

REPLY TO: GA GRANT
Victoria Office
email: ga@woodwardandcompany.com

ASSISTANT: SASHA WILLIAMS
swilliams@woodwardandcompany.com

our file: 6142

December 16, 2021

Via email (tentmountain@iaac-aeic.gc.ca)

Impact Assessment Agency of Canada
22nd Floor, Place Bell
160 Elgin Street
Ottawa ON K1A 0H3

Attention: Impact Assessment Agency of Canada, Reference #81436

Re: Ermineskin First Nation Comments on Tent Mountain Impact Assessment Act

Thank you for your letter November 25, 2021, wherein the Impact Assessment Agency invited Ermineskin Cree Nation ("ECN") to comment on key issues and initial concerns the ECN community has regarding the proposed Tent Mountain Mine Redevelopment Project ("Tent Mountain" or the "Project"). ECN is committed to participating in consultation regarding impacts to its lands and people.

Background: Ermineskin's Traditional Territory

Although ECN's reserve lands—10,295.8 hectares of land in Maskawacis, plus a further 2002 acres of shared Cree reserve—are located just south of Edmonton, ECN's traditional lands are much broader and ECN's attachment and engagement across their traditional territory has been an essential component of ECN daily life since time immemorial. The entire territory continues to provide subsistence hunting, fishing, and important medicine gathering areas, while also functioning as an essential cultural and spiritual anchor for important aspects of ECN traditional life through their historical attachment to the land. The Eastern Slopes of the Rocky Mountains, including the Project footprint and surrounding areas, have long been an area critical to the practice of Ermineskin rights, including harvesting, trade and spiritual practices.

Originally known as the Rocky Mountain Cree to European fur traders and explorer, in the 1830's Louis Piche (*Pesew/Pisu*), the Forebearer of Ermineskin Cree Nation and Head Chief {00423683.3}

VICTORIA OFFICE:
200 – 1022 GOVERNMENT STREET
VICTORIA, BC V8W 1X7

WHITEHORSE OFFICE:
201 - 3059 3RD AVENUE
WHITEHORSE, YT Y1A 1E2

TEL: 250-383-2356; FAX: 250-380-6560
WEBSITE: www.woodwardandcompany.com

TEL: 867-633-5940
WEBSITE: www.woodwardandcompany.com

of the Rocky mountain Cree, had a core territory ranging broadly from Banff to Jasper, west of the mountains and east into the plains. The Rocky Mountain Cree ranged as far north as Lesser Slave Lake, and south into the United States from Washington to Montana and North Dakota.

Fragmentation of the Rocky Mountain Cree followed Louis Piche's death, with his sons, Alexis Piche (Bobtail) and Baptiste Piche (Ermineskin) migrating towards the eastern parts of their traditional territory near Pigeon Lake.¹ In 1885, Ermineskin had their reserve surveyed and Ermineskin (the son) was recognized as first Chief of the tribe in 1889. Despite settlement, Ermineskin members have traveled continuously throughout their whole traditional territories to the south and west, hunting, fishing, and gathering according to traditional custom.² This use of land is also essential to ECN's participation in their powwow system, ceremonies, and trade with their greater Cree relations.

As development has intensified over time, lands providing access to medicines, habitat for fish and game, as well as clean air and water, have become increasingly scarce and precious. As such, protecting such lands that are within ECN traditional territory is of the utmost priority, as ECN members face increasing difficulty in practicing their Aboriginal and Treaty rights and essential aspects of their culture.

Despite the distance of the Tent Mountain Mine project from colonially-designated ECN reserve land, members continue to the present day to utilize and connect to lands throughout the entirety of their traditional territory, inclusive of the areas around Tent Mountain and Castle Provincial Park. Further information regarding Ermineskin's history and use of territories south of Calgary can be found in the *Ermineskin Cree Nation Traditional Knowledge and Use Study: Springbank Off-Stream Reservoir Project*, enclosed.

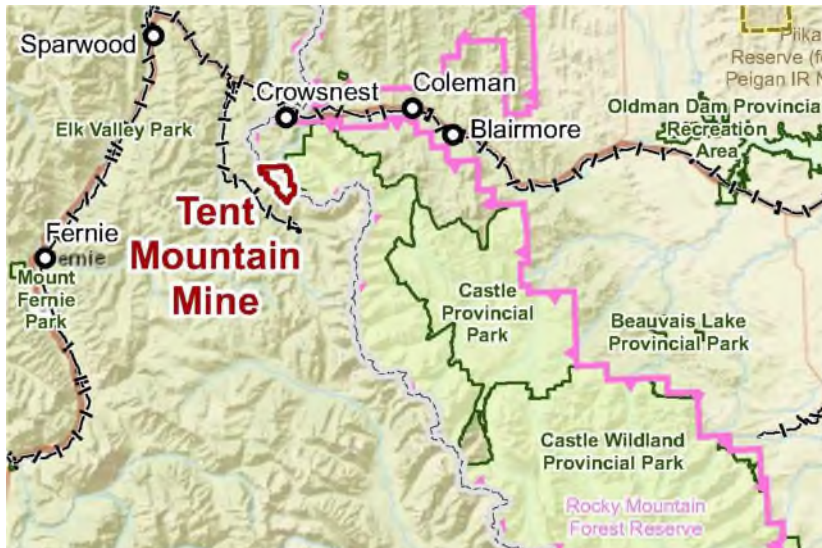
ECN use and engagement in the Tent Mountain area

Located in the Livingstone Hills Land Management Zone, the Tent Mountain site is in an environmentally sensitive area protected by the Livingstone-Porcupine Hills Footprint Land Management Zone. This area is part of the internationally significant "Crown of the Continent Ecosystem"—an ecologically significant area that comprises the headwaters of North America's three great watersheds.

¹ Ermineskin Cree Nation Traditional Knowledge and Use Study: Springbank Off-Stream Reservoir Project, at 3.

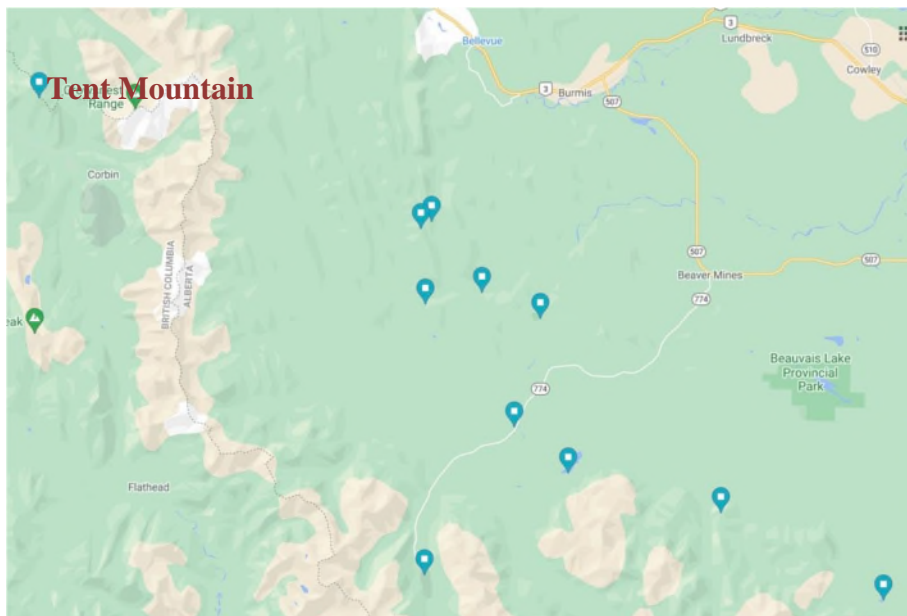
² *Ibid*, at 4.

Tent Mountain is also located directly adjacent to Castle Provincial Park and Castle Wildland Provincial Parks.



Excerpt of: Map of Regional Project Location. Source: Montem Resources Alberta Operations Ltd.

ECN's Preliminary Ancestral Land Use and Occupancy Report: Castle Provincial Park/Castle Wildland Park (the "Castle ALUOR"), submitted confidentially under separate cover, outlines ECN's exercise of Aboriginal and Treaty rights in this part of their traditional territory. Please see the annotated map of sites identified submitted along with the Castle ALUOR.



Approximate locations of select ECN sites identified in the Castle ALUOR

The sites identified in the preliminary Castle ALUOR include important sites for gathering medicines and smudges, as well as fishing, wildlife habitat, and wildlife water sources. Medicines found in these sites are considered rare and may not be found in areas of the territory closer to ECN reserves. ECN traditional knowledge reflects that mountains in the area of the Project are also used for Sundance grounds, vision quest sites, buffalo jumps, and camps.

ECN has also been involved in numerous site assessments in the Livingston/Porcupine Area with the Alberta Land Use Secretariat and has engaged in consultation regarding impacts in this area.

ECN is currently undertaking full traditional land use study of the Project area and requires further capacity funding to complete the TUS. As such, a revised scope of the potential Project impacts to Ermineskin are underway and must be considered by Canada in order for the Crown to discharge its duty to consult Ermineskin.

Impacts on ECN and Areas of Concern

ECN has serious concerns regarding the proposed Project and its impacts on ECN rights and the ECN community. The traditional practices conducted on the land and waters impacted by Tent Mountain are integral to Ermineskin's physical and cultural wellbeing.

1) Cumulative effects

The cumulative effects of development and extraction projects throughout ECN's territories have already significantly impacted ECN's exercise of Aboriginal and Treaty rights and the socio-economic wellbeing of ECN members. The cumulative impact of various activities including agricultural development, the development and expansion of municipalities, the transfer of lands to private landholders, conservation areas, tourism and recreation, and mining and other industrial activities have resulted in much of ECN's traditional territory being taken up by activities that are inconsistent with the practice of ECN's Treaty rights and culture.

ECN is becoming increasingly concerned with the level of proposed development, and particularly coal development, in and around the Eastern Slopes. There are significant concerns related to the pressure of proposed coal developments in the area. This includes several operating coal mines in BC, a series of proposed coal mines in BC, and a push for mining on the eastern slopes of the Rocky Mountains.

Cumulative impacts compound the effects of the Tent Mountain Project, such as the fact that members are already facing further and further difficulty accessing medicines and

resources, and that animal migration and hunting patterns are disrupted. Impacts to ECN must be viewed as a whole and in the context of the cumulative impacts of coal and other development on both the BC and Alberta sides of the provincial border. Impacts to ECN must also consider the effects of the duration of the Project—a proposed 21 years.

The Impact Assessment Agency of Canada (the “IAAC”) must also consider the cumulative impacts in relation to the existing Tent Mountain site, where prior work was abandoned without reclamation to an acceptable standard, as discussed below.

2) Leeching and impacts to water, fish, and fish habitat

It is crucial to note that the existing Tent Mountain Mine is not remediated and continues to actively impact ECN and its territories—the extent of which is not known or has not been shared with ECN.

On May 15, 2021, a Montem Resources representative told ECN consultation staff that the existing mine was an active “environmental disaster” that is actively leeching harmful chemicals, such as selenium, into the lands and waters. The representative said that the state of the existing mine was “not reclaimed even up to 1980s standard” and that they had to start up the mine again in order to clean up the existing leeching. ECN is therefore deeply concerned with remediation to date. To date, ECN has been denied access to the Tent Mountain site in their own territories has not been provided with full disclosure of the extent of the existing impacts. The IAAC’s impact assessment must consider the proposed Project alongside the impacts of the existing abandoned mine.

Indeed, ECN shares the concerns identified in the IAAC analysis regarding whether to designate the Project for Impact Assessment,³ including:

- Fish and fish habitat: In Alberta, release of water into the Crowsnest River could affect two species listed as threatened under the *Species at Risk Act* (the “SARA”), including by affecting downstream critical habitat for bull trout, designated as “threatened” under SARA. In BC, the project overlaps the Elk River watershed, where the westslope cutthroat trout is also now designated as “threatened.”⁴ It is not yet clear whether the project would require DFO authorization because of harmful alteration, disruption or

³ Impact Assessment Agency of Canada, “Analysis Report: Whether to designate the Tent Mountain Mine Redevelopment Project in Alberta and British Columbia pursuant to the Impact Assessment Act” (June 2021) at 1, online: <https://iaac-aeic.gc.ca/050/documents/p81436/139462E.pdf> [Analysis Report].

⁴ *Ibid* at 7-8; Government of Canada, “Species Profile: Westslope Cutthroat Trout Saskatchewan - Nelson Rivers populations”, online: https://wildlife-species.canada.ca/species-risk-registry/species/speciesDetails_e.cfm?sid=861.

destruction of fish habitat, or other impacts on fish or other aquatic species at risk.⁵ ECN is significantly concerned about selenium contamination from runoff.⁶

- Transboundary impacts: These effects include impacts on transboundary water, greenhouses gas emissions, and climate change. The U.S. Environmental Protection Agency is concerned, for example, that water from BC operations could contaminate water flowing into the U.S. through the Elk Valley to the Koocanusa reservoir, which straddles the border between BC and Montana.⁷

With respect to water contamination, waste rock piles from open pit mining are known to contain selenium, arsenic, nitrates, and other pollutants. Exposed to the weather, these elements make their way into the surrounding air and water. Selenium is of special concern to ECN. Water with elevated selenium levels is particularly dangerous to fish and aquatic life. In humans, long-term exposure to high levels of selenium (such as through drinking water) is known to cause serious health problems. ECN members rely on fishing for sustenance and therefore ECN is very concerned about possible impacts to fish and fish habitat. ECN is concerned given that technology to control, prevent, and treat selenium contamination have not been demonstrably proven.

ECN members drink waters in the Project area and downstream in the Oldman River watershed. ECN is concerned about the contamination of wildlife and its rare medicines found in the Project area, as wastewater and leeching drains into lower lands onto the slopes, and flows into the cells of flora and fauna drinking impacted waters downstream.

The Oldman River watershed is already prone to drought, and existing concerns about the impact of drought on downstream communities will only be exacerbated as the effects of climate change become more and more evident.

3) Impacts on Aboriginal and Treaty Rights

As above, the Project may significantly and adversely affect ENC's cumulative ability to practice Aboriginal and Treaty rights, as signatories to Treaty 6. In addition to impacts to fish and fishing rights, the Project may also impact hunting rights.

ECN land users report that hunting practices are changing due to physical and behavioural changes appearing in wildlife. For example, big horn sheep and mountain goats are observed

⁵ Analysis Report at 8.

⁶ *Ibid.*

⁷ *Ibid* at 12.

changing physically, with bigger heads and smaller bodies, as well as brittle horns. As such, ECN members are no longer as comfortable hunting big horn sheep and are focusing on other animals, which in turn may face other environmental challenges. For example, moose have always been solitary animals, but have more recently been observed travelling in herds. Because wildlife migrates through the entire ECN territory, cumulative development impacts to ECN's hunting rights must be considered.

Capacity funding for more detailed traditional land use studies is needed to identify the scope and severity of potential effects like reduced access to traditional harvesting areas, loss of access to traditional foods and medicines, changes in water quality, destruction of habitat for culturally important species, increased hunting pressure arising from increased access, damage to heritage sites, polluted waters and soils, and the continued fraying of Indigenous relationships to traditional territories.

4) Impacts to cultural knowledge and socio-cultural harms

The socio-cultural harms of the Project must also be considered cumulatively, as increased development has disrupted overall ECN connection to land, including access to sites significant to community knowledge and wellbeing. This includes sites for rare medicines and vision questing as known to be around the Project area. The Project entails increased traffic and general disturbance in the sensitive Tent Mountain area, in addition to other physical impacts discussed above.

ECN's language is based on the land. ECN reflects on the following questions: How can we teach the younger generation about the plants and animals that aren't here anymore? How we can teach our youth about place names when those places no longer exist? What happens to our language and culture when our vocabulary is no longer alive? How we can we heal from the harms of colonialism without access to our land, which is our medicine, and the root of our connection to our spiritual selves?

Cumulative development has also destabilized the social roles in ECN society and perpetuates the legacy of colonial displacement. In particular, disruption in connection to the land affects both Elders and youth. Elders face hardship and unwellness in not being able to be connected to culture, and not being able to teach the younger generations. Youth also suffer from not being able to connect with Elders and be taught the community teachings and spirituality. Without sufficient access to their lands and resources, Elders and youth are not able to meet in the traditional places where intergenerational teaching is practiced and pass on these teachings. Access to vision questing sites on the slopes of the Eastern Rockies, for example, is also essential to continued practice of the rituals of passages to manhood.

ECN's teachings involve sustainability and the natural law of land stewardship, such as selective burning practices, the interconnectedness of human-ecological systems, and the well-being of present and future generations. Disruption to the means and methods of ECN transmission of teachings results in a significant loss of Indigenous traditional knowledge.

ECN faces challenges including a high unemployment rate and a high birth rate. If development is to occur in ECN territory, for the Crown and industry must ensure that ECN benefits from economic development and employment in order to provide programs and services for the Nation. ECN has not been provided with specific information regarding employment or economic development in relation to this Project.

Necessity for Impact Assessment

Now that the Minister has designated the Project under s. 9(1) of the Impact Assessment Act, ECN strongly submits that the IAAC should determine that the Project require environmental assessment given the potential impacts of this project on multiple areas of federal jurisdiction:

- The approximate production capacity is only 75 tonnes per day below the threshold for automatic federal review.
- The impacts on Ermineskin's Aboriginal and Treaty rights, as above.
- Adverse effects on water (including navigable and transboundary water), fish and fish habitat. This is especially a concern given the lack of scientific and technical capacity to contain and remediate harms associated with the Project, such as selenium release.
- Transboundary impacts, including transboundary water, greenhouse gas emissions, and climate change.
 - o The impacts of the contamination to water flowing from the watersheds into BC and Montana.
 - o Environmental impacts that cross the BC provincial border, harmful cumulative effects from multiple projects in the area—including the directly adjacent Michel Coal Project, and adverse effects on fish and fish habitat and species of special importance.

- This is especially the case when adverse effects are not adequately managed by other regulatory mechanisms. Although both Alberta and BC would be required to issue authorizations for various activities related to the Project, neither would require Montem to consult with Indigenous groups in BC.⁸
- Coal mining and the products of coal mining release greenhouse gases which will contribute to the Government of Canada's ability to meet its commitments in respect of climate change, including in the context of Canada's 2030 emissions targets and forecasts.
- Cumulative effects, including those coal mines proposed in the area on both sides of the provincial border. The push for coal development in the area lead the Alberta Government to, without appropriate consultation, rescind a decades old Coal Policy that protected these areas. Although that decision has been temporarily revoked, the area remains under immense pressure from coal development.

Approach to Consultation and Engagement

With respect to the IAAC's Consultation, should the Project be designated for assessment, ECN requests full participation and involvement of Elders and land users in order to assess impacts on ECN's rights protected under s. 35 of the *Constitution Act*, 1982. As ECN is currently undertaking a full traditional land use study of the Project area, a revised scope of the potential Project impacts to Ermineskin are underway and must be considered by Canada in order for the Crown to discharge its duty to consult Ermineskin.

ECN cultural values include transparency, accountability, and ground-truthing, where being on and witnessing the land in site assessment is considered fundamental. Due to concerns with the existing Tent Mountain Mine, ECN believes that thorough baseline studies on water and soil quality are necessary, and that all information must be shared with ECN in order to understand threats to members eating and drinking in the area and risks of concern.

Yours truly,
WOODWARD & COMPANY LAWYERS LLP

<Original signed by>

Ga Grant

⁸ *Ibid* at 16, 17.