

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 ("**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**")

Reply Motion of CPAWS NAB and AWA

July 9, 2025

I. Introduction

On February 7, 2025, the Alberta Energy Regulator (AER) granted full participant status to CPAWS NAB and AWA in relation to this proceeding. At that time, it was determined that both CPAWS NAB and AWA were affected by the subject of this proceeding. This is clear in the decision made by the Hearing Panel, where they state,

“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”, and “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 the same decision, the Hearing Panel recognized that through granting CPAWS NAB and AWA the status as full participants in the proceeding, the organizations would be able to make important contributions to help inform the panel's decision about the specific concerns raised. The Panel notes 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.”

In their written submission, CPAWS NAB have detailed their concerns with the Application at greater depth, expanding on the limitations identified within the Application, and proposing a detailed list of measures that must be taken for the Application to be adequately considered. Given the importance of the area to biodiversity and wildlife, CPAWS NAB have carefully considered the impacts that the Project would have, with specific focus on the impacts of underground mining. Where possible, references used refer to underground mining impacts and only where appropriate are references related to other mining impacts considered. Given the limited data and research available on underground mining impacts, the onus must be on the Applicant to prove that these impacts will not be felt. To support CPAWS NAB’s submission, they have enlisted the expertise of several experts in their field, whose inputs are included as appendices to their submission, and one of whom will testify on their behalf.

Similarly, the Panel noted 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.”

In AWA’s written submission, the concerns identified by the Panel were explained in depth, with AWA presenting detailed biodiversity indicator data to substantiate the presence of high-quality habitat in and around the project site, an expert toxicological review of the Application to contextualize concerns for water quality and watershed health, and highlighting deficiencies in the Application, including its consideration of policy, cumulative effects, and climate change.

Based on the Panel’s direction, both organizations have undertaken extensive efforts, including the retaining of relevant experts to assist the regulator in this process. It would be a breach of natural justice, procedural fairness, reasonable expectation, and failure to consult to deny the continuation of the process. Both organizations have a long history of positively contributing to regulatory processes with the AER and its predecessors.

For example, in 2020, AWA submitted a Statement of Concern (SOC) to the AER in relation to a coal exploration program proposed in and around the neighbouring Caw Ridge. The SOC outlined potential impacts the program would have on bighorn sheep and mountain goat populations in the area. When the AER rejected the coal exploration program, their decision was justified on the basis of many of the same concerns raised within AWA’s SOC, indicating the value of AWA’s participation in the process.

II. Submissions of CPAWS NAB and AWA

Summit raises significant inaccuracies in its submissions.

Inaccuracy #1: CPAWS NAB and AWA have a long history of fervent opposition to natural resource development projects in Alberta.

Inaccurate: A simple review of their respective websites would have shown that neither organization is opposed to responsible and sustainable resource development. Indeed, both organizations regularly work with industry and government to achieve better environmental outcomes during resource development projects.

For example, both CPAWS NAB and AWA have played prominent roles in developing Forest Stewardship Council (FSC) forest certification standards, which is an important tool to promote stringent and sustainable practices within the forestry industry.

CPAWS NAB also has a long history of working at multistakeholder forums to develop improved land use plans across the province. Including as task force members for the sub-regional land use planning process in the Upper Smoky Sub-region, Cold Lake Sub-region, and Bistcho Sub-region.

AWA's position on energy development outlines multiple natural resource industries they are supportive of, which include energy storage, geothermal, green hydrogen, solar, wind, and hydroelectric projects. The statement clearly outlines the reasoning behind and conditions for AWA's support of these industries, in relation to their stated mandate.

In relation to coal development in Alberta, CPAWS NAB and AWA are simply supporting the findings of the independent Coal Policy Committee, which after broad consultation with Albertans made the following observations about coal that should be considered of significance to policy and decision-makers:

1. Cumulative effects analyses should be undertaken before a new coal mine, exploration permit or other industrial activity is authorized.

Coal exploration and development have significant impacts on the landscape. A key concern is the ability of landscapes in the Eastern Slopes to continue providing water required for ecosystems and downstream users. The regulation of coal activities thus requires a full understanding of ecological limits, determined by careful cumulative effects analyses.

2. Modernized coal policy for Alberta must recognize many Alberta communities depend upon the coal industry and will need support to ensure their sustainability through a time of transitions.

Although coal mining represents less than one percent of the province's GDP, it represents substantial economic activity at the local level – in local wages, local property taxes and support for local communities from social responsibility efforts by coal producers. Aside from Employment Insurance for impacted workers, however, there are few programs to compensate Alberta communities affected by mine closures or the termination of coal exploration programs. There are no programs that compensate communities for loss of future economic opportunities due to project denials or the halting of proposed projects due to changes in policy or regulations. In fairness, any federal or provincial policies deliberately aimed at closing active coal mines, or transitioning communities away from existing mining projects, must be accompanied by programs to assist and compensate workers. The federal government's Just Transition program should assist local communities impacted by federal regulatory initiatives. Alberta should also consider joint programs and strategies to assist communities in the Eastern Slopes affected by curtailment of coal activities.

3. Place priority on restoring trust throughout Alberta’s regulatory system for coal, including material new efforts to convince Albertans that the public interest is respected.

A general decline in public trust in regulatory authorities may reflect broader concerns about complex policy issues and shifting public attitudes toward acceptance of risks. The committee heard Albertans have concerns about the AER’s perceived lack of transparency and accessibility. Trust in regulatory authorities is essential. The Government of Alberta should work to enhance public trust in the regulatory process for coal exploration and development.

4. Enhance environmental monitoring, inspection, and enforcement at existing and abandoned mines to address water contamination, specifically selenium contamination within watersheds.

Importantly, the AER should be instructed to consider activities impacting species under the Species at Risk Act and, equally as important, critical habitats. Cumulative impacts of approvals must be assessed by the AER in conjunction with current and future land uses, including linear footprints resulting from resource development. Selenium is a key concern. Any assessments of proposed coal mines should consider the selenium standards soon to be established in proposed federal Coal Mining Effluent Regulations. A joint Alberta-industry inventory of contaminated waters at coal sites should also be commissioned.

5. Alberta should continue to work with Canada and other provinces to develop consistent regulations for coal mine effluents.

Several policy pronouncements by the Canadian federal government in 2021 have indicated a reluctance to approve new thermal bituminous coal developments, or the expansions of existing thermal coal mines. There is a need for a seamless, integrated federal, provincial, and municipal regulatory regime for coal. The first step would be the enactment of consistent effluent regulations.

Inaccuracy #2: CPAWS NAB and AWA - Groups which have no statutory mandate, no connection to the area.

Inaccurate: Both organizations have membership in the thousands, representing people all across Alberta, including members who visit, work, live, and raise families in the Grand Cache Area. Many of these supporters have made clear they are concerned about coal; since January, AWA has been copied on more than 750 letters to government from members of the public concerned about advanced coal projects like Summit’s Mine 14, the removal of coal moratorium, future directions of coal policy in the province, and the environmental impacts of continued and further development of the industry. Both organizations function to consolidate and voice the public’s environmental concerns, which is part of their statutory mandates. Both historically and in recent years, CPAWS NAB and AWA have been active advocates for the region, participating in numerous policy development, land-use, and resource planning processes.

CPAWS NAB and AWA were both members of the Caribou Task Force, which was established to advise the government on Upper Smoky sub-regional planning, including conservation and recovery actions for caribou and other sensitive species. Multi-stakeholder conversations were held in good faith from 2019 to 2021, and included representatives from Indigenous Nations, Metis groups, industry, municipalities, and various other advocacy and interest groups.

Both organizations successfully raised the alarms and advocated against the closure of provincial parks and protected areas in the region in 2020, including the Smoky River South Provincial Recreation Area and the Sheep Creek Provincial Recreation Area.

CPAWS NAB, as was made clear in their submission for participation, has undertaken province wide analysis to evaluate areas of high conservation priority, through which this region was identified as having irreplaceable conservation value. Additionally, CPAWS NAB, alongside AWA, represents the environmental interests of Albertans, including those who reside in the region. CPAWS NAB has a history of nearly 60 years of representing the interests of nature in the province, including for species at risk (such as bull trout and arctic grayling). This longstanding history of advocacy for the conservation of nature and biodiversity position CPAWS NAB as an ideal organization able to provide expertise and participation in land use decisions that represent risk to the environment.

AWA's long-standing work, connections, and concerns in the region are further detailed in the Kakwa and Little Smoky Archives and History Sections on the organization's website. Some highlights include:

- AWA's participation in the development of foundation policy for the region and province, including *A Policy for Resource Management of the Eastern Slopes (1977 and 1984)* and *A Coal Development Policy for Alberta (1976)*.
- AWA's advocacy for the Caw Ridge populations of bighorn sheep and mountain goats' dates back to the 1970's.

Inaccuracy #3: AWA and CPAWS NAB have not raised any issues which have not previously been dealt with by Summit to the satisfaction of the AER.

Inaccurate: CPAWS NAB and AWA have raised significant issues and deficiencies within the Application, and present relevant and local research to better contextualize concerns and help inform the AER's decision in this proceeding. Further, it is the responsibility of the AER, not Summit, to determine whether the concerns raised have been sufficiently addressed in the Application. This can be achieved through the public hearing process.

CPAWS NAB's written submission provides evidence that the Application is lacking fundamental baseline data and assessments related to wildlife and biodiversity. It highlights where the Application fails to communicate commitment and clarity, or entirely lacks mitigation measures to avoid and minimize impacts to the environment. It discusses where proposed monitoring plans are poorly designed and lacking in key areas and emphasizes that mitigation and monitoring plans should be presented in full before project approval, and not during design or construction phases.

AWA's written submission provides further evidence that reiterates the lack of appropriate environmental and toxicological baseline data. It notes the Application fails to complete a cumulative effects assessment as required and also demonstrates how it lacks climate change considerations. The written submission identifies sources of pollution that were missed in the assessments and demonstrates deficiencies in how the water and air monitoring results were collected, interpreted, and applied within the Application.

Both written submissions provide recommendations to improve how environmental data is collected, monitored, reported, and addressed in the Application.

III. Conclusion

Although Summit, as previously referenced in their submissions, have had some success with their "cultivation" efforts with some of the full participant parties, they have made no effort to address the concerns raised by the remaining parties through any form of communication, including mediation and, as a result, the remaining legitimate issues raised by AWA and CPAWS NAB, (with a long history of participation in both land use planning and resource development processes in the area, including statutory responsibilities, with members who work, reside and raise families in the area) clearly need to be addressed by a hearing – a hearing now that will to be focused, expedient and necessary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 9th day of July, 2025.



Clint G. Docken, K.C.