

December 16, 2021

**Impact Assessment Agency of Canada**  
Prairie and Northern Region  
Canada Place  
Suite 1145, 9700 Jasper Avenue  
Edmonton, Alberta T5J 4C3

**Attention: Mr. Greg Bosse**  
**Project Manager, Prairie and Northern Region**

Dear Sir:

**Re: Montem Resources Alberta Operations Ltd. (“Montem”) Application for the Tent Mountain Mine Redevelopment Project (the “Project”). Driftpile Cree Nation (“Driftpile”) comments on the Initial Project Description (the “IPD”).**

We are legal counsel for Driftpile in the regulatory proceedings for the above-referenced Project. We write on behalf of Driftpile in response to the IPD submitted to the Impact Assessment Agency of Canada (the “IAAC”). As its absence from the IPD suggests, Driftpile has to date not been engaged by Montem with respect to the Project. Driftpile makes these comments in order to describe the potential direct and cumulative adverse effects the Project will have on Driftpile rights and why Driftpile must be meaningfully engaged and consulted in the context of the Project-approval process.

### **The Initial Project Description**

Montem proposes to re-open and expand the historical open-pit Tent Mountain Mine for the extraction and export of metallurgical coal to international markets. As part of the early stages of seeking a recommendation for approval from the IAAC, Montem submitted an IPD for the Project on November 25, 2021.

The Project was not originally designated for federal review as the planned amount of coal extraction of the Project falls just below the 5,000-tonne threshold for that designation. However, after submissions from various Indigenous groups earlier in 2021, the Minister of Environment and Climate Change Canada (the “**Minister**”) made the decision to designate the Project for federal review on June 28, 2021. The Minister based its decision on the fact that the Project may cause

adverse effects within the federal jurisdiction, the Project is not captured in a single provincial assessment, and the Project may cause adverse impacts on the rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982*, in part because the transborder location of the Project prevents either Alberta or British Columbia from consulting with all Indigenous groups potentially affected by the Project.

The proposed Project is located 20 km to the west of Blairmore, Alberta, within the municipality of Crowsnest Pass on the border between Alberta and British Columbia. The Project area is located within the Rocky Mountains. The IPD notes that there are several other historical and proposed mining operations in the area, as well as significant forestry and gas developments, pipelines, railways and well sites. These kinds of developments have been occurring in the area for more than 100 years. Montem has identified a number of rare and protected plant species and 151 different wildlife species were documented in the Project area, with a subset of those labelled as at risk or threatened.

In the IPD, Montem states that it has initiated engagement with 14 Indigenous communities and it has promised to continue to communicate and consult with Indigenous communities. Montem is conducting a number of Traditional Land Use (“TLU”) studies with different Indigenous groups and states that it will carry out a historical, archaeological and paleontological study. The IPD states that Montem will strive to understand any traditional land use areas. The IPD says that Montem’s engagements to date suggests that traditional rights to hunt and gather will be impacted and that Indigenous communities are concerned about water sustainability, quantity and quality. However, the IPD also states that Montem’s engagement with Indigenous communities has not yet identified any adverse effects on the physical and cultural heritage, the current uses of the Project area for traditional purposes or identified any significant structures, sites, or things.

### **Driftpile Cree Nation**

The community members of Driftpile have occupied the lands of present-day Alberta, British Columbia, Saskatchewan, Northwest Territories and beyond since time immemorial. Driftpile is a signatory of Treaty No. 8, which was signed on June 1, 1899. Additionally, Driftpile is a member of the Lesser Slave Lake Indian Council, in conjunction with Kapawe’no First Nation, Sawridge Band, Sucker Creek First Nation and Swan River First Nation. Driftpile’s reserve is located approximately 74 km west of the town of Slave Lake and 50 km east of High Prairie, on the south shore of Lesser Slave Lake. In February of 2018, Driftpile had a population of 2,800 members.

In addition to its Treaty rights and its inherent Indigenous rights, Driftpile has established Aboriginal rights and interests under section 35 of the *Constitution Act, 1982* that protect the practices, traditions and customs unique to the culture of Driftpile that were in practice prior to European contact. Driftpile has always had a very close connection to and reliance on the lands and waters in order to exercise its rights. Driftpile continues to hunt, trap, fish, gather, and use the land for ceremonial purposes, as they have done since time immemorial. As the Driftpile people

are traditionally nomadic, in the exercise of these Aboriginal rights, Driftpile members have historically traveled beyond the boundaries of Treaty No. 8. Additionally, Driftpile members are now travelling farther afoot than ever before to exercise their Aboriginal and Treaty rights due to cumulative impacts resulting from industrial development within Driftpile ancestral lands.

Driftpile's inherent and constitutional rights underscore the importance of appropriately and adequately assessing the impacts of the Project to Driftpile and to advance necessary consultations and accommodation and mitigation measures.

### **Direct Effects on Driftpile's Rights and Interests**

Driftpile's traditions and connections to the land are not restricted to the boundaries of its reserve or Treaty lands. While Driftpile's home is near Slave Lake, Driftpile's traditional land use includes travelling to other parts of Alberta, British Columbia and Canada for seasonal use. Those seasonal use areas include the areas in the vicinity of the Project. Further, a significant number of Driftpile members and families live outside of Treaty No. 8 land and in areas surrounding the proposed Project. For traditional land use purposes, those members rely substantially on lands that risk being significantly altered by the Project. Therefore, while the Project will not have a direct adverse effect on Driftpile reserve and Treaty lands, any developments in the Project area and its vicinity will have a direct impact on Driftpile's rights and interests on those lands. Specifically, the construction and redevelopment of the Project and its effects on the land and waters will negatively interfere with Driftpile's rights to hunt, fish, gather and use the land for ceremonial purposes.

Driftpile has particular concerns about the quality of water on the lands where it practices its traditions. Driftpile recognizes that the most significant effect these kinds of projects can have is on the water. Water is sacred and viewed as life itself. Any negative impacts on the quality and quantity of water affect all other aspects of the land.

Further development in the area and the Project will directly interfere with wildlife, disrupt habitats, migratory patterns and restrict and diminish access to food for wildlife. Driftpile is concerned that the result of the Project development will further reduce wildlife populations and impact Driftpile's ability to hunt and fish in the area. The IPD states that a significant number of wildlife species have been observed in the Project area and it is therefore likely that the Project will interfere with those species.

Driftpile members are taught by their elders and knowledge keepers to gather and pick plants where the land is pure and clean without disturbance or disruptions. As a result of developments already in place, the land that is appropriate for gathering is dwindling. Driftpile is forced to travel further and further in an attempt to gather and live a traditional way of life. Reopening and expanding the Tent Mountain Mine, and the concomitant land disturbances from construction, increase in human access and airborne and aquatic pollutants all threaten important areas where

Driftpile members have traditionally gathered unique plants and medicines. Further, these impacts on the land threaten loss of traditionally-used plant species and reduction in their quality.

Additionally, with increasing numbers of Driftpile members deciding to reside in geographic areas which are proximate to the project, Driftpile expects an even higher proportion of its members to be using the Project area for the exercise of its Aboriginal rights in the years to come.

The above described impacts on the land will also limit, impede or restrict the ability of Driftpile to use the lands within the vicinity of the Project for ceremonial purposes.

### **Cumulative Effects on Driftpile's Rights and Interests**

If approved, the Project will be part of an ever-increasing number of mines, pipelines and other energy and resource-based developments across Alberta and British Columbia. Located in northern Alberta, Driftpile is surrounded by extractive resource industries that have contributed to historical and ongoing adverse cumulative effects, including health risks, barriers to gathering and impacts on ecosystems and habitats on Driftpile lands. While the Project is only one of numerous developments that will cumulatively impact Driftpile's rights, the Project will nevertheless contribute to the cumulative effects on Driftpile and Driftpile's traditional lands. In Driftpile's view, the fact that the Project plans to reopen a previously operational mine underestimates the potential for new disturbance from the redevelopment of the mine and its related contribution to cumulative impacts to Driftpile, and other Indigenous nations.

Driftpile relies on hunting and trapping as a food source and for medicinal, ceremonial and other traditional purposes. As it is, Driftpile's access to wildlife populations for these purposes has been severely impacted by other developments, creating food insecurity, risk to economic opportunities and the ability to share and pass on Indigenous knowledge and culture. Although the Project is not within Driftpile's Treaty lands, it will further disrupt wildlife habitats and ecosystems and interrupt the movement patterns of wildlife that Driftpile relies upon. The environment is delicate and interconnected. Disturbing, contaminating and altering the environment in one area will impact neighbouring ecosystems. These impacts will be felt by Driftpile and are exacerbated by other developments that are completed or ongoing. Driftpile is concerned that certain cumulative impacts are already irreversible and that the environment will never recover. Continuing to develop the land, regardless of the size of each individual development, only adds to the detrimental effect on Driftpile's rights and interests. In light of the recent *Yahee v British Columbia* case, Driftpile submits that it would be a mistake to allow resource development to proceed on an extensive scale without properly assessing and addressing Driftpile's concerns about the cumulative effects of the Project.

## **Summary of Driftpile's Interests in the Project**

As described above, the Project, if approved, will have adverse direct and cumulative effects on Driftpile's Aboriginal and Treaty rights and its ability to exercise those rights. The result is that Driftpile is losing its interconnectedness with the land. To mitigate those losses, Driftpile believes that its interests and activities must be properly understood in the context of the Project prior to any contemplated approval by the IAAC. Further, Driftpile believes that there must be a robust assessment of the cumulative effects of the Project and the broader energy and resource industry in Alberta and British Columbia in the context of the IAAC process. Accordingly, Driftpile is interested in participating in and contributing to the IAAC process to the full extent possible. Driftpile believes that it is necessary that its participation include a TLU and cumulative effects studies. The failure of the IAAC or Montem to facilitate Driftpile's meaningful participation in the Project assessment and review process would result in an important gap in such processes which should be avoided.

As Driftpile has not yet been engaged and consulted with in respect of the Project, the IPD fails to properly recognize the potential impact the Project will have on Driftpile and its people. Driftpile recognizes that the reason for this is, in part, the fact that Montem is in the initial phase of its application for approval of the Project. While this failure to engage may be explained in this matter, Driftpile wishes to reiterate that its interests are potentially significantly impacted and that it should be fully engaged in the review process of the Project.

As noted above, the IPD also states that Montem's engagement with Indigenous communities has not identified any adverse effects yet. Given the relationship Indigenous people have with the land, Driftpile believes this conclusion is untenable. It is inevitable that the re-opening of a coal mine, its expansion and 14 years of mining activity will have material direct and cumulative impacts on Indigenous rights and interests. Potential impacts on Indigenous groups have already been highlighted in earlier submissions by Indigenous groups that advocated for federal designation of the Project. These impacts will be far-reaching. A TLU study and cumulative effects study specific to Driftpile will demonstrate the potential impacts the Project will have on Driftpile and suggest the impact that the Project could have on many other Indigenous communities.

In conclusion, Driftpile feels that targeted measures should be put in place to assess, understand and accommodate impacts to Driftpile's rights and that there should be a fulsome consideration of the direct and cumulative nature of such impacts. The IPD tends to downplay the significant potential of the Project to cause new specific impacts or for it to contribute to cumulative impacts.

More robust TLU studies must be supported in the context of the IAAC process and more meaningful consultation and engagement with potentially impacted Indigenous communities must be initiated by the Crown and Montem at the earliest opportunity.

We appreciate your consideration of these matters

Sincerely,

**MLT AIKINS LLP**

Per:



Aryn F. Lalji

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