

**File No.: 1334**  
**VIA EMAIL**

June 30, 2020

Honourable Jonathan Wilkinson MP  
Minister of Environment and Climate  
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Dear Minister and Madam:

**Re: Letter in Support of Requests for Designation under the *Impact Assessment Act* of Coalspur Mine (Operations) Ltd.'s Vista Coal Mine Expansion**

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We represent the Stoney Nakoda Nations (the “**Stoney Nakoda**”) with respect to the above-noted matter.

On May 1, 2020, Louis Bull Tribe and Keepers of the Water, Keepers of the Athabasca and the West Athabasca Bioregional Society, submitted requests (collectively, the “**Designation Requests**”) to the Impact Assessment Agency (the “**Agency**”) and the Minister of Environment and Climate Change (the “**Minister**”) requesting:

- a. The designation of the expansion plans for Coalspur Mine (Operations) Ltd.’s (“**Coalspur**”) existing Vista Mine pursuant to Schedule 2, section 19(a) of the *Physical Activities Regulations*, SOR/2019-285 (the “**Regulations**”); or
- b. In the alternative, that the Minister exercise his discretion to designate the expansion plans under section 9(1) of the *Impact Assessment Act*, SC 2019, c 28, s 1 (the “**IAA**”).<sup>1</sup>

The Stoney Nakoda submit this letter in support of the Designation Requests.

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<sup>1</sup> Louis Bull Tribe Request for Designation under the *Impact Assessment Act* of Coalspur Mine (Operations) Ltd.’s Vista Coal Mine Expansion (May 1, 2020) (“**Louis Bull Designation Request**”); Keepers of the Water, Keepers of the Athabasca and the West Athabasca Bioregional Society Request for Designation of the Vista Thermal Coal Mine Expansion Phase under s.19(a) of the Schedule to the *Physical Activities Regulations* and s.9(1) of the *Impact Assessment Act* (May 1, 2020) (“**Ecojustice Designation Request**”).

## Existing mine and expansion plans

The existing Vista Mine is an open pit thermal coal mine located in Alberta's Eastern Slopes of the Rocky Mountains (“**Phase I**” or “**Vista Mine**”). The expansion plans for the Vista Mine include Phase II (“**Phase II**”) and the Vista Test Underground Mine (“**VTUM**”) (collectively, the “**Expansion Phase**”). Stoney Nakoda agrees with Louis Bull Tribe and Keepers of the Water, Keepers of the Athabasca and the West Athabasca Bioregional Society that the components of the Expansion Phase, that is, Phase II and the VTUM, are temporally and geographically linked to the existing Phase I and must accordingly be considered together for the purposes of determining whether the project should be designated under the *Regulations* or the *IAA*.<sup>2</sup>

The serious health and environmental impacts of thermal coal mining are not in dispute. The Department of Environment and Climate Change recently acknowledged that “[c]oal is one of the most significant sources of carbon emissions and air pollution in the world. Coal-fired electricity has significant adverse environmental and health impacts.”<sup>3</sup> Canada has therefore committed to phasing out traditional coal-fired power by 2030.<sup>4</sup>

## The Stoney Nakoda

The Stoney Nakoda are comprised of the Bearspaw First Nation, Chiniki First Nation and Wesley First Nation, and have six reserves, namely: Morley Indian Reserves 142, 143 and 144, undivided; Rabbit Lake Indian Reserve 142B; Big Horn Indian Reserve 144A; and Eden Valley Indian Reserve 216. The Stoney Nakoda are signatories to Treaty No. 7 and have Aboriginal and Treaty rights as recognized and affirmed under section 35 of the *Constitution Act, 1982*. The prairies, foothills and eastern slopes of the Rocky Mountains have always been home to the Stoney Nakoda.

Coalspur incorrectly believes that the Stoney Nakoda are a Treaty 6 nation.<sup>5</sup> As stated, the Stoney Nakoda are signatories to Treaty 7, and the Vista Mine and the Expansion Phase are located entirely within Stoney Nakoda's traditional territory. The Stoney Nakoda have an ongoing action regarding these lands in the Court of Queen's Bench of Alberta (Action No. 0301-19586) in which they seek, in part, a declaration of unextinguished Aboriginal title and compensation from Canada and Alberta for breaches of Aboriginal rights and title over Stoney Nakoda lands now located in Alberta (the “**Title Claim**”).

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<sup>2</sup> Louis Bull Designation Request, *ibid* at page 7; Ecojustice Designation Request, *ibid* at page 10.

<sup>3</sup> Environment and Climate Change Canada, News Release: “Canada launches strategic assessment of thermal coal mining” (20 December 2019).

<sup>4</sup> *ibid*.

<sup>5</sup> Coalspur Mines (Operations) Ltd., Impact Assessment Act (“IAA”), Requests for Designation of May 1, 2020 (May 29, 2020), at page 5 (“**Coalspur Response to Designation Requests**”); Coalspur Mines (Operations) Ltd. CCA Applications 1927365, 1927366 and 1927367, EPEA Application 008-00301345, Water Act Applications 005-00311969 and 005-00311965, Coalspur Mines (Operations) Ltd. (“Coalspur”), Vista Coal Project – Test Underground Mine (“Project”) (April 30, 2020), at page 4 (“**Coalspur Reply to SNN Statement of Concern**”).

The Stoney Nakoda's concerns regarding direct adverse impacts from the Vista Mine and the Expansion Phase include the following:

- Additional taking-up of Crown land within Stoney Nakoda's traditional territory in Treaty 7;
- Loss of access to lands and waters;
- Additional damage to lands, waters and the environment;
- Cumulative impacts to the Stoney Nakoda way of life and Aboriginal and Treaty rights;
- Additional loss of important habitat for culturally significant species, including elk, deer, moose, and fish, including species at risk; and
- Additional increase in greenhouse gas emissions, further exacerbating environmental impacts.

### **Absence of impact assessments and consultation on the Vista Mine and Expansion Phase**

Vista Mine Phase I was not subject to any federal environmental assessment. The Canadian Environmental Assessment Agency determined in 2012 that a federal environmental assessment under the then *Canadian Environmental Assessment Act*, SC 1992, c 37 was not required.

The Stoney Nakoda have at no point been consulted about Phase I, despite its size and its location within Stoney Nakoda traditional territory.

As it stands, Phase II will also not be subject to any federal environmental assessment. The Agency determined on November 8, 2018 that Phase II would not be designated under the then *Canadian Environmental Assessment Act*, 2012, SC 2012, c 19, s 52, and on December 20, 2019 the Minister declined to designate Phase II under the *IAA*.<sup>6</sup>

Notwithstanding the decisions not to designate Phase II, the Agency and the Minister found in their analysis that Phase II may result in adverse effects within federal jurisdiction, including:

- Effects on migratory birds, including certain species listed under the *Species at Risk Act*;
- Effects on fish and fish habitat, including certain species listed under the *Species at Risk Act*; and
- Effects on the rights of Indigenous Peoples, including effects to current use of lands and resources for traditional activities, effects to pre-contact archeological sites, and adverse health effects resulting from water quality and food contamination, release of coal dust, air emissions and noise.<sup>7</sup>

<sup>6</sup> Minister's Decision, Coalspur Vista Coal Mine Phase II Expansion Project (20 December 2019).

<sup>7</sup> Impact Assessment Agency of Canada, "Whether to Designate the Coalspur Mine Ltd. Vista Coal Mine Phase II Project in Alberta, Analysis Report" (December 2019), at pages 6-7.

At no point have the Stoney Nakoda been consulted about Phase II, again despite its location in Stoney Nakoda traditional territory and the acknowledgement by the Agency and Minister that Phase II may result in direct and adverse impacts on the rights of Indigenous Peoples. While a provincial environmental impact assessment is required for Phase II, Stoney Nakoda has had no indication from the Aboriginal Consultation Office (the “ACO”) that Stoney Nakoda will be consulted. Coalspur has also not indicated that it has any intention of engaging or consulting with Stoney Nakoda on Phase II.

The VTUM will also not be subject to any federal environmental assessment, and no federal regulatory authorization is required. Further, the VTUM is also not subject to a provincial environmental assessment. This is despite the fact that underground mining may result in significant adverse impacts on the environment, including the emission of greenhouse gases, release of toxic waste and changes to streams and groundwater. Coalspur has acknowledged that the VTUM will result in the deposit of additional waste material, changes to reclamation plans, changes to the surface area, sequencing and regrade configuration of the existing Vista Mine, and changes to water management and groundwater and surface water diversion.<sup>8</sup> Fisheries and Oceans Canada states that “for both aspects of the project [Phase II and VTUM] it is probable that the proposed water management plan would change stream flow through water withdrawal and discharge, which has the potential to cause the harmful alteration, disruption or destruction of fish habitat, and effects to listed aquatic species at risk”.<sup>9</sup> Furthermore, Environment and Climate Change Canada has concluded that “when considered in addition to our previous advice related to the Phase II Expansion Project, the activities associated with the Underground Test Mine Project may collectively result in adverse environmental effects as defined under the Impact Assessment Act, including potential effects on species at risk, migratory birds, water quality, and air quality.”<sup>10</sup> Further still, Health Canada states that “[b]ased on the limited information available, Health Canada notes that the Vista Test Underground Mine could have potential impacts to air quality, noise, country foods and drinking water quality. Additionally, the information provided does not identify which Indigenous receptors or communities may be affected by the potential human health impacts of the Vista Test Underground Mine.”<sup>11</sup> It is therefore clear that the VTUM may result in adverse health and environmental effects. Yet at this time, the VTUM will escape undergoing any environmental assessment.

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<sup>8</sup> Coalspur’s Response to Designation Requests, *supra* note 5, at page 4.

<sup>9</sup> Fisheries and Oceans Canada, Federal Authority Advice Record: Designation Request under IAA (June 8, 2020) at page 1.

<sup>10</sup> Environment and Climate Change Canada, Request for Federal Expert Advice - Designation Request for Proposed Expansion Activities of the Vista Coal Mine Project under the Impact Assessment Act (June 8, 2020) at page 5.

<sup>11</sup> Health Canada’s Response to the Designation Request under the Impact Assessment Act for the Coalspur Vista Coal Underground Mine and Expansion Activities Project (June 8, 2020) at page 4.

Additionally, the ACO determined that no consultation on the VTUM with any Indigenous community is required.<sup>12</sup> On April 9, 2020, the Stoney Nakoda submitted a statement of concern to the Alberta Energy Regulator regarding the VTUM.<sup>13</sup> Stoney Nakoda submitted in part that given an impact assessment was never conducted on the existing Vista Mine, a proper impact assessment must now be conducted on the expansion in order to address and accommodate Stoney Nakoda's concerns regarding the project. Based on Coalspur's reply to Stoney Nakoda's statement of concern, and in particular, Coalspur's position that Stoney Nakoda is not directly affected by the VTUM,<sup>14</sup> Stoney Nakoda does not anticipate that Coalspur will voluntarily engage in any consultation activities regarding the VTUM. Despite Coalspur's claim that it is "committed to engaging with and discussing any potential concerns of potentially affected stakeholders, landowners or Indigenous groups"<sup>15</sup>, Coalspur has stated that it does not have any specific engagement or consultation plans for the VTUM beyond the communications it already performs.<sup>16</sup>

In summary, thus far no part of the existing Vista Mine nor the Expansion Phase has or will be required to undergo a federal environmental assessment. This is despite the fact that the production capacity of Phase I, Phase II and the VTUM would make the Vista project one of the largest thermal coal mining operations in Canada, and despite the fact that Canada has committed to phasing out coal-fired power because of its adverse impacts on carbon emissions, air pollution, human health and the environment. Given these facts it is absurd that this project may somehow escape undergoing any federal assessment. While Phase II will be subject to a provincial environmental assessment, the VTUM will not be subject to any environmental assessment. Provincial regulatory assessments are insufficient for addressing effects within federal jurisdiction and for providing opportunities for Indigenous communities and the broader public to provide input. Stoney Nakoda has at no point been consulted on any aspect of the existing Vista Mine nor the Expansion Phase. This is despite the fact that the Vista Mine and Expansion Phase are located entirely in the traditional territory of Stoney Nakoda which is the subject of the Title Claim, and that the Stoney Nakoda have expressed serious concerns about direct and adverse impacts.

The regulatory process favours industrial projects instead of the Stoney Nakoda people and other Indigenous communities. The Designation Requests and the foregoing discussion clearly demonstrate the significant adverse impacts within federal jurisdiction that may result from the Expansion Phase, and the overall lack of consultation and impact assessments that have or will occur for the project. Whether the Expansion Phase is designated under the *Regulations* or through the exercise of the Minister's discretion, it is

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<sup>12</sup> Coalspur, Vista Test Underground Mine Application No. 1927365, Vol 1, at page 101 ("VTUM Application").

<sup>13</sup> Stoney Nakoda Nations Statement of Concern on CCA Applications 1927365, 1927366, and 1927367, EPEA Application 008-00301345, Water Act Applications 005-00311969 and 005-00311965, Coalspur Mines (Operations) Ltd. Vista Coal Project (April 9, 2020).

<sup>14</sup> Coalspur Reply to SNN Statement of Concern, *supra* note 5, at page 5.

<sup>15</sup> *ibid*, at page 7.

<sup>16</sup> VTUM Application, *supra* note 12, Vol 1 at page 16.

essential that it undergo a federal assessment in order to provide sufficient opportunity for consultation and public input, and in order to properly identify adverse impacts within federal jurisdiction and determine appropriate accommodation and mitigation measures for these impacts.

Yours truly,

Rae and Company  
<original signed by>

Sara Loudon  
SML

cc: Dean Cherkas, Director of Consultation, Stoney Tribal Administration  
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