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Our File No.: 94634.2

October 2, 2024

By Email (SOC@aer.ca)

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

Attention: Regulatory Applications Team

Dear Sirs/Mesdames:

**Re: Summit Coal Inc. ("Summit")
Application Nos. Coal Conservation Act ("CCA") 1945552, 1945553
Environmental Protection and Enhancement Act ("EPEA") 001-00496728
Water Act ("WA") 001-00496729 and 001-00496730
Public Lands Act ("PLA") 32212208, 32405203, and 32900389 (the "Applications")
Summit Follow-Up Request for Approval of the Applications**

We are inquiring into the status of the above-noted Applications, which relate to Summit's Mine 14 Project near Grande Cache, Alberta (the "**Project**"). Summit's Applications were submitted to the Alberta Energy Regulator ("**AER**" or the "**Regulator**") more than one year ago. Despite Summit's efforts to facilitate a timely and efficient review of the Applications, the AER has not issued any correspondence regarding its processing of the Applications since late 2023. Given this significant delay, and further to Summit's letter of May 24, 2024 (the "**May Letter**"), Summit urges the AER to render a decision approving the Applications as soon as possible.

As the AER is well aware, the principal approvals for the Project (*i.e.*, Mine Permit No. C 2009-6 and Mine Licence No. C 2011-9) were issued more than a decade ago. The Applications seek the issuance or renewal of other regulatory authorizations under the *CCA*, *EPEA*, *WA*, and *PLA* which are necessary for the construction and/or operation of the Project. Upon receiving approval of the Applications, Summit is ready to immediately proceed with final engineering and procurement efforts needed to commence Project construction. Put simply, the deployment of millions of dollars of capital, which will have a direct and significant positive impact on the Grande Cache community and the broader Alberta economy, hinges on the AER's approval of the Applications.

As detailed in the May Letter, Summit submits that the AER's record is complete and clearly supports approval of the Applications without further process. In particular, support for the AER's approval of the Applications is underpinned by letters from both the Aseniwuche Winewak Nation ("**AWN**")¹ and the Mountain Métis Community Association ("**MMCA**")², being the only First Nations or Métis groups

¹ May Letter at Tab 2.

² May Letter at Tabs 3 and 4.

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immediately proximate to the Project area. In Summit's submission, the consistent support exhibited among Indigenous stakeholders who are closest to the Project site is a clear indication that the AER should approve the Applications without delay.

Although six other First Nations or Métis groups have filed statements of concern ("**SOC**") in respect of the Applications, Summit notes that the applicable Pre-Consultation Assessment and Adequacy Determination made by the Aboriginal Consultation Office ("**ACO**") [TAB 1] both confirm that none of these parties are owed an obligation of Crown consultation in connection with the Project. The ACO, as the government agency tasked with determining whether Crown consultation is required and, if so, whether consultation undertaken has been adequate, determined that none of the remaining SOC filers were owed consultation in connection with the Project. The ACO's determinations in this regard are entirely consistent with the fact that of the remaining Indigenous groups who filed SOCs, the closest is located approximately 250 km away from the Project site.

The AER must rely on and defer to the ACO's findings in this regard, because it is the ACO that is responsible for managing Alberta's obligations to Indigenous communities and because the AER is explicitly precluded from assessing the adequacy of Crown consultation under its governing statute.³ As discussed in the May Letter, Summit submits that imposing further consultation obligations after the ACO has issued its Pre-Consultation Assessment and Adequacy Determination would infringe upon the ACO's authority and diminish industry confidence in Alberta's regulatory regime.

To summarize, Summit has satisfied all applicable legislative and regulatory requirements in preparing the Applications, and has meaningfully engaged with all parties who may be impacted by the Project – including those identified by the ACO. Accordingly, having followed the prescribed process and responded to all statements of concern and other submissions put before the AER, Summit is entitled to a timely decision from the AER on its Applications. Regulatory efficiency requires this.

For the reasons set out herein and in the May Letter, Summit respectfully reiterates its request that the AER grant the Applications without a hearing and promptly issue the applied-for approvals.

Please contact the undersigned with any questions

Yours truly,

BENNETT JONES LLP



Martin Ignasiak KC

cc: Shaun McNamara, Summit
Sean Sexton, Executive Vice President, Law Branch and AER General Counsel
Outstanding SOC Filers
Sherri Dunne, Aboriginal Consultation Office

³ *Responsible Energy Development Act*, SA 2012, c R-17.3, s 21.

TAB 1

Adequacy Assessment

File Number for Consultation:

Date of Submission:

Client Project Name:

The Aboriginal Consultation Office has reviewed the consultation records regarding the proposed projects provided by

In accordance with Alberta's First Nations and Metis Settlements policies and guidelines (<http://indigenous.alberta.ca/1.cfm>), the Aboriginal Consultation Office has determined adequacy for each activity number. The proponent may proceed with their regulatory applications for those activities deemed Adequate.

Be advised that this notice does not grant the client any authority to make application for any use of land not identified within this notification.

Reviewed by:

Date of Review:

Should you have any questions, please contact the reviewer at:

Phone Number:

Email Address:

Supporting Comments/Direction:

Although the ACO is providing consultation adequacy in accordance with Alberta's consultation process, the ACO understands that the AER may not be accepting the related regulatory application, as stated in the Coal Policy Ministerial Order 002/2022.

Personal information is collected in accordance with Section 33(c) of the Freedom of Information and Protection of Privacy Act. The personal information collected within this form will be used to administer the First Nations/Metis Settlements consultation process. If you have any questions about the collection or use of this information, you can contact the Director, FOIP Services, Indigenous Relations and International and Intergovernmental Relations (780)427-9658.

Adequacy Assessment

Activity Number	Disp Type	Program Type	Source Line Spacing	Regulator	Purpose Type	Activity Area/Distance	Land Use Area
FNC202203218-001	MSL			AER	Mine - Coal	52.534 HA	Peace Region
	ATS Legal - From	ATS Legal - To		First Nation(s)	Aseniwuche Winewak Nation		Horse Lake First Nation
	SW 14 57 8 6	SE 23 57 8 6		/ Metis Settlement(s)	East Prairie Metis Settlement		
Action Required	Adequate						
Adequacy	Adequate						
FNC202203218-002	LOC			AER	Access - Major Corridor	47.862 HA	Peace Region
	ATS Legal - From	ATS Legal - To		First Nation(s)	Aseniwuche Winewak Nation		Horse Lake First Nation
	SW 4 57 8 6	NW 14 57 8 6		/ Metis Settlement(s)	East Prairie Metis Settlement		
Action Required	Adequate						
Adequacy	Adequate						
FNC202203218-003	WAC			AER	Water Act	100.396 HA	Peace Region
	ATS Legal - From	ATS Legal - To		First Nation(s)	Aseniwuche Winewak Nation		Horse Lake First Nation
	SW 4 57 8 6	SE 23 57 8 6		/ Metis Settlement(s)	East Prairie Metis Settlement		
Action Required	Adequate						
Adequacy	Adequate						

Pre-consultation Assessment

File Number for Consultation: Date of Submission:

Client Project Name:

Client Name:

Contact Name: Contact Number:

Contact Email:

In accordance with Alberta's First Nations and Metis Settlements policies and guidelines (<http://indigenous.alberta.ca/1.cfm>), the Aboriginal Consultation Office has determined a level of consultation for each activity.

Reviewed by: Date of Review:

Should you have any questions, please contact the reviewer at:

Phone Number: Email Address:

Consultation contacts for each First Nation/Metis Settlements as identified below (name, mailing address, phone number) are available at <http://indigenous.alberta.ca/576.cfm>

Supporting Comments/Direction:

Although the ACO is providing consultation direction in accordance with Alberta's consultation process, the ACO understands that the AER may not be accepting the related regulatory application, as stated in the Coal Policy Ministerial Order 002/2022.

This project may impact a HRV4c site administered by Alberta Culture, Multiculturalism and Status of Women (CMSW). Approval under the Historical Resources Act is required prior to any land surface disturbance. Please contact the Historic Resources Management Branch (HRMB) for direction on the Historic Resources application process: <https://www.alberta.ca/online-permitting-clearance.aspx> The ACO's consultation process is independent of any consultation required by Alberta CMSW. For questions related to consultation and HRV 4c traditional use sites of an historic resource nature, please contact the Aboriginal Heritage Section. aboriginal.heritage@gov.ab.ca.

When providing notification and Record of Consultation (ROC) Log to First Nations/Metis Settlements, applicant must utilize the First Nations and Metis Settlements contacts lists and the prescribed consultation contact methods indicated. Use of any other list or method of contact will not be accepted and may result in a determination of Incomplete Consultation. The First Nations and Metis Settlements contacts lists are located on the Aboriginal Consultation Office website at <https://www.alberta.ca/indigenous-consultation-contacts.aspx>

Consultation Pauses and/or Timeline Extensions may come into effect prior to the initiation of consultation or during the consultation process due to potential unforeseen events (e.g., fire, flood, pandemic). Refer to the official contact listings web page before sending communications for the current status of all First Nations and Metis Settlements. Please note that consultation activities should not take place while a Consultation Pause is in effect.

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Pre-consultation Assessment

Activity Number	Disp Type	Program Type	Source Line Spacing	Regulator	Purpose Type	Activity Area/ Distance	Land Use Area
FNC202203218-001	MSL			AER	Mine - Coal	52.534 HA	Peace Region
	ATS Legal - From	SW 14 57 8 6	ATS Legal - To SE 23 57 8 6	First Nation(s) / Metis Settlement(s)	Aseniwuche Winewak Nation East Prairie Metis Settlement	Horse Lake First Nation	
	Level 2: Standard Consultation						
Action Required							
FNC202203218-002	LOC			AER	Access - Major Corridor	47.862 HA	Peace Region
	ATS Legal - From	SW 4 57 8 6	ATS Legal - To NW 14 57 8 6	First Nation(s) / Metis Settlement(s)	Aseniwuche Winewak Nation East Prairie Metis Settlement	Horse Lake First Nation	
	Level 2: Standard Consultation						
Action Required							
FNC202203218-003	WAC			AER	Water Act	100.396 HA	Peace Region
	ATS Legal - From	SW 4 57 8 6	ATS Legal - To SE 23 57 8 6	First Nation(s) / Metis Settlement(s)	Aseniwuche Winewak Nation East Prairie Metis Settlement	Horse Lake First Nation	
	Level 2: Standard Consultation						
Action Required							

