



O'CHIESE FIRST NATION

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Sent via e-mail allisson.lefebvre@iaac-aeic.gc.ca on August 6, 2021

Dear Ms. Lefebvre,

RE: O'Chiese First Nation comments on the Reconsideration of Designation Requests for the Proposed Coalspur Mines (Operations) Ltd. - Phase I Vista Test Underground Mine and Vista Mine Phase II Expansion Projects under the *Impact Assessment Act*.

This letter is sent on behalf of O'Chiese First Nation Chief and Council. The Chief and Council of O'Chiese First Nation have the elected authority and responsibility to protect the Inherent and Treaty Rights of O'Chiese First Nation. The Inherent and Treaty Rights of O'Chiese First Nation are recognized by Treaty 6 and Section 35, *Constitution Act, 1982*.

O'Chiese First Nation is bound by *Kaa-Ke-Chi-Ko-Moo-Nan*, O'Chiese First Nation's Great Binding Law ("Natural Laws"). As such, O'Chiese First Nation operates under its own distinct set of legal principles and laws that have been in place since time immemorial, which we understand and expect are protected by Treaty 6 and Section 35 of the *Constitution Act, 1982*. Our Natural Laws are the foundation for O'Chiese First Nation Peoples.

We submit this letter to the Impact Assessment Agency of Canada ("IAAC") in response to its request for comments on the reconsideration of the designation for Phase I Vista Test Underground Mine and Vista Mine Phase II Expansion Projects (the "Projects") proposed by Coalspur Mines Ltd.'s ("Coalspur") received on August 3, 2021.

O'Chiese First Nation is in full support of maintaining the designation of both Projects under the *Impact Assessment Act, 2019* ("IAA").

We offer the following critical information for consideration by the IAAC in its reconsideration process for the Projects in efforts to urge to the IAAC to maintain their designations under the IAA.

1. Impacts to O'Chiese First Nation's Inherent and Treaty Rights

Coal development creates deep and lasting scars on landscapes and impede the ability for O'Chiese First Nation to live according to the Treaty promises – in accordance with our

Natural Laws and with the continued ability to exercise our Inherent and Treaty rights as have since time immemorial.

The Projects would be located within Treaty No. 6, in the heart of O'Chiese First Nation's territory and within the Eastern Slopes Region. The area in question has been used historically and presently by our members to exercise their constitutionally protected Inherent and Treaty rights.

The Projects, if approved, will take up some of the last remaining unoccupied Crown lands in our territory, and significantly diminish Nation members' abilities to exercise their Inherent and Treaty rights freely and in accordance with our Natural Laws. Furthermore, the land and resources in the area of the Projects holds ceremonial, subsistence, and medicinal meaning to the Nation; We are fearful of the damage and contamination that will be caused by the proposed Projects and the inevitable impacts to our culturally critical lands and resources. The level and breadth of impacts that the Projects will create if approved merit designation under the *IAA*.

Further, O'Chiese First Nation is gravely concerned with the level of development, historic, current, and proposed, within our territory and Treaty 6. The Government of Alberta and the Government of Canada have continuously approved projects without proper consideration to cumulative impacts to O'Chiese First Nation's Inherent and Treaty rights. The project-by-project approach to reviewing proposed development projects fails to consider thresholds for taking up of lands and how development approvals may contribute to cumulative effects and the infringement of O'Chiese First Nation's Inherent and Treaty rights.

However, the IAAC's process is more rigorous than that of the AER and would provide more opportunities and capacity for Indigenous nations to participate in the regulatory process and identify impacts to Inherent and Treaty rights. Given the depth and breadth of impacts that result from any coal development, the more attention, and considerations to impacts that can be given, the better.

Additionally, O'Chiese First Nation understands accommodations for impacts resulting from development such as coal mining should include the provision of financial compensation as a control measure for identified impacts. We would like to request that financial accommodation for impacts resulting from the Projects to be a central point of consideration in the regulator review processes overseen by the IAAC should the designations remain.

2. Government of Alberta's Problematic Approach to Coal Development

O'Chiese First Nation is deeply concerned with the Government of Alberta's encouragement of coal exploration and development in Alberta. Despite coal production, particularly thermal coal production, being known as an unacceptable climate change risk¹, it appears that coal development in Alberta is still a growing industry that is supported by the Government of Alberta.

¹ The Minister of Environment and Climate Change (Canada) has issued a policy statement that Canada is aiming to transition away from thermal coal mining and project expansions as they are likely to cause unacceptable environmental effects and do not match Canada's domestic and international climate change commitments. The impacts of coal development were also discussed and recognized by the recent Joint Panel review decision on the proposed Grassy Mountain Mine project.

O'Chiese First Nation does not understand the unwillingness of the Government of Alberta to diversify the province's economy and seek more sustainable and environmentally beneficial industries to support. The time where short-term economic benefits to a few can outweigh the long-term, widespread impacts to many, including to constitutionally protected rights, has long passed and Alberta must recognize this and adjust.

This support and encouragement of coal exploration and development is made even more problematic to O'Chiese First Nation due to the extreme lack of consideration to Inherent and Treaty rights within the Alberta regulatory processes. The Government of Alberta has designed its regulatory process to benefit the proponents at the expense of First Nations and the environment. The Government of Alberta holds an extremely narrow understanding of O'Chiese First Nation's Inherent and Treaty rights² and makes every effort to avoid fulfilling the duty to consult and accommodate with O'Chiese First Nation on development projects within our territory and on Treaty 6 lands.³

Unfortunately, due to the poor example shown by the Government of Alberta and the minimal requirements for consultation and consideration for Inherent and Treaty rights, proponents are not willing to participate in meaningful engagement with our Nation and frequently refuse to provide O'Chiese First Nation with capacity required for us to complete tasks in a consultation and regulatory process including document review, meeting attendance, data collection and reporting, community engagement, and correspondences. This means that O'Chiese First Nation is required to carry not only the burden of impacts from development projects, but also the cost of participating in consultation and regulatory processes so that we can try to protect our Inherent and Treaty rights from further harm.

Additionally, the Government of Alberta has yet to replace the *1976 Coal Policy* that it unceremoniously repealed on May 30, 2021. The repealing of the 1976 policy led the Government of Alberta to open new exploration and mining leases in Category 2 Lands, where open pit mining was prohibited since 1976. After public backlash, the Government of Alberta limited new leases to exploration activities only until April 23, 2021 and stopped new leases entirely following that date.

The Government of Alberta, via Alberta Energy, is now in a public consultation process, accepting comments and documents with a final report of the feedback is due November 15, 2021. However, there is wide-spread public lack of confidence in Government of Alberta's management of coal development.⁴ After years of experiencing the failures of the coal policy and the regulatory system to protect our Inherent and Treaty rights and witnessing the increasing infringement to our Inherent and Treaty rights, we share in that lack of confidence. This lack of confidence has only increased since O'Chiese First Nation began trying to engage in consultation with the Government of Alberta in the coal policy consultation process.

² Government of Alberta defines Treaty rights as only including rights to hunt, trap, and fish.

³ Including only triggering consultation with O'Chiese First Nation within an inadequate and abstract consultation boundary, limiting consultation timelines, minimizing requirements for proponents to engage First Nations, providing insufficient annual consultation capacity funding for operation of our consultation office, and not considering cumulative impacts to Inherent and Treaty rights or setting thresholds for lands taken up.

⁴ The coal policy survey results shared by the Government of Alberta reported that over 90% of respondents said there are areas in Alberta unsuitable for coal exploration and over 85% of respondents said they were not at all confident that Government of Alberta's regulation of coal mining was safe, efficient, orderly, or environmentally responsible. <https://www.cbc.ca/news/canada/edmonton/coal-survey-results-economic-environment-1.6030796>

Given the bias held by the Government of Alberta towards coal coupled with its failings to recognize and protect Inherent and Treaty rights and the lack of any policies or regulations for coal development at this time, it would be inappropriate for the Government of Alberta, via the Alberta Energy Regulator (“AER”), to review the Projects and provide regulatory oversight.

3. Regulatory Review Process Requirements

Under the IAAC, Coalspur must demonstrate how it has consulted with Indigenous nations. Coalspur should also demonstrate considerations and inputs specific to each potentially impacted Nation. Further, as per the IAAC’s practitioners’ guidelines at Section 12:

“The Impact Statement should include contextual information, both historic and current, regarding an Indigenous group’s history and cultural practices, land use, as well as the manner in which rights of Indigenous peoples are, or may be, exercised and impacted by the project, as identified by the Indigenous groups. The contextual information may include the following:

- *the physical and cultural heritage of each Indigenous group;*
- *the current use of lands and resources for traditional purposes;*
- *the health, social, and economic conditions of Indigenous peoples; and*
- *nature and extent of the rights exercised.⁵ Neither of these information requirements.”*

The AER process does not have these same requirements. As previous stated, the AER process is biased towards coal to the point of ignoring long-term environmental impacts and cumulative effects. Further the AER does not properly recognize Inherent and Treaty rights in its regulatory review and oversight process. Considering the risks of coal development to the natural environment and the impacts the Projects will have to O’Chiese First Nation’s Inherent and Treaty rights, the need for a more stringent regulatory process is critical.

4. Coalspur’s Unwillingness to Carry Out Proper Consultation with O’Chiese First Nation

O’Chiese First Nation is deeply concerned by the Projects and the impacts the Project will have on O’Chiese First Nation’s Inherent and Treaty rights. As such, we have been actively working to engage with Coalspur to ensure that the proponent: a) considers impacts to O’Chiese First Nation; b) identifies appropriate accommodation measures for any identified impacts; and c) completes meaningful consultation that will ensure explicit integration of O’Chiese First Nation’s input into all project documents and related project assessment and planning activities.

⁵ Section 12 of the Practitioners Guide to the Impact Assessment Act. https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-act.html#_Toc15652119

To-date Coalspur has demonstrated an unwillingness to adequately engage with O'Chiese First Nation and has shown a lack of respect and recognition to O'Chiese First Nation's Inherent and Treaty rights. This has resulted in a strained relationship between O'Chiese First Nation, as well as stress. This has been exacerbated because Coalspur has yet to provide consultation capacity funding to facilitate our participation in consultation-related activities to identify and accommodate impacts to O'Chiese First Nation's Inherent and Treaty rights.

O'Chiese First Nation was encouraged to see that the Projects had been designated. Designation of the Projects would require Coalspur to make increased efforts to engage with O'Chiese First Nation and demonstrate how our input and our Inherent and Treaty rights were considered in all aspects of the Projects. We request that the IAAC not to revoke designations for the Projects so to ensure a fair and meaningful consultation process and to push the proponent to properly consult with Indigenous nations, including O'Chiese First Nation.

If approved, these two Projects will create long-term damages to lands and resources, contribute to already unbearable cumulative effects, and deeply impact O'Chiese First Nation's Inherent and Treaty rights. The responsibility of reviewing the two Projects cannot be left to the Government of Alberta at this time. The Government of Alberta has demonstrated an extreme bias towards development and has lost confidence from the Alberta public in its ability to manage coal development. The IAAC is the only Crown regulatory body best positioned to lead a review of the two project applications and carry out a fair and unprejudiced regulatory process that is inclusive of Indigenous nations and explicitly considers impacts to Inherent and Treaty rights. We implore the IAAC to maintain the designation of the Projects and subject them to a rigorous and careful regulatory review process.

We thank you for your consideration and your support in this important matter. O'Chiese First Nation is available should the IAAC have any questions or require any additional information.

Sincerely,

<Original signed by>

Andrew Scott
Consultation Director
O'Chiese Consultation Office

CC: Laurie Pushor, CEO – Alberta Energy Regulator Laurie.Pushor@AER.ca