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File No. 1265-062

September 13, 2022

Via Email

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Honourable Minister Steven Guilbeault
Environment and Climate Change Canada
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12th Floor, 200 Sacré-Coeur Blvd
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 Whitefish Lake First Nation #128 on Mine 14 Designation Request

We are legal counsel to Whitefish Lake First Nation #128 (“**Whitefish**”) with respect to Summit Coal Inc.’s Mine 14 Project (the “**Project**”).

On August 18, 2022, the IAAC sent a letter to Chief Stan Houle informing Whitefish that the IAAC received a request from Aseniwuche Winewak Nation (the “**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 comment on the AWN Request and state that Whitefish:

- 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, please find attached a memorandum that summarizes historical and existing land use values in and around the Project area. This information was compiled using existing Whitefish land use information and under relatively tight timelines. As such, it should not be taken as a comprehensive review of all land use values in and around the Project area. Further study will be necessary as part of the environmental assessment of the Project.

1.0 WHITEFISH LAKE FIRST NATION #128

Whitefish are Aboriginal peoples and a Cree community with 2,378 registered members. Whitefish entered into Treaty 6 (the “**Treaty**”) in 1876.¹ Whitefish reserve lands and much of their Traditional Territory lies within the area of land subject to Treaty 6. Today, Whitefish is a resilient nation that continues to exercise their Aboriginal and Treaty rights by means of hunting, fishing, harvesting, and practicing their distinct culture. These activities are essential to cultural continuity and Whitefish identity.

Settler interference has radically disrupted Whitefish’s way of life by eradicating the local bison population. Whitefish, like other First Nations, relied heavily on bison for subsistence, clothing, housing and ceremony. After Canada extirpated bison from their territory, Whitefish relied on moose, elk, deer, fish, and plants to substitute their spiritual, emotional and physical wellbeing. This has led to increased travel and reliance on areas like the Eastern Slopes to maintain their traditional way of life. Outside interference continues to adversely impact Whitefish’s ability to exercise traditional activities and Aboriginal and Treaty rights. Among other sources, Whitefish must contend with the interference on their Treaty rights from: the encroachment of settler communities and the industrial development of their traditional territory.

Whitefish is deeply concerned the Project will further prohibit Whitefish’s land and cultural interests. As such, Whitefish supports AWN’s request for the Minister to designate this Project for federal review for the reasons set out below.

2.0 SUPPORT FOR DESIGNATION REQUEST

The Project is located within Whitefish’s Traditional Territory. Whitefish share many of the same concerns raised in the AWN Request. As such, Whitefish endorses and supports AWN’s call for federal review of the Project.

In particular, Whitefish views a federal review as necessary given the Project’s potential to:

- cause adverse impacts to Whitefish Aboriginal rights;
- impact the health of Whitefish community members harvesting and practicing Aboriginal rights in areas surrounding the Project and along the waterways impacted by potential pollutants;
- contribute to the already significant cumulative impacts of industrial development in the Treaty 6 region; and
- adversely impact the health and sustainability of 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 required to properly assess these impacts.

¹ Whitefish Lake First Nation #128. *Whitefish Lake – WFL#128*. Last modified September 6, 2022. <https://wfl128.ca/>.

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

Whitefish's traditional territory spans central Alberta – stretching from Jasper National Park in the west to the Alberta-Saskatchewan border in the east – and encompasses the Project area and the eastern slopes of the Rocky Mountains (the “**Eastern Slopes**”). The Eastern Slopes are critical for Whitefish members to practice their rights and culture.

The Project has the potential to cause adverse impacts to Whitefish Aboriginal and Treaty rights. The Project is located approximately 4 kilometers northeast of the town of Grande Cache, and is situated on the Eastern Slopes. The Project and its impacts are not isolated to the immediate areas surrounding the Eastern Slopes near Grande Cache. The interconnected nature of these environmentally sensitive areas mean the Project can adversely impact the animals, fish, plants, and lands throughout their Traditional Territory that Whitefish relies on to exercise their Aboriginal and Treaty rights.

Whitefish has a rich traditional economy and many members who routinely practice their Aboriginal and Treaty rights as part of their daily life. Whitefish members use the area in and around Grande Cache for hunting, fishing, trapping, gathering, camping, and medicinal plant use. Members have described using Highway 40 (and the forestry trunk road that predates it) to access remote hunting areas in the Eastern Slopes that include portions of the Project area. These were large endeavours with up to 40 people and the establishment of large hunting camps to serve as a base for the hunting of large game for subsistence and ceremonial purposes.² The Grande Cache area remains a desirable area for hunting moose and elk today.³

Whitefish has and continues to use the Eastern Slopes in and around Grande Cache for ceremonial purposes, trading, traveling, hunting, and harvesting. It continues to be an area of importance for the exercise of Aboriginal and Treaty rights and related cultural practices. The ability to exercise Aboriginal and Treaty rights underpins Whitefish's identity and cultural prosperity. Without land and the ability to hunt, trap, gather, travel, and engage in cultural practices, Whitefish's spirituality, wellbeing, and rights suffer.

Canada and Alberta must ensure that the Project will not adversely impact their Treaty and Aboriginal rights.

2.2 The Project is located within an environmentally sensitive location

(a) Impact to Bighorn sheep

Bighorn sheep are important to Whitefish and face impacts from increased industrial activity. As noted in the AWN Request, Bighorn sheep have been found near the Smoky River with traces of selenium outside of the safe range of contamination. Selenium is released during coal mining, and can cause damage to an organism's reproductive system.⁴ A decreased population of Bighorn sheep will adversely impact Whitefish opportunity to hunt and harvest given potential conservation

²Memorandum from D. O'Connor – WLFN No. 128 TLU Impacts to Treaty Rights, at p 2 [Memorandum].

³ Memorandum at p 2.

⁴ Bob Weber, "Alberta Government Knew Bighorn Sheep Contaminated with Coal-mine Selenium: Scientist," CBC, last modified November 23, 2018, [online](#).

measures. Whitefish members have had to increasingly rely on species like Bighorn sheep (and elk, moose, and deer) given the collapse of the plains bison population. This has led to increased activity in the Eastern Slopes and a commensurate increase in importance of this area to Whitefish.

(b) Impacts to woodland caribou

Whitefish community members have identified the Grande Cache area as a known habitat for woodland caribou. This species at risk is particularly sensitive to environmental changes. Given the Project location – between the Red Rock-Prairie Creek and the A La Peche caribou herds – extra caution should be taken so as to hinder caribou recovery efforts in this area.

(c) Impacts to fish and fish habitat

The Eastern Slope is also home to northern pike, whitefish, walleye, bull trout, and Athabasca rainbow trout that Whitefish fishes. Both the Athabasca rainbow trout and the bull trout are classified as threatened under *Alberta's Wildlife Act*. Project related impacts on these waterways and fish habitat could impact fish stock and fish reproduction and therefore have a negative impact on Whitefish's Aboriginal and Treaty rights to fish.

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

Today, there are fewer and fewer locations for Whitefish to practice their Aboriginal and Treaty rights and culture. The many years of cumulative impacts from industrial projects have already affected much of Whitefish Traditional Territory creating increased pressure and reliance on the Eastern Slopes. Further impacts created by the Project will contribute to the decline of Whitefish's ability to exercise Aboriginal and Treaty rights in this area.

Other industrial projects that occur near Whitefish traditional territory include: oil and gas development; agricultural development; development and expansion of municipalities; transfer of land to private landholders; conservation areas; tourism and recreation; and mining.

The Project is another land use that diminishes open land for the practice of Aboriginal and Treaty rights and has the potential to significantly and adversely impact the ecological integrity of the area. The combination of cumulative effects from existing and potential projects requires an assessment by the federal government.

2.4 The Project may impact the health of Whitefish 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.

Whitefish 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 Whitefish hunting parties to safely set-up camp near clean and potable water supplies.

2.5 Whitefish have experienced environmental degradation and decline throughout their Traditional Territory

Whitefish harvesters have noticed contaminated water, diseased fish, and sick animals throughout their Traditional Territory. Most commonly, they have observed these concerns in forest environments in the eastern portion of their Traditional Territory that are exposed to industrialized projects. These areas include Swan Hills, Barrhead, Edson, and Fox Creek.

Whitefish is deeply concerned about maintaining their connection to their ecological surroundings. According to some Whitefish members, a healthy environment encourages peace of mind and mental health. Hunting and being outdoors demands movement and engagement with the land, which lends to increased physical health. Additionally, some Whitefish members grew up on traditional meats, such as moose. When a hunter catches a moose, they will often share the meat with other. This contributes to the community's overall health and wellbeing.

Whitefish has already radically change their way of life due to the eradication of bison. Whitefish intends to protect their remaining teachings, stories and language— aspects of culture that are inherently tied to the land. As Whitefish lands are impacted by industrial projects, the applicability of their teachings, stories, and language are disrupted.

Whitefish hunts moose, elk, and other animals along the Eastern Slopes. Whitefish is concerned that the Eastern Slopes will suffer the same fate they witnessed within their eastern territory as a result of increased industrial development. If this happens, future Whitefish members will not have the same connection to the land, teaching and stories as the previous generation. Cultural transmission is integral to the ability of Whitefish to pass down their way of life.

3.0 CONCLUDING REMARKS

Whitefish 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.

If you have any questions about this correspondence, please do not hesitate to reach out to me directly at <Email address removed>.

Yours truly,

JFK LAW LLP

Per: <Original signed by>

Blair Feltmate

cc. Darryl Steinhauer, Whitefish Lake First Nation #128, (<Email address removed>)
Clayton Leonard, JFK Law LLP (<Email address removed>)
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Encl.