wilderness or critical corridors that still require formal protection, and
- The proposed mine site is close to its Kakwa Area of Concern (<1km) and Little Smoky Area of Concern (<15 km), and AWA has worked extensively to prevent their environmental degradation.

In AWA's view the outcome of this hearing directly affects their work and their membership. AWA submitted that it can speak on behalf of the region's air, land, and waters from a wilderness conservation perspective, and to its specific areas of concern, if AWA is allowed to participate.

Summit objected to the AWA's request to participate stating that the areas of concern raised by the AWA and are of no use to the AER in assessing and/or quantifying potential project-related impacts.

Summit submitted that AWA has failed to identify any specific or tangible interest in the project itself nor is it directly and adversely affected by the Applications. Summit argued that if the AWA is granted participation in this hearing, the AWA would then be permitted to participate in virtually any hearing for any proposed energy resource development in Alberta.

Panel Decision

Section 34(3) of the *Responsible Energy Development Act* states that: "... a person who may be directly and adversely affected by the application is entitled to be heard at the hearing". In addition, the *Alberta Energy Regulator Rules of Practice* (*Rules*) give the hearing panel discretion to permit participation of persons who have a tangible interest and whose participation will materially assist the panel in deciding the matter that is the subject of the hearing without unnecessarily delaying the proceedings or repeating or duplicating evidence. The participation provisions in the *Rules* are intended to ensure a fair and efficient process and the development of a complete record that enables the panel to decide Applications.

AWA provided information about its work related to Alberta's public lands, waters, and biodiversity with a link to areas near or adjacent to the project. AWA stated that it is interested in securing better protections for wildlife and water resources.

In our view, through its submissions AWA demonstrated that it has a tangible interest in the subject of the proceeding, specifically because of AWA's wildlife and wildlife habitat conservation work in the region, and its Kakwa and Little Smoky areas of concern, which are near the Project area.

In Summit's view, AWA is raising general concerns related to coal mining and does not explain what specific impacts Mine 14 will have. We note that AWA provided specific concerns about the project and

- stated that Grande Mountain, which is the site proposed for Mine 14, has factors that may indicate high-quality habitat for wildlife;
- provided some critique of Summit's water management plan and pointed to the potential negative impact on water quality in the area and the subsequent impact on the aquatic wildlife in nearby waterbodies from tributaries that flow through the proposed mine site; and
- stated its concern about the potential negative impacts of the Project on Grande Cache Lake, Victor Lake, the Smoky River, and other associated watersheds.

In bringing these concerns to our attention, AWA stated that its environmental knowledge and expertise can help inform the proceeding.

Moreover, AWA indicated its intention to assist the panel in deciding the Applications, by consolidating and presenting the peer-reviewed literature and demonstrating how the peer-reviewed literature is applied in the regulatory regime under which we have jurisdiction.

Based on what AWA has outlined in its submissions, in our view, AWA meets the criteria set out in the *Rules*. AWA may have information that can assist the panel in reaching its decision on the applications.

We disagree with Summit's assertion that granting participation to AWA in this proceeding, based on the relevant information that is before us, would lead to AWA being permitted to participate in any other hearing for a proposed energy resource development in Alberta. We are making our decision based on the facts in the submissions of AWA and Summit for this proceeding. Similarly, other AER decision makers decide matters before them based on relevant facts raised by the parties, to those matters. This panel has no authority over other decision-makers nor does it fetter their decision-making authority by granting AWA participation at this hearing.

Therefore, we permit AWA's full participation in the hearing. Full participation allows AWA to file written submissions according to the schedule to be set by the panel, speaking to those submissions at the hearing, being questioned by Summit, any other party that is adverse in interest and the panel, cross-examining Summit, and submitting final arguments.

Cost Claims

Hearing participants may be eligible to submit a cost claim to recover some of the costs of their participation under the Alberta Energy Regulator's *Directive 031: REDA Energy Cost Claims*. Section 58.1 of the *Rules* sets out the factors to be considered when deciding an application for costs. Those factors include whether a participant has attempted to consolidate common issues or resources with other parties (s. 58.1(f)) and whether the conduct of the participant tended to shorten or unnecessarily lengthen the proceeding (s. 58.1(m)).

It is our goal to have a process that is not only fair and transparent, but also efficient. Therefore, we encourage AWA to make efforts to collaborate with other parties when their interests align and avoid duplicating evidence provided by others in the proceeding.

Hearing Process

Summit stated that this panel should forego a hearing because the requests to participate of requestors who oppose the Project do not establish that any of them may be directly and adversely affected by the AER's decision on the Applications and contain no indication that they should otherwise be granted participatory rights with respect to the public hearing, and because requestors who stand to experience a demonstrable effect or impact arising from an approval of the Project are supportive of the Project.

Given our decisions on participation, we are not compelled by Summit's argument. An oral hearing will be held in this matter. Further direction from the panel regarding the hearing process, schedule, and timelines will be provided to participants in due course. If you have any questions, please contact hearing.services@aer.ca.

Sincerely,

Parand Meysami
Presiding Hearing Commissioner

M.A. (Meg) Barker
Hearing Commissioner

Andrew MacPherson
Hearing Commissioner

cc: Martin Ignasiak, KC and Thomas Machell, Bennett Jones LLP
Shauna Gibbons and Bronwhyn Simmons, AER counsel for the panel
Elaine Arruda and Andrew Lung, AER hearing coordinators

This is exhibit "E" referred to in the affidavit of Gloria Wozniuk affirmed before me on September 19, 2025.

Commissioner for Oaths in and for the Province of Alberta

PRINT NAME AND EXPIRY OR LAWYER/STUDENT-AT-LAW

Alberta Energy Regulator

Hearing Commissioners' Office

Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

tel 403-297-8311

aer.ca

Proceeding 449
February 7, 2025

To: Kecia Kerr
Canadian Parks and Wilderness Society

[By email only]

Re: Summit Coal Inc., Mine 14 Underground Coal Mine (Summit)
Applications 1945552, 1945553, 001-00496728, 001-00496729, 001-496730, 32212208 and 32900389 (the "Mine 14 Applications")
Participation Decision for Canadian Parks and Wilderness Society (CPAWS) Northern Alberta chapter

Kecia Kerr:

We are the Alberta Energy Regulator (AER) panel of hearing commissioners (the panel) presiding over proceeding 449 and we write to inform you that CPAWS's Northern Alberta chapter is granted full participation in the hearing.

Background

The AER will hold a public hearing to decide an integrated application submitted by Summit. Summit made the application under the *Environmental Protection and Enhancement Act* (*EPEA*), the *Water Act* (*WA*), the *Coal Conservation Act* (*CCA*), and the *Public Lands Act* (*PLA*), to both update active approvals and for new approvals for the Mine 14 Underground Coal Mine (the Project).

On November 26, 2024, the panel issued a notice of hearing for proceeding 449 and set a filing deadline of December 17, 2024, for requests to participate.

On December 17, 2024, CPAWS filed its request for its Northern Alberta chapter (NAB) to participate in the hearing. On January 6, 2025, Summit responded to the requests to participate.

Submission of Parties

CPAWS NAB opposes the Applications and requests full participation in the hearing, stating the following:

- CPAWS is a national conservation organization dedicated to the protection and sustainability of public land and waters across Canada.
- CPAWS NAB has over 2,230 active members, who have donated in the past year.

- Over 300 people who follow and are engaged with CPAWS NAB work in the greater Grande Prairie region, which includes Grande Cache.
- CPAWS NAB has been active in conservation issues in Alberta since 1968, and regularly collaborates with government, industry, and Aboriginal communities on these issues.
- CPAWS has a direct and active interest in participating in subregional planning which will be directly and adversely affected by the Project.
- The mine lease area overlaps with two caribou management subregions, the Upper Smoky and the Berland, for which subregional planning under the Alberta Land Stewardship Act is ongoing.
- CPAWS NAB designed a conservation blueprint for Northern Alberta which identifies the

highest priority areas for conservation in the region.

- The project falls within the Kakwa – Little Smoky – Swan Hills zones of these high priority areas.
- CPAWS NAB's efforts to contribute to the conservation of the species and ecosystems in this area will be directly and adversely affected by the applications.
- CPAWS NAB intends to assist the proceedings by consolidating and presenting the latest peer-reviewed literature on the potential impacts of Mine 14 on wildlife and biodiversity.
- CPAWS NAB intends to demonstrate how approval of these applications runs contrary to the purposes of applicable legislation.

According to CPAWS NAB, its participation is necessary and distinct as it will speak on behalf of the region's wildlife and biodiversity, within the unique and specific context of CPAWS's interest in in the Upper Smoky and Berland subregional planning processes and the area of conservation priority outlined in CPAWS NAB's conservation blueprint.

Summit responded that CPAWS raises broad concerns related to only general environmental challenges posed by coal mining. Summit stated that CPAWS's request doesn't explain what specific impacts Mine 14 will have or how they translate to a finding that CPAWS may be directly and adversely affected by the AER's decision on Summit's Applications. Summit further submitted that CPAWS refers to a conservation blueprint that it has created for Northern Alberta, suggesting that its conservation efforts will be directly and adversely affected by the Project. Summit also states that CPAWS provided no details as to how these direct and adverse effects might arise, other than the Project is proposed within an area which CPAWS has focused its conservation efforts.

In Summit's view, a finding that CPAWS may be directly and adversely affected, simply because it has general concerns regarding the protection of the environment in the broader area surrounding the project, would effectively mean that CPAWS would have the right to participate in the hearing process for any proposed

energy resource development in the Province, rendering the legislative regime's focus on parties that are directly affected as meaningless.

Panel Decision

Section 34(3) of the *Responsible Energy Development Act* states that: "... a person who may be directly and adversely affected by the application is entitled to be heard at the hearing". In addition, the *Alberta Energy Regulator Rules of Practice* (*Rules*) give the hearing panel discretion to permit participation of persons who have a tangible interest and whose participation will materially assist the panel in deciding the matter that is the subject of the hearing without unnecessarily delaying the proceedings or repeating or duplicating evidence. The participation provisions in the *Rules* are intended to ensure a fair and efficient process and the development of a complete record that enables the panel to decide Applications.

We note that CPAWS NAB is a regional chapter of CPAWS. It is understandable that, through CPAWS NAB's conservation work in the region where the project is located, CPAWS NAB has a tangible interest in the subject of the proceeding. We also note that CPAWS NAB discussed the link between its high-priority areas of Kakwa – Little Smoky – Swan Hills zones that are proximate to the project area and the wildlife habitat for sensitive and at-risk species.

In Summit's view, CPAWS is raising several concerns related to the environmental challenges posed by coal mining but does not explain what specific impacts the project will have. However, we note that CPAWS NAB provided some critique of the methodology used in Summit's Conservation and Reclamation Plan that was included in Summit's application. Specifically, CPAWS NAB stated that Summit's Conservation and Reclamation Plan relies on insufficient data. CPAWS NAB stated that they intend to provide evidence that speaks directly to Summit's mitigation measures for the Project and to provide its expertise to the panel in sub-regional planning to suggest what adequate mitigation measures for wildlife protection can be achieved. We find this expertise helpful and not repetitive of any other requestor. As such, in our view, CPAWS NAB meets the criteria set out in the Rules. CPAWS may have information that can assist the panel in reaching its decision on the applications.

We disagree with Summit's assertion that granting participation to CPAWS in this proceeding, based on the relevant information before us, would amount to CPAWS being permitted to participate in any other hearing for a proposed energy resource development in Alberta. We are making our decision based on the facts in CPAWS NAB's request to participate and Summit's reply for this proceeding. Similarly, other AER decision makers decide matters before them based on relevant facts raised by the parties to those matters. This panel has no authority over other decision-makers, nor can it fetter their decision-making authority by granting CPAWS NAB participation at this hearing.

Therefore, we permit CPAWS NAB full participation in the hearing. Full participation allows CPAWS NAB to file written submissions according to the schedule to be set by the panel, speaking to those submissions at the hearing, being questioned by Summit, any other party adverse in interest and the panel, cross-examining Summit, and submitting final arguments.

Costs Claims

Hearing participants may be eligible to submit a cost claim to recover some of the costs of their participation under the *Alberta Energy Regulator's Directive 031: REDA Energy Cost Claims*. Section 58.1 of the *Rules* sets out the factors to be considered when deciding an application for costs. Those factors include whether a participant has attempted to consolidate common issues or resources with other parties (s. 58.1(f)) and whether the conduct of the participant tended to shorten or unnecessarily lengthen the proceeding (s. 58.1(m)).

It is our goal to have a process that is not only fair and transparent, but also efficient. Therefore, we encourage CPAWS NAB to make efforts to collaborate with other parties when their interests align and avoid duplicating evidence provided by others in the proceeding.

Hearing Process

Summit stated that this panel should forego a hearing because the requests to participate of requestors who oppose the Project do not establish that any of them may be directly and adversely affected by the AER's decision on the Applications and contain no indication that they should otherwise be granted participatory rights with respect to the public hearing, and because requestors who stand to experience a demonstrable effect or impact arising from an approval of the Project are supportive of the Project. Given our decisions on participation, we are not compelled by Summit's argument. An oral hearing will be held in this matter.

Further direction from the panel regarding the hearing process, schedule, and timelines will be provided to participants in due course. If you have any questions, please contact hearing.services@aer.ca.

Sincerely,

Parand Meysami
Presiding Hearing Commissioner

M.A. (Meg) Barker
Hearing Commissioner

Andrew MacPherson
Hearing Commissioner

cc: Martin Ignasiak, KC and Thomas Machell, Bennett Jones LLP
Shauna Gibbons and Bronwhyn Simmons, AER counsel for the panel
Elaine Arruda and Andrew Lung, AER hearing coordinators

This is exhibit "F" referred to in the affidavit of Gloria Wozniuk affirmed before me on September 19, 2025.

Commissioner for Oaths in and for the Province of Alberta

PRINT NAME AND EXPIRY OR LAWYER/STUDENT-AT-LAW

Alberta Energy Regulator

Hearing Commissioners' Office

Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

aer.ca

Proceeding 449
July 23, 2025

To: Martin Ignasiak, KC Bennett Jones LLP
For: Summit Coal Inc.

To: Adam Bordignon, Napoli Shkolnik Canada
For: Canadian Parks and Wilderness Society Northern Alberta chapter (CPAWS NAB)

To: Adam Bordignon, Napoli Shkolnik Canada
For: Alberta Wilderness Association (AWA)

To: Tyler Olsen
For: Municipal District (MD) of Greenview

[By email only]

Re: Summit Coal Inc., Mine 14 Underground Coal Mine (Summit)
Applications 1945552, 1945553, 001-00496728, 001-00496729, 001-496730, 32212208 and 32900389 (the "Applications")
Panel Decision on Motion Filed by Summit Coal Inc.

Dear Parties:

As the panel of Alberta Energy Regulator (AER) hearing commissioners presiding over this proceeding (the panel), we write to you to provide our decision on Summit's motion (the Motion), pursuant to section 44 of the *Alberta Energy Regulator Rules of Practice (Rules)*. Following review and consideration of the submissions provided by the Municipal District of Greenview (MD of Greenview), Canadian Parks and Wilderness Society Northern Alberta chapter (CPAWS NAB) and Alberta Wilderness Association (AWA), we have decided to deny Summit's request to cancel the hearing for the reasons set out below.

Background and Submissions

Through the Motion, Summit requests that we immediately cancel the scheduled hearing dates for the Applications and all other process steps set out in the Hearing Panel's letter of June 3, 2025, and proceed to render a decision. On July 2, 2025, we set a process to receive motion responses from full participants and a reply from Summit to the responses from full participants. We also suspended the submission schedule until further notice.[1]

In the Motion, Summit argued that holding a hearing is not necessary because, after the withdrawal of four other full participants opposed to the Applications, proceeding 449 no longer contains any participants who are opposed to the Applications and may be directly and adversely affected by the AER's decision.

[1] Exhibit 84.0. Exhibits can be accessed at https://apps.public.aer.ca/hearing/

Summit submitted that both AWA and CPAWS have a long history of fervent opposition to natural resource development projects in Alberta and advocate against all forms of coal mining, they oppose coal mining generally rather than specifically the Applications, and they have no legal rights that may be impacted by Mine 14. Citing rules 6.2(1)(a) and 7 of the *Rules* in addition to several AER decisions, Summit argued that the AER has a standard practice of cancelling hearings where all parties who may be directly and adversely affected have withdrawn from the hearing process and asked us to cancel this hearing accordingly. Summit also argued that section 34 of the *Responsible Energy Development Act (REDA*) does not require the AER to hold a hearing and that only a person who may be directly and adversely affected by the application is entitled to be heard at a hearing. Summit further argued that all the remaining participants potentially affected by the Applications (MD of Greenview and the Limited Participants), are in favour of them. Summit also argued that CPAWS and AWA do not have sufficient connection to the area and are using the AER process for fundraising, and that AWA and CPAWS have not raised any new issues, so the hearing should be cancelled.

Motion responses from CPAWS NAB in conjunction with AWA[2] as well as the MD of Greenview[3] were received on July 9th and 4th, 2025, respectively.

In their response, AWA and CPAWS NAB argued that they have, and will provide, specific information relevant to the biodiversity, wildlife, toxicology, water quality, watershed health, and the Applications' impacts if approved. AWA and CPAWS NAB submitted that cancelling the hearing would be a breach of natural justice, procedural fairness, reasonable expectations, and a failure to consult because they have undertaken extensive efforts such as retaining relevant experts to assist us in making a decision on the Applications. CPAWS NAB and AWA denied that they oppose natural resource development, that they have members in the Grand Cache area, and highlighted that they have raised significant issues and deficiencies in the Applications. CPAWS NAB and AWA stated that a focused and expedient hearing is necessary because the issues they raise have not been addressed by Summit.

In its response, the MD of Greenview submitted that it supports the Motion because Summit has prioritized both the environment and the best interests of the community. It stated that the withdrawal of all Indigenous groups meant that there were no longer any participants remaining in the proceeding that may be directly and adversely affected by the Applications. The MD of Greenview argued that continuing the hearing would waste government resources, disregard the position of the local community and Indigenous groups who support the project, and would directly and adversely affect those who support Summit.

Summit filed its reply on July 15, 2025.[4] In its reply, Summit submitted that the AER is not required to hold a hearing in this case and reiterated that the hearing should be cancelled and the Applications approved.

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[2] Exhibit 86.0.

[3] Exhibit 85.0.

[4] Exhibit 87.0.

Summit argued that the hearing is not important to AWA or CPAWS (collectively the ENGOs), they will not be directly and adversely affected by a cancellation, they have no connection to the Grande Cache area and have not raised any valid issues. Summit also stated that it is the standard practice of the AER to cancel hearings when certain parties withdraw and only ENGOs are left. It argued that the panel made it clear and created a legitimate expectation that the hearing may be cancelled after withdrawal of some full participants by saying in Exhibit 53.0 that "if those withdrawals occur, we will address them when they occur....". Summit also argued that the hearing should be cancelled because CPAWS and AWA have nothing constructive to offer and that these participants are abusing the AER's hearing process by advocating in the hearing process.

In addition, a number of responses were received from Limited Participants. Although these responses have been entered onto the record in Exhibit 88.0, responses were only requested of Full Participants. We appreciate the efforts of the Limited Participants but have not considered them in making our decision.

Reasons for Decision

CPAWS NAB and AWA are Parties to this Proceeding

Section 34(3) of the *REDA* states that: "... a person who may be directly and adversely affected by the application is entitled to be heard at the hearing". In addition, the *Rules* give the hearing panel discretion under sections 9(1) and 9(2)(c) to permit participation of persons who are not directly and adversely affected by a decision of the AER on the application, but have provided an explanation of how:

> (i) the person's participation will materially assist the Regulator in deciding the matter that is the subject of the hearing,
> (ii) the person has a tangible interest in the subject-matter of the hearing,
> (iii) the person's participation will not unnecessarily delay the hearing, and
> (iv) the person will not repeat or duplicate evidence presented by other parties,...

Once the panel has granted participation, there is no distinction between participants, as is confirmed by the following definitions in the *Rules*:

> 1(i.1) "participant" means, except in Division 2 of Part 5, a person who is permitted by the Regulator under section 9 or 31.2 to participate in a hearing on an application or regulatory appeal, but does not include an applicant or a requester;
>
> (j) "party" means
> (ii) in the case of a hearing on an application,
> (A) an applicant, or
> (B) a participant...

Under section 9.1 of the *Rules*, a hearing panel may specify the limits and scope of any party's participation in the hearing, as has been done in this proceeding with the distinction between full and limited participants.

On February 7, 2025, the panel granted AWA and CPAWS NAB full participation rights in proceeding 449.[5] As such, both AWA and CPAWS NAB are parties to this proceeding. We expect CPAWS NAB and AWA to provide information at the hearing that can assist us in reaching our decision on the Applications.

[5] Exhibits 41.0 and 42.0, respectively.

The examples provided by Summit of prior AER decisions to cancel a hearing were situations in which all parties to the hearing withdrew. This is not the same situation. Both CPAWS NAB and AWA stated that they oppose the Motion and submitted that it would breach natural justice and their procedural rights to cancel the hearing at this stage. In our review of the caselaw presented to us and the AER decisions cited by Summit, we did not find situations where the AER cancelled a hearing with a party or parties objecting to the cancellation, nor caselaw that would clearly require us to do so when the remaining parties are of a certain type. In the cited examples all participants withdrew their objections and concurred with the cancellation. The caselaw cited advises us that a duty of procedural fairness is "highly contextual" and "eminently variable".[6] We are not persuaded that the circumstances in this proceeding warrant cancelling the hearing. As noted above, the *Rules* provide no distinction between types of participants once they are granted participation. CPAWS NAB and AWA have been granted full participation and submit that they will materially assist us in our decision on these applications. We are not persuaded otherwise.

Summit relied on sections 6.2(1) and 7 of the *Rules,* which govern consideration of statements of concern. The statement of concern process has concluded and is no longer relevant. Furthermore, in support of its motion, Summit relied upon information from CPAWS Southern Alberta, which is a separate chapter from CPAWS Northern Alberta, who is a party to this proceeding.[7]

As the party advancing the Motion, Summit bears the onus to establish that the circumstances warrant a cancellation of the hearing. Summit has not provided prior decisions, evidence, or a legal basis sufficient to meet this onus. Rather, it argued that CPAWS NAB and AWA "...do not have a legal right to be heard at a hearing..."[8] and paraphrased its previous arguments objecting to the participation of CPAWS NAB and AWA on the basis that they are not directly and adversely affected and that they are generally opposed to industrial development.[9] This is an argument that has been heard and denied at the participation stage, and again in the panel's procedural decision in Exhibit 53.0. For clarity, the panel granted participation to CPAWS NAB and AWA. Any further challenges to the participation decisions will be construed as a collateral attack.

Discussion of Legitimate Expectations

Summit raised the doctrine of legitimate expectations in the course of their submissions and specifically cited one portion of the panel's procedural decision in Exhibit 53.0:

> *"If those withdrawals occur, we will address them when they occur."*

Summit appears to take this statement to mean that it was promised that the hearing would be cancelled should a set of facts occur. Summit now uses this statement and alleged promise as a reason to cancel the hearing should only CPAWS NAB and AWA remain as participants.

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[6] *Landry v Rocky View County (Subdivision and Development Appeal Board),* 2025 ABCA 34 at para 33, citing *Baker v Canada Minister of Citizenship and Immigration),* 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 21

[7] Exhibit 83.1, Tab 1, Exhibit "B" to the Affidavit of Eva Lew.

[8] Motion at para 27.

[9] See Exhibit 33.0: Summit's response to CPAWS' and AWA's requests to participate.

We do not agree that this statement promised an outcome, rather it promised a process to address the facts that have since come to pass. Thus, the context of the impugned statement on the record of this hearing is important, and we review it in detail.

On February 25, 2025, Summit wrote to the panel to ask for the scheduling of a pre-hearing meeting. In this letter, which is Exhibit 52.0, Summit made the following submission:

> The AER's standard practice has been to cancel hearings in cases where all parties who may be directly and adversely affected have withdrawn from the hearing process. In this case, however, it is unclear from the participation decisions whether the AER would proceed in this manner. Summit requires confirmation of the AER's intentions in this regard before it can engage in meaningful discussions with the four Indigenous groups granted participation rights.
>
> Since receiving the Panel's participation decisions, Valory, as the potential future owner of Summit, has reached out to each of the Driftpile, SCFN, LBT and LSAMCA to request meetings to discuss their reasons for filing SOCs and RTPs in connection with the Applications.
>
> These groups have already agreed to meeting with Valory in its capacity as the potential future owner of Summit. Valory fully expects that these meetings will include discussions regarding the compensation each of these groups will receive, if Valory becomes the owner of Summit, in exchange for withdrawing their SOCs and RTPs.
>
> Valory, as the potential future owner of Summit, must carefully assess numerous factors before determining whether to provide such compensation. For instance, Valory, as the potential future owner of Summit, will have to consider how any compensation to these groups, which may include business opportunities in connection with Mine 14, will impact the AWN, which has been found by Alberta to have constitutionally recognized rights in the area. Another factor Valory, as the potential future owner of Summit, must consider is whether it will still be required to go through a hearing if the four Indigenous groups withdraw from this Proceeding. Without knowing this, Valory, as the potential future owner of Summit, cannot with any confidence determine whether any payment to these groups is appropriate or justified. Therefore, we seek the following:
> 1. Confirmation that, if the four Indigenous groups withdraw from the Proceeding, but AWA and CPAWS do not, the hearing will be cancelled. ...

The panel addressed this submission in Exhibit 53.0 as follows:

> Another issue that Summit proposed is related to a future process and if some parties withdraw their participation. It would be inappropriate to predetermine a decision that we might make in the future on facts that we do not have in front of us today. If those withdrawals occur, we will address them when they occur.

CPAWS NAB, AWA, and the MD of Greenview are now the only remaining full participants, as contemplated by Summit in its argument in Exhibit 52.0. Summit has not provided a reference to a "clear, unambiguous, and unqualified" representation by the panel that the hearing ***will*** be cancelled if only certain parties withdraw from the hearing. As shown by the quotations set out above, the panel represented it would address the impact of some full participants withdrawing in the event those withdrawals occur.

In other words, the decision in Exhibit 53.0 promised a fair and comprehensive process by which the panel of this proceeding would consider a motion to cancel the hearing. In considering this Motion, we have done just that. In so doing we have fulfilled the legitimate expectations, if any such expectations do exist, arising from the discussion in Exhibit 53.0.

Conclusion on Motion

We have considered the Motion and concluded for the reasons set out above that Summit has not met its onus to establish that the hearing of the Applications should be cancelled notwithstanding the objection of two of the remaining parties.

Since the hearing will not be cancelled, the submission schedule is no longer suspended and is amended as set out in the following section.

Submission Schedule

The updated schedule for the remaining submissions is included below. The deadline for the filing of motions and the hearing start dates are unchanged.

Filing	Due Date
Reply submissions from Summit	July 30, 2025
Submissions from Limited Participants (optional)	August 13, 2025
Summit Reply to Limited Participants, adverse to Summit's interests (optional)	August 20, 2025
Deadline for Motions	September 3, 2025
Hearing commences – Limited Participants	October 7, 2025
Hearing continues – Full Participants	October 21, 2025

We remind all parties that submissions and evidence in this matter must be relevant and material to the Applications which are proposed for **underground mining**. As stated in the Notice of Hearing, issued November 26, 2024, Summit has submitted an integrated application under the *Environmental Protection and Enhancement Act* (*EPEA*), the *Water Act* (*WA*), the *Coal Conservation Act* (*CCA*), and the *Public Lands Act* (*PLA*) to both update active approvals and for new approvals for the Mine 14 Underground Coal Mine, Mine Permit C 2009-6 and Mine License C 2011-9.

• ***Coal Conservation Act* – 1945552 / 1945553** Amendment applications to increase the Mine Permit C 2009-6 boundary by 130 ha and increase the Mine Licence C 2011-9 boundary by 82 ha. These changes are required to ensure all previously approved mining areas as well as the access road are wholly contained within the approval boundaries.

• ***Environmental Protection and Enhancement Act* – 001-00496728** An application for a new EPEA approval for the construction, operations and reclamation of the Mine 14 Underground Mine Project comprising the mine portal area, sedimentation ponds and associated water management structures and the access road.

• ***Water Act* – 001-00496729 / 001-00496730** The WA approval application is for a new approval to construct and operate the water management systems at the mining project to capture, contain, reroute and otherwise manage water at the project location. The WA licence application is for a new licence for the diversion and use of 55,000 m^3 of water per year, consisting of 31,500 m^3 per year from groundwater sources (groundwater pumped during mining operations), and 23,500 m^3 per year from surface water sources (stormwater and snowmelt collected from the surface water management structures at the project location). The water will be used for mining operations.

• ***Public Lands Act* – 32212208 / 32903389** Applications to replace expired Mineral Surface Lease (MSL) 131303 and License of Occupation (LOC) 131361 which expired in June 2021.

We expect all parties to ensure that their future submissions are relevant to the scope of the Applications as detailed in the Notice of Hearing and re-iterated above.

Attendance and Scheduling – Limited Participants

As previously indicated, **all Limited Participants must** confirm, by **4:00 pm on August 13, 2025,** if they will be appearing in person to provide oral evidence at the hearing in Grande Cache. That is regardless of whether you filed a written statement or submission on August 13, 2025.

Conclusion

For the reasons noted above, Summit's motion is denied, and the proceeding schedule is updated accordingly.

Sincerely,

Shona Mackenzie
Presiding Hearing Commissioner

Cindy Chiasson
Hearing Commissioner

Andrew MacPherson
Hearing Commissioner

cc: Shauna Gibbons and Bronwhyn Simmons, AER counsel for the panel
Elaine Arruda and Andrew Lung, AER hearing coordinators
Full Participants and Limited Participants, as identified in the attached 'Schedule of Participants for AER Proceeding 449'
Tim MacDonald, ACO

Schedule of Participants for AER Proceeding 449

Full Participants

Alberta Wilderness Association

CPAWS – Northern Alberta Chapter

Municipal District of Greenview

Limited Participants

Grande Cache Hotel

Grande Cache Golf and Country Club

Ridgeview Restaurant and Lounge

Willmore Wilderness Foundation

People and Peaks Productions Ltd.

Grande Cache Chamber of Commerce

Spruce & Bean

Eagle Rock Holdings

Busy Beez Play Zone Ltd.

Richard Riva Cambrin

Bob's Trucking Ltd.

Grande Industrial Ltd.

Macro Properties

McNeil Construction

C.C.'s Welding and Fabrication Ltd.

Grande Cache Automotive

Verity LLP

This is exhibit "G" referred to in the affidavit of Gloria Wozniuk affirmed before me on September 19, 2025.

Commissioner for Oaths in and for the Province of Alberta

PRINT NAME AND EXPIRY OR LAWYER/STUDENT-AT-LAW

July 28, 2025

APPENDIX 2

Honourable Brian Jean
Minister of Energy and Minerals
Members of Executive Council, Executive Branch
324 Legislature Building
10800 - 97 Avenue
Edmonton, AB T5K 2B6

RE: UNDERGROUND MINE 14, GRANDE CACHE, ALBERTA
ALBERTA REGULATORY PROCESS

Dear Minister Jean,

Valory Resources Inc. ("**Valory**") is concerned and disappointed with Alberta's regulatory processes. Valory is the owner of Summit Coal, which holds a Mine Permit, Mine Licence and other regulatory approvals to operate Mine 14 near Grande Cache, Alberta. There is a growing consensus that if Canadians are going to maintain their standard of living, timely and responsible development of our natural resources is critical. Facilitating the responsible development of our natural resources requires that regulators efficiently and effectively address the concerns of local stakeholders, including Indigenous communities, and adopt reasonable and sensible positions on who has the standing to trigger, and participate in, expensive and time-consuming public hearings.

Summit Coal's Mine 14 Project (the "**Project**") has earned the support of the MD of Greenview, six (6) Indigenous communities, and every local resident and business that has expressed a view to the Alberta Energy Regulator ("**AER**"). Despite this, the AER is delaying jobs in Grande Cache and construction of Mine 14 by holding a public hearing only because of requests by two environmental advocacy organizations who forcefully advocate against development of Alberta's natural resources, the Alberta Wilderness Association ("**AWA**") and the Canadian Parks and Wilderness Society ("**CPAWS**"). This is something we expected from the previous federal government, and we are dismayed to see such a position taken by an Alberta regulator.

That two advocacy organizations can trigger a public hearing process against the express wishes of the MD of Greenview that the hearing be cancelled is astonishing. The elected representatives of the community have told the AER that every delay to Mine 14 hurts the local economy, which is already suffering. The views of the MD and the economic challenges facing Grande Cache were entirely ignored in the AER's decision to hold a hearing only because of the AWA and CPAWS. It is important to note that the Wilmore Wilderness Foundation, a local charity committed to preserving the legacy of Alberta's wild frontier is a supporter of the Project and was granted status as a limited participant (of the group of "local supporters"). The Wilmore Wilderness Foundation has written to the AER to encourage the Project approval. This group is headquartered in Grande Cache and has been working to preserve the cultural heritage, historic pack trails, campsites, gravesites, and trapline cabins of Alberta's Eastern Slopes while practicing traditional land use and responsible stewardship in the Grande Cache area for over 20 years.

The AER possesses the technical expertise to review and assess whether resource projects can be responsibly carried out in the public interest. The AER's predecessor conducted a thorough and expert review of Mine 14 and determined it to be in the public interest in 2009. Valory is now seeking from the AER amendments to allow for the already approved Mine 14 to proceed. AER technical staff have

carefully reviewed the Mine 14 Project Applications, issued supplemental information requests, and obtained further technical information from Summit Coal. AER staff also drafted approvals for the Project in 2024, before the AER unexpectedly issued a Notice of Hearing, without ever telling Summit Coal why Mine 14 was referred to a hearing.

Despite all this previous technical work conducted by the AER, including drafting approvals, the AER's Hearing Commissioners are now insisting on continuing with a hearing because they expect AWA and CPAWS to "provide information at the hearing that can assist us in reaching our decision." These environmental advocacy organizations have no expertise in metallurgical coal or underground mining and are biased against natural resource development. In fact, they vehemently oppose all coal mining in the province and have seemingly made it their mission to end all coal mining in Alberta. They have no connection with the local community. This is clear on AWA's website where they erroneously labeled a photograph of the CST Coal processing plant being on Caw Ridge, when Caw Ridge is over 20 km away and the processing plant is actually in the Smoky River valley.

The AER issues approvals every day without the benefit of "information" from AWA or CPAWS. We are at a loss to understand what assistance these groups offer in respect of Mine 14 and why the AER feels it requires assistance from these advocacy groups to finish its job. Especially since the local wilderness foundation and local Indigenous groups with decades of knowledge in the Grande Cache area support the project.

Also of significant concern is that the AER has refused to tell Valory if it will be responsible to pay the costs and legal fees for AWA and CPAWS to attend the hearing and support their advocacy against coal mine development in Alberta. The AER typically requires proponents to pay the hearing costs of those raising concerns at AER hearings. This makes sense when local landowners and impacted Indigenous groups participate in hearings and offer constructive solutions. However, Valory is not prepared to pay environmental advocacy groups to participate in an unnecessary hearing so that they can advance their anti-coal development agenda.

Valory has reached agreements with every Indigenous group that has expressed concerns with Mine 14. This includes the Indigenous groups that the Alberta Consultation Office (ACO) determined may be impacted by Mine 14, which Valory had been working with for many years. In addition, Valory reached agreements with 4 additional Indigenous groups. These groups were not recognized by the ACO as having any legal rights affected by Mine 14. The AER ignored the ACO's expert advice and very late in the regulatory process, in February of 2025, determined that these 4 Indigenous groups had a right to a public hearing. Despite the ACO's findings, Valory reached agreements with these groups on an expedited schedule. The refusal of the AER to recognize the role and expertise of the ACO creates significant legal uncertainty for proponents and is inconsistent with the intended regulatory framework in Alberta.

Mine 14 is fully supported by the MD of Greenview and the local community. In fact, the MD of Greenview, and residents and businesses in Grande Cache, have asked the AER to cancel the hearing and approve Mine 14. Despite this, the AER is forcing Mine 14 to go through an expensive and time-consuming hearing because of two environmental advocacy groups. We are not aware of any other jurisdiction where this would be permitted to happen.

Mine 14 represents a critical growth opportunity for Alberta. It will generate substantial employment, taxes, and royalties, while establishing a valuable export asset for our metallurgical coal, a critical

component in global steel production. Mine 14 is an underground steelmaking coal project, which is consistent with the Coal Industry Modernization Initiative that the province is developing. The Grande Cache community, heavily reliant on natural resource development including steelmaking coal, and local Indigenous communities stand to benefit significantly from the economic activity this Project will generate. The AER is unjustifiably putting all this at risk by ignoring the extensive support for the Project and instead prioritizing the interests of two organizations that are staunchly opposed to coal development and resource development in general.

CLOSURE

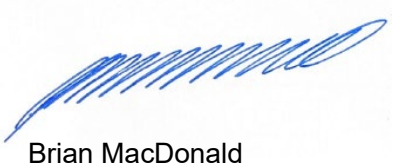
Every unnecessary permitting delay puts the Project at risk. A hearing diverts resources away from the local community and Indigenous groups. Valory will be required to incur significant and open-ended hearing costs, even though it has secured local community and Indigenous support for the Project. This is unacceptable and inconsistent with efficient and effective regulatory review.

Moreover, the continued regulatory delays mean construction delays, delays of jobs for local community members, benefits for local businesses, etc.

We are therefore considering all our options as they pertain to the future of Mine 14. We are available to meet with you at your convenience to discuss our concerns and frustrations.

Yours sincerely,

VALORY RESOURCES INC.



Brian MacDonald
President

CC: Duncan Au, Board Chair, AER
Rob Morgan, Chief Executive Officer, AER

This is exhibit "H" referred to in the affidavit
of Gloria Wozniuk affirmed before me on
September 19, 2025.

Commissioner for Oaths in and for
the Province of Alberta

PRINT NAME AND EXPIRY OR
LAWYER/STUDENT-AT-LAW

ALBERTA ENERGY REGULATOR

PROCEEDING ID 449

IN THE MATTER OF the *Responsible Energy Development Act*, SA 2012, c R-17.3 ("***REDA***") and the Regulations and Rules made thereunder;

AND IN THE MATTER OF Application Nos. 1945552, 1945553, 001-00496728, 001-00496729, 001-00496730, 32212208, and 32900389 under the *Coal Conservation Act*, RSA 2000, c C-17 ("***CCA***"), the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 ("***EPEA***"), the *Water Act*, RSA 2000, c W-3 ("***Water Act***"), and the *Public Lands Act*, RSA 2000, c P-40 ("***PLA***"), and the Regulations made thereunder (collectively, the "**Applications**"), made by Summit Coal Inc. ("**Summit**").

MOTION OF SUMMIT COAL INC.

July 29, 2025

I. INTRODUCTION

1. Summit hereby brings this motion pursuant to section 44 of the *Alberta Energy Regulator Rules of Practice* (the "***Rules***") requesting that the Alberta Energy Regulator ("**AER**") immediately adjourn Proceeding 449 *sine die*.[1]

2. Further, Summit requests that the AER, pursuant to section 42 of the *Rules*, dispense with the requirement that an affidavit or documents be filed with this Motion as required pursuant to section 44(2)(b) of the Rules, on the basis that no additional evidence or documents are required to support this Motion.

II. GROUNDS IN SUPPORT

3. In its decision dated July 23, 2025, the AER determined that even though there are no parties who may be directly and adversely affected by the Applications opposed to the timely approval of the Applications, it will hold a hearing into the Applications because the Alberta Wilderness Association ("**AWA**") and the Canadian Parks and Wilderness Society ("**CPAWS**") may "provide information at the hearing that can assist us in reaching our decision." (the "**Hearing Decision**").[2]

4. As a result of the Hearing Decision, Summit is reassessing whether to proceed with the Applications and the Mine 14 Project. We respectfully submit the AER should provide Summit with the necessary time to properly consider the future of the Applications. The Hearing Decision means that despite Summit having made significant commitments to address the concerns of those potentially affected by the Mine 14 Project, including Indigenous groups not identified by the Aboriginal Consultation Office, it will nevertheless be required to participate in an expensive and time consuming hearing process, with no ability to predict whether it will, at the conclusion of that process, be required to pay the AWA and CPAWS hundreds of thousands of dollars in hearing costs. Summit must therefore reassess whether proceeding with the Applications continues to be in the interests of its shareholder.

[1] Alta Reg 99/2013 [*Rules*].
[2] See Exhibit 89.0

5. In addition, Summit is assessing whether to apply for a reconsideration or permission to appeal of the Hearing Decision, pursuant to section 42 or 45 of the *REDA*, respectively, and requires adequate time to do so. Both a reconsideration and appeal have arguable merit on the basis that *REDA* and the *Rules* both prioritize the concerns of parties that may be directly and adversely affected by applications. It is reasonable to conclude that therefore, oral hearings, which are the most expensive and time-consuming form of review conducted by the AER, were intended to be used to consider the concerns of parties that are directly and adversely affected, as opposed to environmental advocacy organizations.

6. In any event, Summit cannot comply with the schedule established in the Hearing Decision, which requires that Summit file reply submissions on or before July 30, 2025. On July 2, 2025, the AER suspended the hearing schedule, including the requirement that Summit file reply submissions for the hearing.[3] As a result, human resources and administrative decisions were made with the result that individuals required to prepare the reply submissions are not available before July 30, 2025.

7. Summit submits that the AWA and CPAWS are not prejudiced by an adjournment of Proceeding 479 because they oppose the approval of the Applications.

8. Summit acknowledges that if Mine 14 does not proceed on a timely basis, the MD of Greenview, local Indigenous communities, and Limited Participants, will be negatively impacted through the loss of economic benefits, including contracting and employment opportunities. Therefore, Summit hereby commits to updating the AER and local stakeholders of its intentions within 20 days of the AER ruling on this Motion.

9. In addition to updating the AER within 20 days of the AER ruling on this Motion, Summit will complete its reply submissions which will at a minimum set out the conditions being proposed or sought by AWA and CPAWS, and compare those with the commitments that Summit has made, the conditions it has already agreed to or is prepared to agree to, and its views on any remaining conditions being proposed or sought by AWA or CPAWS. This will allow for the timely resumption and conclusion of a hearing process if it is reinstated.

[3] Exhibit 84.0.

III. RELIEF REQUESTED

10. Based on the foregoing, Summit respectfully requests that the AER immediately adjourn Proceeding 449 *sine die* for the following three reasons:

(a) Summit requires time to reassess whether to proceed with the Applications and the Mine 14 Project;

(b) Summit requires time to assess whether to apply for a reconsideration or permission to appeal of the Hearing Decision, pursuant to section 42 or 45 of the *REDA*, respectively; and

(c) In any event, Summit cannot comply with the hearing schedule established by the AER.

11. Summit will update the AER within 20 days of its ruling on this Motion as to the status of Summit's decision making on the future of Mine 14.

IV. EVIDENCE RELIED ON

12. As set out in paragraph 2 of this Motion, Summit does not require any affidavit or documentary evidence that is not otherwise on the Proceeding record to make this Motion, and therefore requests that the AER dispense with the requirement that an affidavit or documents be filed with this Motion as required pursuant to section 44(2)(b) of the Rules, on the basis that no additional evidence or documents are required to support this Motion.

All of which is respectfully submitted this 29th day of July, 2025.

This is exhibit "I" referred to in the affidavit of Gloria Wozniuk affirmed before me on September 19, 2025.

Commissioner for Oaths in and for the Province of Alberta

PRINT NAME AND EXPIRY OF LAWYER/STUDENT-AT-LAW

HON. JONATHAN DENIS K.C. NOTARY PUBLIC PROVINCE OF ALBERTA BARRISTER & SOLICITOR

ALBERTA ENERGY REGULATOR

PROCEEDING ID 449

IN THE MATTER OF the *Responsible Energy Development Act*, SA 2012, c R-17.3 ("***REDA***") and the Regulations and Rules made thereunder;

AND IN THE MATTER OF Application Nos. 1945552, 1945553, 001-00496728, 001-00496729, 001-00496730, 32212208, and 32900389 under the *Coal Conservation Act*, RSA 2000, c C-17 ("***CCA***"), the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 ("***EPEA***"), the *Water Act*, RSA 2000, c W-3 ("***Water Act***"), and the *Public Lands Act*, RSA 2000, c P-40 ("***PLA***"), and the Regulations made thereunder (collectively, the "**Applications**"), made by Summit Coal Inc. ("**Summit**").

MOTION OF SUMMIT COAL INC.

TO THE CHIEF EXECUTIVE OFFICER OF THE

ALBERTA ENERGY REGULATOR

August 6, 2025

I. INTRODUCTION

1. Pursuant to section 42 of the *REDA*, Summit hereby requests that you, the Chief Executive Officer ("**CEO**") of the Alberta Energy Regulator ("**AER**" or "**Regulator**"), exercise your authority to reconsider the AER's decision dated July 23, 2025 (the "**Hearing Decision**"),[1] wherein the Hearing Panel assigned to AER Proceeding 449 (the "**Panel**") denied Summit's motion to cancel the hearing in respect of the Applications. In the Hearing Decision, the Panel determined that even though there are no parties opposed to the Applications who may be directly and adversely affected by them, it would still hold a hearing in respect of the Applications because two environmental non-governmental organizations, the Alberta Wilderness Association ("**AWA**") and the Canadian Parks and Wilderness Society ("**CPAWS**"), may "provide information at the hearing that can assist us in reaching our decision."[2]

2. For the reasons outlined below, Summit respectfully submits that the Hearing Decision is based on an incorrect interpretation of the legislative framework governing the AER's process and should be varied such that the hearing is cancelled.

II. GROUNDS IN SUPPORT

3. As explained in Part A below, you, as CEO of the AER, have legal authority to conduct a reconsideration pursuant to section 42 of the *REDA*. Summit respectfully requests that you exercise your authority to reconsider the Hearing Decision because you have the ultimate responsibility of ensuring that the AER's day-to-day processes and operations, including the proceedings of hearing commissioners, are consistent with its governing statutory framework.

4. As explained in Part D below, the Hearing Decision is unreasonable, inconsistent, and based on an incorrect interpretation of the legislative framework governing the AER's process, including its express focus on parties that are directly and adversely affected in determining whether a hearing is required. The Hearing Decision contains several significant flaws in its reasoning which constitute exceptional and compelling grounds to reconsider the Hearing Decision.

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[1] Exhibit 89.0.
[2] Exhibit 89.0 at PDF p. 3.

5. To understand the full extent the Hearing Decision's unreasonableness, it is necessary to consider the conduct of the entire AER review of the Applications. To this end, Summit provides a high-level overview of the history of the Applications in Part C below. Summit respectfully submits that the AER's regulatory review of the Applications has suffered from the following structural deficiencies in the AER's process:

(a) The AER sent the Applications to a hearing without referring to any of the Statements of Concern ("**SOCs**") that were submitted in connection with the Applications or otherwise providing any rationale or explanation for doing so. Hearings are time-consuming, expensive, and arduous processes, and the AER's failure to provide any explanation for subjecting the Applications to such a process creates considerable uncertainty for project proponents and investors in Alberta's natural resources economy. Further, the Panel made its standing decisions after the Applications were sent to hearing, which is contrary to the principle that the decision on whether to hold a hearing should be based primarily on who has standing by virtue of their being potentially directly and adversely affected.

(b) The Panel granted Full Participant status in Proceeding 449 to several Indigenous groups notwithstanding that the Aboriginal Consultation Office ("**ACO**") had previously determined that none of those Indigenous groups have any constitutional rights that may be impacted by the Applications. Proponents rely on the ACO's determinations to identify which Indigenous groups they must consult with in advance of and after filing applications with the AER. In this case, Summit spent years developing its relationships with the groups identified by the ACO, and the AER's subsequent disregard for the ACO's determinations creates further uncertainty for investors in Alberta's natural resources economy.

(c) The Panel's decisions throughout this Proceeding reveal that AER hearing panels generally act as ad-hoc panels that are not in any way bound by previous decisions of the AER or required to consider the precedential value of their decisions. This runs contrary to the principles of regulatory certainty and predictability which Summit submits are the hallmarks of efficient and effective regulatory processes. Furthermore, it is evident that hearing panels only become involved in the review of an application after AER subject matter experts have done extensive work reviewing the application and, as in this case, preparing draft approvals.[3] However, none of this extensive work is incorporated into the hearing process, thereby creating significant inefficiency in the AER's processes.

6. Summit does not expect that the AER's decision on this reconsideration will immediately address all the above issues; rather, Summit simply requests that the subject hearing be cancelled

[3] Despite being drafted in late 2024 before referring the Applications to a hearing, these draft approvals were never put on the hearing record or provided to Summit, as further set out in paragraphs 47 and 48.

and the AER's subject matter experts finalize the regulatory approvals sought in the Applications. However, Summit submits that the AER's reconsideration decision, in addition to cancelling the hearing, should set out the AER's views on the issues above so that the AER can then take the necessary steps to address these issues on a go-forward basis through the necessary changes to AER policies, rules, and practices.

7. The issues identified above (the AER's opaque and arbitrary decisions regarding the need for a hearing, the refusal of the AER to rely on ACO decisions, and the ad-hoc nature of the hearing commissioners' proceedings) create significant uncertainty and unpredictability for all project developers attempting to navigate the AER's regulatory regime. Future changes to AER policies, rules, and practices should clarify who has the legal standing to trigger hearings, the interaction between the ACO and the AER when it comes to determining the standing of Indigenous groups, and the way hearing commissioners take part in the technical review of applications that are subject to hearings.

8. In their submissions to the AER, AWA and CPAWS assert that the Applications should be denied and that in the alternative, if the Applications are approved, they provide a list of conditions for the AER's consideration.[4] To facilitate the cancellation of the hearing and the timely processing of the Applications, in Part E below, Summit has reviewed and compiled the proposed Mine 14 approval conditions set out in the hearing submissions previously filed by AWA and CPAWS, as well as Summit's existing commitments and expected conditions to be contained in such approvals issued by the AER. Further, Summit compiled a list of conditions and commitments which will ensure that if the Applications are approved, this will result in the responsible development of the underground Mine 14 in a manner that is protective of the environment and in the public interest. An overview of those conditions and commitments, as well as Summit's position on each, is attached hereto as **Appendix "A"**.

9. For completeness and ease of reference, the following appendices in addition to Appendix "A" are attached to this Motion for Reconsideration of the Hearing Decision:

[4] Exhibits 75.0 and 76.0.

Appendix "B" – Letter from the CEO of Valory Resources Inc. to Alberta Minister of Energy and Minerals, the Honourable Brian Jean, KC, setting out concerns with the regulatory review of the Applications.

Appendix "C" – Letters from the only local Indigenous groups, the Aseniwuche Winewak Nation and the Mountain Metis Community Association, confirming that they each support the timely approval of the Applications without a hearing so that their communities can benefit from Mine 14.

Appendix "D" – Submissions from the MD of Greenview to the AER all confirming that the MD of Greenview is strong support of the Applications being approved without a hearing on the basis that Mine 14 is critical to the economic future of Grande Cache.

A. Legal Authority of Chief Executive Officer

10. Division 4 of Part 2 of the *REDA* governs reconsiderations by the AER. Section 42 of the *REDA* provides that "[t]he Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision." Section 43 provides that "[s]ubject to the regulations, the Regulator may conduct a reconsideration with or without conducting a hearing." None of the regulations promulgated under the *REDA* establish circumstances where a hearing is required in respect of a reconsideration. Thus, the *REDA* affords the AER considerable discretion in relation to reconsiderations, and the AER is not required to hold a hearing when conducting a reconsideration. In this case, we submit that this reconsideration should proceed on the basis of written submissions by the remaining parties to Proceeding 449.

11. Section 12(1)(c) of the *REDA* provides that where the Regulator is to conduct a hearing in respect of a reconsideration, the hearing must be conducted on behalf of and in the name of the Regulator by a panel of one or more hearing commissioners selected by the chief hearing commissioner. Section 34 of the *Alberta Energy Regulator Rules of Practice* (the "***Rules***") similarly specifies that where the Regulator sets a reconsideration down for a hearing, the chief hearing commissioner must establish a panel of one or more hearing commissioners to conduct a hearing in respect of the reconsideration.[5] However, neither the *REDA* nor the *Rules* establish

[5] *Alberta Energy Regulator Rules of Practice*, Alta Reg 99/2013, s 34(1)(a) [*Rules*].

requirements regarding who must conduct a reconsideration "on behalf of and in the name of the Regulator" where the AER does not set the reconsideration down for a hearing.

12. While the *REDA* prohibits the CEO from being appointed as a hearing commissioner by the Lieutenant Governor in Council, the *REDA* makes clear that the CEO's mandate directly encompasses the proceedings of hearing commissioners. Specifically, the *REDA* states that the CEO "is responsible for the day-to-day operation of the business and affairs of the Regulator".[6] The *REDA* expressly clarifies that the "proceedings of the hearing commissioners are part of the day-to-day operations of the Regulator."[7] Accordingly, the proceedings of hearing commissioners fall squarely within the CEO's statutory mandate under the *REDA*.

13. In short, you have legal authority to reconsider the Hearing Decision on behalf of and in the name of the Regulator without conducting a hearing.

14. Summit submits that this reconsideration raises issues that require disposition by you, the CEO of the AER. As noted above, it is your ultimate responsibility and obligation to ensure that the AER's processes and operations, including the proceedings of hearing commissioners, are consistent with the *REDA* and the AER's objective to be a world-class regulator with efficient and effective processes that result in the responsible and orderly development of Alberta's natural resources in the public interest. Only you have the mandate within the AER to address the issues raised within this reconsideration. The issues arising in this Proceeding go beyond the mandate and authority of the hearing commissioners, as evidenced by the fact that the hearing commissioners were not involved in the review of the Applications before the AER referred them to a hearing, without providing reasons for doing so.

15. Among other things, this reconsideration raises the question of whether it should be the practice of the AER, in fulfilling its statutory mandate under the *REDA*, to hold public hearings notwithstanding that there are no parties opposed to the applications who may be directly and adversely affected by such applications. The AER's answer to this question will have wide-ranging consequences beyond this Proceeding, including the effect of either encouraging or discouraging investment in Alberta more broadly. This reconsideration presents the AER with an opportunity

[6] *Responsible Energy Development Act*, SA 2012, c R-17.3, s 7(1)(a) [*REDA*].
[7] *REDA*, s 13(1).

to ensure that its processes and operations are carried out in accordance with its mandate under the *REDA*. Summit respectfully submits that this question can, and should, be determined by you, the person responsible for the day-to-day operation of the AER. All of these reasons constitute compelling reasons to proceed with a reconsideration on the merits.

B. Role of Hearing Commissioners

16. Division 2 of Part 1 of the *REDA* governs the appointment and role of AER hearing commissioners. Hearing commissioners are appointed by the Lieutenant Governor in Council.[8] Neither a director nor the CEO of the AER may be appointed as a hearing commissioner.[9]

17. The *REDA* expressly contemplates AER hearing commissioners carrying out three distinct duties. First, where the AER conducts a hearing in respect of an application, a regulatory appeal, or a reconsideration, the hearing must be conducted on behalf of and in the name of the AER by a panel of hearing commissioners.[10] Second, where the AER conducts an inquiry, the CEO may arrange for the inquiry to be conducted on behalf of and in the name of the AER by a panel of hearing commissioners.[11] Third, hearing commissioners may participate in the development of the AER's practices, procedures, and rules.[12] In addition, the *Rules* provide that hearing commissioners may conduct certain dispute resolution meetings, as well as binding dispute resolution.[13]

18. The role of AER hearing commissioners is, therefore, very limited within the AER's broader mandate of regulating the life cycle of energy and minerals resource developments in Alberta. In contrast, prior to the coming into force of the *REDA* in 2013, Energy Resources Conservation Board ("**ERCB**") members had comparatively broader, more involved roles in carrying out the ERCB's mandate under the *Energy Resources Conservation Act*.[14] Upon the *REDA*'s coming into force in 2013, however, the roles of those conducting hearings on energy resource applications (formerly ERCB members, now AER hearing commissioners) was significantly limited.

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[8] *REDA*, s 11(1).
[9] *REDA*, s 11(3).
[10] *REDA*, s 12(1).
[11] *REDA*, s 12(2).
[12] *REDA*, s 13(2)(a).
[13] *Rules*, ss 7.81, 7.9(1).
[14] *Energy Resources Conservation Act*, RSA 2000, c E-10.

19. While Summit maintains that the Hearing Decision is unreasonable and does not accord with the AER's governing legislative framework, Summit does not necessarily view that outcome as being the fault of the Panel. The reality is that AER hearing commissioners have been placed in the unenviable position of making decisions on applications while effectively being isolated from most other aspects of the AER's operations and decision-making due to the above-mentioned decisions, made over a decade ago, regarding the new, limited role of hearing commissioners within the AER. In this case, this resulted in the Panel having to decide whether to cancel a hearing, even though the Panel was not told why the AER referred the Applications to a hearing in the first instance.

20. Summit encourages you, as well as the AER board, to reconsider the currently limited roles of AER hearing commissioners within the AER more broadly. For those investing in Alberta's natural resource industry, it is essential that the AER function as an integrated and coordinated entity and it is Summit's observation, as set out below, that decisions made years ago have resulted in the segregation of hearing commissioners from the decision-making and operations of the rest of the AER, resulting in an inefficient hearing processes carried out by ad-hoc panels. Nothing in *REDA* requires this to be case, nor, in Summit's submission, should this be the case.

C. History of Applications

21. To provide important background and context for this reconsideration request, Summit provides the following high-level overview of the history of the Applications, including the three critical issues that have arisen in the course of the AER's review, which should be addressed by the AER as a matter of policy so that they can be dealt with consistently in future reviews conducted by the AER.

22. Summit filed the Applications in respect of the Mine 14 Project located near Grande Cache, Alberta ("**Mine 14**" or the "**Project**") in May and July of 2023. Notably, however, the Project was first considered by the AER's predecessor, the ERCB, in 2009. Upon determining that the Project was in the public interest, the ERCB issued Mine Permit No. C 2009-6 (the "**Permit**") and Mine Licence No. C 2011-9 (the "**Licence**") to Milner Power Inc. ("**Milner**") under the *CCA* in 2009 and 2011, respectively. Both the Permit and the Licence were transferred from Milner to Summit in 2013.

23. Importantly, each of the Applications can be characterized as either: (i) an amendment to an existing, valid regulatory approval; or (ii) an updated request for a regulatory approval which was previously applied for, and in some cases issued, in relation to the Project.[15]

24. In March of 2022, Summit engaged the ACO to determine if the AER's decisions on the Applications may trigger consultation obligations with Indigenous groups and, if so, which groups. The ACO identified three Indigenous groups as having constitutional rights that may be impacted by Mine 14: Aseniwuche Winewak Nation ("**AWN**"), East Prairie Metis Settlement ("**East Prairie**"), and Horse Lake First Nation ("**Horse Lake**"). Summit proceeded to engage with each of these Indigenous groups identified by the ACO on a good faith basis.

25. In April of 2023, after over a year of comprehensive consultation and engagement by Summit, the ACO issued its Adequacy Assessment determining that Summit's consultation with each of AWN, East Prairie, and Horse Lake was complete and Summit could proceed to file the Applications with the AER.[16]

26. As noted above, Summit proceeded to file the Applications with the AER in May and July of 2023. The AER issued a Public Notice of Application on July 27, 2023.

27. A total of eleven SOCs were filed in response to Summit's Applications. These included SOCs filed by AWA, CPAWS, and AWN, as well as four other Indigenous groups who had never previously expressed an interest in Mine 14: Driftpile Cree Nation ("**Driftpile**"), Louis Bull Tribe ("**LBT**"), Sucker Creek First Nation ("**SCFN**"), and Lac Ste. Anne Métis Community Association ("**LSAMCA**") (collectively, the "**Opposing Indigenous Groups**"). The main communities or reserves of the Driftpile, LBT, SCFN, and LSAMCA, are located, 265, 384, 250, and 338 kilometers from Mine 14, respectively.

28. Three of the eleven SOCs, including that filed by AWN, the only Indigenous group with constitutional rights recognized by the ACO to file an SOC, were subsequently withdrawn. AWN withdrew its SOC and expressed unqualified support for the Project upon entering into an

[15] See Exhibit 2.0 at PDF pp. 10-12.
[16] Exhibit 2.1 at PDF p. 484.

agreement with Summit to ensure AWN substantially benefits from the Project through employment opportunities, business contracting opportunities and other valuable commitments.

29. Notwithstanding that eleven SOCs were filed, it is critical to note that they are not representative of the level of support for the Project within the local community. Upon the filing of an application with the AER, there is no statutory mechanism for stakeholders to voice support for the project. Rather, the *REDA* only provides those who are opposed to the subject application with an opportunity to file an SOC. In this case, the local community overwhelmingly supports the Applications. This is noteworthy because those who live and work in the local community necessarily have the highest potential of being directly and adversely affected by the Applications.

30. On October 3, 2024, the AER advised the Chief Hearing Commissioner that the Applications should be decided by a panel of hearing commissioners.[17] The letter confirms that Summit submitted a project summary in December of 2021 and refers to a Ministerial Order previously issued by the Minister of Energy.

31. The letter does not refer to any of the SOCs that were submitted in connection with the Applications and does not provide any rationale or explanation as to why the Applications were referred to a hearing. It should be noted that when the referral to hearing was made, the only outstanding SOCs were filed by: (i) Indigenous groups who the ACO did not identify as having any constitutional or traditional rights that may be impacted by the Applications; and (ii) the AWA and CPAWS, who are clearly not directly and adversely affected by the Applications.

32. Summit submits that this is the first critical issue with the AER's process in respect of the Applications. Hearings are time-consuming, expensive, and arduous processes, and the AER's failure to provide any explanation whatsoever as to why the Project would be subjected to such a process creates considerable uncertainty for project proponents and investors in Alberta's natural resources.

33. The *REDA* is focused on ensuring that those who may be directly and adversely affected by a proposed project are able to raise their concerns with the AER. This is consistent with sound regulatory practice and consistent with the AER's role as an expert regulator to ensure development

[17] Exhibit 1.0.

occurs considering the public interest. An emphasis on addressing concerns of those that may be directly and adversely affected ensures that the scope of hearings is restricted to the technical aspects of the application before the AER, and not broader policy concerns that are properly issues for the Government of Alberta, not the AER.

34. Therefore, Summit submits that decisions on whether to hold public hearings should be based primarily on whether there remain outstanding concerns held by those who may be directly affected. The AER should provide reasons why any given application is being referred to a hearing. The AER's current practice to refer matters to a hearing without providing any reasons for doing so, as occurred in this case, results in significant uncertainty and unpredictability. A decision to hold a hearing should, at a minimum, provide the proponent and hearing commissioners with a clear understanding of why the AER has decided to conduct a hearing, which did not occur in this case.

35. The AER subsequently issued a Notice of Hearing on November 26, 2024.[18] A total of twenty-nine parties filed either a Request to Participate ("**RTP**") or a letter of support in response to the AER's Notice of Hearing. Of these, twenty-three parties, all of which live or conduct business in the Grande Cache area, expressed strong support for the timely approval of the Applications. Only six of the RTPs, namely those filed by the four Opposing Indigenous Groups not recognized by the ACO, as well as by AWA and CPAWS (together, the "**ENGOs**"), were not supportive of the Project. It is significant that no one in the local community opposed the Project.

36. In its participatory decisions issued February 7, 2025, the Panel determined that a total of seven "Full Participants" and seventeen "Limited Participants" would have the ability to participate in the public hearing process for Proceeding 449. The parties granted standing as Full Participants were the four Opposing Indigenous Groups, the two ENGOs, and the Municipal District of Greenview ("**Greenview**"). Greenview, as well as all seventeen Limited Participants, support the Applications. Importantly, the Panel did not find that the ENGOs may be directly and adversely affected by the AER's decision on the Applications, as it did with each of the Opposing Indigenous

[18] Exhibit 3.0.

Groups.[19] Rather, the Panel simply found that the ENGOs "may have information that can assist the panel in reaching its decision on the applications."[20]

37. As noted, the ACO had determined that none of the Opposing Indigenous Groups have any constitutional or traditional rights that may be impacted by the Applications. Summit submits that granting Full Participant status to the Opposing Indigenous Groups, notwithstanding the ACO's determination in this regard, is the second critical issue with the AER's process in respect of the Applications.

38. Importantly, it is the ACO, and not the AER, that is tasked with undertaking the "contextual analysis" to determine if the constitutional rights held by an Indigenous group may be impacted by a proposed project. After this analysis has been undertaken, it is the ACO's role to then "advise the AER on whether actions may be required to address potential adverse impacts of a project on Treaty rights and traditional uses."[21] In other words, the ACO is responsible for delineating the Aboriginal rights that exist in relation to a proposed project, and the AER is responsible for considering potential adverse impacts that the project might have on those rights.

39. Proponents rely on the ACO's determinations to identify which Indigenous groups they must consult with in advance of and after filing applications with the AER. In this case, Summit spent years developing its relationships with the groups identified by the ACO and this produced the desired result, namely no outstanding objections from Indigenous groups with recognized constitutional rights potentially impacted by the Applications. Summit invested considerable time, resources, and effort to consult and to reach agreement with the AWN and another local Indigenous community[22] to provide substantial long-term benefits from the development of the Project.

40. Summit submits that granting Indigenous groups standing where the ACO has determined they have no constitutional rights that may be impacted by a proposed project is unreasonable, creates further uncertainty for investors in Alberta's resource economy, and is contrary to the regulatory framework established by Alberta, as evidenced by the following:

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[19] Exhibit 37.0 at PDF p. 3; Exhibit 38.0 at PDF p. 3; Exhibit 39.0 at PDF p. 3; Exhibit 40.0 at PDF p. 4.
[20] Exhibit 41.0 at PDF p. 3; Exhibit 42.0 at PDF p. 3.
[21] *Fort McKay First Nation v Prosper Petroleum Ltd*, 2020 ABCA 163 at para 49.
[22] Although not directed to do so by the ACO, Summit engaged with, entered into an agreement with, and earned the support of, the Mountain Métis Community Association which has members in and around Grande Cache.

(a) the AER's Notice of Hearing for this Proceeding explicitly stated that "Crown consultation with Alberta's First Nations and Métis settlements and assessment of its adequacy are managed by the Aboriginal Consultation Office."[23] Despite this, the hearing panel overruled the ACO's determination that the Opposing Indigenous Groups did not have traditional rights potentially impacted by the Applications.[24]

(b) The AER determined that it could not "simply adopt the ACO's conclusions as we do not have the same information the ACO relied on to make its determination."[25] It is true that the AER does not have the same information as the ACO. The AER has virtually no information on which to base its decision other than the materials filed by counsel for the Indigenous groups seeking to intervene. In contrast, the ACO has extensive information on every Indigenous group in Alberta and provides them with "annual core funding allotment to assist with consultation-related activities regarding land / natural resource management."[26] The ACO therefore has the information and expertise to properly assess whether a project is within the traditional territories of an Indigenous group, as well as any potential impacts of the project on an Indigenous Group's traditional rights, whereas the AER does not.

(c) It is trite law that the AER's hearing process constitutes consultation undertaken by the Crown.[27] The Panel appears not to have understood that therefore, if the ACO determines an Indigenous group's right to consultation has not been engaged, the AER need not provide that group with standing to participate in its regulatory process.

(d) The AER's decision not to give effect to the ACO's determinations is contrary to *Energy Ministerial Order 105/2014* requiring "the AER to act consistently with decisions made by Alberta [the ACO] under the Consultation Policy and Guidelines in respect of energy applications".[28]

(e) In the case of three of the Opposing Indigenous Groups, they acknowledged they only became aware of the Applications "after becoming aware of the Project through public notices posted by the AER."[29] This was the case notwithstanding that Mine 14 has been the subject of regulatory proceedings for over 15 years, thereby demonstrating these groups had no previous connection to Mine 14. The entire purpose of creating the ACO to manage Alberta's constitutionally owed obligations was to ensure that the AER's regulatory process focuses on the effects of a given project on those with demonstrated rights, when necessary, and that the AER's processes are not used as a forum to make the preliminary determination as

[23] Exhibit 3.0 at PDF p. 4.
[24] Exhibits 37.0, 38.0, 39.0 and 40.0, at PDF p. 3.
[25] Exhibits 37.0, 38.0, 39.0 and 40.0.
[26] https://www.alberta.ca/indigenous-consultations-in-alberta.
[27] *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, 2017 SCC 40 at paras 30-34; *Chippewas of the Thames First Nation v Enbridge Pipelines Inc*, 2017 SCC 41 at para 32.
[28] *Energy Ministerial Order 105/2014* (October 31, 2014) at PDF p. 3.
[29] Exhibit 26.0 at PDF p. 9; Exhibit 30.0 at PDF p. 8; Exhibit 31.0 at PDF p. 9.

to whether these rights exist. Such determinations require a complicated contextual analysis for which the AER's processes are ill-suited.

41. Summit respectfully submits that the hearing commissioners' decision to ignore the ACO's analysis and determinations creates significant regulatory uncertainty, unnecessarily complicates the management of Alberta's obligations to Indigenous communities, and is contrary to the regulatory regime established by the Alberta Government. The AER's processes should accord with existing orders and policies governing ACO decisions regarding the constitutional rights of Indigenous groups and its standing decisions should respect the ACO's expertise in this regard.

42. As stated above, however, the hearing commissioners were not provided with any reasons as to why the Applications were referred to them for a hearing. Therefore, the Panel may have ignored the ACO's determinations on which Indigenous groups did and did not have constitutional and traditional rights that may be affected by the Applications because it appears the AER also ignored the ACO when it referred the Applications to a hearing. As set out above, at the time the AER referred the Applications to a hearing, the only outstanding SOCs were filed by the ENGOs, who are clearly not directly and adversely affected, and Indigenous groups who the ACO never identified as being owed any duty of consultation. Accordingly, it is reasonable to conclude that the AER also ignored the ACO's determinations when it referred the Applications to a hearing, thereby justifying the Panel's decision to subsequently do the same. In any event, this situation underscores: (i) why the AER should provide reasons whenever it refers a matter to a hearing, including on the standing of those parties with outstanding SOCs; and (ii) why the AER should clarify as a matter of policy that the standing of Indigenous groups will be determined based on the decisions of the ACO, as was always intended.

43. Although Summit took issue with the AER's decision to ignore the findings of the ACO as to which Indigenous groups have constitutional rights that may be affected by the Applications, it nevertheless took steps to engage with and address the concerns of the Opposing Indigenous Groups granted standing by the Panel. This engagement, which required the dedication of material financial and human resources, occurred on an expedited timeline and resulted in the current situation where no parties with any potential to be directly affected by the Applications remain opposed to their approval.

44. As set out in paragraph 5(c) of this Motion, AER hearing panels generally act as ad-hoc panels that are not in any way bound by previous decisions of the AER. The Panel's decision on the participation rights of the ENGOs expressly confirms that the Panel had no concern about the precedent it was creating by granting the ENGOs full participation rights:[30]

> We disagree with Summit's assertion that granting participation to AWA in this proceeding, based on the relevant information that is before us, would lead to AWA being permitted to participate in any other hearing for a proposed energy resource development in Alberta. We are making our decision based on the facts in the submissions of AWA and Summit for this proceeding. Similarly, other AER decision makers decide matters before them based on relevant facts raised by the parties, to those matters. This panel has no authority over other decision-makers nor does it fetter their decision-making authority by granting AWA participation at this hearing.

45. Although the AER should make substantive determinations on applications based on the specific facts of every case, it is critical that the AER apply consistent and predictable criteria when making procedural decisions regarding who can trigger and participate in AER hearing processes. Contrary to the Panel's reasons, its decision to grant Full Participant status to the ENGOs who are not directly and adversely affected was not fact specific.

46. The ENGOs have a long history of fervent opposition to natural resource development projects in Alberta and regularly seek to intervene in AER proceedings to oppose such projects. There is nothing unique or special about the Mine 14 Project or the Applications that has attracted AWA's and CPAWS' opposition or their participation in Proceeding 449. Rather, AWA and CPAWS are devoted to opposing natural resource development generally. AWA and CPAWS have no legal rights that may be impacted by Mine 14 and therefore have no potential to be directly and adversely affected by the Applications. Nevertheless, the Panel justified its decision to grant the ENGOs full participation rights on the basis that other panels could decide differently, meaning that no precedent was being set. However, the hearing commissioners are to conduct hearings "on behalf of and in the name of the Regulator".[31] The AER should have clear and predictable rules regarding who can trigger and participate in hearings and hearing panels should apply those.

[30] Exhibits 41.0 and 42.0, at PDF p. 3.
[31] *REDA*, s 12(1).

Standing decisions should not vary depending on the hearing commissioners appointed to a given panel.

47. The ad-hoc approach of AER hearing panels also results from a lack of integration with the AER's technical review of the Applications undertaken by the AER's subject matter experts. In this case, Summit asked the Panel to have regard for the previous work done by the AER during the previous year and a half of review:[32]

> It is our understanding that the AER, before deciding to refer the Applications to a hearing in October of 2024, prepared draft approvals that would be issued if the Applications were going to be approved without a hearing. Our view is that significant effort and expertise likely went into the preparation of these draft approvals and the Hearing Panel should therefore consider these as part of its deliberations. Otherwise, this process will be unnecessarily inefficient and the significant time and effort previously put into developing these draft approvals will have been wasted. We therefore request that the Hearing Panel direct AER staff to put these draft approvals on the hearing record. This will focus the scope of the hearing on those issues that were identified by the AER's subject matter experts as being relevant to the approval of the Applications.

48. The Panel never responded to Summit's request that the previously drafted approvals be placed on the hearing record and used to focus the scope of the AER hearing.[33] The lack of integration between the AER's technical review of Applications and the hearing process carried out by hearing commissioners is inefficient and unnecessary. We respectfully submit that previous decisions segregating the role of hearing commissioners from the day-to-day operations of the AER, including the technical review that precedes the hearing, need to be revisited.

49. On March 25, 2025, the AER issued a process letter.[34] in which the AER advised that the Panel would hold an oral in-person hearing for this Proceeding. The AER determined that the hearing will be conducted in two parts, with a community session for oral presentations from limited participants on October 7 and 8, 2025, with the hearing process resuming for full participants only on October 21, 2025. The only parties opposed to the Applications were the

[32] Exhibit 52.0 at PDF pp. 13, 18.
[33] See Exhibit 53.0 which does not address this issue.
[34] Exhibit 54.0.

Opposing Indigenous Groups, and the ENGOs. All the other Full and Limited Participants were fully in support of the Applications being approved on a timely basis.

D. Reconsideration Submissions

50. On June 17, 2025, each of the four Opposing Indigenous Groups withdrew from Proceeding 449 and provided written confirmation that they no longer object to the AER's approval of the Applications,[35] leaving only AWA and CPAWS as the only remaining participants in Proceeding 449 who oppose the Applications.

51. On June 27, 2025, Summit filed a motion seeking that the hearing and all other procedural steps and filing deadlines for Proceeding 449 be cancelled and the Panel proceed to approve the Mine 14 Applications on the basis that there are no longer any parties opposed to the Applications who may be directly and adversely affected by the AER's decision on the Applications (the "**Motion**"),[36] and other hearing participants subsequently provided submissions in response to Summit's Motion.

52. As noted above, the Panel issued the Hearing Decision on July 23, 2025.

53. Summit submits that there are exceptional and compelling grounds to reconsider the Hearing Decision, namely that it is based on an incorrect interpretation of the legislative framework governing the AER's process, imposes an unreasonable onus on Summit and by extension other developers, and constitutes an unreasonable exercise of discretion that will have negative consequences for the development of Alberta's natural resources economy. Proponents expect to be required to address concerns held by parties that may be directly and adversely affected by a proposed project, as contemplated in *REDA*. However, it is not expected that an expert regulator will conduct hearings so that environmental advocacy organizations have a forum in which to advance their anti-development agenda, especially when the proponent may be required to pay the organizations their costs for doing so. The reasons for Summit's concerns are fully expressed in the letter from its shareholder, attached as Appendix "B".

[35] See Exhibits 70.0, 71.0, 72.0, and 73.0.
[36] Exhibits 83.0 and 83.1.

54. The first obvious error in the Hearing Decision relates to the Panel's disregard for section 34 of the *REDA* and its clear focus on parties who may be directly and adversely affected by applications in respect of energy resource activities. While the Panel cites this provision in its Hearing Decision,[37] it completely disregarded Summit's submissions explaining why section 34 of the *REDA* provides important context on the purpose of hearings conducted by the AER. Section 34 of the *REDA* states as follows:

> **Hearing on application**
>
> **34(1)** Subject to subsection (2), the Regulator may make a decision on an application with or without conducting a hearing.
>
> **(2)** The Regulator shall conduct a hearing on an application
>
> (a) where the Regulator is required to conduct a hearing pursuant to an energy resource enactment,
>
> (b) when required to do so under the rules, or
>
> (c) under the circumstances prescribed by the regulations.
>
> **(3)** If the Regulator conducts a hearing on an application, a person who may be directly and adversely affected by the application is entitled to be heard at the hearing.
>
> **(4)** A hearing on an application must be conducted in accordance with the rules.

55. Notably, section 34(1) of the *REDA* states that the AER has the ability to decide an application "with or without a hearing" unless the circumstances in section 34(2) apply. For clarity, none of these circumstances are applicable in the present case. Section 34(3) also clearly states that only "a person who may be directly and adversely affected by the application is entitled to be heard at the hearing" in the event that a hearing is held.

56. The primary objective of the legislative regime under the *REDA*, as illustrated in part by the express language of section 34, is to ensure the concerns of those who may be directly and adversely affected are considered and addressed. This objective has been achieved in the present case. All participants who have any potential to be affected by the Applications have clearly communicated their desire that the hearing to be cancelled and the Applications approved. Only AWA and CPAWS, who have absolutely no potential to be directly or adversely affected, want a

[37] Exhibit 89.0 at PDF p. 3.

hearing to occur. Summit submits that the Panel erred in the Hearing Decision by disregarding the *REDA*'s clear focus on parties who are directly and adversely affected.

57. The second obvious error in the Hearing Decision relates to the Panel's misinterpretation of sections 6.2(1) and 7 of the *Rules*. The Panel dismissed Summits submissions based on those provisions on the basis that they "govern consideration of statements of concern" and "[t]statement of concern process has concluded and is no longer relevant."[38] With respect, this is incorrect. As Summit explained in its Motion, section 7 allows the AER to consider a variety of factors when deciding whether to conduct a hearing on an application, and states as follows:

> **Decision regarding whether to hold a hearing**
>
> **7** The Regulator may consider any of the following factors when deciding whether or not to conduct a hearing on an application:
>
> (a) whether any of the circumstances described in section 6.2 apply;
>
> (b) whether the objection raised in a statement of concern filed in respect of the application has been addressed to the satisfaction of the Regulator;
>
> (c) whether the applicant and any persons who have filed statements of concern in respect of the application have made efforts to resolve the issues in dispute directly with each other through a dispute resolution meeting or otherwise;
>
> […]
>
> (e) whether the matter to which the application relates has been adequately dealt with or addressed through a hearing or other proceeding under any other enactment or by a decision on another application;
>
> […]
>
> (j) any other factor the Regulator considers appropriate. [emphasis added]

58. Section 7(a) provides that one such factor to consider in determining whether or not to conduct a hearing on an application is "whether any of the circumstances described in section 6.2 apply". Section 6.2(1)(a) of the *Rules* allows the AER to disregard an SOC if, in the AER's opinion, the person who filed the statement of concern has not demonstrated that the person may be directly and adversely affected by the application."[39] Although section 6.2 of the *Rules* refers to SOCs, it is expressly referenced in section 7(a), which guides the AER's determinations on whether or not

[38] Exhibit 89.0 at PDF p. 4.
[39] This provision also references the special circumstances set out in section 6.1 of the *Rules*; however, these special circumstances are not applicable.

to conduct a hearing on an application. In this way, section 7(a) does not simply "govern consideration of statements of concern", as the Panel incorrectly stated in the Hearing Decision.

59. As Summit explained in its Motion, there are "circumstances described in section 6.2" of the *Rules* which are highly relevant to the current status of Proceeding 449. That is, there are no longer any remaining participants opposed to Mine 14 who have demonstrated that they may be directly and adversely affected by the AER's decision on the Applications.

60. The AER has historically allowed parties that have no potential to be directly and adversely affected to participate if a hearing is being held in any event. However, this is done with the understanding that if the concerns of parties who are directly and adversely affected are addressed, the hearing is likely to be cancelled. Summit submits that the fact the ENGOs were previously granted participation rights in Proceeding 449 at a time when there were participants opposed to Mine 14 who had demonstrated that they may be directly and adversely affected by the AER's decision on the Applications does not justify such blatant disregard of the factors enumerated under the *Rules*, which expressly guide its determination on whether to conduct a hearing on an application.

61. Summit's Motion further explained, in reference to the other factors listed under section 7 of the *Rules* and excerpted above, that the Hearing Panel should also consider that:

(a) the Applications contain robust mitigation and planning measures in respect of potential impacts to water, wildlife, and vegetation, as well as other environmental concerns raised by AWA and CPAWS in their respective submissions;

(b) Summit has expended a great deal of time and effort in engaging with all the hearing participants who may be directly and adversely affected (*i.e.*, Driftpile, LBT, SCFN, and LSAMCA) and resolving their concerns outside the formal hearing process, as evidenced by the withdrawal of these participants;

(c) the Applications relate to Summit's Mine 14 Project, which has been in development for more than twenty years, and is already the subject of a positive public interest determination in addition to several other regulatory approvals; and

(d) given that all eighteen of the other remaining hearing participants are supportive of the Applications, continuing with the hearing process on account of only AWA and CPAWS would be inappropriate where these groups are private organizations whose businesses are focused on objecting to projects such as Mine 14 and resource development generally.[40]

62. Summit submits that the factors listed under section 7 of the *Rules* clearly militate towards the cancellation of the subject hearing in the present circumstances.

63. As noted, the Panel in its participation decisions did not find that the ENGOs may be directly and adversely affected by the AER's decision on the Applications, as it did with each of the Opposing Indigenous Groups.[41] Rather, the Panel simply found that the ENGOs "may have information that can assist the panel in reaching its decision on the applications."[42] Importantly, whether or not a party may have such information is not a factor enumerated under section 7 of the *Rules* as a factor to consider in determining whether to conduct a hearing on an application. Notwithstanding the Legislature's clear intention that the AER consider whether or not any parties are directly and adversely affected in making such a determination, the Panel disregarded this factor and instead based its Hearing Decision on a factor that is not enumerated under section 7 (i.e., whether a party may have information that can assist the panel in reaching its decision).

64. Summit submits that the Panel erred in disregarding the above-mentioned change to the "circumstances described in section 6.2" of the *Rules* (i.e., the fact that there are no longer any remaining participants opposed to Mine 14 who have demonstrated that they may be directly and adversely affected), as it is entirely relevant to, and should directly inform the AER's decision on, whether a hearing is still required. As a result of this error, the Panel wrongly concluded that Summit had not provided "a legal basis" to establish that the circumstances warrant a cancellation of the hearing.

[40] See, for example, Exhibit 23.0 at PDF p. 3.
[41] Exhibit 37.0 at PDF p. 3; Exhibit 38.0 at PDF p. 3; Exhibit 39.0 at PDF p. 3; Exhibit 40.0 at PDF p. 4.
[42] Exhibit 41.0 at PDF p. 3; Exhibit 42.0 at PDF p. 3.

65. Despite acknowledging that it has the legal authority to cancel the hearing,[43] the Panel went on to impose an unreasonable onus on Summit through its conclusion that Summit had "not provided prior decisions" to establish that the circumstances warrant a cancellation of the hearing. In the Motion, Summit provided several examples where the AER cancelled a hearing because all parties who may be directly and adversely affected had withdrawn from the hearing process.[44] The Panel disregarded those examples and instead relied heavily on the fact that Summit could not identify a situation with the exact same circumstances where a hearing was cancelled.[45]

66. Importantly, however, the Panel completely ignored the obvious corollary, namely that neither the ERCB nor the AER have ever previously conducted a hearing where the only parties were ENGOs that were not directly and adversely affected. The hearing into the Applications, if it proceeds, would be the first of its kind in Alberta and to our knowledge, in any Canadian jurisdiction. Summit submits that it was unfair and unreasonable for the Panel to conclude that Summit failed to meet its onus because Summit did not provide: (i) specific examples of AER precedent that does not exist; and (ii) caselaw establishing that the AER must cancel the hearing in the circumstances.

67. The Panel also erred when it misunderstood the concept of legitimate expectations and engaged in a fundamentally flawed analysis in that regard. The Panel was of the view that the issue of legitimate expectations arose because Summit "was promised that the hearing would be cancelled should a set of facts occur."[46] This is a gross misunderstanding of Summit's position and why the legitimate expectations issue arose in this Proceeding.

68. First, Summit's position is simple. The Panel has the legal discretion to cancel the hearing and should cancel the hearing because the ENGOs are not directly and adversely affected by the Applications and have no expertise in metallurgical coal or underground coal mining that can be

[43] Exhibit 89.0 at PDF p. 4 where the Panel acknowledges that it may, depending on the circumstances, cancel the hearing: "[w]e are not persuaded that the circumstances in this proceeding warrant cancelling the hearing."

[44] See, for example, Proceeding 392: CSV Midstream Solutions Corp. Application to construct and operate a sour gas processing plant – AER Letter Decision dated April 30, 2021 (2021 ABAER 007) at para 9; Proceeding 408: Coalspur Mines (Operations) Ltd. Vista Coal Project – AER Letter Decision dated March 23, 2021 (2021 ABAER 006) at para 9; Encana Corporation Application For Acid Gas Disposal, Wembley Field – AER Letter Decision dated September 26, 2019 (2019 ABAER 012) at para 9.

[45] Exhibit 89.0 at PDF p. 4: "[i]n our review of the caselaw presented to us and the AER decisions cited by Summit, we did not find situations where the AER cancelled a hearing with a party or parties objecting to the cancellation, nor caselaw that would clearly require us to do so when the remaining parties are of a certain type."

[46] Exhibit 89.0 at PDF p. 4.

helpful to the AER. Holding a hearing in these circumstances is contrary to the intent of *REDA*, which is focused on the public interest and parties that are directly and adversely affected. At no time has Summit relied on the principle of legitimate expectations.

69. Second, legitimate expectations was only raised by the ENGOs in their submissions in response to Summit's Motion to cancel the hearing. The ENGOs stated that: "It would be a breach of natural justice, procedural fairness, reasonable expectation, and failure to consult to deny the continuation of the process."[47] In reply to this, Summit articulated why none of natural justice, procedural fairness, reasonable expectation (or legitimate expectations according to the Supreme Court of Canada), or the duty to consult require that the AER proceed with a hearing.[48] Summit never stated that there was an expectation the hearing would be cancelled. Summit only argued that the hearing may be cancelled and this is why the ENGOs could not rely on the principle of legitimate expectations to say the hearing must be held. The Panel misunderstood this and instead held as follows:[49]

> Summit has not provided a reference to a "clear, unambiguous, and unqualified" representation by the panel that the hearing **will** be cancelled if only certain parties withdraw from the hearing.

70. In doing so, the Panel again placed an unreasonable burden on Summit. Imposing an onus on Summit to articulate why a hearing must be cancelled when it has never been told why the hearing was convened in the first place is unreasonable and reveals the Panel's view that once a hearing has been referred to it, it must proceed with the hearing regardless of the circumstances. Summit never relied on the principle of legitimate expectations in any of its submissions and instead only commented on the issue to demonstrate that the ENGOs reliance on legitimate expectations was without merit.

71. Finally, the Panel completely failed to assess whether proceeding with the hearing was in the public interest. In addition to Summit's submissions, the Panel received submissions from the

[47] Exhibit 86.0 at PDF p. 3.
[48] Exhibit 87.0 at paras 5-9.
[49] Exhibit 89.0 at PDF p. 5 [emphasis in original].

ENGOs, who have no connection to Grande Cache, and Greenview, the municipal, district within which Grande Cache is located. Greenview advised the Panel that:

> With the already stringent permitting process and all other permits being issued, The MD of Greenview feels that holding this project up longer hurts the local economy every day this progresses. Jobs, housing prices, and retail businesses have been waiting 2 years in an already drawn out process. Holding up this project continues to keep the Grande Cache economy in speculation and in times of multiple government decisions holding our beautiful hamlet in a very precarious spot.[50]

72. In addition, in support of cancelling the hearing, Greenview emphasized the following:

> Continuing with the hearing would simply waste government resources at multiple levels and disregard the position of the local community and the Indigenous groups who now all support this project. In fact, proceeding with the hearing would directly and adversely affect those very groups and communities who have expressed their support for Summit.[51]

73. Greenview has repeatedly advised the AER that delays to the processing of the Applications harm the economic well-being of its residents and businesses and that the hearing should therefore be cancelled since there is complete community support for the approval of the Applications and development of the underground Mine 14. These submissions by Greenview are attached as Appendix "D" to this Motion.

74. In the Hearing Decision, the Panel acknowledged receiving Greenview's submissions but did not respond to Greenview's submissions in its reasons explaining why it was continuing with the hearing process. At no point did the Panel explain why further delaying the Applications to conduct a hearing and harming Grande Cache's economy was in the public interest. To the extent there were reasons for prioritizing the hearing over the timely processing of the Applications, the Panel should have provided these reasons in the Hearing Decision, but it did not.

75. Furthermore, in the Hearing Decision, the Panel failed to take into account that Summit had entered into agreements with the Opposing Indigenous Groups and the AWN and Mountain

[50] Exhibit 79.0.
[51] Exhibit 85.0.

Metis. The AWN told the AER that it supported the Applications, no hearing is necessary, and that the Applications should be approved "as soon as possible."[52] The Mountain Metis, the only other Indigenous community with members residing near Mine 14, advised the AER that Mine 14 will "provide much needed meaningful training, employment and contractual opportunities" and that the Applications should be approved.[53] The Panel, when determining whether continuing with the hearing was in the public interested, should have considered the potential impacts of delay on these Indigenous groups, and in particular the AWN which was recognized by the ACO as having constitutional rights that may be impacted. As set out by the Courts, these rights include the right to economically benefit from resource development and it is in the public interest for Indigenous groups to do so.[54] In addition to these submissions, the AWN and Mountain Metis have all recently again advised the AER that the hearing should be cancelled so that they can benefit economically and socially from the development of Mine 14, in a timely manner. These letters are attached to this Motion as Appendix "C".

76. In summary, Summits submits that the withdrawal of the Opposing Indigenous Groups from Proceeding 449 means that there are no longer any participants who may be directly and adversely affected by a decision on the Applications, and that a hearing on the Applications is no longer necessary. Summit further submits that cancellation of the scheduled hearing is entirely consistent with the *REDA* and the factors listed in the *Rules*, and is further supported by the numerous letters filed by members of the local community and requesting that the AER approve the Applications without a hearing. It is also in line with the AER's standard practice to cancel hearings in cases where all parties who may be directly and adversely affected have withdrawn from the hearing process.

77. The Panel's decision to proceed with a hearing on the account of two ENGOs that have no potential to be directly and adversely affected by the Applications creates significant and regulatory risk for investors in the Province. As noted above, hearings are incredibly time-consuming, expensive, and onerous processes. Advocacy groups should not be permitted to leverage these processes for their own private objectives, including generating public attention and

[52] Exhibit 2.2 at PDF 107 and 108.
[53] Exhibit 2.2 at PDF 109 and 110.
[54] *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2021 ABCA 342 and *Coalspur Mines (Operations) Ltd. v. Canada (Environment and Climate Change)*, 2021 FC 759.

improving their fundraising abilities, at the expense of project proponents, Alberta taxpayers, and all those individuals and businesses who stand to benefit from a proposed development. These uncertainties need to be addressed not only so that the Applications can be efficiently processed, but also so future investors in Alberta's resource economy have some certainty and predictability regarding the role of ENGOs in Alberta's regulatory processes.

78. For the reasons set out above, Summit respectfully submits that there are exceptional and compelling grounds to reconsider the Hearing Decision and cancel the hearing.

E. Approval Conditions

79. To facilitate the cancellation of the hearing and the timely processing of the Applications, Summit has reviewed the hearing submissions previously filed by CPAWS and AWA.[55] Summit has compared the proposed conditions in those submissions with its existing commitments and expectations for conditions to be contained in approvals issued by the AER for Mine 14. Summit is equally conscious of the substantial reviews that AER subject matter experts have already conducted, including multiple Supplementary Information Requests (SIRs) clarifying all of the matters of relevance with respect to the Applications. From Summit's perspective, nothing has been validly raised in the AWA and CPAWS submissions that has not previously been considered by Summit and the AER throughout the AER's regulatory review of the Applications. Again, neither AWA nor CPAWS have any experience with underground mining or metallurgical coal that could be relevant to the AER's review. Summit's review, setting out its position on the matters raised by the AWA and CPAWS, and the conditions under consideration, is contained in Appendix "A" attached hereto.

80. Many of the conditions proposed by the AWA in its hearing submissions assert that further studies are required to establish baseline conditions and that further groundwater, air and surface water assessment and modelling are required.[56] CPAWS makes similar assertions in its hearing submissions.[57]

[55] Exhibits 75.0 and 76.0.
[56] Exhibit 75.0 at para. 4 to 7.
[57] Exhibit 76.0 at para. 4 to 9.

81. The submissions from AWA and CPAWS fail to take into account that Mine 14 has already been the subject of extensive regulatory review since 2009 and that the site is well-understood.

82. With respect to air, an additional air monitoring instrument was installed at the site in November of 2023 and has been continuously monitoring since this time. Summit previously conducted air monitoring and modelling and these results are set out in the Applications. Using conservative assumptions that tend to overpredict emissions, the Applications summarized the results of the air modelling work as follows:

> Summary of model predictions were provided at MPOI locations (Table 7.1) and along the Mine 14 MPB (Table 7.2). For NO_X, CO, $PM_{2.5}$ and PM_{10}, no exceedances of the AAAQOs/BCAAQO are predicted for the Project-Only case. Moreover, the incremental impact of the Project on the existing 668 MPOI range from negligible (NO_2) to immaterial (CO, $PM_{2.5}$ and PM_{10}). Project-Only TSP predictions for the 24-hour averaging period were predicted to exceed the AAAQO but TSP concentrations were predicted to diminish rapidly with distance from the Project and the predicted exceedances all occur within 180 m of the Mine 14 MPB. Annual predictions of TSP predictions for the Project-Only case are below the AAAQO.[58]

83. Furthermore, as set out in Appendix "A", Summit is agreeable to conditions requiring ongoing air monitoring and modelling and will provide the AER with annual reports pursuant to *Environmental Protection and Enhancement Act* ("***EPEA***")[59] conditions that comprehensively address air emissions and ambient air conditions.

84. With respect to groundwater, CPAWS and AWA make assertions that further information is required. However, neither ENGO credibly critiques the groundwater assessment conducted by Summit. In fact, neither ENGO has put forward any evidence by a hydrogeologist qualified to assess groundwater.

85. The groundwater assessment in the Applications "includes a description of the regional and local hydrogeological setting based on existing information and fall 2022 field observations as well as an impact assessment of the Project's proposed use of groundwater for operations."[60] Based on site visits, sample taking and expert review by a professional hydrogeologist, it concludes: "No

[58] Exhibit 2.0 at PDF 668 and 669.
[59] *Environmental Protection and Enhancement Act*, RSA 2000, c E-12.
[60] Exhibit 2.0 at PDF 589.

aquifers are expected in the Quaternary deposits in immediate vicinity of proposed Mine Portal Area. The overburden thickness and materials in the area of the Mine Portal are not conducive for the formation of aquifers."[61] With respect to potential impacts to groundwater, the assessment states: "Due to the heterogeneity of fractures in the shallow bedrock, effects of the proposed Project are expected to remain local to the mine portal and underground workings."[62]

86. In any event, as set out in Appendix "A", Summit expects that as part of any *EPEA* Approval, it will be required to submit a groundwater monitoring plan for AER approval and that Summit will be required to report annually on groundwater. These conditions are sufficient to ensure that Mine 14 will not adversely affect groundwater resources.

87. With respect to surface water, the Applications contain a surface water and hydrology assessment, a water management plan, and an aquatic ecology assessment.[63] These expert reports conclude that the stormwater management ponds have been adequately sized and that erosion is not expected downstream of the pond spillways.[64] The aquatic ecology assessment concludes that if the mitigation measures identified by and committed to by Summit are employed, "then the Project is not expected to impact aquatic Species at Risk, and will not result in the death of fish or a HADD, and the productive capacity of the aquatic resources will remain unchanged."[65] As set out in Appendix "A", Summit anticipates that if approved, the *EPEA* Approval will set out annual reporting requirements so the AER can verify that no unexpected adverse impacts occur. Summit agrees to carrying out monitoring for selenium, heavy metals, polycyclic aromatic compounds, nutrients, and benthic invertebrate community structure as proposed by the ENGOs.

88. The assessments carried out by recognized and qualified professionals and contained in the Applications confirm that Mine 14 may be developed in an environmentally responsible manner, consistent with the public interest. In our submission, the AER should proceed to decide on the Applications and issue the requisite approvals with reference to Appendix "A" to this Notice of Motion.

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[61] Exhibit 2.0 at section 4.2 at PDF 596.
[62] Exhibit 2.0 at section 4.3 at PDF 596.
[63] Exhibit 2.0 at PDF 1097, 1126 and
[64] Exhibit 2.0 at PDF 1122.
[65] Exhibit 2.0 at PDF 1021.

III. RELIEF REQUESTED

89. Based on the foregoing, Summit respectfully requests that the AER exercise its discretion to reconsider the Hearing Decision and vary it such that the subject hearing be cancelled and the AER's subject matter experts finalize the regulatory approvals sought in the Applications, giving consideration to Appendix "A".

90. In Summit's submission, a review of the AER's processes to ensure consistency with its governing statutory framework would help reduce regulatory uncertainty and unpredictability, improve investor confidence within Alberta, and further the AER's objective of being a world-class regulator with efficient and effective processes that result in the responsible and orderly development of Alberta's natural resources in the public interest.

All of which is respectfully submitted this 6th day of August, 2025.

Appendix A

Table of Approval Conditions

Legend to Table Below (colour-coded rows each have a separate meaning - as indicated in the legend description below)

	Indicates that Valory would accept a condition in relation to the matter.
	Indicates that the matter is not likely to be a requirement and that no conditionality would be required .
	Indicates that the matter is not a matter for the Province of Alberta (and hence the AER) to consider - this is under Federal jurisdiction.

Outcome Sought	AWA	CPAWS	Regulatory Requirement *[1]	Anticipated Regulatory Condition	Valory Conditionality Position	Status/Details/Comments
Groundwater						
Baseline monitoring (including trend analysis)	✓	✓	Likely	Yes	Valory would accept a condition in relation to this	Valory has been collecting additional groundwater information at the site already. Valory expects that there will be an Annual Reporting requirement in the EPEA Approval in any case. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Modelling (predictive modelling for contaminant fate and transport)	✓	-	Not likely	No	This is not a requirement.	An assessment of water quality from nearby mines is in progress to assist in predicting the possible contaminant fate and transport means. This is not expected to be a requirement in the Approval.
Triggers - Water quality	✓	✓	Not likely	No	This is not a requirement.	Triggers are not listed in EPEA Approvals. Limits are expected (see Table 4.3-A of draft EPEA Approval).
Assessment of streamflow impacts, including mitigation measures (Ecological Flow Needs)	-	✓	Likely	Yes	Valory would accept a condition in relation to this	Valory will carry out an assessment of streamflow impacts including mitigation measures. Data is currently being collected on site to support this study. Accordingly, a condition in the Approval in relation to an assessment of streamflow impacts should be acceptable to all parties.
Surface Water						
Baseline monitoring (including trend analysis)	✓	✓	Likely	Yes	Valory would accept a condition in relation to this	Valory has taken the initiative to collect additional surface water data on site already. Valory expects that there will be an Annual Reporting requirement in the EPEA Approval in any case. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Modelling (predictive modelling for contaminant fate and transport)	✓	-	Not likely	No	This is not a requirement.	An assessment of water quality from nearby mines is in progress to assist in predicting contaminant fate and transport means. This is not expected to be a requirement in the Approval.
Triggers	✓	-	Not likely	No	This is not a requirement.	Triggers are not listed in EPEA Approvals. Limits are expected (see Table 4.3-A of draft EPEA Approval).
Toxicity testing/risk-based monitoring to establish baseline conditions of effluent	✓	-	Acute lethality is likely, but toxicity for baseline unlikely	Yes - Acute lethality	Valory would accept a condition relating to acute lethality testing	Baseline monitoring is in progress. As above, an assessment of water quality from nearby mines is also already in progress. EPEA Conditions for acute lethality are expected. Accordingly, a condition in the approval in relation to acute lethality should be acceptable to all parties.
Toxicity testing/risk-based monitoring to establish baseline conditions of sediment	✓	-	No	No	This is not a requirement.	Not a requirement.
Water quality - monitoring (includes monitoring selenium, heavy metals, polycyclic aromatic compounds, nutrients, and invertebrate community structure)	-	✓	Yes	Yes	Valory would accept a condition in relation to this	Monitoring including frequency and limits is expected to be set out in the EPEA Approval. Also, this information is expected to be required to be included in an Annual Report. Accordingly, a condition in the approval in relation to this should be acceptable to all parties.
Soils						
Baseline monitoring	✓	✓	Likely	Yes	Valory would accept a condition in relation to this	Baseline monitoring has been completed and will be expanded upon as appropriate. Annual reporting requirements are expected in the EPEA Approval. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.

Outcome Sought	AWA	CPAWS	Regulatory Requirement *[1]	Anticipated Regulatory Condition	Valory Conditionality Position	Status/Details/Comments
Modelling (predictive modelling for contaminant fate and transport) and toxicity testing/risk-based monitoring	✓	–	Not likely	No	This is not a requirement.	Baseline monitoring has been completed. Valory notes that this will be expanded upon as appropriate. Modeling and toxicity testing/risk-based monitoring is not a requirement and it is not appropriate that any conditions should be imposed in this regard.
Air						
Baseline monitoring	✓	✓	Likely	Yes	Valory would accept a condition in relation to this	An air monitoring station was installed at the site in November 2023 and has been continuously monitoring since this time. Valory will expand the monitoring capability to adhere to requirements of the EPEA Approval. Also, an Annual Report requirement is expected. Accordingly, a condition in the approval in relation to this should be acceptable to all parties.
Modelling using local monitoring stations	✓	–	Likely	Yes	Valory would accept a condition in relation to this	Modelling was carried out for the application and will be updated with local monitoring station results. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Triggers (using WHO and CAAQS as evaluation benchmarks)	✓	✓	Not likely	No	This is not a requirement.	Triggers are not listed in EPEA Approvals.
Terrestrial Wildlife						
Critical habitat evaluation/sweep (including species status updates)	–	✓	Likely	Yes	Valory would accept a condition in relation to this	Targeted surveys are in progress to evaluate important habitats for key wildlife species. Species status update is in progress. Given the minimal surface disturbance and the fact that this is an underground mine, any impacts are minimized in the extreme in any case. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Updating of baseline wildlife survey	–	–	Likely	Yes	Valory would accept a condition in relation to this	Updating of baseline wildlife is in progress including an enhanced game camera program. Given the minimal surface disturbance and the fact that this is an underground mine, any impacts are minimized in the extreme in any case. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Wildlife monitoring	–	✓	Likely	Yes	Valory would accept a condition in relation to this	Wildlife monitoring is currently underway and is expected to be part of the EPEA Approval including an Annual Report requirement. Accordingly, a condition in the approval in relation to this should be acceptable to all parties.
Vegetation						
Baseline monitoring	✓	✓	Likely	Yes	Valory would accept a condition in relation to this	An additional inventory survey focused on rare plants has been completed with reporting in progress. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Rare plant survey	–	✓	Likely	Yes	Valory would accept a condition in relation to this	An additional rare plant survey has been completed with reporting in progress. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Wetlands						
Wetland identification	–	✓	Yes	Yes	Valory would accept a condition in relation to this	A wetland identification study is in progress. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Wetland delineation and assessment and impact report	–	✓	Yes	Yes	Valory would accept a condition in relation to this	This will be completed following wetland identification. Given the minimal surface disturbance and the fact that this is an underground mine, any impacts are minimised in the extreme in any case. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Re-establishment of wetlands in monitoring plans	–	✓	Yes	Yes	Valory would accept a condition in relation to this	This will be included as part of Conservation and Reclamation Plan as per EPEA Approval. Accordingly, a requirement in the Approval in relation to this should be acceptable to all parties.

Outcome Sought	AWA	CPAWS	Regulatory Requirement *[1]	Anticipated Regulatory Condition	Valory Conditionality Position	Status/Details/Comments
Updating of wetland and aquatic habitat impact assessment to include surface water and groundwater flow modifications	–	✓	Yes	Yes	Valory would accept a condition in relation to this	This will be completed following wetland identification. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Fish and Fish Habitat						
Baseline fish/fish habitat assessment (using field-based methods), Definition/documentation of electrofishing protocols	–	✓	Likely	Yes	Valory would accept a condition in relation to this	It is expected that a fisheries monitoring program will be established as part of EPEA Approval and be provided in an Annual Report. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
DFO review	–	✓	N/A	N/A	Not under AER jurisdiction	Not under AER jurisdiction. Valory will work with the Government of Canada related to Federal matters.
Allowable harm assessment (*Species at Risk Act*)	–	✓	N/A	N/A	Not under AER jurisdiction	Not under AER jurisdiction. Valory will work with the Government of Canada related to Federal matters.
Impact analysis for dewatering and diversion activities (*Fisheries Act* and *Species at Risk Act*)	–	✓	N/A	N/A	Not under AER jurisdiction	Not under AER jurisdiction. Valory will work with the Government of Canada related to Federal matters.
Replacement of all closed-bottom culverts (oversized)	–	✓	Possibly	Yes	Valory would accept a condition in relation to this	Will be done. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Prohibition of instream construction activities during sensitive spawning or rearing periods	–		Yes	Yes	Valory would accept a condition in relation to this	Will be done. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Reclamation						
Reclamation plans for vegetation (inc. application of woody debris)	–	✓	Likely	Yes	Valory would accept a condition in relation to this	Will be done. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Reclamation plans for wetlands	–	✓	Likely	Yes	Valory would accept a condition in relation to this	Will be done. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Cumulative Effects and Risk Assessment						
Statistical methods for baseline conditions to define pre-development conditions and natural variability	✓	–	Not likely	No	This is not a requirement.	Valory is prepared to undertake to do this work even though it is not expected to be a requirement. Accordingly, a condition in the Approval in relation to this should not be required. However if the AER wished to impose a condition Valory would not object. On this basis, this should be acceptable to all parties. However Valory is conscious that doing so, this may set a precedent for the AER. Valory does not wish to create a precedent so this matter is to be left to the discretion of the relevant AER technical personnel.
Cumulative effects (including for selenium and tissue residue benchmarks)	✓	✓	No	No	This is not a requirement.	An Environmental Impact Assessment (EIA) was not required by the Province of Alberta or the Government of Canada. Valory will address selenium and fish tissue in the Annual Mine Wastewater Report as per the EPEA Approval. Also, given that this is an underground mine without any major overburden rock disturbance at all, and none of the surface waste rock stockpiles associated with open cut mines, any impacts and pathways for selenium and other leachates are minimized in the extreme in any case. Accordingly, not imposing any requirements in the Approval in relation to cumulative effects (including for selenium and tissue residue) should be acceptable to all parties.
Wildlife health risk assessment, including predictive modelling to chemical substances in environment	–	✓	No	No	This is not a requirement.	An EIA was not requiredby the Province of Alberta or the Government of Canada. See also comments above in relation to this being an underground mine. A condition in relation to this matter is not required.
Ecological risk assessment (using predictive modelling and including triggers and biological monitoring)	✓	✓	No	No	This is not a requirement.	An EIA was not required by the Province of Alberta or the Government of Canada. See also comments above in relation to this being an underground mine. A condition in relation to this matter is not required.
Human health risk assessment (using predictive modelling)	✓	–	No	No	This is not a requirement.	An EIA was not required by the Province of Alberta or the Government of Canada. Valory will conform to all Occupational Health and Safety regulatory requirements. In addition Valory intends to put in place industry leading training schemes and systems, and state of the art mining technology to minimize/mitigate or disrupt risks in the underground work space. A condition in relation to this matter is not required.

Outcome Sought	AWA	CPAWS	Regulatory Requirement *[1]	Anticipated Regulatory Condition	Valory Conditionality Position	Status/Details/Comments
Adaptive Management Plan (and Other Management Activities)						
Public transparency	–	✓	N/A	N/A	N/A	Valory will ensure that all information submitted to the AER will be available to the public upon request.
EPEA – Use of conservative benchmarks, identification and enforcement of release limits, regular reporting, and adaptive management responses	✓	–	Yes	Yes	Valory would accept a condition in relation to this	Valory expects that this will be part of the EPEA Approval. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.
Adaptive Management Plan (Mitigation and Monitoring Commitment, Water Management Plan)	–	✓	Likely	Yes	Valory would accept a condition in relation to this	Valory expects that this will be part of the EPEA Approval. Accordingly, a condition in the Approval in relation to this should be acceptable to all parties.

Notes:

***1. Based on Valory's knowledge and experience and precedent AER actions elsewhere**

Appendix B

Letter from the CEO of Valory Resources Inc. to Alberta Minister of Energy and Minerals, the Honourable Brian Jean, KC, setting out concerns with the regulatory review of the Applications

July 28, 2025

Honourable Brian Jean
Minister of Energy and Minerals
Members of Executive Council, Executive Branch
324 Legislature Building
10800 - 97 Avenue
Edmonton, AB T5K 2B6

RE: UNDERGROUND MINE 14, GRANDE CACHE, ALBERTA
ALBERTA REGULATORY PROCESS

Dear Minister Jean,

Valory Resources Inc. ("**Valory**") is concerned and disappointed with Alberta's regulatory processes. Valory is the owner of Summit Coal, which holds a Mine Permit, Mine Licence and other regulatory approvals to operate Mine 14 near Grande Cache, Alberta. There is a growing consensus that if Canadians are going to maintain their standard of living, timely and responsible development of our natural resources is critical. Facilitating the responsible development of our natural resources requires that regulators efficiently and effectively address the concerns of local stakeholders, including Indigenous communities, and adopt reasonable and sensible positions on who has the standing to trigger, and participate in, expensive and time-consuming public hearings.

Summit Coal's Mine 14 Project (the "**Project**") has earned the support of the MD of Greenview, six (6) Indigenous communities, and every local resident and business that has expressed a view to the Alberta Energy Regulator ("**AER**"). Despite this, the AER is delaying jobs in Grande Cache and construction of Mine 14 by holding a public hearing only because of requests by two environmental advocacy organizations who forcefully advocate against development of Alberta's natural resources, the Alberta Wilderness Association ("**AWA**") and the Canadian Parks and Wilderness Society ("**CPAWS**"). This is something we expected from the previous federal government, and we are dismayed to see such a position taken by an Alberta regulator.

That two advocacy organizations can trigger a public hearing process against the express wishes of the MD of Greenview that the hearing be cancelled is astonishing. The elected representatives of the community have told the AER that every delay to Mine 14 hurts the local economy, which is already suffering. The views of the MD and the economic challenges facing Grande Cache were entirely ignored in the AER's decision to hold a hearing only because of the AWA and CPAWS. It is important to note that the Wilmore Wilderness Foundation, a local charity committed to preserving the legacy of Alberta’s wild frontier is a supporter of the Project and was granted status as a limited participant (of the group of "local supporters"). The Wilmore Wilderness Foundation has written to the AER to encourage the Project approval. This group is headquartered in Grande Cache and has been working to preserve the cultural heritage, historic pack trails, campsites, gravesites, and trapline cabins of Alberta’s Eastern Slopes while practicing traditional land use and responsible stewardship in the Grande Cache area for over 20 years.

The AER possesses the technical expertise to review and assess whether resource projects can be responsibly carried out in the public interest. The AER's predecessor conducted a thorough and expert review of Mine 14 and determined it to be in the public interest in 2009. Valory is now seeking from the AER amendments to allow for the already approved Mine 14 to proceed. AER technical staff have

carefully reviewed the Mine 14 Project Applications, issued supplemental information requests, and obtained further technical information from Summit Coal. AER staff also drafted approvals for the Project in 2024, before the AER unexpectedly issued a Notice of Hearing, without ever telling Summit Coal why Mine 14 was referred to a hearing.

Despite all this previous technical work conducted by the AER, including drafting approvals, the AER's Hearing Commissioners are now insisting on continuing with a hearing because they expect AWA and CPAWS to "provide information at the hearing that can assist us in reaching our decision." These environmental advocacy organizations have no expertise in metallurgical coal or underground mining and are biased against natural resource development. In fact, they vehemently oppose all coal mining in the province and have seemingly made it their mission to end all coal mining in Alberta. They have no connection with the local community. This is clear on AWA's website where they erroneously labeled a photograph of the CST Coal processing plant being on Caw Ridge, when Caw Ridge is over 20 km away and the processing plant is actually in the Smoky River valley.

The AER issues approvals every day without the benefit of "information" from AWA or CPAWS. We are at a loss to understand what assistance these groups offer in respect of Mine 14 and why the AER feels it requires assistance from these advocacy groups to finish its job. Especially since the local wilderness foundation and local Indigenous groups with decades of knowledge in the Grande Cache area support the project.

Also of significant concern is that the AER has refused to tell Valory if it will be responsible to pay the costs and legal fees for AWA and CPAWS to attend the hearing and support their advocacy against coal mine development in Alberta. The AER typically requires proponents to pay the hearing costs of those raising concerns at AER hearings. This makes sense when local landowners and impacted Indigenous groups participate in hearings and offer constructive solutions. However, Valory is not prepared to pay environmental advocacy groups to participate in an unnecessary hearing so that they can advance their anti-coal development agenda.

Valory has reached agreements with every Indigenous group that has expressed concerns with Mine 14. This includes the Indigenous groups that the Alberta Consultation Office (ACO) determined may be impacted by Mine 14, which Valory had been working with for many years. In addition, Valory reached agreements with 4 additional Indigenous groups. These groups were not recognized by the ACO as having any legal rights affected by Mine 14. The AER ignored the ACO's expert advice and very late in the regulatory process, in February of 2025, determined that these 4 Indigenous groups had a right to a public hearing. Despite the ACO's findings, Valory reached agreements with these groups on an expedited schedule. The refusal of the AER to recognize the role and expertise of the ACO creates significant legal uncertainty for proponents and is inconsistent with the intended regulatory framework in Alberta.

Mine 14 is fully supported by the MD of Greenview and the local community. In fact, the MD of Greenview, and residents and businesses in Grande Cache, have asked the AER to cancel the hearing and approve Mine 14. Despite this, the AER is forcing Mine 14 to go through an expensive and time-consuming hearing because of two environmental advocacy groups. We are not aware of any other jurisdiction where this would be permitted to happen.

Mine 14 represents a critical growth opportunity for Alberta. It will generate substantial employment, taxes, and royalties, while establishing a valuable export asset for our metallurgical coal, a critical

component in global steel production. Mine 14 is an underground steelmaking coal project, which is consistent with the Coal Industry Modernization Initiative that the province is developing. The Grande Cache community, heavily reliant on natural resource development including steelmaking coal, and local Indigenous communities stand to benefit significantly from the economic activity this Project will generate. The AER is unjustifiably putting all this at risk by ignoring the extensive support for the Project and instead prioritizing the interests of two organizations that are staunchly opposed to coal development and resource development in general.

CLOSURE

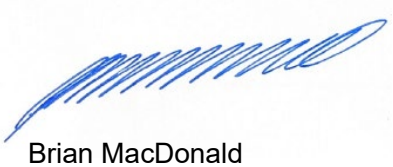
Every unnecessary permitting delay puts the Project at risk. A hearing diverts resources away from the local community and Indigenous groups. Valory will be required to incur significant and open-ended hearing costs, even though it has secured local community and Indigenous support for the Project. This is unacceptable and inconsistent with efficient and effective regulatory review.

Moreover, the continued regulatory delays mean construction delays, delays of jobs for local community members, benefits for local businesses, etc.

We are therefore considering all our options as they pertain to the future of Mine 14. We are available to meet with you at your convenience to discuss our concerns and frustrations.

Yours sincerely,

VALORY RESOURCES INC.



Brian MacDonald
President

CC: Duncan Au, Board Chair, AER
Rob Morgan, Chief Executive Officer, AER

Appendix C

Letters from the only local Indigenous groups, the Aseniwuche Winewak Nation and the Mountain Metis Community Association, confirming that they each support the timely approval of the Applications without a hearing so that their communities can benefit from Mine 14

ASENIWUCHE
WINEWAK NATION

August 5, 2025

Via Email: SOC@aer.ca

Alberta Energy Regulator
Suite 1000, 250 – 5th Street SW
Calgary, AB T2P 0R4

Attn: Regulatory Applications Team

Re: Summit Coal Inc. ("Summit") Mine 14 Project (the "Project")
Application Nos. Coal Conservation Act 1945552, 1945553; Environmental Protection and Enhancement Act 001-00496728; Water Act 001-00496729 and 001-00496730; and Public Lands Act 32212208 and 32230703 (the "Applications")

I write as President of Aseniwuche Winewak Nation ("AWN") regarding the above-noted Applications. We understand from recent correspondence that Summit has requested to suspend the upcoming hearing for the Project.

As we stated in our May 2, 2024 correspondence with the Alberta Energy Regulator and later confirmed with further correspondence on November 19, 2024:

> Since the SOCs were filed, AWN has been working with Valory Resources Inc. ("Valory"), Summit and its representatives to identify and understand potential impacts that the Applications and the Project may have on AWN's members in the Grande Cache area, and to develop measures and strategies to address these potential impacts. To this end, AWN and Valory have entered into an agreement which AWN believes adequately addresses the concerns identified in the SOCs.

We note that the Applications are on land immediately adjacent to AWN's primary land base and AWN has the closest proximity to Mine 14 of any Indigenous group. The agreement reached with Valory directly addresses any potential direct and adverse impacts on AWN.

AWN is in support of the Applications, takes the position that a hearing is unnecessary, and supports Summit's request to suspend the upcoming hearing.

Sincerely,

David MacPhee
President, Aseniwuche Winewak Nation

Cc. Shaun McNamara, Summit Coal Inc.
Martin Ignasiak, KC, Bennett Jones LLP
Michelle Moberly, Executive Director, AWN
Jaymie Campbell, AWN
Blair Feltmate, JFK Law LLP

miyo wicehtowin

Mountain Métis Community Association

Date: August 4, 2025

To:

Rob Morgan

Chief Executive Officer, Alberta Energy Regulator

rob.morgan@aer.ca

CC:

Valory Resources Ltd.

sls@valoryresources.com

Support for Valory Resources & Request to Reconsider the Proposed Hearing

Dear Mr. Morgan,

As President of the Mountain Métis Community Association, I am writing to express our strong support for Valory Resources and to respectfully request that the Alberta Energy Regulator reconsider the necessity of the proposed hearing.

Our community has entered into a formal Impact Benefit Agreement with Valory Resources, signed in December 2023. This agreement was not signed lightly it was the product of meaningful dialogue, trust-building, and shared values between our Nation and Valory's leadership. It outlines clear areas of collaboration including employment, environmental stewardship, and community benefit. Since the beginning of our relationship, Valory has shown a consistent willingness to engage openly with us, to listen to our concerns, and to work alongside us in a spirit of collaboration.

The land in question lies within the traditional territory of our Mountain Métis people, who have stewarded and relied upon this region for generations. Our connection to this land is both historical and ongoing, and we take seriously our responsibility to protect it while pursuing opportunities for our people.

For our community, this project represents more than resource development. It represents hope, opportunity, and a future driven by self-determination. It brings the potential for local employment, skill development, and economic stability. Delaying this project places at risk immediate opportunities that our people have long awaited.

That is why we are deeply concerned about the panel's decision to proceed with a hearing despite the established IBA and the cooperation already in place. As a recognized Métis

Nation within this territory, we hold constitutionally protected rights under Section 35 of the Canadian Constitution. These rights include the recognition of our role in decisions that directly affect our people and our lands. Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples, which both Canada and Alberta have endorsed, affirms our right to be active partners in shaping the future of our territories.

The decision to move forward with a hearing creates the impression of conflict where, in fact, collaboration already exists. It introduces unnecessary delays and uncertainty not just for Valory, but for us as a Nation that has invested time, trust, and hope into this process.

We believe this project can serve as a model of what respectful Indigenous–industry partnerships should look like. We want to see it move forward not for the benefit of Valory alone, but for the benefit of our people. For our children. For our future.

We respectfully ask the Alberta Energy Regulator to recognize the strength of the relationship we've built and to respect the commitments already made. We do not believe a hearing is necessary or appropriate in this context, and we urge you to reconsider.

Should it be helpful to the panel's understanding, I would welcome the opportunity to meet and offer further clarity and context on behalf of our community.

Thank you for your time, and for your consideration of our Nation's voice.

Sincerely,
Joshua Hallock
President
Mountain Métis Community Association
mna1994@telus.net | (780) 827-2002

Appendix D

Submissions from the MD of Greenview to the AER all confirming that the MD of Greenview is strong support of the Applications being approved without a hearing on the basis that Mine 14 is critical to the economic future of Grande Cache

Municipal District of GREENVIEW

December 13, 2024

Elaine Arruda, Hearing Coordinator
Alberta Energy Regulator
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Email: Hearing.Services@aer.ca
Phone: (403) 297 7365

Attention: Elaine Arruda

Subject: Summit Coal Hearing

On behalf of the Municipal District of Greenview, we respectfully submit our request to participate in the upcoming hearing regarding the Summit Coal Mine 14 Project. We have thoroughly reviewed the project and have had extensive engagement with Summit, which has demonstrated transparency and a strong commitment to addressing all environmental and community considerations.

The Municipal District of Greenview does not have any concerns regarding the Mine 14 Project. Summit Coal has been open and proactive in providing detailed information about the project, and we are confident that the development meets the necessary environmental standards and aligns with the community's values. Therefore, a formal statement of concern has not been filed.

The Municipal District of Greenview is directly impacted by the decision on the application. If the Mine 14 Project is not approved, it will have a significant negative effect on the economic stability and sustainability of Grande Cache. The approval of the project is crucial to the Hamlets's future, as it will bolster the local economy, create job opportunities, and bring new growth and development to the region.

Our interest lies in the economic and community benefits that the Mine 14 Project will bring to the Grande Cache region. As the local governing body, we are committed to supporting projects that promote economic diversity, job creation, and long-term community development. The approval of this project is key to maintaining a stable and thriving community.

Our participation will assist the AER by providing a clear, unified voice from the local government, which supports the project's potential to bring economic stability and growth to the region. We can offer insights into the community's support for the project and the importance of responsible resource development for the long-term sustainability of the area.

The Municipal District of Greenview has a direct interest in the positive outcomes that the Mine 14 Project will bring to Grande Cache. The project is expected to create approximately 150-200 high-paying jobs and provide additional benefits to the community through investments in infrastructure and community facilities.

We advocate for the swift approval of the Mine 14 Project, recognizing its potential to drive economic development and job creation in the Grande Cache region. We firmly believe that the project has met all environmental requirements and that its positive impacts will far outweigh any concerns.

Our participation will focus on emphasizing the significant benefits of the Mine 14 Project for the local economy, community sustainability, and job creation. We aim to provide a clear statement of support based on our ongoing collaboration with Summit and the project's alignment with Greenview's long-term goals.

Summit Coal has worked closely with the Municipal District of Greenview throughout the planning process. They have demonstrated transparency and have addressed all environmental and community considerations. We have no outstanding concerns, and we fully support the project's approval. We have submitted letters of support in the past for this project in March, October, and November of 2024.

Thank you for considering our request to participate in this hearing. We look forward to contributing to the process and ensuring that the Mine 14 Project proceeds as planned, bringing valuable economic and social benefits to the Grande Cache region.

This request is being submitted by Reeve Tyler Olsen, on behalf of Greenview Council.
Tyler Olsen 780-827-6651
tyler.olsen@mdgreenview.ab.ca

Sincerely,

Tyler Olsen
Reeve, MD of Greenview

MUNICIPAL DISTRICT OF GREENVIEW

October 1, 2024

Attention: Alberta Energy Regulators

Subject: Mine 14 Project

I am writing on behalf of the Municipal District of Greenview to express our endorsement of the Mine 14 Project in Grande Cache, Alberta. This project resonates with our established position statement, which acknowledges the inherent challenges associated with metallurgical coal mining within the Province of Alberta. We firmly believe that Mine 14 is committed to striking a balance between responsible mining practices and our outlined principles.

Our position statement underscores key principles, encompassing Environmental (water, air, land) and Societal Awareness. We recognize the challenges posed by metallurgical coal mining and advocate for clear regulations to rigorously assess impacts on local communities, the environment, and the values of Indigenous Peoples.

Emphasizing Reclamation Fund Assurance, we stress the importance of securing sufficient funds for proper environmental recovery post-mining activities. This financial commitment ensures the long-term sustainability of mining operations.

Additionally, our commitment to respecting Indigenous Values and Rights is unwavering. We advocate for meaningful consultation and collaboration with Indigenous communities, ensuring their traditions are respected and concerns addressed.

However, we are concerned with the length of time it is taking for the Alberta Energy Regulator (AER) to make its decision regarding the approval of the Summit Coal Mine 14 project. This delay is holding up much-needed investment and employment opportunities in Grande Cache, both of which are vital to the region's economic stability. The Municipal District of Greenview strongly supports this project, and it is critical that the approval process moves forward to unlock the benefits that Mine 14 will bring to the region.

In essence, the Municipal District of Greenview supports the responsible mining of metallurgical coal, as exemplified by the Mine 14 Project. We see it as a transformative initiative with the potential to stimulate economic diversity, create job opportunities, and maintain community stability while upholding our commitment to environmental stewardship, Indigenous collaboration, and responsible resource management.

Once operational, Mine 14 is projected to boost the Grande Cache economy by creating approximately 150-200 direct, high-paying jobs, with positive ripple effects throughout the community and region. Valory Resources has already signed community initiative contracts, ensuring operational funding for essential facilities such as our medical clinic and community golf course for the foreseeable future. Backed by 33 letters of support from the community, Mine 14 represents the much-needed catalyst for growth in our region.

Thank you for considering our perspective, and we look forward to the positive impact that responsible mining practices can bring to our community.

Sincerely,

Tyler Olsen
Reeve, MD of Greenview

cc:
Minister Brian Jean
AER CEO, Laurie Pushor
VP Valory Resources, Scott Stensrud
Greenview Council

Municipal District of GREENVIEW

June 23, 2025

Dear Ms. Arruda,

RE: Summit Mine, AER Proceeding 449

On behalf of the Municipal District of Greenview I am requesting that the hearing for Summit Mine, AER Proceeding 449, be canceled.

We believe that with all indigenous SOC being removed and the Nations all withdrawing from the proceeding this satisfies all parties that are directly affected. Having parties that are not directly affected by Summit Mine 14 play a major role in holding up the permitting and a distinct possibility of the whole project being cancelled is very alarming.

With the already stringent permitting process and all other permits being issued, The MD of Greenview feels that holding this project up longer hurts the local economy every day this progresses. Jobs, housing prices, and retail businesses have been waiting 2 years in an already drawn out process. Holding up this project continues to keep the Grande Cache economy in speculation and in times of multiple government decisions holding our beautiful hamlet in a very precarious spot. Summit Mine 14 has met all local concerns and has now satisfied all indigenous concerns.

This project has exponential benefits for our community and has now proven it has satisfied all directly and adversely effected groups. Holding a hearing for only two non local or directly effected groups does not show proper process. If the Directly effected groups had not withdrawn, then both AWA and CPAWS could have standing to voice their concerns, but alone they cannot show direct or adversely effected and only stand to cause direct and adverse harm to the Summit Mine 14 and Grande Cache.

With local partnerships and agreements waiting in limbo, the Municipal District of Greenview respectfully asks that the AER cancel the Summit Mine 14, Proceeding 449.

Sincerely,

Tyler Olsen
Reeve, MD of Greenview

Municipal District of GREENVIEW

July 3, 2025

Re: Summit Coal Inc., Mine 14 Underground Coal Mine (Summit)
Applications 1945552, 1945553, 001-00496728, 001-00496729, 001-496730, 32212208 and 32900389 (the "Mine 14 Applications")
Summit Motion

Dear Hearing Coordinator,

On behalf of the MD of Greenview, I would like to respond to the motion put forward by Summit regarding Mine 14. The MD of Greenview fully supports this motion to cancel the upcoming hearing. We have stood beside Summit Coal throughout the entire permitting process, recognizing that they have prioritized both the environment and the best interests of the community from the beginning.

With all Indigenous groups having withdrawn, this concludes the involvement of all parties that would be directly and adversely affected. All remaining participants in the hearing are either supportive of Summit receiving the permit or are not directly and adversely affected. Continuing with the hearing would simply waste government resources at multiple levels and disregard the position of the local community and the Indigenous groups who now all support this project. In fact, proceeding with the hearing would directly and adversely affect those very groups and communities who have expressed their support for Summit.

In closing, the process has been properly followed, and it is now clear that all affected groups have been heard and their concerns addressed. The MD of Greenview fully supports the motion put forward by Summit Coal to cancel the hearing for Mine 14.

Sincerely,

Tyler Olsen
Ward 9 Councillor for Grande Cache, Reeve for MD of Greenview

Municipal District of GREENVIEW

Hearing Coordinator
Alberta Energy Regulator
Suite 1000, 250 – 5 Street SW
Calgary, AB T2P 0R4

RE: Support for Request to Suspend Hearing – Summit Coal Mine 14

Dear Hearing Coordinator,

On behalf of the Council of the Municipal District of Greenview, I am writing to express our full support for Summit Coal's request to suspend the upcoming hearing for the Mine 14 Project near Grande Cache, Alberta.

Greenview has stood alongside Summit Coal throughout the regulatory process and continues to support this project, recognizing its importance to our region's economic revitalization and long-term sustainability. The level of community and Indigenous support for Mine 14 is significant and well-documented. All Indigenous communities that previously had concerns have since withdrawn from the hearing, and many have formally endorsed the project. Local businesses, residents, and respected community organizations—including those with longstanding commitments to land stewardship—have all voiced their support for this development.

Given this broad-based support and the considerable technical review already conducted by AER staff—including the drafting of approvals—the continuation of a hearing at this point is both unnecessary and unjustified. Proceeding at the request of two environmental advocacy organizations, who have no direct connection to the affected area, represents a clear misalignment with the principles of efficient and responsible regulatory oversight.

Greenview is deeply disappointed with this decision by the AER given that it may result in long-standing and irreversible impacts to our community and regional economy. By allowing the hearing to proceed in the absence of any directly affected opposition, the AER is jeopardizing much-needed job creation, delaying investment, and creating unnecessary barriers to economic stability for Grande Cache and the surrounding region.

We echo Summit Coal's concerns that this process undermines the voices of Indigenous communities and local residents who have actively engaged and now fully support the project. It diverts limited public and private resources away from meaningful outcomes and damages investor confidence in Alberta's regulatory system.

In alignment with Summit Coal's position, we urge the AER to approve the request for suspension. This will provide the proponent the necessary time to reassess the project's next steps, without incurring further costs associated with a hearing that serves no direct public interest.

Greenview remains committed to supporting responsible resource development that respects environmental values, supports Indigenous partnerships, and strengthens rural communities. We trust the AER will reconsider its approach and demonstrate a more balanced and pragmatic path forward.

Sincerely,

Tyler Olsen
Reeve, Municipal District of Greenview
Ward 9 Councillor – Grande Cache

cc:
Hon. Brian Jean, Minister of Energy and Minerals
Duncan Au, Board Chair, Alberta Energy Regulator
Rob Morgan, Chief Executive Officer, Alberta Energy Regulator

This is exhibit "J" referred to in the affidavit
of Gloria Wozniuk affirmed before me on
September 19, 2025.

Commissioner for Oaths in and for
the Province of Alberta

PRINT NAME AND EXPIRY OR
LAWYER/STUDENT-AT-LAW

Alberta Energy Regulator

Hearing Commissioners' Office

Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

aer.ca

Proceeding 449
August 8, 2025

To: Martin Ignasiak, KC Bennett Jones LLP
For: Summit Coal Inc.

To: Adam Bordignon, Napoli Shkolnik Canada
For: Canadian Parks and Wilderness Society Northern Alberta chapter (CPAWS NAB)

To: Adam Bordignon, Napoli Shkolnik Canada
For: Alberta Wilderness Association (AWA)

To: Tyler Olsen
For: Municipal District (MD) of Greenview

[By email only]

Re: Summit Coal Inc., Mine 14 Underground Coal Mine (Summit)
Applications 1945552, 1945553, 001-00496728, 001-00496729, 001-496730, 32212208 and 32900389 (the "Applications")
Panel Decision on Motion for Adjournment Filed by Summit Coal Inc.

Dear Parties:

As the panel of Alberta Energy Regulator (AER) hearing commissioners presiding over this proceeding (the panel), we write to you to provide our decision on Summit's July 29, 2025, adjournment motion (Motion for Adjournment) made pursuant to section 44 of the *Alberta Energy Regulator Rules of Practice (Rules)*. Following review and consideration of the submissions provided by the Municipal District of Greenview (MD of Greenview), Canadian Parks and Wilderness Society Northern Alberta chapter (CPAWS NAB) and Alberta Wilderness Association (AWA), we have decided to partially grant Summit's request to adjourn the hearing for the reasons set out below. We are aware that Summit has filed a separate motion for reconsideration (Motion for Reconsideration) that is currently under review in a separate process and will not be put on the record of this proceeding at this time.

In our review of the materials submitted by the parties in response to the Motion for Adjournment, we note that the Chief Executive Officer (CEO) and Board Chair of the AER were copied on one submission, and a letter to Alberta's Minister of Energy was attached to another submission. It appears necessary to clarify for the parties our role in this proceeding.

We, the hearing commissioners constituting this hearing panel, are independent decision makers authorized under section 12 of the *Responsible Energy Development Act* (*REDA*) to carry out hearings of applications and make decisions in the name of and on behalf of the AER.[1]

[1] *O'Brien, Re,* 2021 ABAER 3 at para 27.

The Alberta Legislature delegated to the AER the power, duty, and function to consider and decide applications under energy resource enactments in respect of mines for the recovery and processing of mineral resources, among other powers.[2]

Where the AER is to conduct a hearing in respect of applications such as the Mine 14 Applications, the hearing must be conducted on behalf of and in the name of the Regulator by a panel of one or more hearing commissioners, and a decision of a panel of hearing commissioners on a hearing is a decision of the AER.[3] Neither the CEO nor a director of the AER may be appointed as a hearing commissioner,[4] and the board of directors of the AER may not authorize a person to carry out a power, duty or function of the Regulator that is prescribed by the regulations – in particular in this case, the conduct of hearings by hearing commissioners.[5]

Accordingly, we, the panel of hearing commissioners, have been delegated the power, duty, and function to conduct this hearing of the Applications. The participants to this hearing are Summit, as applicant, the full participants CPAWS NAB, AWA, and the MD of Greenview, and the Limited Participants identified in the schedule to this decision. The panel reminds all participants that correspondence and submissions in this proceeding should be addressed to the panel and to the parties, and not to external persons.

Background and Submissions

In the Motion for Adjournment Summit asks that we adjourn the hearing *sine die*.

Summit explains in the Motion for Adjournment that it requires an adjournment to reassess whether to proceed with the Applications and the Mine 14 Project, to assess whether to apply for a reconsideration or permission to appeal of the hearing decision, and because Summit was unable to comply with the hearing schedule that required its reply submission by July 30, 2025. The Motion for Adjournment also contains a note that Summit would provide an update and its reply submission to the AER within 20 days of a ruling on this Motion. Finally, Summit submitted that AWA and CPAWS are not prejudiced by an adjournment because they oppose approval of the Applications.

On July 30, 2025, we set a process to receive motion responses from full participants and a reply from Summit to the responses from full participants. We also suspended the submission schedule until further notice.[6] Motion responses from the MD of Greenview[7] and CPAWS NAB in conjunction with AWA[8] were received on July 31 and August 1, 2025, respectively. The MD of Greenview supported the adjournment. CPAWS NAB and AWA opposed the adjournment.

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[2] *REDA* s 2(2)(a).

[3] *REDA* s 12(1), (3).

[4] *REDA* s 11(3).

[5] *REDA* s 6(2), (3); *Alberta Energy Regulator Rules of Practice,* s 8 (*Rules*).

[6] Exhibit 91.0. Exhibits can be accessed at https://apps.public.aer.ca/hearing/

[7] Exhibit 92.0.

[8] Exhibit 93.0.

In their response, CPAWS NAB and AWA argued that Summit's reasons for an indefinite adjournment are not valid and create a risk of delaying the hearing when Summit has consistently advocated for a timely and efficient review of the Applications. CPAWS NAB and AWA submitted that the mere possibility of reconsideration, appeal or withdrawal of applications does not justify an adjournment *sine die*. CPAWS NAB and AWA further argued that adjourning the hearing *sine die* would prejudice CPAWS NAB and AWA's ability to fully and meaningfully participate and undermine their procedural rights. In particular, CPAWS NAB and AWA require significant time and resources to participate, and an adjournment *sine die* would disproportionally affect them as non-profit, public interest organizations. They cited that they lack the financial or institutional resources available to Summit. Finally, CPAWS NAB and AWA argued that further adjournment would afford additional time for the Summit to pursue alternative avenues that seemingly circumvent this process.

Summit filed its reply on August 6, 2025.[9] In its reply, Summit responded to CPAWS NAB and AWA's arguments by advising that it had filed a Motion for Reconsideration with the CEO of the AER and therefore the request was not a "mere possibility". Summit maintained its adjournment request and further requested that should its Motion for Reconsideration be denied, that the proceeding resume in a timely manner.

Panel Decision

Summit's request for an adjournment is partially granted. In order to ensure that this proceeding is heard expeditiously, we decline to adjourn the hearing *sine die* and instead grant an adjournment to **February 9, 2026.** On or before this deadline, Summit must provide an update to tell the panel whether the Motion for Reconsideration has been decided, its outcome, and if there is no reconsideration, whether Summit intends to continue with the proceeding 449 hearing or will withdraw the Applications.

We are not authorized to hear the Request for Reconsideration and would not be aware of any deliberations therein. Summit is directed to provide an update to the parties and the panel as to the status of the reconsideration, **no later than 4:00 pm on August 21, 2025**. If there has been no decision on the Request for Reconsideration by this date, we will need to vacate the October 2025 hearing dates.

Future scheduling of the proceeding 449 hearing will be dependent on the availability of all the parties and the hearing team including AER subject matter experts, other scheduled AER hearings, and other logistical considerations (e.g. availability of hearing venues). For clarity, this means that if the October 2025 dates are vacated as a result of the update on August 21, 2025, and the hearing proceeds at a later date, new hearing dates are likely to be in mid-to-late 2026.

There are numerous factors that must be re-arranged if the hearing is to be re-scheduled, especially with so much of the process already completed. Given the opposition to the Motion for Adjournment, the repeated assertions from Limited Participants and the MD of Greenview that the hearing should be held in a timely manner, and Summit's request in reply that should its Request for Reconsideration be denied that the proceeding resume in a timely manner, the panel will endeavour to reschedule the hearing expeditiously

[9] Exhibit 94.0.

should rescheduling become necessary, but again will not be able to hold the October hearing dates past August 21, 2025.

Reasons for Decision

Section 46 of the *Rules* provides for broad discretion when a panel is reviewing a request for adjournment:

> *46 The Regulator may, on its own initiative or on motion by a party, adjourn a proceeding on any terms that the Regulator considers appropriate. It is within the discretion of the panel to grant an adjournment on terms that it considers appropriate.*

The issues to consider on determining how to use this discretion broadly include the purpose of the hearing,[10] and what prejudice results from the decision to grant or not grant the adjournment.[11]

The purpose of this hearing was outlined in the Notice of Hearing.[12] This hearing is a process by which the Applications of Summit to conduct energy resource activities (Mine 14) near Grande Cache is the purpose of this hearing. An adjournment does not change that purpose. The Applicant has asked for time to better determine whether or not its Applications should proceed, and if so, in what legal venue. This request is at the heart of the purpose of this hearing.

Furthermore, we are not convinced that AWA and CPAWS NAB are prejudiced by the adjournment. Under *REDA*, a party may request a reconsideration of the AER or request that the Court of Appeal of Alberta hear an appeal. We see no evidence that suggests that the procedural steps of this hearing are undermined or otherwise circumvented as a result of Summit availing itself of these legal steps. The delay, such that it is, impacts the speed with which we are able to determine the Applications.

We acknowledge the concerns of AWA and CPAWS NAB, but note that unless this panel is directed otherwise, the Applications cannot proceed without this hearing. Furthermore, AWA and CPAWS NAB have submitted their concerns onto the record of this proceeding from which a decision will be made. What remains on the schedule is the reply to those submissions from Summit, the submissions of the Limited Participants (and Summit's reply if adverse in interest) and any preliminary motions prior to the oral hearing. The adjournment to a date certain remedies any potential prejudice that AWA and CPAWS NAB may suffer.

Finally, *REDA* and the *Rules* provide for this panel to consider costs, and affords parties a process by which their cost claims are assessed. As a reminder, hearing participants may be eligible to submit a cost claim to recover some of the costs of their participation under the *Alberta Energy Regulator's Directive 031: REDA Energy Cost Claims*. The rules regarding an advance of funds and interim award of costs are set out in sections 59 and 61 (respectively) of the *Rules*. We are not persuaded that limited resources of any of the parties is sufficient to demonstrate that an adjournment requested by the Applicant should not be granted.

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[10] *Lameman v Alberta*, 2011 ABQB 40 at paras 25-27, citing *R v Barrette*, 1976 CanLII 180 (SCC), [1977] 2 SCR 121, 68 DLR (3d) 260 at para 6 and *Khimji v Dhanani* (2004), 2004 CanLII 12037 (ON CA), 69 OR (3d) 790 at para 14.

[11] *Ibid,* para 33.

[12] Exhibit 3.0.

Given that Summit filed the Motion for Reconsideration, its submissions in respect of requiring an adjournment for the purposes of seeking a reconsideration of the AER's decision to set its Applications down for a hearing are not speculative or premature. Since we are independent decision-makers, we are not in a position to know the outcome of the reconsideration motion made to the CEO. As such, an adjournment is necessary until such time as a decision is made on the reconsideration motion.

An essential consideration was whether any of the parties will be significantly prejudiced by our decision to adjourn proceeding 449. In our view, none of the parties are significantly prejudiced by this decision. The prejudice CPAWS NAB and AWA allege is financial in nature and could potentially be offset by the costs process.

Conclusion

We have considered the Motion for Adjournment and concluded for the reasons set out above, the hearing is adjourned until **February 9, 2026**. We are partially granting Summit's request for adjournment, with a requirement for an update in two weeks, because it is in the interest of all parties to conduct this hearing in an efficient and timely manner. To ensure that October hearing dates are not vacated prematurely, Summit is directed to provide an update to the parties and the panel as to the status of the reconsideration, **no later than 4:00 pm on August 21, 2025**.

We remind all parties that the submission schedule remains suspended. Should the hearing be reactivated, the panel will set a new submission schedule for the remaining submissions, including Summit's reply. We do not anticipate providing an opportunity for parties to update submissions that were filed previously. If parties wish to request an opportunity to update their hearing submissions, they will need to file a motion in accordance with section 44 of the *Rules*.

Any motion must be submitted to hearing.services@aer.ca, with copies to all parties, after which the panel will set an appropriate motion submission schedule in due course.

Sincerely,

Shona Mackenzie
Presiding Hearing Commissioner

Cindy Chiasson
Hearing Commissioner

Andrew MacPherson
Hearing Commissioner

cc: Shauna Gibbons and Bronwhyn Simmons, AER counsel for the panel
Elaine Arruda and Andrew Lung, AER hearing coordinators
Full Participants and Limited Participants, as identified in the attached 'Schedule of Participants for AER Proceeding 449'
Tim MacDonald, ACO

Schedule of Participants for AER Proceeding 449

Full Participants

Alberta Wilderness Association

CPAWS – Northern Alberta Chapter

Municipal District of Greenview

Limited Participants

Grande Cache Hotel

Grande Cache Golf and Country Club

Ridgeview Restaurant and Lounge

Willmore Wilderness Foundation

People and Peaks Productions Ltd.

Grande Cache Chamber of Commerce

Spruce & Bean

Eagle Rock Holdings

Busy Beez Play Zone Ltd.

Richard Riva Cambrin

Bob's Trucking Ltd.

Grande Industrial Ltd.

Macro Properties

McNeil Construction

C.C.'s Welding and Fabrication Ltd.

Grande Cache Automotive

Verity LLP

This is exhibit "K" referred to in the affidavit of Gloria Wozniuk affirmed before me on September 19, 2025.

Commissioner for Oaths in and for the Province of Alberta

PRINT NAME AND EXPIRY OF LAWYER/STUDENT-AT-LAW

HON. JONATHAN DENIS K.C. PROVINCE NOTARY PUBLIC ALBERTA BARRISTER & SOLICITOR

Alberta Energy Regulator

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
tel 403-297-8311
aer.ca

Request for Reconsideration
August 11, 2025

By email only

Canadian Parks and Wilderness Society (CPAWS);
Alberta Wilderness Association (AWA)
Attention Adam Bordignon

The Municipal District (MD) of Greenview
Attention Tyler Olsen

Summit Coal Inc (Summit)
Attention: Martin Ignasiak, KC

Dear Parties:

RE: Request for Reconsideration of July 23, 2025, Hearing Panel Decision
Summit Coal Inc.
Proceeding 449

The Alberta Energy Regulator (AER acknowledges receipt of the motion by Summit Coal Inc. dated August 6, 2025 requesting that the AER CEO reconsider the decision dated July 23, 2025 wherein the Hearing Panel assigned to AER Proceeding 449 (the "Panel") denied Summit's motion to cancel the hearing in respect of the Applications.

Request for Reconsideration

The AER has authority to reconsider its decisions pursuant to section 42 of the *Responsible Energy Development Act* (*REDA*). That section states:

> The Regulator may, **in its sole discretion**, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision.
>
> [emphasis added]

As indicated by section 42, the AER has sole discretion to reconsider a decision made by it. That section does not provide an appeal mechanism that is designed to be applied-for and utilized by industry or members of the public: other provisions provide this opportunity. The AER will only exercise its discretion to reconsider a decision outside under extraordinary circumstances, where it is satisfied that there are exceptional and compelling grounds to do so.

The AER requests that **CPAWS, AWA, and the MD of Greenview** provide their submissions in response to Summit's Request by no later than **4:00 p.m. on August 15, 2025**. Submissions should address whether the AER should exercise its discretion to reconsider, **and,** if the AER decides to reconsider, whether or not it should vary the decision as requested by Summit.

Summit is requested to provide its reply submission by no later than **4:00 p.m. on August 19, 2025.**

The parties are requested to direct all communications relating to this matter to the Regulatory Appeals Coordinator by e-mail at RegulatoryAppeal@aer.ca. Further, **the parties are requested to copy each other on all communications relating to the reconsideration.**

Please be aware that pursuant to section 49 of the *AER Rules of Practice (Rules*) all documents filed will be placed on the public record.

Sincerely,

for: Aimée Hockenhull
Regulatory Appeals Coordinator

Cc: Rob Morgan, CEO

This is exhibit "L" referred to in the affidavit
of Gloria Wozniuk affirmed before me on
September 19, 2025.

Commissioner for Oaths in and for
the Province of Alberta

HON. JONATHAN DENIS K.C.
NOTARY PUBLIC
PROVINCE OF ALBERTA
BARRISTER & SOLICITOR

PRINT NAME AND EXPIRY OF
LAWYER/STUDENT-AT-LAW

Municipal District of GREENVIEW

August 11, 2025

RE: Summit Coal – Mine 14

Request for Reconsideration and Cancellation of Hearing

Dear Regulatory Appeals Coordinator,

The Municipal District of Greenview has reviewed the Alberta Energy Regulator's request for written submissions regarding Summit Coal's request to cancel the hearing for Mine 14.
It is our position that the AER should exercise its discretion to reconsider its previous decision to proceed with the hearing. Should the AER decide to reconsider, we strongly support varying the decision as requested by Summit and cancelling the hearing in its entirety.

Our reasoning is fully outlined in our previous letter of August 6, 2025, submitted as part of the written record for this proceeding. In that correspondence, we detailed our concerns that proceeding with the hearing, despite broad-based local and Indigenous support and the absence of any directly affected opposition, represents an unnecessary use of resources, creates long-term economic risk for our community, and undermines the principles of efficient and effective regulation.

We respectfully request that the AER give due weight to the views of the local community and Indigenous groups who have been actively engaged and who now fully support the project. We further urge the AER to cancel the hearing in order to avoid needless delays, costs, and economic harm to the Grande Cache region.

Sincerely,

Tyler Olsen
Reeve, Municipal District of Greenview

This is exhibit "M" referred to in the affidavit
of Gloria Wozniuk affirmed before me on
September 19, 2025.

Commissioner for Oaths in and for
the Province of Alberta

PRINT NAME AND EXPIRY OF
LAWYER/STUDENT-AT-LAW

HON. JONATHAN DENIS K.C.
NOTARY PUBLIC
PROVINCE OF ALBERTA
BARRISTER & SOLICITOR

ALBERTA ENERGY REGULATOR

PROCEEDING ID 449

IN THE MATTER OF the *Responsible Energy Development Act*, SA 2012, c R-17.3 ("**REDA**") and the Regulations and Rules made there under;

AND IN THE MATTER OF Application Nos. 1945552, 1945553, 001-00496728, 001- 00496729, 001-00496730, 32212208, and 32900389 under the *Coal Conservation Act*, RSA 2000, c C-17, the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, the *Water Act*, RSA 2000, c W-3, and the *Public Lands Act,* RSA 2000, c P-40, and the Regulations made thereunder (collectively, the "**Applications**"), made by Summit Coal Inc. ("**Summit**")

RESPONSE SUBMISSIONS OF AWA and CPAWS NAB TO SUMMIT'S MOTION FOR RECONSIDERATION DATED AUGUST 6, 2025

August 15, 2025

I. INTRODUCTION

1. Alberta Wilderness Association ("**AWA**") and Canadian Parks and Wilderness Society, Northern Alberta Chapter ("**CPAWS NAB**") oppose Summit's reconsideration request dated August 6, 2025 (the "**Request**") for the Alberta Energy Regulator ("**AER**") to reconsider its July 23, 2025 decision denying Summit's motion to cancel the hearing in this proceeding (the "**Decision**"). The Request is procedurally improper, substantively without merit, and, if granted, would undermine the AER's ability to fulfill key aspects of its mandate.

2. The Request raises two primary issues:
   a. whether the AER should exercise its discretion to reconsider the Decision; and
   b. if so, whether the AER should vary or confirm the Decision.

3. In addition, AWA and CPAWS NAB submit that two preliminary issues must be addressed at the outset: (1) the proper scope of this reconsideration, and (2) the proper procedure for requesting reconsideration. Both go directly to the integrity of the AER's process.

4. The only decision properly before the AER is its July 23, 2025 Decision denying Summit's motion to cancel the hearing.[1] While Summit also seeks to revisit other decisions, such as those issued on October 3, 2024 and February 7, 2025, those decisions are not within the scope of this Request and cannot be addressed on this motion. Summit's attempt to improperly broaden the scope of its Request and reopen decisions made many months ago, after numerous procedural and substantive steps have been taken in reliance on them, undermines the predictability, orderliness, and efficiency that are essential to the AER's mandate.

[1] Motion of Summit Coal Inc. to the Chief Executive Officer of the Alberta Energy Regulator (August 6, 2025) ("**Summit's Reconsideration Request**"), at para 1.

5. Further, AWA and CPAWS NAB oppose Summit's request to have the matter decided by the CEO. Neither the governing legislation, the regulations, nor established practice permit a party to direct a reconsideration request to the CEO. This is not an isolated procedural misstep, it is the latest in a series of attempts by Summit to prevent the hearing from proceeding at all. Seeking to bypass the normal route threatens both the integrity of the AER's process and the rights of AWA and CPAWS NAB to a fair, properly constituted hearing. The AER should firmly reject these tactics.

6. In any event, the Request fails to meet the stringent test for reconsideration, which requires showing extraordinary circumstances that provide exceptional and compelling grounds to revisit a decision. The Decision not to cancel the hearing was reasonable, firmly grounded in the legislative and regulatory framework, and consistent with established precedent. Summit has identified no statutory provision or precedent authorizing, let alone requiring, cancellation of a hearing while opposing parties remain.

7. Summit's Request, in substance, is a thinly veiled collateral attack on the AER's settled decisions granting AWA and CPAWS NAB full participant status. Having chosen not to challenge those rulings when they were made, Summit now seeks to re-litigate them under the guise of cancelling the hearing, advancing the unfounded premise that these parties lack equal procedural rights. This tactic is contrary to REDA, unsupported by precedent, and aimed at stripping AWA and CPAWS NAB (and future parties) of the status and rights the AER has already confirmed.

8. For these reasons, and those set out in detail below, the Request should be dismissed in its entirety, or in the alternative, the Decision should be confirmed.

II. SUBMISSIONS

A. Preliminary Issues

i. The Proper Scope of this Reconsideration

9. Summit' Request seeks reconsideration of the AER's July 23, 2025 Decision.[2] Although the Request purports to be limited to that Decision, Summit attempts to expand its scope by asking the AER to "set out the AER's views" on additional matters arising from earlier decisions, including those dated October 3, 2024 and February 7, 2025.[3]

10. This amounts to a clear attempt to improperly expand the scope of reconsideration to matters long settled. Summit offers no explanation for failing to appeal or seek reconsideration of those prior decisions at the time they were made. Instead, it chose to remain silent, allowing numerous procedural steps and substantive rulings to occur in reliance on those decisions.

11. Summit cannot now revisit or re-litigate these settled matters. REDA section 42 does not provide a backdoor for parties to rehash grievances or mount broad attacks on prior procedural rulings. Its purpose is narrow and reserved for genuine reconsideration of specific errors or new evidence.[4] Summit's attempt to use section 42 as means to vent its general frustrations with the process distorts its function.

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[2] Summit's Reconsideration Request, at para 1.

[3] Summit's Reconsideration Request, at paras 5-6. Despite limiting its request to Exhibit 89, Summit also focuses its Request on AER's decision to grant a hearing (Exhibit 3) and to grant full participant status to various Indigenous groups (Exhibits 37 to 40).

[4] Past reconsideration decisions have focused on specific errors or new evidence in relation to a particular decision. For example see Alberta Energy Regulator, *Request for Reconsideration No 1956259* (2 July 2025), online (pdf): <https://www.aer.ca/prd/documents/decisions/regulatory-appeal-decision/1956259-20250702.pdf>; also see: Alberta Energy Regulator, *Request for Reconsideration No.: 1942728, Request for Reconsideration of Suncor's McClelland Lake Wetland Complex Operational Plan for the Fort Hills Oil Sands Project (Operational Plan)* (November 23 2023), online (pdf): <https://www.aer.ca/documents/decisions/regulatory-appeal-decisions/1942728-20231123.pdf>.

12. Permitting a party to improperly expand the scope of its reconsideration request to revisit decisions made months earlier would fundamentally undermine the principles of certainty and predictability that are essential to the AER's regulatory process. While Summit invokes the need for certainty and predictability, its approach contradicts these principles. Allowing reconsideration of long-finalized decisions would also set a troubling precedent by encouraging parties to delay requests for reconsideration for months or even years. This would create significant uncertainty and risk unravelling years of procedural progress, to the detriment of all stakeholders and the orderly administration of proceedings.

13. Summit also seeks to use this Request to invite the AER to "reconsider the currently limited roles of AER hearing commissioners within the AER more broadly."[5] This invitation is plainly beyond the scope of the reconsideration and cannot be properly addressed on this motion. Broader policy questions of this nature are unsuited to resolution within the confines of a request focused on a specific decision in a particular proceeding. They require broader public consultation and a deliberate decision-making process. Accordingly, the AER should decline to entertain this inappropriate expansion of the reconsideration scope.

14. In summary, the AER must reject any effort to broaden the reconsideration beyond the July 23, 2025 Decision. Upholding the proper scope is essential to maintaining procedural fairness, preserving the integrity of the regulatory process, and safeguarding the AER's ability to fulfill its statutory mandate effectively.

ii. <u>The Proper Procedure for Requesting Reconsideration</u>

15. AWA and CPAWS NAB submit that Summit's decision to address its Request directly to the CEO was improper and inconsistent with established practice of directing reconsideration requests to the Regulatory Appeals Coordinator. The

[5] Summit's Reconsideration Request, at para 20.

governing rules do not authorize an applicant to choose its decision-maker, and past practice has consistently been to submit such requests through the established channels.[6]

16. In its August 8, 2025 decision on Summit's adjournment motion, the AER expressly directed parties not to send correspondence to the CEO.[7] Further, Summit has cited no instance, nor are AWA and CPAWS NAB aware of any, where a reconsideration request was sent directly to the CEO. The established practice has been to submit these requests to the Regulatory Appeals Coordinator for processing in accordance with the AER's standard procedures.

17. While AWA and CPAWS NAB acknowledge that the CEO may have authority to hear reconsiderations in some cases, it is not for Summit to dictate who will decide its Request based on its perception of a favourable outcome. REDA section 12(1) provides that where the AER conducts a hearing in respect of a reconsideration, "the hearing must be conducted… by a panel of one or more Hearing Commissioners selected by the Chief Hearing Commissioner."[8] Although the legislation is silent on the procedure where no hearing is held, it does not follow that the requesting party may select its own decision-maker. That determination rests solely with the AER.

18. Summit relies on the CEO's general responsibility for the day-to-day operations of the AER as a basis to request that the CEO decide its Request. However, operational oversight does not equate to authority over reconsideration decisions. In fact, REDA expressly prohibits the CEO from being appointed as a hearing commissioner, the

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[6] For example: Ecojustice, *Request for Reconsideration of Administrative Penalty Director's Decision No 202408-009* (27 November 2024), online (pdf): <https://ecojustice.ca/wp-content/uploads/2024/11/2024-11-27-Request-for-Reconsideration.pdf>; also see: Alberta Wilderness Association, *Request for Reconsideration No 1942728* (21 June 2023), online (pdf): <20230621_lt_mcc_fhosp_awa_reply_to_suncor_aer_reconsider.pdf>.

[7] 2025-08-08 AER to Parties re Motion Decision, at page 1.

[8] REDA, s 12(1).

very role empowered to hear reconsideration hearings, thereby underscoring that such decisions ordinarily fall outside the CEO's mandate.[9]

19. This is not an isolated procedural misstep on the part of Summit. Summit's plea to the CEO is the latest in a pattern of attempts to circumvent the established process. Throughout this proceeding, Summit has:
    a. sent letters directly to the AER rather than filing motions in the prescribed manner, despite being told that such correspondence was improper;[10]
    b. attempted to side-step the regulatory process altogether by appealing directly to the Minister;[11] and
    c. now seeks to involve the CEO directly.

20. Such tactics undermine the integrity of this process and should be firmly rejected.

21. Only the AER has the authority to determine who will hear a reconsideration request without a hearing. Summit has provided no compelling reason to depart from the standard and legislated practice whereby the chief hearing commissioner selects a panel of one or more hearing commissioners. Upholding that practice in this case will preserve the impartiality, orderliness, and integrity of the AER's decision-making framework.

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[9] REDA, s 11(3) and 12(1)(c).

[10] Exhibit 74; and Exhibit 81 in which the AER reminds Summit that "Parties were made aware via the letter dated March 3, 2025 (exhibit 53.0) that 'all participants in proceeding 449 are directed to make further motions formally and in accordance with section 44 of the *Rules*.'"

[11] 2025-08-01 – AWA and CPAWS NAB Response to Motion to Adjourn ("**AWA and CPAWS Response to Motion to Adjourn**"), Appendix 2 titled "Brian MacDonald Letter to Minister Biran Jean on behalf of Valory Resources (July 28, 2025)."

B. The AER Should Decline to Reconsider the Decision

i. Summit Has Not Met the Test for Reconsideration

22. The AER applies a strict and well-established test when exercising its discretion under REDA section 42 to reconsider a decision. This discretion exists to address extraordinary circumstances such as the emergence of new information or the discovery of an error so fundamental that leaving the decision in place would render it without value or merit. It is not intended as a substitute appeal process for parties dissatisfied with the outcome. Given the appeal mechanisms already available under REDA and the need for finality and certainty in its decisions, the AER will only reconsider where there are exceptional and compelling grounds to do so. Mere disagreement with the decision is not sufficient.[12]

23. There is no new information before the AER since its July 23, 2025 Decision. It follows that Summit can only succeed if it demonstrates an error so profound that it would be absurd not to revisit the Decision. Summit has not met this high threshold. As will be discussed below, the Decision not to cancel the hearing was reasonable, consistent with the governing legislative and regulatory framework, aligned with past AER decisions, and falls squarely within the AER's mandate to ensure the efficient, safe, orderly, and environmentally responsible development of Alberta's energy and mineral resources.

24. Further, Summit's Request is an attempt to invoke section 42 as a backdoor appeal, seeking to re-argue matters already determined and thereby eroding the finality and certainty that are fundamental to the AER's process. It also constitutes a collateral attack on the rights of AWA and CPAWS NAB, both of whom are full participants to this proceeding and entitled to the same procedural rights as any other party.[13] By

[12] Alberta Energy Regulator, *Request for Reconsideration No 1956259* (2 July 2025), online (pdf): <https://www.aer.ca/prd/documents/decisions/regulatory-appeal-decision/1956259-20250702.pdf>, at page 2.

[13] Exhibits 41 and 42.

attempting to cancel the hearing altogether, Summit is effectively seeking to deny these parties their right to be heard on the merits. Such tactics are antithetical to procedural fairness, contrary to the proper administration of justice, and inconsistent with the AER's statutory mandate. The Request should be dismissed outright.

ii. The AER Correctly Interpreted and Applied Relevant Legislation and Precedent

25. Contrary to Summit's submission, the Decision panel (the "**Panel**") did not disregard Summit's arguments on REDA section 34. The Panel expressly acknowledged Summit's interpretation,[14] but correctly found that subsection 34(1) permits the AER to grant a hearing at its sole discretion, and that nothing in subsections 34(2) or 34(3) constrain AER's ability to hold a hearing where the AER considers it appropriate.

26. Section 34(2) sets out the circumstances in which a hearing is mandatory. Section 34(3) merely affirms that persons who may be directly and adversely affected are entitled to be heard if a hearing is held. Where section 34(2) is not engaged, the AER's decision to hold a hearing is guided by its statutory mandate and the non-exhaustive factors in REDA section 7 (discussed below).

27. The Panel therefore made no error in its interpretation or application of section 34. Nothing in this section requires the AER to cancel the hearing in these circumstances and the Panel's Decision not to cancel the hearing was reasonable. Summit's disagreement with the Panel's interpretation does not amount to a legal error and certainly does not render the Decision without merit such that it would be absurd not to reconsider it.

28. The Panel also correctly recognized that, once the AER grants party status under Rules 9(1) and 9(2), there is no legal distinction between participants who are

[14] Exhibit 89, at page 2.

directly and adversely affected and those who are not.[15] AWA and CPAWS NAB, as full participants, are entitled to the same procedural rights as any other party. Summit's attempt to revisit or diminish that status is irrelevant and improper. The Panel properly rejected Summit's line of argument on three separate occasions.[16]

29. Likewise, the Panel reasonably applied Rules 6.2 and 7. These provisions are permissive, guiding the AER's discretion rather than imposing mandatory constraints.[17] A discretionary power to consider certain factors does not create a legal obligation to apply them in a particular way, and the AER commits no error by exercising that discretion differently than Summit would prefer.

30. Furthermore, AWA and CPAWS NAB's status as parties was not dependent on the presence of other parties that may be directly and adversely impacted by the project. AWA demonstrated unique expertise in wildlife and habitat conservation in the Kakwa and Little Smoky regions, as well as concerns about impacts on water quality and aquatic species. CPAWS NAB showed established conservation work in the Kakwa–Little Smoky–Swan Hills area, identified methodological flaws in Summit's reclamation plan, and offered expertise in mitigation planning. Both offered non-duplicative, relevant evidence capable of materially assisting the Panel.[18]

31. These are legitimate considerations for the AER when deciding to grant participation under Rule 9. They also align with several of the considerations set out in Rule 7 for

[15] Exhibit 89, at pages 3 and 4.

[16] Exhibit 89, at page 4 where the Panel states "This is an argument that has been heard and denied at the participation stage, and again in the panel's procedural decision in Exhibit 53.0. For clarity, the panel granted participation to CPAWS NAB and AWA. Any further challenges to the participation decisions will be construed as a collateral attack."

[17] *Alberta Energy Regulator Rules of Practice*, Alta Reg 99/2013 ("**Rules**") at ss 6.2 and 7, both of which state that "The Regulator may….".

[18] Exhibits 41 and 42.

determining whether to hold a hearing. For example, AWA and CPAWS NAB's participation applications raised:

- 7(b): unresolved objections;
- 7(c): inadequate efforts by Summit to address those objections;
- 7(g): the potential for substantial and adverse effects on high-quality wildlife habitat;
- 7(h): the potential for substantial and adverse effects on the aquatic environment, including water quality and aquatic life; and
- 7(j): the potential to raise information that could materially assist the Panel.[19]

32. Therefore, the granting of participant status to AWA and CPAWS NAB was not contingent on other parties being directly and adversely affected. Rather, their participation was intrinsically linked to the same considerations that supported holding the hearing in the first place. The decision to grant the hearing was never meant to be solely dependent on the presence of directly and adversely affected parties. Summit's fixation on the absence of directly affected parties is unsupported by REDA or the Rules.

33. The Panel's Decision is also entirely consistent with precedent. The AER has never cancelled a hearing while full participants with standing and active opposition remain. The only examples Summit identifies involve cancellations after *all* objectors had withdrawn. These are fundamentally different circumstances. The Panel did not impose an unreasonable onus or ignore relevant precedent; it correctly found that Summit had failed to establish any precedent supporting its position.[20]

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[19] Rules, s 7.

[20] Exhibit 89, at page 4 where the Panel found, "The examples provided by Summit of prior AER decisions to cancel a hearing were situations in which all parties to the hearing withdrew. This is not the same situation…. The caselaw cited advises us that a duty of procedural fairness is "highly contextual" and "eminently variable". We are not persuaded that the circumstances in this proceeding warrant cancelling the hearing."

34. Adopting Summit's approach would require the AER to create an entirely new precedent – cancelling hearings despite the continued opposition of full participants. This would undermine established procedural rights and the integrity of the hearing process. The absence of any such precedent underscores why Summit's request should fail.

35. As the party seeking reconsideration, Summit bears the burden of demonstrating extraordinary and compelling grounds. It has identified no statutory provision or precedent authorizing, let alone requiring, cancellation of a hearing while full participant objectors remain. At most, Summit posits alternative interpretations of the legislation. That is insufficient to meet its burden and falls far short of the high standard for reconsideration.

iii. Summit's Request is a Collateral Attack on AWA and CPAWS NAB's Party Status

36. Since AWA and CPAWS NAB applied for, and were granted, full participant status in this proceeding, Summit has pursued a sustained campaign to demean, discredit, and undermine their role. Summit has made no secret of its view that AWA and CPAWS NAB should never have been recognized as full participants, despite the AER's clear and final determinations to the contrary.[21] This Request is nothing more than an attempt to re-litigate and overturn those decisions under the guise of seeking to cancel the hearing. Such conduct constitutes an improper collateral attack on settled procedural rulings.

37. From the outset, Summit opposed AWA and CPAWS NAB's participation solely on the ground that they were not "directly and adversely affected," disregarding the other factors under Rule 9. The AER nevertheless granted full participant status based on those other factors. Summit did not appeal or seek reconsideration of those decisions, and they are not open to challenge now.

[21] Exhibits 41 and 42.

38. Summit has nonetheless sought to discredit and undermine AWA and CPAWS NAB's participation, even resorting to defamatory remarks. Examples include:
    a. Repeatedly characterizing AWA and CPAWS NAB as "private organizations"[22] despite both having membership open to the public and broad public support across Canada;[23]
    b. Repeatedly stating that AWA and CPAWS NAB have "no connection to the area"[24] despite both having members and supporters who live and work in the Grande Cache. For example, CPAWS NAB alone has over 300 supporters who work in the greater Grande Prairie region, which includes the Grande Cache.[25]
    c. Repeatedly and intentionally mischaracterizing AWA's participation as being about improving fundraising.[26] This is a gross distortion of AWA's request to participate, which clearly articulated its responsibility to its supporters and its mission to advocate for Alberta's air, land, water, and wildlife.[27]
    d. Stating that it would not be prepared to pay any costs to AWA and CPAWS NAB despite this decision resting squarely with the AER.[28]

39. This Request repeats the same improper theme by fabricating a non-existent hierarchy among full participants to diminish AWA and CPAWS NAB's legal rights. As the Panel correctly recognized, neither REDA nor the Rules create such distinctions. Once granted full participant status under Rule 9, a party enjoys the same procedural fairness and due process rights as any other party, regardless of

[22] Exhibits 52, 74 and 83.1.

[23] Exhibits 41 and 42.

[24] Exhibits 80 and 83.1.

[25] Exhibits 41 42.

[26] Exhibits 52; also see Summit's Reconsideration Request, at para 77.

[27] Exhibit 23.

[28] Exhibit 52; also see AWA and CPAWS Response to Motion to Adjourn, Appendix 2.

whether they are directly and adversely affected. The Panel's reasoning on this point is set out below:[29]

> Once the panel has granted participation, there is no distinction between participants, as is confirmed by the following definitions in the *Rules*:
>
> 1(i.1) "participant" means, except in Division 2 of Part 5, a person who is permitted by the Regulator under section 9 or 31.2 to participate in a hearing on an application or regulatory appeal, but does not include an applicant or a requester;
>
> (j) "party" means
> (i) in the case of a hearing on an application,
> (A) an applicant, or
> (B) a participant...

40. Meanwhile, Summit's interpretation would have the AER create a distinction between different categories of full participants where none exist. Not only is this position inconsistent with the Rules and an attack on AWA and CPAWS NAB procedural rights, but it also threatens the participatory rights of all full participants who do not meet a narrow threshold that the AER did not impose. This is not a reasonable or credible reading of the legislative framework and, as discussed above, is without precedent.

41. Summit's interpretation also runs contrary to the AER's mandate to provide for the environmentally responsible development of energy and mineral resources in Alberta.[30] That mandate necessarily extends to participants with expertise on environmental impacts, even if they are not directly and adversely affected. The AER's focus on the environmental impacts of projects is evident throughout its past decisions and reports.[31] AWA and CPAWS NAB have raised ongoing, credible

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[29] Exhibit 89, at page 3.

[30] REDA, s 2(1)(a).

[31] *Livingstone Landowners Group v Northback Holdings Corporation*, 2025 ABAER 6; also see *Benga Mining Limited, Grassy Mountain Coal Project, Re* (2021), 2021 ABAER 010, online: https://static.aer.ca/prd/documents/decisions/2021/2021ABAER010.pdf.

concerns about the project's effects on wildlife habitat, water quality, and aquatic species that speak directly to this aspect of the AER's mandate.

42. Naturally, Summit's interpretation would not only undermine the AER's ability to fulfill its environmental mandate in this proceeding, but by effectively stripping the rights of all parties with legitimate environmental concerns, it would also compromise the AER's ability to carry out that mandate in future matters.

43. In summary, the AER granted AWA and CPAWS NAB full participant status because their contributions are relevant and speak directly to the AER's mandate, regardless of direct adverse impact. Summit's reconsideration is an overt attempt to re-litigate the AER's decisions granting AWA and CPAWS NAB full participant status and an attempt to impose additional requirements for participation that do not exist. The AER should firmly reject Summit's Request as both procedurally improper and substantively baseless.

iv. Unresolved Issues Necessitate a Hearing

44. In Appendix A of its Request, Summit purports to set out its position on the conditions proposed by AWA and CPAWS NAB. Summit did not consult AWA or CPAWS NAB on the sufficiency of these conditions, nor does the list accurately reflect the full set of conditions proposed or the concerns raised. AWA and CPAWS NAB's primary position remains that the project should not be approved; however, should approval be granted, it must incorporate robust and effective conditions to mitigate its impacts.

45. In any event, the adequacy of Summit's response to the concerns raised by AWA and CPAWS NAB cannot be resolved through a reconsideration request. These substantive unresolved issues require a full review of the complete record, including party submissions, evidence, and expert testimony. The continued dispute over the

project's adverse environmental impacts and the appropriateness of proposed conditions can only be properly addressed at a full hearing, where all parties have the opportunity to participate and present their positions.

C. Alternatively, the AER's Decision Should be Confirmed

46. As set out herein, AWA and CPAWS NAB submit that Summit has not met the stringent test for reconsideration and, as such, the AER should deny its Request. Alternatively, in the event the AER exercises its discretion to hear the Request, the AER should confirm the Decision for the reasons set out herein.

III. RELIEF

47. Reconsideration requests under REDA section 42 are not intended to provide a platform for a party to air its general grievances with the AER's process, nor to serve as a backdoor appeal to re-litigate decisions it disagrees with. Reconsiderations are equally not intended as a means to mount a collateral attack on the rights of opposing parties. Permitting such misuse would undermine the integrity of the AER's processes, disrupt the orderly administration of hearings, and erode the procedural protections afforded to all participants. For these reasons, and those set out above, AWA and CPAWS NAB respectfully request that the AER refuse to exercise its sole discretion to reconsider the Decision, or alternatively, confirm the Decision.

Respectfully submitted this 15th day of August, 2025.

Adam Bordignon
Counsel for AWA and CPAWS NAB

This is exhibit "N" referred to in the affidavit
of Gloria Wozniuk affirmed before me on
September 19, 2025.

Commissioner for Oaths in and for
the Province of Alberta

PRINT NAME AND EXPIRY OF
LAWYER/STUDENT-AT-LAW

Alberta Energy Regulator

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
tel 403-297-8311
aer.ca

Reconsideration No.: 1958898
August 21, 2025

By email only

Summit Coal Inc.

Attention: Martin Ignasiak, KC

Canadian Parks and Wilderness Society & Alberta Wilderness Association

Attention: Adam Bordignon

The Municipal District (MD) of Greenview

Attention: Tyler Olsen

Dear Parties:

RE: Request for Reconsideration by Summit Coal Inc (Summit)
Application Nos.: 1945552, 1945553, 001-00496728, 001- 00496729, 001-00496730, 32212208, and 32900389 under the Coal Conservation Act, the Environmental Protection and Enhancement Act, the Water Act, and the Public Lands Act (Applications).
AER Proceeding 449

I have considered Summit's request under section 42 of the *Responsible Energy Development Act* (REDA) for a reconsideration of the July 23, 2025 decision in Proceeding 449 in which the Summit hearing panel decided not to cancel the hearing of the application (the Decision). I have reviewed Summit's submissions and the joint submission made by Alberta Wilderness Association and Canadian Parks and Wilderness Society, Northern Alberta Chapter (Collectively 'the Environmental Organizations'), as well as the submission from the Municipal District (MD) of Greenview

For the reasons that follow, I have decided to reconsider the Decision, without a hearing. I have also decided that the Decision should be varied such that the hearing in Proceeding 449 is cancelled and the applications returned to AER Regulatory Applications branch for consideration and decision.

Reasons for Decision

1. What is the scope of the Request for Reconsideration

I agree with the Environmental Organizations that the only matter before me is the July 23, 2025 decision in Proceeding 449 in which the Summit hearing panel decided not to cancel the hearing of the application (the Decision). I have not considered the other decisions or broader issues raised by Summit; nor am I making any

determination or direction in relation to the ultimate decision of whether the applications should be approved.

2. Authority to decide the Request

As CEO, I am responsible for the day-to-day operation of the business and affairs of the AER, per section 7(1)(a) REDA. This includes the proceedings of the hearing commissioners, as these are expressly part of the AER's day-to-day operations: section 13(1) of the REDA. Under the AER's General Bylaw, I also have authority and general supervision over the operation of the business and affairs of the AER. Through formal delegation of authority under section 6(2) of the REDA, the Board has authorized the CEO to carry out any power, duty or function of the AER under the REDA and other enactments. This includes the power to reconsider a decision of the AER, and to vary, confirm, revoke or suspend such decision. I am satisfied that I have proper authority to decide Summit's request for reconsideration, and this falls within my purview and discretion.

I recognize it is without precedent for a non-hearing commissioner decision maker to consider a reconsideration request of a procedural decision made by hearing commissioners. Except for the very unique circumstances in this situation, I am not inclined to exercise my discretion to reconsider decisions of hearing panels, out of respect for the hearing process and the autonomy and independence of hearing panels. Certainty, and finality in decision making is of fundamental importance to Alberta's energy regulatory system, to the participants involved, and Albertans generally. My decision should not be construed as a means by which parties can circumvent hearing or other AER decisions they disagree with.

3. Whether to Reconsider the Decision under s. 42 of the REDA

Section 42 states:

> **Reconsideration of decisions**
>
> 42 The Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision

The AER has very broad discretion to choose to reconsider any decision made by it. The AER does not need a 'request' to exercise its authority under section 42. It can do so on its own initiative, if it becomes aware, by any means, of facts or circumstances that cause it to decide to reconsider a decision.

While I am of the view that Summit has met the test traditionally imposed on requesters to justify the AER exercising its reconsideration powers, I am also deciding to reconsider the decision based on my absolute discretion to do so, as I feel it is of sufficient importance to the AER, given the unique and unprecedented issues raised.

At least three related circumstances make this unique and exceptional: 1) The AER has not previously conducted a hearing with no directly and adversely affected parties participating, 2) The AER has never cancelled a hearing where parties granted full participation status have not withdrawn, 3) The request asks

the 'operational' arm of the AER, through its CEO, to reconsider a procedural matter that has been decided by the 'adjudicative' arm of the AER (i.e. a panel of hearing commissioners).

As an adjunct to 1) above, there are far more Participants in the hearing, albeit most are limited participants, that support the application; a further number of participants have withdrawn, but in doing so have indicated their support or non-objection to the application. This is another compelling reason for me to reconsider the Decision.

I have decided that this merits a reconsideration of the Decision, without a hearing as it would be quite impractical to do so and there is a need to deal with this expediently. The parties have also provided submissions on the substantive issue of whether to vary, confirm, revoke, or suspend the Decision.

4. Whether to Vary or Confirm the Decision

As Summit rightly points out, the REDA and its regulations draw significant connection between the potential for adverse effects of energy development and the corresponding right of people potentially directly affected by the development to have their say at a hearing about how it will impact them. Numerous decisions from the Alberta Courts confirm that the REDA and its Rules of Practice are intended to give hearing participatory rights to those potentially impacted by energy development. Adopting statements made in previous decisions about the AER's predecessor regarding 'directly and adversely affected' and the corresponding entitlement to participate in hearings, the Alberta Court of Appeal has applied this same guidance to participation in AER hearings, indicating:[1]

> As this Court has previously stated in *Kelly v Alberta (Energy Resources Conservation Board), 2012 ABCA 19 at para 33, 519 AR 284*:
>
> > The development of Alberta's natural resources enriches the province as a whole, and provides significant economic benefits to the companies that develop those resources. Resource development can, however, have a disproportionate negative effect on those in the immediate vicinity of the development. The requirement for public hearings is to allow those "directly and adversely affected" a forum within which they can put forward their interests, and air their concerns. In today's Alberta it is accepted that citizens have a right to provide input on public decisions that will affect their rights [Emphasis Added].

While I understand the Environmental Organizations' position that they have been given participant status at the discretion of the panel, they have not pointed to any authority in REDA or the Courts which equates discretionary participation granted under section 9(1)(b)(ii) and (c) of the Rules, with the same weighty significance that REDA, its regulations, and the Courts recognize in relation to the participatory rights of potentially directly and adversely affected individuals. To that extent, I don't agree with the Environmental

[1] *Coulas v Ferus Natural Gas Fuels Inc*, 2016 ABCA 332 at para 10. The same statement is cited with approval in the more recent decision of *Fort McMurray Métis Local Council 1935 v Alberta Energy Regulator*, 2022 ABCA 179 at para 22.

Organizations' statement that there is no legal distinction between participants in a hearing who are directly and adversely affected and those who are not. It is clear that both the applicable legislation and the Courts place a high level of importance and significance on the former but not the latter.

Section 15 of the REDA, and section 3 of the *REDA General Regulation* also support this conclusion. These provisions emphasize the need to consider the interests of landowners, which I interpret to mean landowners with proximal connection to the project, as well as impacts to the specific landowners upon whose lands the project is located. Under section 3 of the *General Regulation,* socio-economic and environmental effects must also be considered.

As noted by Summit, the local community – comprised of landowners and others who live and work in the community proximal to the mine – overwhelmingly support the Applications. Twenty-three parties, all of whom live or conduct business in the Grande Cache area, expressed strong support for the timely approval of the Applications through requests to participate. The limited participants in the proceeding all support the project. Local Indigenous communities support and will receive benefits from the project. The four Indigenous Groups previously opposed to the project have withdrawn from Proceeding 449 and no longer object to the AER's approval of the Applications. The MD of Greenview, the municipality in which the project is located and a full participant in the hearing, fully supports the application and the advocates for the cancellation of the hearing via the reconsideration process. They state that proceeding with the hearing 'represents an unnecessary use of resources, creates long-term economic risk for the community, and undermines the principles of efficient and effective regulation'.

Having regard for the above, the social and economic effects of the project as well as the interests of local landowners strongly support that the Decision be varied, and the hearing be cancelled.

Turning to a consideration of the effects of the project on the environment, it is relevant that there is an existing mine permit for this project which the AER already monitors and regulates. This is an application for an underground mine, which is expressly permissible under the Government of Alberta's recent policy statements on coal industry modernization, which policy also limits other types of coal mining such as open pit and mountain top removal. There is now a fulsome application record before the AER filed by the parties in the hearing and in the Reconsideration submissions of the parties, including the table of environmental conditions and commitments filed by Summit.

I do not take issue with the Environmental Organization's statements that they have expertise in certain environmental matters including wildlife and habitat conservation. The information they have already provided in this regard in their hearing submissions will greatly assist AER staff subject matter experts in technical and environmental sciences with a comprehensive review of the applications. AER staff and decision makers have the requisite expertise and understanding to ensure that, should a decision be made to approve the application, any approval is protective of the environment with proper conditions put in place to minimize, mitigate, and monitor effects on the environment. Making this information available to AER staff and decision makers means that the Environmental Organizations procedural right are largely maintained as

they can still 'materially assist the Regulator in deciding the matter' (i.e. the applications), as contemplated in the Request to Participate provisions in section 9 of the *AER Rules of Practice*. Their submissions will still be 'heard' and considered by the AER, just not at an oral hearing.

This also allows the AER to start its application review and decision making process immediately. Based on the schedule in the Decision, the hearing would run until late October, meaning the Panel would not have begun to deliberate and decide the matter until the end of October, with 90 days to decide the applications after that. Given the foregoing, that delay does not seem reasonable.

Conclusion and Decision

The July 23, 2025 decision of the Summit hearing panel is hereby varied as follows:

1) Hearing Proceeding 449 is cancelled.

2) The application and all submissions on the record of Proceeding 449 are to be transferred to the AER's Regulatory Applications branch (Oil Sand Mining & Coal Division) for decision.

As indicated, submissions on this reconsideration request will also be forwarded to the Regulatory Applications staff and will be before the AER decision maker when deciding the applications.

Sincerely,

Rob Morgan,
Chief Executive Officer,
Alberta Energy Regulator

cc: Elaine Arruda, Hearing Coordinator
AER Hearing Panel, Proceeding 449