



ʔAkisq̓nuk First Nation
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December 16, 2021

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

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

Dear Sir:

Re: Application for the Tent Mountain Mine Redevelopment Project (the “Project”) by Montem Resources Alberta Operations Ltd. (“Montem”): comments of ʔAkisq̓nuk First Nation (“ʔAkisq̓nuk”) on the Initial Project Description (the “IPD”).

The purpose of this letter is to respond to the IPD in respect of the Project submitted to the Impact Assessment Agency of Canada (the “IAAC”) by Montem. In this submission we will raise the concerns that ʔAkisq̓nuk has with the Project in the context of the IPD. ʔAkisq̓nuk has not yet had any direct communications with Montem about the Project and as a result the IPD fails to reflect our important concerns about the Project. In this submission we will seek to identify the important gaps that we have observed in the IPD. Through a high-level summary of the potential adverse and cumulative effects the Project will have on ʔAkisq̓nuk rights, we will seek that steps be taken to rectify the process-related deficiencies as they relate to both Montem and the IAAC.

ʔAkisq̓nuk First Nation

ʔAkisq̓nuk is one of six sister Bands, four of which are in Canada and two in the US, that make up the Ktunaxa Nation (“Ktunaxa”). Since time immemorial, ʔAkisq̓nuk members, including the Ktunaxa peoples, have lived within and subsisted upon our traditional territories, which include the Kootenay areas of British Columbia, into Alberta, Washington, Idaho and Montana. ʔAkisq̓nuk is the Ktunaxa name for the place now known as Windermere, British Columbia, which is the northern boundary of the current day ʔAkisq̓nuk territory, with Lake Windermere to the west, Fairmont Hot Springs to the south, and the base of the Rocky Mountains as the eastern border.

ʔAkisq̓nuk has Aboriginal title in the vicinity of the Project areas, inherent Indigenous rights, as well as protected and 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 ʔAkisq̓nuk that were in practice prior to European contact. We continue to practice these rights



and traditions, including hunting, trapping, fishing, gathering, and using the land for ceremonial purposes, as we have always done. While the ʔAkisq̓nuk territory may be described geographically, the ʔAkisq̓nuk people's practice of our rights is not limited to that area and extends to a much broader cultural landscape that supports ʔAkisq̓nuk's connection with the lands that we have occupied since time immemorial. As a result of current and expanding industrial development on ʔAkisq̓nuk ancestral lands, ʔAkisq̓nuk's traditions and customs are increasingly vulnerable to direct and cumulative adverse effects. This is very concerning to us and all decisions and proceedings which have the potential to impact our rights must fully engage and involve ʔAkisq̓nuk. Based on the belief that we borrow the lands from future generations, the ʔAkisq̓nuk people consider ourselves environmental stewards of the land. Environmental protection is a priority and we encourage respect for the traditions, the culture and the archeology of the lands.

ʔAkisq̓nuk is extremely concerned about the impact the Project may have on the land, the water and the practice of its inherent and constitutional rights. These concerns require that the impacts of the Project on ʔAkisq̓nuk are appropriately and adequately assessed and that necessary consultation, accommodation and mitigation measures are put in place. The Project is in our backyard and will impact core areas of our territories and traditional use areas. Given that a duty of deep consultation is owed to us in relation to the Project, we are concerned that there has been no meaningful engagement with us on the Project to date and that the IPD clearly reflects this deficiency.

The Initial Project Description

Montem seeks to redevelop and further expand the original open-pit Tent Mountain Mine. The metallurgical coal that will be produced from the mine will be sold to international markets. The IPD submitted by Montem is one of the preliminary steps in the IAAC Process. After numerous submissions of Indigenous groups, the Minister of Environment and Climate Change Canada (the "**Minister**") exercised its discretion to designate the Project for federal review on June 28, 2021, notwithstanding an earlier decision to the contrary. While the volume of coal set to be extracted from the Project falls just under the threshold for a required designation of the Project, in making the decision to designate the Minister found that the Project may have adverse effects within the federal jurisdiction, the Project would not be captured by a single provincial assessment, and rights under section 35 of the *Constitution Act, 1982* were threatened. These were important factors that the Minister considered in making its decision.

The Project's location traverses the British Columbia-Alberta border, and is a short distance from the Montana border. This entire area is critically important to ʔAkisq̓nuk and the exercise of our Inherent Indigenous rights and Aboriginal rights. The Project is just 22 km southwest of Sparwood, British Columbia, and is within the municipality of Crowsnest pass. The Project area is also located within the Qukin ʔamakʔis (Raven's Land), which is also known as the Elk Valley, in the Rocky Mountains. The Project is therefore situated in the heart of ʔAkisq̓nuk territory, in areas that have ages-old significance to our people. We are gravely concerned about the Project's potential to impact our rights, our traditional use areas and our way of life. We note that a settling pond is



planned as part of the Project that discharges into Michel Creek, a tributary of Elk River. Additionally, the Project area is an important, and vulnerable, habitat for a number of at-risk or threatened fauna and flora and Montem has provided information on 151 different wildlife species in the area of the Project.

There are many other decommissioned and planned mining operations in the area of the Project, in addition to pipelines, railways and large-scale forestry and gas developments. Teck Coal has existing operations within the immediate vicinity of the project and new mines are being proposed in the region as well.

In its IPD, Montem has indicated that it has consulted with 14 Indigenous groups. Notably, ?Akisq̓nuk was not consulted as part of this process. While correspondence to Ktunaxa was shared with ?Akisq̓nuk, ?Akisq̓nuk has not been engaged in its own right to date and wishes to be independently engaged in the IAAC proceedings, and parallel processes with the Crown and Montem, in order to address its unique interests and rights. Montem has begun the process of performing a number of traditional land use studies with the 14 Indigenous groups initially, and has indicated a commitment to carry out a historical, archaeological and paleontological study. Again, ?Akisq̓nuk is concerned that there has been no direct engagement with our Nation. This is problematic and not in keeping with the need to directly engage with us on the unique nature of our rights and their strong potential to be impacted by the Project. Of particular concern to us is the statement of Montem that “[t]o date, Montem’s engagement with Indigenous communities have not identified any adverse effects because of the restarting operations at the [Project] on the physical and cultural heritage, the current uses of the [Project] area for traditional purposes or identified any significant structures, sites or things” (see page 71 of IPD). This conclusion is surprising and clearly cannot be informed by an understanding of ?Akisq̓nuk rights and strong connection to the lands that will be impacted by the Project.

Direct Adverse Effects on ?Akisq̓nuk Rights

?Akisq̓nuk members rely on the Project area and the lands in the vicinity of the Project to live a traditional way of life and to practice a number of rights. These include hunting, fishing, gathering, ceremonial purposes, the teaching of oral histories and transmission of traditional knowledge. Reopening the Tent Mountain Mine, and the associated construction, increase in human access and pollutants associated with mining reduces the lands that are considered by ?Akisq̓nuk as pure and clean and used for important cultural and spiritual traditions.

Additionally, Development in the Project area will directly interfere the habitats and migratory patterns of species that ?Akisq̓nuk rely on for the exercise of spiritual, cultural and harvesting practices. These include bighorn sheep, mountain goat, elk and grizzly bear, which were identified in the area by Montem. Similarly, the land appropriate for the growth of plant species that the ?Akisq̓nuk have traditionally gathered will be reduced by Project-related impacts.



The Project's impacts on the quality of the water in the vicinity of the Project is also a major concern for ?Akisq̓nuk. Any impact on water will be felt throughout our lands, on the plants, wildlife and people, and have far-reaching impacts on the ?Akisq̓nuk way of life and that of other Indigenous groups. The reactivation of a historic settling pond that discharges into Michel Creek, and subsequently into the Elk River is of significant concern to ?Akisq̓nuk. One example is that Michel Creek is home to a number of vulnerable fish species upon which our members have historically relied.

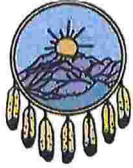
Cumulative Effects on ?Akisq̓nuk Rights

Given the number of mines and other industrial developments in the vicinity of the Project, the area is already significantly impacted and has affected our rights for decades. While ?Akisq̓nuk continues to use the land notwithstanding these historic impacts, the Project will add to the adverse cumulative effects, including health risks, barriers to gather and impacts on ecosystems and habitats in the Elk Valley region and on ?Akisq̓nuk. ?Akisq̓nuk rarely benefits socially or economically from such developments and is instead left with environmental damage and loss of traditional land use and culture. Regardless of the size or specifics of the Project, any mining developments in the area will contribute to the cumulative effects on ?Akisq̓nuk and ?Akisq̓nuk ancestral lands.

The lands and waters in the vicinity of the Project are all connected. Disturbing the delicate environmental balance in one area impacts neighbouring areas, which in the Elk Valley, are, to a large extent, already directly impacted by similar industrial developments. The impact on wildlife migration and habitats, and the waters, including Michel Creek and the Elk River, as described above, add to a growing number of effects on the environment that ?Akisq̓nuk fears it cannot recover from. The result is that ?Akisq̓nuk's practice of customs, traditions and Aboriginal rights will not only be impacted in the immediate vicinity of the Project, but throughout our territory in the immediate vicinity of the Project that we regard as sacred and use as important cultural and spiritual areas.

Summary of ?Akisq̓nuk's Interests in the Project

The Project will have significant impacts upon ?Akisq̓nuk and our aboriginal rights and title to the Project area. The risk is that ?Akisq̓nuk is unable to practice its unique way of life as it has done in the areas in the vicinity of the Project since time immemorial. Therefore, ?Akisq̓nuk advocates that its rights and title to the Project area must be fully understood and that impacts upon our way of life be properly assessed. There must be appropriate mitigation and accommodation measure put in place well in advance of the preparation of an Impact Assessment Report in respect of the Project. This process should include, but not be limited to, assessments of ?Akisq̓nuk traditional land uses, ?Akisq̓nuk's unceded title to the areas within the vicinity of the Project, and the cumulative effects of the Project, and the broader energy and resource industry in British Columbia and Alberta, on ?Akisq̓nuk.



?Akisqnuq finds it problematic that Montem's has failed to engage with us to date notwithstanding our understanding that the level of Indigenous engagement has been preliminary. In order to rectify the material concerns we have raised in this submission, ?Akisqnuq seeks that the IAAC process, as well as parallel consultation processes in respect of the Project, be revised to directly engage ?Akisqnuq regarding the significant impacts that the Project is likely to have upon our rights, title and traditional uses of the Project area. The failure to address the material concerns we have raised in the context of the IPD will relegate ?Akisqnuq to the sidelines of an process that it should be integrally involved in with a view to substantially understanding, accommodating and resolving its concerns in respect of the Project.

Sincerely,

DocuSigned by:

Rosemary Phillips

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Rosemary Phillips,

?Akisqnuq First Nation Councillor