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Via Email

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Honourable Minister Steven Guilbeault
Environment and Climate Change Canada
Fontaine Building
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Gatineau, QC K1A 0H3

Impact Assessment Agency of Canada
757 W Hastings
St. Suite 210A
Vancouver, BC
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Dear Honourable Minister Guilbeault and the Impact Assessment Agency of Canada:

Re: Comments from Ermineskin Cree Nation on Mine 14 Designation Request

We are legal counsel to Ermineskin Cree Nation (“**Ermineskin**”) with respect to Summit Coal Inc.’s Mine 14 Project (the “**Project**”). On August 18, 2022, the Impact Assessment Agency of Canada (“**IAAC**”) sent a letter to Chief Randy Ermineskin informing Ermineskin that the IAAC received a request from Aseniwuche Winewak Nation (“**AWN Request**”) to designate the Project for federal review under section 9(1) of the *Impact Assessment Act* SC 2019, c 28, s. 1.

We write to provide comments on the AWN Request and state that Ermineskin:

- supports AWN’s request and endorses their submissions; and
- further requests that the Minister of Environment and Climate Change (the “**Minister**”) designate the project for federal review.

In support of this designation request, Ermineskin attaches memorandum that summarizes historical and existing land use values in and around the Project area. This information was compiled using existing Ermineskin land use information and under relatively tight timelines, to inform this designation request. As such, it should not be taken as a comprehensive review of all land use values in and around the Project area.

1.0 ERMINESKIN CREE NATION

Ermineskin is a Cree community and one member of the Four Nations of Maskwacis, Alberta. Ermineskin reserve lands are located about fifty miles south of Edmonton. Ermineskin entered into Treaty 6 (the “**Treaty**”) in 1877.

Oral histories and historical records confirm that the Cree used and occupied the eastern slopes of the Rockies (the “**Eastern Slopes**”). Ermineskin ancestors would shield from cold winters in the Jasper and Banff areas.¹ Other areas frequented by Ermineskin ancestors during the winter months include “the areas to north up to Pipestone Creek (south of Grande Prairie), and the areas to the south, including the Kootenay Plains, Banff, and Pincher Creek”.² The Cree were highly mobile during this period and “ranged as far north as Grande Prairie and Lesser Slave Lake, south through the mountains into Washington State and Oregon”.³ This historic presence highlights the significance of the Eastern Slopes to Ermineskin people.

In the 1960’s, Ermineskin presence in the Eastern Slopes was “strengthened and reinvigorated ... with the founding of Smallboy Camp by Robert “Bobtail” Smallboy”.⁴ Chief Smallboy and 100 followers left the reserve lands and established a camp on the Kootenay Plains in the Eastern Slopes. Committed to a traditional Cree lifestyle, members of Smallboy Camp continued to hunt throughout the Eastern Slopes. In particular, one member who was raised at Smallboy Camp described how his father and uncles would “hunt and harvest medicines all through the foothills to the north through Chungo and Thistle Creeks to the Grande Cache area, where they hunted bighorn sheep”.⁵ Additional history of the travel and migrations of Ermineskin ancestors can be found in the attached memorandum.

The Eastern Slopes are integral to Ermineskin’s identity. Ermineskin’s culture, tradition, identity, wellbeing, spirituality, and rights are tied to the land that they reside on. The Eastern Slopes are one of the few remaining areas that can support Ermineskin’s way of life. The increasing risk of industrial development on these lands puts both Ermineskin cultural identity and Treaty rights at risk.

As such, Ermineskin supports AWN’s request for the Minister to designate this Project for federal review pursuant to s. 9(1) of the IAA for the reasons set out below

2.0 SUPPORT FOR DESIGNATION REQUEST

The Project is located within Ermineskin’s Traditional Territory, “including important harvesting and land use areas, such as those in and around Grande Mountain, the Smoky and Muskeg Rivers, and Knife Mountain”.⁶ The Project poses considerable risk to the viability of the area for continued practice of Aboriginal and Treaty rights by Ermineskin members.

¹ Willow Springs Strategic Solutions Ltd. “ECN – Desktop TLU Summary Summit Mine 14 Project”, at p 5 [Memorandum].

² Memorandum at p 5.

³ Memorandum at p 6.

⁴ Memorandum at p 6.

⁵ Memorandum at p 8.

⁶ Memorandum at p 9.

Ermineskin shares many of the same concerns raised in the AWN Request and endorses and supports AWN's call for federal review of the Project. In particular, Ermineskin views a federal review as necessary given the Project's potential to:

- cause adverse impacts to Ermineskin's Aboriginal and Treaty rights;
- impact the health of Ermineskin community members harvesting and practicing Aboriginal and Treaty rights in the area surrounding Grande Cache;
- contribute to the already significant cumulative impacts of industrial development in the Treaty 6 region; and
- adversely impact the health and sustainability of the waterways in the Upper Smoky River watershed and the plants, animals, and humans that rely on it.

The Project affects these and other areas of federal jurisdiction. A federal review is necessary to ensure that the impacts on the environment and on Aboriginal peoples is properly assessed.

2.1 The Project has the potential to cause adverse impacts to Ermineskin's Aboriginal and Treaty rights

As identified in the attached memorandum, Ermineskin members use the area in and around Grande Cache for the practice of Aboriginal and Treaty rights. It is an area that their ancestors used and that they use today for hunting bighorn sheep, mountain goat, and elk. A preliminary study of existing traditional land use information found 54 intersections between traditional use (hunting and access) and the project area. This includes 6 sites within the Coal Lease Area with successful hunts.⁷

2.2 The Project sits within an environmentally sensitive location

The Project area contains critical habitat for culturally significant species, including caribou, grizzly bear, bighorn sheep, mountain goats, arctic grayling, and bull trout.⁸

This area is critical to Ermineskin Aboriginal and Treaty rights and continued industrial activity, such as the Project, pose considerable risk to the viability of the area for rights practice. The Project intersects with caribou habitat (both the A La Peche and Redrock-Prairie-Creek herd ranges), sits within core grizzly bear habitat, and intersects a Key Wildlife and Biodiversity Zone.

Increased industrial disturbance as well as the increased risk of selenium pollution in the nearby waterways will impact these core habitats and sensitive environments. Given the nature of potential selenium pollution, and the federal responsibility for endangered and threatened species, a federal review is necessary to ensure these impacts are adequately studied. Ermineskin is particularly concerned about the impact of selenium pollution on bighorn sheep, as was identified in the AWN Request.

⁷ Memorandum at 16.

⁸ Memorandum at p 13.

2.3 The Project will contribute to the already significant level of development in the area

Prior to colonization, the Eastern Slopes and Ermineskin's larger traditional territory were available for the practice of Ermineskin rights and way of life, and supported those practices with an abundance of wildlife, fish, plants and medicine. Since settler encroachment, two-thirds of the area around Ermineskin's reserve have been converted to private farmland, or restricted protected areas.

As a result of this ongoing taking up of lands, there are few locations for Ermineskin to practice their Treaty rights and culture, increasing the importance of the Eastern Slopes for Ermineskin's rights practice. The taking up of Treaty 6 lands for industrial and other development had left few locations for Ermineskin to practice their Aboriginal and Treaty rights. Figure 5 of the attached memorandum highlights the encroachment of industrial development throughout the regional study area.

Ermineskin is concerned that the cumulative impact of the Project has the potential to significantly and adversely impact the ecological integrity of the area, and disrupt the practice of Aboriginal and Treaty rights. The potential cumulative effects from previous and future projects requires an assessment by the federal government to ensure Ermineskin Aboriginal and Treaty rights are not adversely impacted.

2.4 The Project may impact the health of Ermineskin members

Most of Alberta receives water from water reserves located in the Eastern Slopes. Wastewater released during the coal mining process, which will include selenium, may contaminate these waterways for humans, animals and plants. As was mentioned in AWN's Report, selenium has been linked to reproductive issues, hair loss, nausea, vomiting, fatigue, and other adverse health impacts.

Ermineskin harvesters are present in the area and may rely on rivers and streams for drinking water. Unsafe drinking water will impact access, enjoyment, and the ability for Ermineskin hunting parties to set-up camp near clean and potable water supplies.

2.5 The Project has potential to adversely impact Ermineskin's connection to their surrounding ecological system and the wellbeing of present and future generations

Ermineskin have long practiced their Aboriginal and Treaty rights in and around the Eastern Slopes. This area is critical to Ermineskin's cultural continuity in the area.

Traditional land based activities provide opportunities for the older generations to teach youth about the traditional values, teachings and skills. It also supports the role and status of Elders within the community.⁹ Ermineskin's interdependent connection with the land allows community to teach the upcoming generation about the values that underpin Ermineskin identity. The Project may adversely impact Ermineskin's connection to the land, and cultural teaching by upsetting the ecological system that Ermineskin relies on to convey these teachings.

Ermineskin members have noted that the consumption of traditional foods benefits the larger community, and creates bonds of support. In addition to physiological health, Ermineskin's connection to land promotes physical health, spiritual values, and a sense of identity. Disruption to the ecological system will effect these connections.

⁹ Willow Springs Strategic Solutions, *Ermineskin Cree Nation Traditional Knowledge and Use Study: Springbank Off-Stream Reservoir Project*, (Cochrane, Alberta: Willow Springs Strategic Solutions), <https://www.ceaa-acee.gc.ca/050/documents/p80123/123625E.pdf> at page 12-13.

Ermineskin culture and way of life are protected by section 35. The Project requires an assessment by the federal government to ensure Ermineskin's way of life is not adversely impacted.

3.0 CONCLUDING REMARKS

Ermineskin wishes again to restate the support for the AWN Request and call for the Minister to exercise discretion to designate this Project for federal review. We hope this submission highlights the broad impact the Project can have on First Nations communities that rely on the Eastern Slopes and on an ever-shrinking land base for traditional activities.

This Project requires a federal review. Please reach out to me directly at <Email address removed> if you have any questions about this submission.

Yours truly,

JFK LAW LLP

Per: <Original signed by>

Blair Feltmate

cc. Carol Wildcat, Ermineskin Cree Nation (<Email address removed>)
Clayton Leonard, JFK Law LLP (<Email address removed>)
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Encl.