

**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**").

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**MOTION OF SUMMIT COAL INC.**

**TO THE CHIEF EXECUTIVE OFFICER OF THE  
ALBERTA ENERGY REGULATOR**

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**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**"),<sup>1</sup> 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."<sup>2</sup>

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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<sup>1</sup> Exhibit 89.0.

<sup>2</sup> 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.<sup>3</sup> 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

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<sup>3</sup> 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.<sup>4</sup> 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:

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<sup>4</sup> 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.<sup>5</sup> However, neither the *REDA* nor the *Rules* establish

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<sup>5</sup> *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".<sup>6</sup> The *REDA* expressly clarifies that the "proceedings of the hearing commissioners are part of the day-to-day operations of the Regulator."<sup>7</sup> 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

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

<sup>7</sup> *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.<sup>8</sup> Neither a director nor the CEO of the AER may be appointed as a hearing commissioner.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> Third, hearing commissioners may participate in the development of the AER's practices, procedures, and rules.<sup>12</sup> In addition, the *Rules* provide that hearing commissioners may conduct certain dispute resolution meetings, as well as binding dispute resolution.<sup>13</sup>

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*.<sup>14</sup> 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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<sup>8</sup> *REDA*, s 11(1).

<sup>9</sup> *REDA*, s 11(3).

<sup>10</sup> *REDA*, s 12(1).

<sup>11</sup> *REDA*, s 12(2).

<sup>12</sup> *REDA*, s 13(2)(a).

<sup>13</sup> *Rules*, ss 7.81, 7.9(1).

<sup>14</sup> *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.<sup>15</sup>

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.<sup>16</sup>

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 SOC's were filed in response to Summit's Applications. These included SOC's 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 SOC's, 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

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<sup>15</sup> See Exhibit 2.0 at PDF pp. 10-12.

<sup>16</sup> 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.<sup>17</sup> 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

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<sup>17</sup> 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.<sup>18</sup> 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

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<sup>18</sup> Exhibit 3.0.

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

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."<sup>21</sup> 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<sup>22</sup> 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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<sup>19</sup> 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.

<sup>20</sup> Exhibit 41.0 at PDF p. 3; Exhibit 42.0 at PDF p. 3.

<sup>21</sup> *Fort McKay First Nation v Prosper Petroleum Ltd*, 2020 ABCA 163 at para 49.

<sup>22</sup> 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."<sup>23</sup> 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.<sup>24</sup>
- (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."<sup>25</sup> 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."<sup>26</sup> 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.<sup>27</sup> 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".<sup>28</sup>
- (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."<sup>29</sup> 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

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<sup>23</sup> Exhibit 3.0 at PDF p. 4.

<sup>24</sup> Exhibits 37.0, 38.0, 39.0 and 40.0, at PDF p. 3.

<sup>25</sup> Exhibits 37.0, 38.0, 39.0 and 40.0.

<sup>26</sup> <https://www.alberta.ca/indigenous-consultations-in-alberta>.

<sup>27</sup> *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.

<sup>28</sup> *Energy Ministerial Order 105/2014* (October 31, 2014) at PDF p. 3.

<sup>29</sup> 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 SOC's 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 SOC's; 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:<sup>30</sup>

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".<sup>31</sup> The AER should have clear and predictable rules regarding who can trigger and participate in hearings and hearing panels should apply those.

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<sup>30</sup> Exhibits 41.0 and 42.0, at PDF p. 3.

<sup>31</sup> 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:<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup> 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

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<sup>32</sup> Exhibit 52.0 at PDF pp. 13, 18.

<sup>33</sup> See Exhibit 53.0 which does not address this issue.

<sup>34</sup> 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,<sup>35</sup> 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**"),<sup>36</sup> 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".

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<sup>35</sup> See Exhibits 70.0, 71.0, 72.0, and 73.0.

<sup>36</sup> 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,<sup>37</sup> 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

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<sup>37</sup> 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 Summit's submissions based on those provisions on the basis that they "govern consideration of statements of concern" and "[t]he statement of concern process has concluded and is no longer relevant."<sup>38</sup> 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."<sup>39</sup> 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

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<sup>38</sup> Exhibit 89.0 at PDF p. 4.

<sup>39</sup> 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 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.<sup>40</sup>

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.<sup>41</sup> Rather, the Panel simply found that the ENGOs "may have information that can assist the panel in reaching its decision on the applications."<sup>42</sup> 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.

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<sup>40</sup> See, for example, Exhibit 23.0 at PDF p. 3.

<sup>41</sup> 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.

<sup>42</sup> 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,<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup>

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."<sup>46</sup> 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

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<sup>43</sup> 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."

<sup>44</sup> 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.

<sup>45</sup> 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."

<sup>46</sup> 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."<sup>47</sup> 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.<sup>48</sup> 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:<sup>49</sup>

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

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<sup>47</sup> Exhibit 86.0 at PDF p. 3.

<sup>48</sup> Exhibit 87.0 at paras 5-9.

<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup>

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

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<sup>50</sup> Exhibit 79.0.

<sup>51</sup> 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."<sup>52</sup> 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.<sup>53</sup> The Panel, when determining whether continuing with the hearing was in the public interest, 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.<sup>54</sup> 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

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<sup>52</sup> Exhibit 2.2 at PDF 107 and 108.

<sup>53</sup> Exhibit 2.2 at PDF 109 and 110.

<sup>54</sup> *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.<sup>55</sup> 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.<sup>56</sup> CPAWS makes similar assertions in its hearing submissions.<sup>57</sup>

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<sup>55</sup> Exhibits 75.0 and 76.0.

<sup>56</sup> Exhibit 75.0 at para. 4 to 7.

<sup>57</sup> 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<sub>x</sub>, CO, PM<sub>2.5</sub> and PM<sub>10</sub>, 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<sub>2</sub>) to immaterial (CO, PM<sub>2.5</sub> and PM<sub>10</sub>). 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.<sup>58</sup>

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*")<sup>59</sup> 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."<sup>60</sup> Based on site visits, sample taking and expert review by a professional hydrogeologist, it concludes: "No

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<sup>58</sup> Exhibit 2.0 at PDF 668 and 669.

<sup>59</sup> *Environmental Protection and Enhancement Act*, RSA 2000, c E-12.

<sup>60</sup> 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."<sup>61</sup> 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."<sup>62</sup>

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.<sup>63</sup> These expert reports conclude that the stormwater management ponds have been adequately sized and that erosion is not expected downstream of the pond spillways.<sup>64</sup> 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."<sup>65</sup> 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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<sup>61</sup> Exhibit 2.0 at section 4.2 at PDF 596.

<sup>62</sup> Exhibit 2.0 at section 4.3 at PDF 596.

<sup>63</sup> Exhibit 2.0 at PDF 1097, 1126 and

<sup>64</sup> Exhibit 2.0 at PDF 1122.

<sup>65</sup> 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 6<sup>th</sup> 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
<b>Groundwater</b>						
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.
<b>Surface Water</b>						
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.
<b>Soils</b>						
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.
<b>Air</b>						
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.
<b>Terrestrial Wildlife</b>						
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.
<b>Vegetation</b>						
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.
<b>Wetlands</b>						
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.
<b>Fish and Fish Habitat</b>						
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 ( <i>Species at Risk Act</i> )	–	✓	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 ( <i>Fisheries Act</i> and <i>Species at Risk Act</i> )	–	✓	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.
<b>Reclamation</b>						
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.
<b>Cumulative Effects and Risk Assessment</b>						
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 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.
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
<b>Adaptive Management Plan (and Other Management Activities)</b>						
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

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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**



August 5, 2025

**Via Email: SOC@aer.ca**

Alberta Energy Regulator  
Suite 1000, 250 – 5<sup>th</sup> 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”)

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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 SOC’s 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 SOC’s.

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

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## **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](mailto: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](mailto: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