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File No. 1187-025

## VIA EMAIL

November 3, 2020

**Janet Shaw** ([Janet.shaw@canada.ca](mailto:Janet.shaw@canada.ca))

Impact Assessment Agency of Canada  
Pacific and Yukon Region  
210A - 757 West Hastings Street  
Vancouver, BC V6C 3M2

Dear Ms. Shaw,

**Re: Response to Summary of Initial Project Description for Castle Mountain Project under the IAA**

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We write on behalf of Kainai (Blood Tribe) (“Kainai”) in respect of Teck Resources Limited’s (“Teck”) application for expansion of its Fording River Operations (“FRO”) at Castle Mountain (the “Castle Mountain Project” or the “Project”).

We write to provide comment on the Summary of the Initial Project Description (“IPD Summary”) submitted by Teck as part of the impact assessment conducted by the Impact Assessment Agency of Canada (“IAAC”). As requested by the IAAC, we also provide comment on Kainai’s preferred participation in the federal process.

### **Comments on the Summary of Initial Project Description**

While the IPD Summary and the reference table provided in the document titled *‘What We’ve Heard – Issues Raised to Date on the Castle Project’* largely captures the comments previously submitted by Kainai and is reflective of what Kainai expects to see in the Summary of Issues document, we wish to supplement this list as follows:

1. The IPD Summary refers to “[l]ands associated with Kainai (Blood Tribe) ... in Alberta are located 90 to 130 km from the Project.”<sup>1</sup> This statement refers to the distance that

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<sup>1</sup> IPD Summary p 5.

Kainai Reserve Lands are from the Project. As noted in the previous submission (provided jointly by Kainai and Siksika Nation):

Kainai and Siksika are members of the Blackfoot Confederacy and made treaty with the British Crown in 1877 under the Blackfoot Treaty, also referred to as Treaty 7. Castle Mountain is within the traditional territory of the Kainai and Siksika Nations.<sup>2</sup> The area in and around Castle Mountain was used extensively by Kainai and Siksika for travel, trade, harvesting, and ceremonial purposes, and continues to be an area of importance for the exercise of Treaty rights and related cultural practices for both Nations.<sup>3</sup>

It is inaccurate to state that lands associated with Kainai are 90-130 km away from the Project. The Project is located *within* the traditional territory (i.e. lands) of Kainai and is directly adjacent to areas covered by the Blackfoot Treaty.

Moreover, Kainai has access to a parcel of land near Coleman Alberta, for the practice of traditional land use and treaty rights. This parcel is approximately 60 km from the Project. In addition, Kainai have rights to a quarter section of land near Blairmore for traditional land use. This land is approximately 70km away from the Project. Further, Kainai uses the area between Beehive Natura Area and Bob Creek Wildland for Bighorn sheep and elk hunting among other traditional land uses. This area is approximately 5km away from the Project.

2. The IPD notes that the Project has the potential to impact Indigenous people's physical and cultural heritage, current use of lands and resources for traditional purposes, sites or things of historical archaeological or cultural importance, as well as the health, social or economic conditions of Indigenous people. We wish to add that these impacts may arise directly from the Project itself, as well as through the cumulative impact of this Project and the numerous other coal mining projects being proposed for this area. This Project's contribution to cumulative effects must not be overlooked.
3. Kainai wishes to reiterate concerns related to Bighorn sheep winter ranges. Bighorn sheep are a species of cultural importance to Kainai and continued destruction of their winter ranges will impact Kainai's ability to practice their Treaty rights. As such, it is critical that the significance of impacts to Bighorn sheep ranges and the direct connection to loss of ability to practice Treaty rights is reflected in the Summary of Issues.

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<sup>2</sup> Dermot O'Connor, *Review of the Literature on Blackfoot Use and Occupancy of the Crowsnest Pass & East Kootenays*, Oak Road Concepts, (May 2020), at 2 [Oak Road Report].

<sup>3</sup> *Ibid* at 3.

4. Kainai notes that the Project is approximately 5km away from the headwaters of the Oldman River. The Oldman River system is sacred to Kainai, provides a water supply for their members, and supports healthy fish populations. Kainai requests that the cultural and environmental importance of this river system be reflected in the Summary of Issues.
5. Under the heading “Cumulative Effects” in the *‘What We’ve Heard – Issues Raised to Date on the Castle Project’* document, it states that “Coal mining has been occurring in the Elk Valley for over 100 years which has resulted in changes to the biophysical and human environment, including cumulative effects to land, water, resources and Indigenous peoples.” While this is indeed true, it is important to note that the Elk Valley and Crowsnest Pass is currently facing an unprecedented level of coal mining development, with five projects already approved and/or constructed, and another six or more projects proposed. As such, any cumulative effects analysis must consider not only the impacts from the last 100 years of coal mining, but impacts associated with future development as well. We also wish to specify the importance of assessing how these cumulative impacts will impact Kainai’s ability to practice their rights and culture in and around the Elk Valley and Crowsnest pass.

In addition to the points made above, Kainai requests that the Summary of Issues document reflect concerns as identified in the Request for Designation Letter dated June 19, 2020, and as in its submission to the BC Environmental Assessment Office in respect of this Project.

### **Comments on preferred participation in the federal process**

Kainai seeks to engage in the federal process in a collaborative and substantive way that permits their concerns to be addressed at each stage of the process, that facilitates a meaningful assessment of the Project impacts on its rights, and that supports their ability to positively influence the Project with their unique knowledge, expertise, and experience.

As a starting point, Kainai would like to work with the IAAC and the proponent, to ensure that adequate information is collected with respect to the practice of Kainai rights and culture, the conditions required to practice their rights, and the context within which those rights are being practiced. This information is critical to understanding how the project will impact Kainai’s ability to meaningfully practice their rights.

We also hope to come to an agreement with the IAAC on a methodology for assessing impacts to rights that can be used in the assessment. As you are aware, not only is an assessment of impacts to rights necessary under the Impact Assessment Act, but it is also necessary for discharging the duty to consult.<sup>4</sup> It is critical however, that any assessment of impacts to rights:

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<sup>4</sup> *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 at para 45.

1. take into account the aboriginal perspective;
2. consider the context within which the project is being proposed; and
3. not be limited to a biophysical assessment.

Finally, Kainai wishes to participate in all relevant technical working groups or committees, work collaboratively with the Proponent to develop mitigation measures and reduce the impact of the Project on Treaty rights, and jointly develop conditions with the IAAC.

As such, Kainai expects appropriate funding to be allocated for their active participation in the federal process to ensure that their participation can guide the process in the most effective and valuable way possible.

Practically, Kainai is pleased to participate in consultation events virtually until COVID-19 restrictions are reduced and everyone can meet safely in person.

Yours Truly,

**JFK Law Corporation**

<Original signed by>

Per:

**Mae Price**

MAP/si

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