

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.

June 27, 2025

I. INTRODUCTION

1. Summit hereby brings this motion pursuant to section 44 of the *Alberta Energy Regulator Rules of Practice* (the "**Rules**").¹

2. This motion requests that the Hearing Panel assigned to Alberta Energy Regulator ("**AER**") Proceeding 449:

- (a) immediately cancel the scheduled hearing dates and all other process steps set out in the Hearing Panel's letter of June 3, 2025;² and
- (b) proceed to render a decision on the Applications.

3. As explained in the following section, Summit respectfully submits that, because Proceeding 449 no longer contains any participants who are opposed to the Applications and who may be directly and adversely affected by the AER's decision, a hearing is not necessary.

II. GROUNDS IN SUPPORT

Current Hearing Participants

4. In its participatory decisions issued February 7, 2025, the Hearing 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 include Driftpile Cree Nation ("**Driftpile**"), Louis Bull Tribe ("**LBT**"), Sucker Creek First Nation ("**SCFN**"), Lac Ste. Anne Métis Community Association ("**LSAMCA**"), the Alberta Wilderness Association ("**AWA**"), the Canadian Parks and Wilderness Society ("**CPAWS**"), and the Municipal District of Greenview ("**Greenview**").

5. The seventeen parties granted standing as Limited Participants include a variety of local businesses, community organizations, and residents – all of whom are supportive of the Applications and have requested that the AER approve same.³

¹ Alta Reg 99/2013 [*Rules*].

² Exhibit 69.0.

³ See Exhibits 4.0, 6.0, 7.0, 8.0, 10.0, 11.0, 14.0, 16.0, 17.0, 18.0, 19.0, 20.0, 21.0, 24.0, 27.0, 28.0, and 32.0.

6. Greenview is also supportive of Summit's Applications.⁴

7. Only six of the Full Participants in Proceeding 449 – being Driftpile, LBT, SCFN, LSAMCA, AWA, and CPAWS – are or were at one time opposed to the Applications. Each of Driftpile, LBT, SCFN, and LSAMCA have recently withdrawn from Proceeding 449 and provided written confirmation that they no longer object to the AER's approval of the Applications.⁵ This leaves AWA and CPAWS as the only remaining participants in Proceeding 449 who oppose the Applications.

8. In granting AWA's Request to Participate dated December 17, 2024,⁶ the Hearing Panel determined that AWA "meets the criteria set out in the *Rules*" and "may have information that can assist the panel in reaching its decision on the applications."⁷ The Hearing Panel reached an identical conclusion with respect to CPAWS.⁸ Importantly, the Hearing Panel did not find that AWA or CPAWS may be directly and adversely affected by the AER's decision on the Applications, as it did with each of Driftpile, LBT, SCFN, and LSAMCA.⁹ In any event, Summit submits that it is readily apparent that neither AWA nor CPAWS are or may be directly and adversely affected by the Applications.

Nature of AWA's and CPAWS' Participation

9. Both AWA and CPAWS are environmental non-governmental organizations ("**ENGOS**") who have a long history of fervent opposition to natural resource development projects in Alberta, and who advocate against all forms of coal mining. The nature and objectives of these two organizations are clearly demonstrated in the exhibits to the Affidavit of Stacey Nielson sworn June 27, 2025 and attached to this motion at **TAB 1** (the "**Nielson Affidavit**").

10. Among other things, AWA's website refers to its stance that "AWA opposes all further development or expansion of the [coal] industry and supports the expeditious closure of existing operations and rapid transition away from coal use."¹⁰ Similarly, CPAWS' website describes the

⁴ See Exhibit 22.0.

⁵ See Exhibits 70.0, 71.0, 72.0, and 73.0.

⁶ Exhibit 23.0.

⁷ Exhibit 41.0 at PDF p. 3.

⁸ Exhibit 42.0 at PDF p. 3.

⁹ 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.

¹⁰ Nielson Affidavit, Exhibit "A" at p. 1.

goal of a "Coal Mine Free Alberta"¹¹ and states that it is crucial that "no new mines are approved in the Alberta Rockies."¹²

11. These materials confirm that 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, as discussed above, 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. Mine 14 affects AWA and CPAWS no differently than any other resource project being pursued in Alberta.

12. Accordingly, Proceeding 449 does not currently involve any participants who: (i) oppose the Applications; and (ii) may be directly and adversely affected by a decision on the Applications.

Relevant Legislative Provisions

13. Paragraph 6.2(1)(a) of the *Alberta Energy Regulator Rules of Practice ("Rules")*¹³ allows the AER to disregard a statement of concern 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."¹⁴ 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;

[...]

¹¹ Nielson Affidavit, Exhibit "B" at p. 1.

¹² Nielson Affidavit, Exhibit "B" at p. 2.

¹³ Alta Reg 99/2013 [*Rules*].

¹⁴ This provision also references the special circumstances set out in section 6.1 of the *Rules*; however, these special circumstances are not applicable.

- (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]

14. In Summit's submission, 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. As noted in Summit's previous submissions, 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.¹⁵ Summit respectfully submits that the AER should adhere to this standard practice in Proceeding 449.

15. With reference to the other factors listed under section 7 of the *Rules* and excerpted above, Summit submits 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

¹⁵ 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.

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.¹⁶

16. Section 34 of the *Responsible Energy Development Act* ("**REDA**")¹⁷ also 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.

17. Notably, subsection 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 subsection 34(2) apply. For clarity, none of these circumstances are applicable in the present case. Subsection 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.

18. In summary, the withdrawal of Driftpile, LBT, SCFN, and LSAMCA 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 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.¹⁸

¹⁶ See, for example, Exhibit 23.0 at PDF p. 3.

¹⁷ SA 2012, c R-17.3 [*REDA*].

¹⁸ Exhibits 4.0, 6.0, 7.0, 8.0, 10.0, 11.0, 12.0, 13.0, 14.0, 15.0, 16.0, 17.0, 19.0, 20.0, 21.0, 24.0, 28.0, and 32.0.

Submissions of Summit

19. No provision of the *REDA*, the *Rules*, or any other relevant statute, regulation, directive, or other authoritative document states that the Hearing Panel is required to hold a hearing in these circumstances. Further, Summit is not aware of any circumstance in which the AER has held a public hearing on an application where the only participants opposing the application were ENGOs such as AWA and CPAWS who have no potential to be directly and adversely affected. There is also no legal basis for any claim by AWA or CPAWS that they are entitled to a hearing in these circumstances.

20. The potential cancellation of a hearing when certain parties withdraw from the process is a longstanding feature of the AER's regulatory regime. This gives the AER the flexibility to schedule a hearing when it is in the public interest to do so, for instance when parties such as First Nations with constitutional rights may be affected, and to cancel the hearing if those concerns are addressed by the proponent. 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, as confirmed in the AER's earlier ruling dated March 3, 2025:

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.¹⁹

21. These withdrawals have now occurred. All Indigenous groups that may be directly and adversely affected have confirmed they do not object to the Applications being approved without further process. In Summit's submission, it is now appropriate for the Hearing Panel to address these recent withdrawals by cancelling Proceeding 449 as it is empowered to do under section 34 of the *REDA*.

22. Greenview, a statutory body with a legal mandate "to foster the well-being of the environment" and "foster the economic development of the municipality,"²⁰ has also asked that

¹⁹ Exhibit 53.0 at PDF p. 2.

²⁰ *Municipal Government Act*, RSA 2000, c M-26, s. 3.

the Hearing Panel cancel Proceeding 449.²¹ Summit submits that the Hearing Panel should place significant weight on this request, as Greenview represents the people who live and work in the Grande Cache area, including those who have invested and raised families in the community. Consistent with the views expressed by Greenview, the "Limited Participants" who run businesses, work, reside, and raise families in the Grande Cache area, have also repeatedly asked that the hearing be cancelled and the Applications approved as soon as possible.

23. The primary objective of the legislative regime under the *REDA* 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 hearing to occur.

24. With respect, conducting a hearing solely on account of AWA and CPAWS – groups which have no statutory mandate, no connection to the area, and no potential of being directly or adversely affected – would be an absurd outcome. This is especially so where AWA and CPAWS have admitted to using the AER's hearing process to generate public attention and improve their fundraising abilities.²² Alberta's regulatory processes are not intended for this purpose, and advocacy groups should not be permitted to leverage these processes for their own private objectives and at the expense of project proponents, Alberta taxpayers, and all those individuals and businesses who stand to benefit from a proposed development.

25. Lastly, with respect to the matters referenced by AWA and CPAWS in their respective hearing submissions,²³ and in their previous filings, Summit submits that neither AWA nor CPAWS have put forward any material, relevant, or substantive arguments which raise any question as to whether the Applications should be approved. Instead, AWA and CPAWS have filed submissions which: (i) contain numerous references to mountaintop coal mining and other unrelated activities; (ii) advocate for assessments or studies which are either not required under the applicable legislative regime or are already the subject of final determinations, such as the need

²¹ Exhibit 79.0.

²² Exhibit 23.0 at PDF p. 3.

²³ Exhibits 75.0, 75.1, 75.2, 76.0, and 76.1.

for an environmental impact assessment; and (iii) point to alleged contradictions or inconsistencies which are fully addressed in Summit's Applications and its responses to the AER's supplemental information requests. The fact is, AWA and CPAWS have not raised any issues which have not previously been dealt with by Summit to the satisfaction of the AER.

Closing Remarks

26. For the reasons set out above, a hearing on the Applications is not necessary and, as a matter of policy, no hearing should be held. Holding a hearing for the sole benefit of two ENGOS even though Summit has fully addressed the concerns of all parties who may be directly and adversely affected would create a troubling precedent which could disincentivize proponents from proactively addressing directly affected parties' concerns outside the confines of a hearing process. Such a disincentive is contrary to the primary objective of the AER's regulatory regime.

27. Summit respectfully submits that the AER has broad discretion to determine whether a hearing should be conducted before it decides on an application. This broad discretion is provided under subsection 34(1) of the *REDA*, excerpted above. None of the circumstances enumerated in subsection 34(2) apply and therefore, no hearing is required. Furthermore, AWA and CPAWS are not directly and adversely affected by the AER's decision on the Applications and therefore do not have a legal right to be heard at a hearing, pursuant to subsection 34(4) of the *REDA*.

28. For the foregoing reasons, Summit respectfully requests that the Hearing Panel cancel the scheduled hearing dates and all other process steps associated with Proceeding 449, and direct that the AER continue processing the Applications.

III. RELIEF REQUESTED

29. Based on the foregoing, Summit respectfully requests that the Hearing Panel:
- (a) immediately cancel the scheduled hearing dates and all other process steps set out in the AER's letter of June 3, 2025 pursuant to subsection 34(1) of the *REDA*;
 - (b) proceed to render a decision on the Applications; and
 - (c) grant any such further and other relief as the Hearing Panel deems appropriate.

IV. EVIDENCE RELIED ON

30. In support of this motion, Summit relies on the Nielson Affidavit, as well as all information contained in the AER's Public Record System for Proceeding 449, a link to which is provided at paragraph 4 of the Nielson Affidavit.

31. Summit does not intend to provide any oral evidence in support of this motion.

All of which is respectfully submitted this 27th day of June, 2025.

TAB 1

ALBERTA ENERGY REGULATOR

PROCEEDING 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**").

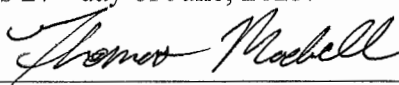
AFFIDAVIT OF STACEY NIELSON

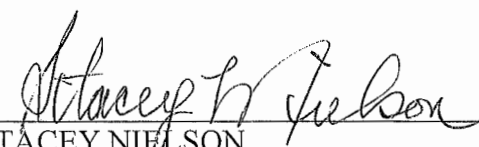
Sworn on June 27, 2025

I, STACEY NIELSON, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

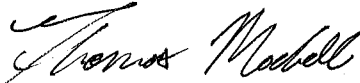
1. I am employed as a legal assistant by Bennett Jones Services Limited Partnership, a services limited partnership for Bennett Jones LLP, solicitors for the Applicant, Summit, and as such, I have personal knowledge of the matters hereinafter deposed to me, or I am informed of and verily believe them to be true.
2. I make this affidavit in support of a motion filed by Summit pursuant to section 44 of the *Alberta Energy Regulator Rules of Practice*, Alta Reg 99/2013.
3. Summit has filed the above-noted Applications with the Alberta Energy Regulator ("**AER**") which are currently subject to a public hearing process designated as AER Proceeding 449.

4. The record for Proceeding 449, including the Applications, is publicly available via the AER's Public Record System and can be accessed at the following internet address: <https://apps.public.aer.ca/hearing/proceeding/449>.
5. The Alberta Wilderness Association ("AWA") and the Canadian Parks and Wilderness Society ("CPAWS") oppose Summit's Applications and have each been granted standing as "Full Participants" in Proceeding 449.
6. On June 27, 2025, I accessed AWA's publicly available website at <https://albertawilderness.ca/issues/wildlands/energy/coal/> and downloaded an excerpt of the displayed webpage, a copy of which is attached as **Exhibit "A"**.
7. On June 27, 2025, I accessed CPAWS' publicly available website at <https://cpaws-southernalberta.org/conservation/coal-mine-free-alberta/> and downloaded an excerpt of the displayed webpage, a copy of which is attached as **Exhibit "B"**.

SWORN BEFORE ME at the City of)
Calgary, in the Province of Alberta,)
this 27th day of June, 2025.)
)
_____)
A Commissioner for Oaths)
in and for Alberta)
W. Thomas Machell)
Barrister & Solicitor)
_____)
)
)


_____)
STACEY NIELSON)

This is **Exhibit "A"** referred to in the
Affidavit of **Stacey Nielson**
Sworn before me, this 27th day of June, 2025



Commissioner for Oaths in and for Alberta

W. Thomas Machell
Barrister & Solicitor

Introduction

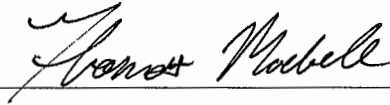
It is now well-established in the literature that the negative impacts from coal are more extensive, pervasive, and damaging than previously thought. Concisely,

“All phases of the coal use continuum (mining, processing, combustion, and waste disposal) create adverse public health and environmental impacts.”

AWA believes that coal exploration and extraction are no longer appropriate or feasible land-uses in the province. AWA opposes all further development or expansion of the industry and supports the expeditious closure of existing operations and rapid transition away from coal use, particularly within Alberta’s Rocky Mountain and Foothills.

Collectively known as the Eastern Slopes, large reserves of coal can be found throughout these natural regions. They also encompass the vital headwaters of the North Saskatchewan, South Saskatchewan, Red Deer and Oldman rivers, provide essential habitat for wildlife and species at risk, and support the recreational pursuits and livelihoods of many. As the backbone of Alberta’s wilderness, any applications and future plans for coal mining exploration and development threaten the ecological integrity of the Eastern Slopes.

This is **Exhibit "B"** referred to in the
Affidavit of **Stacey Nielson**
Sworn before me, this 27th day of June, 2025

A handwritten signature in cursive script, reading "W. Thomas Machell". The signature is written in black ink and is positioned above a horizontal line.

Commissioner for Oaths in and for Alberta

W. Thomas Machell
Barrister & Solicitor

CONSERVATION

Coal Mine Free Alberta

Photo Credit: East Cherry

**ALBERTA'S LANDSCAPE COULD CHANGE
FOREVER...**



A series of coal mines are threatening the environment and way of life in Alberta's Rockies. Despite reinstatement of Alberta's Coal Policy in February, 2021, significant damage has already been done since the policy was cancelled without public consultation in June, 2020.

Coal exploration activities have been the main culprit, with hundreds of kilometres of new roads and test drill pits significantly disrupting wildlife habitat and scenic views.

TAKE ACTION

It is crucial we stand up now to make sure mining projects across the Eastern Slopes that easily passed through early stages of exploration approvals last year cannot continue with activities throughout 2021 and no new mines are approved in the Alberta Rockies.

TAKE ACTION ON COAL

Help Us Fight For A Coal Free Future In Alberta

By donating to CPAWS Southern Alberta you can help us continue to advocate for Alberta's Rockies and keep fighting against the threat of coal mining.

Donate Today