

David Khan
800, 744 – 4th Avenue SW
Calgary, AB T2P 3T4
Tel: (403) 705-0202 ext. 317
Fax: (403) 452-6574
Email: dkhan@ecojustice.ca
File No: 0002045.001

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*Sent via email: ec.ministre-minister.ec@canada.ca
ceaa.information.acee@canada.ca
iaac.pnr-rpn.aeic@canada.ca
IAAC.TentMountain.AEIC@canada.ca*

The Honourable Jonathan Wilkinson MP
Minister of Environment and Climate Change
200 Sacré-Coeur Boulevard
Gatineau, QC K1A 0H3

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

Tent Mountain Mine Redevelopment Project
Impact Assessment Agency of Canada
Canada Place, 9700 Jasper Avenue, Suite 1145
Edmonton, AB T5J 4C3

Dear Minister Wilkinson,

Re: Request for Designation of the Tent Mountain Coal Mine Redevelopment Project pursuant to s. 9(1) of the *Impact Assessment Act*

1. INTRODUCTION

I write to you on behalf of Niitsítapi Water Protectors (“NWP”), Canadian Parks and Wilderness Society Southern Alberta Chapter (“CPAWS S AB”) and Livingstone Landowners Group (“LLG”) regarding Montem Resources Alberta Operations Ltd.’s (“Montem” or the “Proponent”) Tent Mountain Mine Redevelopment Project proposal (the “Project”).

NWP is a grassroots collective of Niitsítapi water and land protectors. NWP’s mission is to protect the water and land within the traditional and Treaty lands of the Blackfoot Confederacy. NWP was formed in response to the threat of coal development projects within Blackfoot traditional territory and the headwaters of the Oldman River. Since its formation in 2020, NWP has been leading on-reserve community awareness campaigns, lobbying provincial and federal governments, and mobilizing grassroots initiatives to stop ALL proposed open-pit coal development projects. NWP is continuing the legacy of the Blackfoot ancestors by protecting the land and water from molestation.

CPAWS is a nationwide non-profit charitable organization dedicated to the protection and sustainability of public lands across Canada. The Southern Alberta chapter has been active for

over 50 years working collaboratively with provincial and federal governments, industry, Indigenous Peoples, and others to provide landscape-scale, science-based support and advice for the protection and proper management of our parks and wilderness areas. They are staffed by a diversity of Albertans with a passion for the outdoors and Alberta's wilderness, and supported by members and donors across the province.

LLG represents more than 150 landowners and supporters of the Livingstone-Porcupine Hills area in southwest Alberta, some of the most biodiverse and sensitive ecosystems in the province. Since its formation in 2004, LLG has been a strong advocate for ongoing land stewardship, protection of the region's critical headwaters and ensuring the sustainability of existing and future land and water uses in this fragile and important area of the Eastern Slopes. LLG actively engages with industry and governments on land use planning and policy and was a registered intervener in the federal/provincial joint impact assessment review process for the proposed Grassy Mountain project.

My clients submit this request for designation of the Project pursuant to s.9(1) of the *Impact Assessment Act*, SC 2019, c 28, s 1 (the "IAA"). Specifically, my clients submit that the Project warrants designation under s. 9(1) of the IAA.

The grounds for this request are that the location, size and potential adverse impacts of the Project warrant designating this project pursuant to s. 9(1) of the IAA.

My clients also support the submissions of the Blood Tribe/Kainai and Siksika Nations requesting the designation the Project by you in correspondence dated March 2, 2021 (the "Kainai & Siksika Designation Request Letters"), copies of which are attached as Appendix "A", and the submissions of the Alberta Wilderness Association requesting the designation the Project in correspondence dated March 28, 2021 (the "AWA Request Letter"), a copy of which is attached as Appendix "B".

2. BACKGROUND

According to the Agency's website, Montem:

"is proposing to restart and expand mining operations at the Tent Mountain Mine, an open-pit coal mine located 16 kilometres west of Coleman, Alberta that stopped operating in 1983. As proposed, the Tent Mountain Mine Redevelopment Project would expand the original mine pits to allow for the production of 4925 tonnes per day of raw coal used for steelmaking, over a 14-year mine life. The project would also include a coal handling and processing plant near the mining area and a rail loading facility located next to Provincial Highway #3 (Crowsnest Highway).¹

Montem itself describes the Project as:

"a surface mineable metallurgical coal deposit in southwest Alberta/southeast British Columbia. It is planned as a conventional truck-and-shovel open cut mine, targeting an overall life-of-mine run-of-mine (ROM) strip ratio of approximately 8.8:1 (BCM/ROM t). The mine plans to produce 1.8 million tonnes of ROM coal per year, resulting in

¹ "Canadian Impact Assessment Registry – Tent Mountain Mine Redevelopment Project," Canadian Impact Assessment Agency (accessed on 29 March 2021), online: <https://iaac-aeic.gc.ca/050/evaluations/proj/81436>.

approximately 1.1 million tonnes of annual saleable product coal. The Tent Mountain Mine product will be marketed as a high-quality Tier 2 hard coking coal (HCC).²

The southeastern slopes of the Rocky Mountains in Alberta are designated as an ecologically sensitive region and function as the headwaters for the Oldman River basin. The proposed Project will directly and irreversibly damage this critical area and contribute to a growing cumulative impact concern related to multiple coal exploration programs and proposed mine developments in the region.

In developing this letter, my clients have undertaken extensive reviews of published documents from the Proponent Montem and its contractors, including, but not limited to:

- The [Montem Resources Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada](#)
- The [Montem Resources Coal Resources for the Tent Mountain Mine, Alberta and British Columbia, Canada, Competent Person's Report](#)
- The [Montem Resources Alberta Operations Ltd Tent Mountain Project, Resuming Activities – Tent Mountain Mine, Coal Handling and Processing Plant, Project Description and Project Summary Table](#)
- The [Montem Resources Ltd. Prospectus, Canadian Steelmaking Coal](#)
- The [Montem Resources Ltd. Proposed Terms of Reference, Environmental Impact Assessment Report for Montem Resources Proposed Tent Mountain Project](#)

They have also reviewed relevant federal and provincial legislation, including the IAA, the Schedule to the *Physical Activities Regulations*, SOR/2019-285 (the “Regulations”), and the Impact Assessment Agency of Canada’s (the “Agency”) “Operational Guide: Designating a Project under the Impact Assessment Act.”³

3. REGULATORY FRAMEWORK

Designated projects under the IAA are prescribed by the *Regulations*. If a proposed project meets or exceeds the threshold within the *Regulations*, the project is a prescribed project and presumptively requires an impact assessment.

For project proposals the Agency considers to be the construction of a new coal mine, the relevant provision is s. 18(a) of the Schedule to the *Regulations*. That section prescribes the following types of projects for impact assessments:

The construction [or] operation ... of a new coal mine with a coal production capacity of 5 000 t/day or more.⁴

² Montem Resources, “Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada” (29 April 2020; accessed on 29 March 2021), online: https://montem-resources.com/wp-content/uploads/2020/09/Tent_Mtn_Technical_Assessment_Report_2CM044.003_20200819_updated_revised.._-_min.pdf.

³ “Operational Guide: Designating a Project under the Impact Assessment Act,” Canadian Impact Assessment Agency (date modified 17 June 2020; accessed on 29 March 2021), online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html>.

⁴ *Impact Assessment Act*, SC 2019, c 28, Schedule to the *Physical Activities Regulations*, SOR/2019-285 (accessed on 29 March 2021), online: <https://laws.justice.gc.ca/eng/regulations/SOR-2019-285/page-3.html#docCont>.

The Agency, based on the information provided by the Proponent Montem, apparently informed Montem on 28 April 2020 that the Project as defined by Montem did not fit the definition contained in s. 18(a), and as such, would not be subject to a federal impact assessment pursuant to the IAA.⁵ Given the level of public interest and concern raised over this project – as detailed below – above and beyond their request that the Minister designate this project under s.9(1) of the IAA, my clients request that you provide them with the documents on which the Agency relied in making its 28 April 2020 screening determination.

However, if a project is not prescribed for an impact assessment, you (hereinafter “you” or the “Minister”) have the authority pursuant to s. 9(1) of the IAA to designate the Project, either of your own volition, or in response to a request to designate the Project:

Minister’s power to designate

9 (1) The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.

Factors to be taken into account

(2) Before making the order, the Minister may consider adverse impacts that a physical activity may have on the rights of the Indigenous peoples of Canada — including Indigenous women — recognized and affirmed by section 35 of the *Constitution Act, 1982* as well as any relevant assessment referred to in section 92, 93 or 95.⁶

The Agency’s “Operational Guide: Designating a Project under the Impact Assessment Act” sets out the factors that you and the Agency should consider when examining a request to designate a project pursuant to s. 9(1) of the IAA, including whether or not:

- the project or its expansion(s) is near a threshold set in the Project List;
- the carrying out of the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, and public concerns related to such effects, including:
 - effects on fish and fish habitat;
 - effects on aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*;
 - effects on migratory birds;
 - changes to the environment on federal lands;
 - changes to the environment that occur in a province or territory other than the one where the project is taking place;

⁵ *Montem Resources Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada* (1 April 2020; accessed on 29 March 2021), see page 6, online: https://montem-resources.com/wp-content/uploads/2020/09/Tent_Mtn_Technical_Assessment_Report_2CM044.003_20200819_updated_revised.._min.pdf.

⁶ *Impact Assessment Act*, SC 2019, c 28 (accessed on 29 March 2021), online: <https://laws.justice.gc.ca/eng/acts/I-2.75/page-3.html#h-1160225>.

- changes to the environment that occur outside of Canada;
 - changes to the environment that could affect the Indigenous peoples of Canada;
 - any change occurring to the health, social or economic conditions of the Indigenous peoples of Canada; and
 - changes to components of the environment, health, social or economic matters set out in Schedule 3 of the *IAA*.
- there are potential impacts of the project on the rights of the Indigenous peoples of Canada – including Indigenous women – recognized and affirmed by section 35 of the *Constitution Act, 1982* (section 35 rights), as well as any relevant regional or strategic assessments;
 - standard design features and mitigation would address the anticipated adverse effects;
 - the project involves new technology or is a new type of activity;
 - the potential adverse effects can be adequately managed through other existing legislative or regulatory mechanisms;
 - an assessment of environmental effects would be carried out by another jurisdiction;
 - the project may cause adverse environmental effects because of its location and environmental setting, or because of a change in use on previously developed lands;
 - there are proposals for multiple activities within the same region that may be a source of cumulative effects;
 - there are potential effects across international borders;
 - the potential greenhouse gas emissions associated with the project may hinder 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; and
 - a response to a prior request to designate the project has been rendered, including a response under the *Canadian Environmental Assessment Act, 2012*.⁷

“Upon receiving a request, the Agency will prepare a recommendation for the Minister that will be informed by science, Indigenous and community knowledge, input from the proponent, and consultations with other jurisdictions, as applicable. To inform the recommendation, the Agency may seek information from the proponent, solicit advice from federal departments, consult with provinces, other jurisdictions and potentially affected Indigenous groups, and seek further input from the requester and any other person or entity. In seeking information, the Agency will not undertake a formal comment period.

⁷ “Operational Guide: Designating a Project under the Impact Assessment Act,” Canadian Impact Assessment Agency (date modified 17 June 2020; accessed on 29 March 2021), online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html>.

“Once the Minister makes a determination, the Minister will provide a response, including reasons for the determination, to the requester and will notify the proponent. The Minister’s response will be posted on the online Canadian Impact Assessment Registry.

“If the Minister decides to designate the project, a ministerial order will be posted on the online Canadian Impact Assessment Registry. Once the project is designated, the prohibition in section 7 of the *IAA* will apply to the proponent of the designated project. Similarly, the prohibition in section 8 of the *IAA* will apply to federal authorities.”⁸

My clients submit that even if the size and “production capacity” of the Project have been deemed by the Agency to not meet the threshold in s. 18(a) of the Schedule to the *Regulations* and the Project is therefore not automatically a “designated project,” you in the circumstances ought to designate the Project pursuant to s. 9(1) of the *IAA*, given the Project barely skirts that threshold, is located in an environmentally sensitive location, gives rise to numerous potential adverse effects in areas of federal authority (including effects on fish and fish habitat, aquatic species and other species at risk; and changes to the environment that could affect the Indigenous peoples of Canada, including to their health, social or economic conditions), has potential impacts on the rights of the Indigenous peoples of Canada (including Indigenous women) recognized and affirmed by section 35 of the *Constitution Act, 1982* (section 35 rights), has potentially serious interprovincial and international effects, the potential greenhouse gas emissions associated with the project may hinder the Government of Canada’s ability to meet its commitments in respect of climate change, and there are proposals for multiple coal mines and exploratory activities within the same region that may be a source of cumulative effects. Crucially, there is widespread public concern related to these effects and impacts of the Project that warrants the designation.

4. ANALYSIS

My clients request that you designate the Project for an impact assessment. My clients submit that the Project warrants designation by you pursuant to s. 9(1) of the *IAA* given its size and environmentally sensitive location and the numerous potential adverse effects within federal jurisdiction that it gives rise to.

As set out below, the Project: is near the threshold set in the Project List as set out in the Schedule of the *Regulations*; is in an environmentally sensitive location; will have numerous potential adverse effects that fall within federal jurisdiction; has potential adverse effects that cannot be adequately managed through other existing legislative or regulatory mechanisms; has environmental effects that cross jurisdictions and as such an assessment of them cannot be carried out by another jurisdiction; is adjacent to proposals for multiple activities within the same region that may be a source of cumulative effects; has potential effects across international borders; has the potential to cause adverse impacts on the section 35 rights of the Indigenous peoples of Canada; and has associated potential greenhouse gas emissions that may hinder the

⁸ “Operational Guide: Designating a Project under the Impact Assessment Act,” Canadian Impact Assessment Agency (date modified 17 June 2020; accessed on 29 March 2021), online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html>.

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. As such, the Project clearly warrants designation by you pursuant to s. 9(1) of the *IAA*.

- i. The Project is near the threshold set in the Project List as set out in the Schedule of the *Regulations*

The Project as proposed is designed to skirt the thresholds as set out in the Schedule in of the *Regulations* to avoid being considered a designated project for a federal impact assessment pursuant to the *IAA* and would still give rise to large volumes of ore mined and production activity. Given the serious potential adverse effects associated with coal mining, the Project therefore clearly warrants designation. The serious potential adverse impacts of coal mining have been recognized by you in recently triggering a strategic impact assessment for the mining of thermal coal.⁹ I would note that my clients' position on this matter at this time is based solely on the Agency's description of the production capacity on the Agency Registry's page and the summary statement set out below, but they have not completed a thorough factual and legal analysis of the documents provided to provincial regulators by Montem. They assume that the Agency has thoroughly reviewed the proposed Project and that the numbers produced by the Agency are accurate, but my clients will be undertaking their own analysis and reserve the right to make submissions on whether the "production capacity" of the Project is in fact above the prescribed threshold.

A federal review of the proposed Project is warranted based on Montem's forecast that the volume of raw coal produced will be 4 925 t/day versus the 5 000 t/day threshold that would automatically designate the Project for a federal impact assessment.

The Proponent's [Montem Resources Ltd. Proposed Terms of Reference, Environmental Impact Assessment Report for Montem Resources Proposed Tent Mountain Project](#) prepared for the Alberta Energy Regulator (the "AER") states:

The Mine operations are designed to release 4,925 raw tonnes per day over the anticipated operating schedule and the mine; mobile equipment and the existing raw coal handling facilities are designed to accommodate this capacity.¹⁰

Given normal operational variances, this volume could easily exceed the 5 000 t/day threshold as set out in the Schedule of the *Regulations*. Whether a project or its expansion(s) is near a threshold set in the Project List is one of the relevant factors the Agency may take into account in developing a recommendation for the Minister as to whether to designate the Project pursuant to s. 9(1) of the *IAA*. Given the very close proximity to the threshold, this factor weighs strongly on the Minister designating this Project.

⁹ News Release: "Canada launches strategic assessment of thermal coal mining," Environment and Climate Change Canada (20 December 2019, accessed on 29 March 2021), online: <https://www.canada.ca/en/environment-climate-change/news/2019/12/canada-launches-strategic-assessment-of-thermal-coal-mining.html>.

¹⁰ Montem Resources Ltd. *Proposed Terms of Reference, Environmental Impact Assessment Report for Montem Resources Proposed Tent Mountain Project* (03 February 2021; accessed on 29 March 2021), see page 4, online: <https://montem-resources.com/wp-content/uploads/2021/02/Proposed-Terms-of-Reference-February-2021.pdf>.

ii. Potential adverse impacts to an environmentally sensitive location

The proposed Project is in an environmentally sensitive location known to include species at risk. It is in the Livingstone Hills Land Management Zone, protected by the Livingstone-Porcupine Hills Land Footprint Management Plan, which is a subplan of the South Saskatchewan Regional Plan (“SSRP”). As stated in the Livingstone-Porcupine Hills Land Footprint Management Plan:

According to SSRP, the management intent for public land in the Eastern Slopes is for integrated management that incorporates the objectives for biodiversity and healthy, functioning ecosystems, to achieve multiple objectives. **Watershed management and headwaters protection is the highest priority.**

...

The Livingstone-Porcupine Hills, combined with the Castle Parks, form a landscape complex that is an integral part of the internationally significant Crown of the Continent Ecosystem. The Crown of the Continent has long been recognized by Indigenous Peoples, scientists, and conservation groups as an ecologically significant area. It comprises the headwaters of North America’s three great watersheds (the Saskatchewan, Missouri, and Columbia River systems) and is recognized as critical to the protection of wildlife, landscapes, and water.¹¹

[emphasis added]

According to Montem’s [*Montem Resources Alberta Operations Ltd Tent Mountain Project, Resuming Activities – Tent Mountain Mine, Coal Handling and Processing Plant, Project Description and Project Summary Table*](#), the Project is located within or adjacent to the following:

- Castle Wildland Park
- South Saskatchewan Regional Plan
- Oldman Watershed
- Important habitat for species of concern, including:
 - Grizzly Bear (Special Concern);
 - Bighorn Sheep and Mountain Goat;
 - *Pinus flexilis* (Limber Pine; Endangered); and

¹¹ Alberta Environment and Parks. 2018. Livingstone-Porcupine Hills Land Footprint Management Plan. Government of Alberta. ISBN No. 978-1-4601-3965-3 (May 2018; accessed on 29 March 2021), see pages 4 and 5, online: <https://open.alberta.ca/dataset/18b70847-7d1e-462b-bc12-6aaaab2fb1ac/resource/61d7fda1-3034-414d-9c40-b7e939366316/download/livingstoneph-landfootprintmgtplan-2018.pdf>.

- *Pinus albicaulis* (Whitebark Pine; Endangered).¹²

The area where the Project is proposed is already subject to significant linear disturbance and a development of the magnitude of the Project could have additional adverse consequences for sensitive and “at risk” plants and wildlife.

- iii. Interprovincial impacts on drinking water, including drinking water for First Nations reserves and Indigenous communities and for populations in Alberta, Western Canada and the United States

The Project location is in the headwaters of a drainage area of the Crowsnest River which feeds into the Oldman River water basin. Water is a critical issue in this semi-arid region and the water basin has been closed to new allocations since 2006. It is extremely important for the federal government to play a role in protecting this important watershed, recognizing that the water supplies virtually all of southern Alberta – including First Nations reserves – and is subject to a water sharing agreement with the provinces of Saskatchewan and Manitoba. Water supplies in the United States are also at risk from increased coal mining in the region.

For years, the provinces, territories, and the federal government have recognized the importance of protecting shared waters through transboundary water agreements. The Rocky Mountains supply drinking water to millions of Canadians living in the Prairies. They are also integral to aquatic life in the headwaters and downstream, including for threatened species.

In the Prairies, the Master Agreement on Apportionment (MAA) has for more than half a century ensured that the provinces of Alberta, Saskatchewan, and Manitoba collaborate on the best uses of the waterways that connect them. But coal developments like this Project on the Eastern Slopes of the Rocky Mountains, at the headwaters of major rivers and tributaries that supply water to millions of people across all three provinces, are now threatening that agreement, and the spirit of collaboration and consultation that the agreement has tried to foster.

Under the MAA, the province of Alberta has agreed to direct one-half of the natural flow of its water into the province of Saskatchewan.¹³ But coal mining on the Eastern Slopes could put a significant strain on that commitment, directly affecting the flows available for entering Saskatchewan, and then Manitoba — be it for irrigation, food production, ecosystem support, hydroelectricity, the drinking water supply, or the maintenance of a healthy aquatic environment.

This is a dangerous proposition at a time when the region is already subject to droughts, and when seasonal water shortages are expected to only worsen due to the climate crisis.

¹² *Montem Resources Alberta Operations Ltd Tent Mountain Project, Resuming Activities – Tent Mountain Mine, Coal Handling and Processing Plant, Project Description and Project Summary Table* (11 February 2021; accessed 29 March 2021), see page 18, online: <https://montem-resources.com/wp-content/uploads/2021/02/Project-Summary-Final-11-Feb2021.pdf45.pdf>.

¹³ *Master Agreement on Apportionment* (30 October 1969; accessed on 30 March 2021), online: <https://www.ppw.ca/about-us/what-we-do/1969-master-agreement-on-apportionment/master-agreement-on-apportionment>.

Headwaters for the Oldman River sub-basin will be directly impacted by Benga Mining’s Grassy Mountain Coal Project (currently under review by a joint federal-provincial review panel), as well as by additional coal mines in the Eastern Slopes that await approval. This water-scarce basin has been closed to new water allocations since 2006, partly to ensure the province can fulfill its obligation to provide water to neighbouring provinces.¹⁴

Meanwhile, the Alberta government has proposed new water allocations¹⁵ that would make it easier for coal companies to draw water from the headwaters of the Oldman watershed.¹⁶ An examination of the nearby Grassy Mountain Mine Proposal indicates a potential under-representation of total water demands, which is an indicator of what to expect from possible future mining in the Eastern Slopes of the Rocky Mountains. The impact of mining in this region is expected to place a new stress on the already stressed water resources of the Oldman River Basin. And, this stress will be most acute during times of drought, when the potential for conflict between on-site water demands and between water license holders will be elevated relative to the present situation.¹⁷ These changes could also endanger the health of small headwater streams and rivers that are critical habitat for at-risk populations of bull trout and westslope cutthroat trout (as further detailed below).

Coal mining in Alberta’s headwaters also has implications for the province’s water quality commitments made under the MAA. As further detailed below, according to leading scientists, it is undisputed that open-pit coal mining contaminates nearby water, with potentially disastrous results for downstream ecosystems, municipalities, and agricultural and ranching operations.¹⁸ One of North America’s top experts on pollution from coal mines has warned Albertans about the dangers of expanding the industry in the province’s Rocky Mountains:

Expansion of coal-mining up the Alberta Rockies chain will absolutely produce an environmental disaster for fish and wildlife health in what are now pristine, high-quality watersheds. Have you ever seen an environmentally clean coal mine? I haven’t in my

¹⁴ *Water Allocation Policy for Closed River Basins in the South Saskatchewan River Basin Directive* (30 August 2006; accessed on 30 March 2021), online: <https://open.alberta.ca/dataset/80929751-96f2-4cf7-b34f-6f817c0d92ae/resource/fa23a09a-5edf-4d52-8fbd-766a5e7641aa/download/waterallocationsouthsaskatchewan-sep2016.pdf>.

¹⁵ Nigel Bankes and Cheryl Bradley, “Water for Coal Developments: Where Will It Come From?” (04 December 2020; accessed on 30 March 2021), online: ABlawg, http://ablawg.ca/wp-content/uploads/2020/12/Blog_NB_CB_Coal_Water.pdf.

¹⁶ “Alberta’s ‘back door’ plan to free up billions of litres of water for coal mines raises alarm,” *The Narwhal* (01 February 2021; accessed on 30 March 2021), online: <https://thenarwhal.ca/alberta-coal-mining-rockies-oldman-river/>.

¹⁷ Chris Hopkinson, “Does the Water Licence for a Coal Mine Capture its Impact on the Water Resource? Examining Benga Mining Limited’s Proposed Grassy Mountain Mine in the Headwaters of the Oldman River Basin” (08 March 2021; accessed on 30 March 2021), online: ABlawg, http://ablawg.ca/wp-content/uploads/2021/03/Blog_CH_Grassy_Mountain_Water.pdf.

¹⁸ A. Dennis Lemly, “Aquatic hazard of selenium pollution from coal mining,” in *Coal mining: Research, Technology, and Safety*, ed. G.B. Fosdyke (New York: Nova Science Publishers, 2008), 167-183 (accessed on 30 March 2021), online: <https://www.fs.usda.gov/treearch/pubs/33826>.

investigations with Canada, the U.S. and other countries around the world for the past 45 years.¹⁹

He also confirmed this in his assessment of the Grassy Mountain Coal Mine Project (entered as evidence in the hearings of the Joint Review Panel assessing this project, near the Tent Mountain Project), and his conclusion that the provincial AER regulator has failed to seriously assess and guard against environmental pollution from mines:

Leaching of selenium and resultant biological impacts is an undisputed fact of open-pit mountain top coal-mining. It will inevitably happen.

Effective treatment doesn't exist.

These [tailings] ponds are notorious for breaching.

To date, there has been no demonstration of effective treatment of leachate wastewater to render it safe to aquatic life in receiving waters at the scale and flows emanating from coalmines.

The proposed methods and techniques to protect water quality are simply hollow promises that carry no legitimate demonstration of prior success.

Despite the scientific documentation of detrimental pollution impacts, it seems that this has been a long-running case of, 'Don't ask, don't tell' by government regulators in Alberta.

Current policy by (the Alberta Energy Regulator) reveals an extremely poor understanding and recognition of the key aquatic pollutant emanating from coal mines.

There is no need for history [what has happened in British Columbia due to selenium and other pollution in waterways from intensive coal mining there] to repeat itself [in Alberta].²⁰

Coal mining leaches toxic concentrations of selenium and arsenic into the water.²¹ That risk is only multiplied when there is a possibility of several mines operating in the same watershed.²²

¹⁹ "Top coal scientist warns Albertans of contamination from mining", *CBC News* (16 February 2021; accessed on 2 April 2021), online: <https://www.cbc.ca/news/canada/calgary/coal-scientist-alberta-mining-rocky-mountains-contamination-ucp-1.5915245>.

²⁰ A. Dennis Lemly, "Environmental hazard assessment of Benga Mining's proposed Grassy Mountain Coal Project," *Environmental Science & Policy*, Volume 96, June 2019, pages 105-113 (accessed on 2 April 2021), online: <https://www.ceaa.gc.ca/050/documents/p80101/132193E.pdf>.

²¹ Mark Wayland and Robert Crosley, "Selenium and Other Trace Elements in Aquatic Insects in Coal Mine-Affected Streams in the Rocky Mountains of Alberta, Canada," *Archives of Environmental Contamination and Toxicology* 50 (2006: 511-522), (accessed on 30 March 2021), online: <https://link.springer.com/article/10.1007/s00244-005-0114-8>.

²² "Navigating Our Future" Coal Mining In The Oldman Watershed – Part 2," Oldman Watershed Council (26 January 2021; accessed on 30 March 2021), online: <https://oldmanwatershed.ca/blog-posts/2021/1/26/navigating-our-future-coal-mining-in-the-oldman-watershed-part-2>.

This, at a time when selenium levels are already dangerously high in some Alberta waterways because of previous coal mines development.²³

Leaching of selenium is an environmental disaster for fish and wildlife health, causing deformities, nerve damage, and reproductive failure in fish, mammals and migratory birds — even long after the coal mines are gone. In British Columbia’s Elk Valley, home to four coal mines, selenium levels have reached 50 times the safe limit for aquatic health.²⁴ New remediation methods currently lack long-term studies on efficacy at the scale and in field conditions of currently proposed mines.

Catastrophic failures of mining infrastructure are also a great risk to downstream water quality. The Obed mine disaster in 2013 released 670 million litres of contaminated water into tributaries of the Athabasca river, and the plume of tailings water travelled more than 1,100 km downstream. This release is expected to cause long-term damage, as spring runoff mobilizes contaminants each year.²⁵ Alberta, Saskatchewan, Manitoba and Canada signed the MAA in a spirit of consultation and cooperation, to reach common goals around shared water resources. But my clients believe that the decision by the Alberta government to allow coal exploration and mining activities, which have inevitable consequences for other Prairie provinces, violates that spirit.

While the Alberta government is in the process of conducting public consultations about a new, updated coal policy, the scope of these consultations must be expanded to include *all* those affected downstream — including in other provinces – which clearly requires federal involvement.

This lack of consultation is not without precedent. Last summer, the Alberta government temporarily suspended water quality monitoring on rivers that flow through oilsands and into the Northwest Territories, without informing that jurisdiction — a clear violation of its transboundary obligations.²⁶ You must ensure that the province never again fails in its responsibility to consult and cooperate with its neighbours.

You must also ensure that both the Province and Canada honour their obligations to consult meaningfully with First Nations — who have protected their land and water since time immemorial — and ensure their rights are not unjustifiably infringed as a result of authorizing new coal mines on public lands located in their traditional territories along the Eastern Slopes and downstream, across Western Canada.

²³ “Contaminant from coal mines already high in some Alberta rivers: unreported data,” *CTV News* (25 January 2021; accessed on 30 March 2021), online: <https://edmonton.ctvnews.ca/contaminant-from-coal-mines-already-high-in-some-alberta-rivers-unreported-data-1.5280626>.

²⁴ “U.S. demands explanation from province over river pollution from B.C. mines,” *CBC News* (11 May 2020; accessed on 30 March 2021), online: <https://www.cbc.ca/news/canada/british-columbia/us-epa-pollution-rivers-teck-mines-bc-1.5564269>.

²⁵ “Scientist expects ‘long-term damage’ from coal spill,” *Northern Journal* (09 December 2013; accessed on 30 March 2021), online: <http://norj.ca/2013/12/scientist-expects-long-term-damage-from-coal-spill/>.

²⁶ “Alberta failed to flag N.W.T. about suspending oilsands monitoring despite agreement: emails,” *Global News* (13 July 2020; accessed on 30 March 2021), online: <https://globalnews.ca/news/7169261/alberta-suspending-oilsands-monitoring-north-west-territories/>.

Further, the Canadian government is also seeking to create a Canada Water Agency “to find the best ways to keep our water safe, clean and well managed.”²⁷ You and your colleagues made the following statements in the Government of Canada’s press release announcing consultations on creating the Canada Water Agency:

“Canadians want a future with cleaner air and cleaner water for their children and grandchildren. Establishing the Canada Water Agency will help to identify, better coordinate, and address various issues relating to freshwater in Canada. It’s an important part of Canada’s plan to build a cleaner, stronger, more resilient economy, with good, secure jobs now and into the future. I encourage all Canadians to take part in these consultations to help shape the Canada Water Agency.”

– The Honourable Jonathan Wilkinson, Minister of Environment and Climate Change

“Canadians know the importance of protecting our natural bounty of lakes, rivers, and other freshwater systems. Farmers need a reliable supply of quality fresh water to produce high-quality food for our country and for export around the world. This agency will be designed to complement and work in collaboration with initiatives already underway at the provincial, territorial, and local levels. We encourage Canadians and agricultural stakeholders to make their voices heard as part of these important consultations.”

– The Honourable Marie-Claude Bibeau, Minister of Agriculture and Agri-Food

“Through the Canada Water Agency, our government is looking to strengthen collaboration between the federal government, the provinces, territories, Indigenous Peoples, and other partners to find the best ways to safeguard our freshwater resources for generations to come. Robust consultations are an important part of this process, and I look forward to the input from Canadians.”

– Terry Duguid, Parliamentary Secretary to the Minister of Environment and Climate Change (Canada Water Agency)

Allowing coal mines to be built in the headwaters of some of Canada’s and North America’s most important water sources without even subjecting them to an impact assessment flies in the face of these stated policy objectives. This factor, as well as the watershed shared by at least three provinces and two territories, the MAA governing water flows between the Prairie provinces, the arid and drought-susceptible regions of southern Alberta, the demand on existing water allocations (by agriculture, industry and municipalities, irrigation, ecosystem support, hydroelectricity, the drinking water supply, or for the maintenance of a healthy aquatic environment), concerns over water quality and selenium and arsenic pollution, and lack of consultation by the Government of Alberta with other jurisdictions and First Nations,

²⁷ “Government of Canada launches consultations on new Canada Water Agency,” Government of Canada (17 December 2020, accessed on 2 April 2021), online: <https://www.canada.ca/en/environment-climate-change/news/2020/12/government-of-canada-launches-consultations-on-new-canada-water-agency.html>.

demonstrate the inability of Alberta to adequately address these issues and necessitate a federal assessment.

- iv. Potential impacts on areas of federal jurisdiction
 - a. Indigenous peoples and federal reserve lands, and Aboriginal and Treaty rights of Indigenous peoples protected by s. 35 of the *Constitution Act, 1982*

This Project is located within the traditional territories of both Kainai/Blood Tribe and Siksika Nations and poses a significant threat to their ability to continue to use the area for the practice of their Aboriginal and Treaty rights. My clients endorse the concerns in this regard as outlined in the Kainai & Siksika Designation Request Letters (Appendix “A”).

The Blackfoot Confederacy consists of four tribes of Niitsítapi (The Real People): the Kainai (Bloods), the Piikani (Peigans), the Siksika (Blackfoot) and Aamskapi Pikuni (Blackfeet).

Blackfoot traditional territory, including the Kainai, Piikani and Siksika, extends from the Rocky Mountains in the west to the Sand Hills in the east, and from the North Saskatchewan River in the north to the Yellowstone River in the south (in the present-day state of Montana, U.S.A.).

The Niitsítapi have occupied and stewarded these lands, including the Eastern Slopes of the Rocky Mountains, since time immemorial. The Eastern Slopes of the Rocky Mountains have long been an area critical to the practise of rights, including harvesting, trade and spiritual practices. The traditional practices conducted on the land and waters are integral to the Blackfoot Confederacy’s continued physical and cultural wellbeing.

Specifically, the Nations of the Blackfoot Confederacy used and continue to use the lands, waters, and resources within their traditional territory for a variety of traditional purposes, including: hunting, fishing, trapping, gathering, traveling, and for cultural practices. The ability to use their traditional lands for a range of practices and access to traditional resources is extremely important to the Niitsítapi, as the lands and resources underpin their culture, tradition, identity, well-being, spirituality, and rights.

The Project may significantly and adversely affect the Nations of the Blackfoot Confederacy, including the Siksika, Kainai, and Piikani, and their ability to exercise their Aboriginal and Treaty rights. The Nations of Treaty No. 7 – including the Blackfoot Confederacy, the Tsuut’ina and Stoney Nakoda – will also be impacted.

In addition, the AER provincial review is insufficient to adequately identify the impacts of projects on First Nations’ Aboriginal and Treaty rights.

The AER is precluded by section 21 of Alberta’s *Responsible Energy Development Act* to “**assess the adequacy of Crown consultation** associated with the rights of aboriginal peoples as recognized and affirmed under Part II of the *Constitution Act*” [emphasis added].²⁸

²⁸ *Responsible Energy Development Act*, SA 2012, c R-17.3, s. 21, online: <https://www.canlii.org/en/ab/laws/stat/sa-2012-c-r-17.3/latest/sa-2012-c-r-17.3.html?resultIndex=1>.

The Eastern Slopes of the Rocky Mountains are one of the few remaining areas that can still support the practise of constitutionally-protected Niitsítapi rights and culture.

The Blackfoot Confederacy has provided information to the Government of Alberta regarding the importance of the Eastern Slopes of the Rocky Mountains by way of consultation on the SSRP and the Livingstone-Porcupine Hills Land Footprint Management Plan. The Livingstone-Porcupine Hills Land Footprint Management Plan specifically states:

The Eastern Slopes include the hunting and gathering, and ceremonial places that lie within traditional territories of multiple First Nations. The Livingstone-Porcupine Hills area provides sustenance, materials, medicines, and sacred places for First Nations since time immemorial and is expected to continue to do so for generations yet to come. Indigenous communities are intimately connected to the land and therefore their ancestral, traditional and continued use of public lands are at risk from the impacts of climate change, industrial development and unmanaged recreational use.³³

Blackfoot Nations (and all Treaty No. 7 Nations) also participated in the regulatory review for the Grassy Mountain Coal Project and filed evidence regarding the importance of the Eastern Slopes of the Rocky Mountains for the practise of their rights.

Mining, and in particularly open pit coal mining, can have significant adverse impacts on First Nations' ability to exercise their rights and maintain their culture, including:

- increased disturbance of land and fragmentation of landscape;
- reduction of territory available for the exercise of the Nations' rights and maintenance of their culture;
- disturbance and destruction of wildlife and wildlife habitat;
- destruction of plants relied on for food, spiritual or ceremonial purposes;
- increased contamination of the Oldman River watershed from selenium and other coal-related contaminants;
- impacts on intergenerational knowledge transmission due to removal of significant sites, reduced or eliminated access to traditional resources and essentials lands;
- decreased confidence in the resources found in the area; and
- increased industrial noise and light that interfere with hunting and the sense of solitude and connection to the lands and waters.

The Project has a capacity near thresholds set out in the Schedule to the *Regulations*: it is designed to release 4 925 t/day of raw coal, which is exceptionally close to the 5 000 t/day

³³ Alberta Environment and Parks. 2018. Livingstone-Porcupine Hills Land Footprint Management Plan. Government of Alberta. ISBN No. 978-1-4601-3965-3 (May 2018; accessed on 29 March 2021), see page 25, online: <https://open.alberta.ca/dataset/18b70847-7d1e-462b-bc12-6aaaab2fb1ac/resource/61d7fda1-3034-414d-9c40-b7e939366316/download/livingstoneph-landfootprintmgtplan-2018.pdf>.

threshold set out in s. 18(a) of the Schedule to the *Regulations*. The Project is located in an environmentally sensitive location: notably, it is located in the Livingstone Hills Land Management Zone protected by the Livingstone-Porcupine Hills Land Footprint Management Zone, which 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. The Project thus may contribute to the pollution of drinking water for Kainai/Blood Tribe and Siksika Nations' on-reserve populations, as well as Alberta's general population.

The Kainai/Blood Tribe and Siksika Nations have also consistently communicated to the Government of Alberta over many years that the Eastern Slopes of the Rocky Mountains are critical to a healthy and sufficient water supply for their reserve lands. The Project has the potential to impact watersheds that also provide essential waters to the Piikani and Kainai Nation reserve lands.

In addition, the Project has the potential to adversely impact the following:

- **Livelihood:** Open pit coal mining will have a negative impact on traditional livelihoods and lifestyles of the Blackfoot Confederacy. Preservation of their traditional lifestyles, cultures and health (physical, mental, spiritual and emotional) depends on the persistence of traditional food, water and land.
- **Health:** Environmental health is a vital component of the overall health of the Blackfoot people. The Niitsítapi continue to rely heavily on the environment for their social, cultural, economic and physical survival and well-being. Loss and/or contamination of traditional foods sources will negatively impact the personal health and well-being of their people.
- **Traditional Foods:** The Niitsítapi have a cultural, traditional, and social connection to the land and continue to rely on traditional foods for socio-cultural, economic, and physical well-being. Traditional food systems and quality of traditional food available are at risk of contamination and degradation. Loss of access to traditional foods (through contamination, at-risk populations, extirpations, or extinctions) translates into a loss of food security.
- **Culture and Traditions:** Niitsítapi spirituality, cultural and ceremonial practices are deeply rooted in and connected to the land and natural environment. Changes to the local environment and socioeconomic conditions will negatively impact the Niitsítapi way of life.
- **Sacred Sites and preservation:** Mine footprints will destroy both documented and previously undocumented sites of archaeological, historical, cultural, or spiritual significance. Areas at risk: Napi's Gambling Place, Oldman River, Thunder Mountain

b. International transboundary waters and risk

One of the major known risks associated with coal mining is water pollution, particularly selenium contamination. This issue was explored in significant detail during the Grassy

Mountain project joint review process, with multiple experts noting that there is no proven field-scale technology available to fully mitigate against selenium leaching. This is already a serious problem with the current Teck Resources coal mines across the border in the Elk Valley in British Columbia, and has led to international concern with the United States as selenium leaching from Canadian coal mines continues to pollute waters downstream in the state of Montana. Endangered fish populations in the Elk River system have been subject to significant fish kills and ongoing deformities from selenium concentrations far higher than the legal limits downstream of the Teck mines.

This risk is compounded by the disparity between the much tighter selenium standards set by the U.S. Environmental Protection Agency (“EPA”) and the guidelines currently in place in British Columbia and Alberta.

The [Montem Resources Ltd. Prospectus, Canadian Steelmaking Coal](#) identifies the risk that **selenium leachate from the British Columbia portion of the Project will drain into the Elk Valley in British Columbia** [emphasis added], which would add to the significant selenium problem already being experienced related to the Teck Mines in that area. The Elk Valley drains into Montana, creating international transboundary risk. Montana has a selenium guideline that is less than half that currently required in Alberta and British Columbia.

The following is an excerpt from page 11 of the Prospectus:

Selenium risk

The rocks surrounding coal seams in the Projects contain selenium. Current opencut coal mines in the Elk Valley in British Columbia are required to have stringent selenium leachate management plans. The portion of the Tent Mountain Mine permit area which is in British Columbia drains into the Elk Valley and will be subject to stringent selenium leachate management when mining is re-established. The Projects which occur in Alberta are also likely to require a comprehensive selenium leachate management plan as part of their mine licence conditions of consent. Operational impacts may occur due to implementation of selenium leachate management plans for the Projects, and these may increase the cost of coal production.³⁴

Thus, Montem in its Prospectus is admitting to its shareholders that selenium is a risk, that it drains into a waterway (which is likely a fish-bearing stream), and that it will require a selenium management plan to manage these risks.

With respect to fish impacts, this is clearly a recognition by Montem that the specifics of that management plan will determine the degree to which these impacts are managed – which necessitates a federal assessment.

³⁴ *Montem Resources Ltd. Prospectus, Canadian Steelmaking Coal* (31 July 2020; accessed on 29 March 2021), see page 11, online: http://montem-resources.com/wp-content/uploads/2020/09/Montem-Resources_Prospectus_Final_no-AF.pdf

Montem in its Prospectus is also clearly acknowledging that there are potential adverse interprovincial and international impacts.

Further, The Proponent's [*Coal Resources for the Tent Mountain Mine, Alberta and British Columbia, Canada, Competent Person's Report*](#) notes:

4.8 ENVIRONMENTAL LIABILITIES – The Mist Mountain Formation, the targeted coal-bearing unit, naturally contains selenium. In alkaline, aerobic conditions, elemental selenium and selenide minerals are oxidized releasing soluble selenate ions which can be transported in surface runoff. Large scale surface mining in the Elk Valley, BC, has enriched the Elk River in selenium.³⁵

c. Fish and fish habitat at risk

According to leading scientists, it is undisputed that open-pit coal mining contaminates nearby water, with potentially disastrous results for downstream ecosystems.³⁶ Coal mining leaches toxic concentrations of selenium and arsenic into the water,³⁷ and the risks increase due to the cumulative effects of multiple mines operating in the same watershed.³⁸ The Alberta government itself has data that demonstrate that selenium levels are already dangerously high in some Alberta waterways because of previous coal mine development.³⁹ Previous catastrophic mine failures in Alberta have been found to create long-term pollution damage.⁴⁰

The Crowsnest River and Oldman River basin headwaters area and associated aquatic habitat are critical to the survival of the westslope cutthroat trout and bull trout populations. Bull trout and westslope cutthroat trout are listed as Threatened in Alberta. The Alberta population of westslope cutthroat trout is also listed federally as Threatened under the *Species at Risk Act* (“SARA”) and bull trout in the North and South Saskatchewan River basins are recommended to be listed as Threatened by the Committee on the Status of Endangered Wildlife in Canada (“COSEWIC”).

³⁵ *Montem Resources Coal Resources for the Tent Mountain Mine, Alberta and British Columbia, Canada, Competent Person's Report* (07 April 2020; accessed on 29 March 2021), see page 27, online: http://montem-resources.com/wp-content/uploads/2020/04/2020-04-07-JORC_Tent-Mountain-Mine_FINAL_Signed_small.pdf.

³⁶ A. Dennis Lemly, “Aquatic hazard of selenium pollution from coal mining,” in *Coal mining: Research, Technology, and Safety*, ed. G.B. Fosdyke (New York: Nova Science Publishers, 2008), 167-183 (accessed on 30 March 2021), online: <https://www.fs.usda.gov/treearch/pubs/33826>.

³⁷ Mark Wayland and Robert Crosley, “Selenium and Other Trace Elements in Aquatic Insects in Coal Mine–Affected Streams in the Rocky Mountains of Alberta, Canada,” *Archives of Environmental Contamination and Toxicology* 50 (2006: 511–522), (accessed on 30 March 2021), online: <https://link.springer.com/article/10.1007/s00244-005-0114-8>.

³⁸ “Navigating Our Future” Coal Mining In The Oldman Watershed – Part 2,” Oldman Watershed Council (26 January 2021; accessed on 30 March 2021), online: <https://oldmanwatershed.ca/blog-posts/2021/1/26/navigating-our-future-coal-mining-in-the-oldman-watershed-part-2>.

³⁹ “Contaminant from coal mines already high in some Alberta rivers: unreported data,” *CTV News* (25 January 2021; accessed on 30 March 2021), online: <https://edmonton.ctvnews.ca/contaminant-from-coal-mines-already-high-in-some-alberta-rivers-unreported-data-1.5280626>.

⁴⁰ “Scientist expects ‘long-term damage’ from coal spill,” *Northern Journal* (09 December 2013; accessed on 30 March 2021), online: <http://norj.ca/2013/12/scientist-expects-long-term-damage-from-coal-spill/>.

More specifically, the Project will discharge to Crowsnest Creek,⁴¹ which flows into the Crowsnest River and then almost immediately into Crowsnest Lake. In examining maps of the area, it appears Crowsnest Creek drainage basin covers most of the area that drains into the lake. This is key as it is known selenium risks are much higher in lake environments and there is a risk of build-up of significant selenium levels in Crowsnest Lake if Crowsnest Creek is the main source of water.

For instance, in the Elk Valley in British Columbia (where coal mining has been active for decades), reports on selenium concentrations in area waterways show levels up to four times British Columbia's maximum for drinking water, and monitoring stations near the mines have reported levels 50 times what's recommended for aquatic health.⁴² It has been found that there are selenium levels in fish ovaries at dangerous levels starting around 50ug/L or so in moving water near the mines. Downstream, in Lake Koocanusa (spanning the international border in both British Columbia and the state of Montana, U.S.A.), dangerous levels have been found starting at 0.8ug/L (i.e., less than 1% of the selenium level). Selenium pollution in Crowsnest Lake is highly likely to be a critical factor, especially if fish are overwintering in the lake (because selenium levels tend to be at their highest in the late winter on the Canadian side of the border).

Again, Montem's Prospectus acknowledges⁴³ that the Project will need to manage selenium levels due to the threat of impacts on fish and waterways. As such, this is clearly an acknowledgement of potential impacts on areas of federal jurisdiction.

The *Crowsnest River Drainage Sport Fish Population Assessment, 2010*,⁴⁴ commissioned by the Alberta Conservation Association, identifies which fish are present in the Crowsnest River and in which reaches. Fish species present include mountain whitefish and rainbow trout, westslope cutthroat trout hybrids, brook trout, brown trout and longnose sucker (a fish that takes up selenium quite easily in Lake Koocanusa and has been found with egg/ovary selenium levels over British Columbia's and the EPA's limits, even in areas with low selenium levels).

The Proposed Recovery Strategy for westslope cutthroat trout states that for the Crowsnest River: "They have been all but extirpated from their native waters in the Crowsnest River

⁴¹ The Technical Assessment Report refers to potential utilization of wetlands along the Crowsnest Creek, known as a critical habitat for the federally endangered Westslope Cutthroat trout: *Montem Resources Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada* (1 April 2020; accessed on 29 March 2021), see page 91, online: https://montem-resources.com/wp-content/uploads/2020/09/Tent_Mtn_Technical_Assessment_Report_2CM044.003_20200819_updated_revised.._min.pdf.

⁴² "U.S. demands explanation from province over river pollution from B.C. mines," *CTV News* (11 May 2020; accessed on 30 March 2021), online: <https://www.cbc.ca/news/canada/british-columbia/us-epa-pollution-rivers-teck-mines-bc-1.5564269>.

⁴³ *Montem Resources Ltd. Prospectus, Canadian Steelmaking Coal* (31 July 2020; accessed on 29 March 2021), see page 11, online: http://montem-resources.com/wp-content/uploads/2020/09/Montem-Resources_Prospectus_Final_no-AF.pdf

⁴⁴ Blackburn, J. 2011. Crowsnest River drainage sport fish population assessment, 2010. Technical Report, T-2011-001, produced by the Alberta Conservation Association, Lethbridge, Alberta, Canada. 27 pp + App, at page 13, online: https://www.ab-conservation.com/downloads/report_series/Crowsnest_River_Drainage_Sport_Fish_Population_Assessment.pdf.

drainage (Fitch 1977–80; Mayhood et al. 1997; ASRD 2008)." The *Crowsnest River Drainage Sport Fish Population Assessment, 2010*⁴⁵ also states that one hybrid and one westslope cutthroat trout were found in Crowsnest Creek in 2003 and none in 2008. While pure-strain westslope cutthroat trout have been extirpated in the Crowsnest Creek and the Crowsnest River, these areas should still be considered in future recovery planning. Since we know water pollution from coal mines flows for centuries, it is imperative the Agency examine this issue in an assessment pursuant to the *IAA* to ensure future westslope cutthroat trout recovery is possible.

For bull trout, Table 3a in the [Proposed Recovery Strategy](#)⁴⁶ shows the upper Crowsnest River as historically having a very high Fish Sustainability Index for Bull Trout, but which is now functionally extirpated. Presumably, this includes Crowsnest Creek as there does not appear to be any barriers between the River and the Creek. Since we know water pollution from coal mines flows for centuries, it is imperative the Agency examine this issue in an assessment pursuant to the *IAA* to ensure future bull trout recovery is possible. Critical Habitat for bull trout occurs downstream of Lundbreck Falls on the Crowsnest River. The impact of selenium on bull trout critical habitat in this reach of the river must be assessed.⁴⁷

Further downstream, there is the potential for cumulative effects in conjunction with the Grassy Mountain Mine Project (currently undergoing a joint federal-provincial impact assessment review). There are small areas of potential lentic habitat (with high selenium uptake potential) right downstream of the Gold Creek confluence and further along the Crowsnest River. The Oldman Reservoir itself is an area of concern again due to selenium in a lentic environment (the Oldman Reservoir and the Oldman River below it are Critical Habitat for bull trout).

In addition, the federal government is currently developing new regulations under the *Fisheries Act* for coal mining effluent to reduce the risk of contaminants including selenium. All proposed coal developments must be held to these new standards as a minimum, including examining the Project in a federal impact assessment with this lens. There is no indication that the provincial assessment process will lead to parallel, equivalent standards; therefore, by not assessing this Project in light of these potential impacts on federal jurisdiction, you or the Agency would be deferring to a lesser regulatory standard on a key area of federal jurisdiction.

d. Other species at risk issues

The Project proposal must be considered in a federal context, recognizing the impact of coal mining in the Eastern Slopes of the Rocky Mountains on Canada's commitments to preserving

⁴⁵ Blackburn, J. 2011. Crowsnest River drainage sport fish population assessment, 2010. Technical Report, T-2011-001, produced by the Alberta Conservation Association, Lethbridge, Alberta, Canada. 27 pp + App, at page 31, online: https://www.ab-conservation.com/downloads/report_series/Crowsnest_River_Drainage_Sport_Fish_Population_Assessment.pdf.

⁴⁶ Fisheries and Oceans Canada. 2020. Recovery Strategy for the Bull Trout (*Salvelinus confluentus*), Saskatchewan-Nelson Rivers populations, in Canada [Proposed]. *Species at Risk Act* Recovery Strategy Series. Fisheries and Oceans Canada, Ottawa. vii + 126 pp (accessed on 29 March 2021), online: <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/bull-trout-proposed-2020.html>.

⁴⁷ *Ibid.*, see Figure 20.

on dispersal agents all contribute to placing this species at high risk of extirpation in Canada.

Limber Pine:

Limber Pine is imminently and severely threatened throughout its Canadian range by White Pine Blister Rust (an introduced species), Mountain Pine Beetle, and climate change. While each taken singly poses a significant threat, they interact to further increase the severity of the impacts. With climate change, the frequency, intensity, and duration of drought is projected to increase, and fire is projected to be more frequent and severe. Stressed trees are likely to be more susceptible to pathogens and insects.

Both Limber Pine and Whitebark Pine are also listed as Endangered in Alberta under the *Wildlife Act*; however, the COSEWIC assessments of both species state that no provisions exist under that Act to provide broad legal protection for either individuals or habitat. Given the lack of provincial protection, the impact of the proposed Project on these species must be assessed by the Agency.

The Grizzly bear (*Ursus arctos*) population in western Canada was listed as a species of Special Concern in Schedule 1 of SARA. COSEWIC estimated the Canadian population to be 26,000, but concluded the number of mature bears was uncertain and “could be close to 10,000.” Provincially, in 2002, Alberta’s Endangered Species Conservation Committee recommended assigning a Threatened designation to the province’s grizzly bear population under the *Wildlife Act*.⁵²

Healthy Grizzly bear populations require contiguous ranges that have connections to other populations in British Columbia, Alberta and the state of Montana, U.S.A. The Project and other mine proposals and exploratory activity risk destroying the vital corridors these populations use to interact and breed.

Governments and academics alike recognize the regional character of the grizzly bear population found in the corner of Alberta where the Project is located. The Alberta government’s 2020 report on grizzly bear occurrence in Bear Management Area (BMA) 6 states:

Grizzly bears in BMA 6 are part of a larger population that includes those in the province of British Columbia and state of Montana, U.S.A. (Proctor et al, 2012). **There is no ecological basis for partitioning an Alberta specific portion of this population.**⁵³
[emphasis added]

⁵² In Alberta, a *Threatened* species is “(a) species likely to become endangered if limiting factors are not reversed.” An *Endangered* species describes “(a) species facing imminent extirpation or extinction.” Marco Festa-Bianchet, *Status of the Grizzly Bear (Ursus arctos) in Alberta: Update 2010*, (Government of Alberta, February 2010), 43.

⁵³ Alberta, Environment and Parks, *Grizzly Bear Occurrence Summary 2019: Bear Management Area (BMA) 6*, (Government of Alberta, December 2020), 8. This language is virtually the same to that used by Morehouse and Boyce four years earlier. They wrote in 2016: “Partitioning an Alberta portion of this inter-jurisdictional grizzly bear population as a separate management unit has no ecological basis.” See Andrea T. Morehouse and Mark S. Boyce, “Grizzly Bears Without Borders: Spatially Explicit Capture-Recapture in Southwestern Alberta,” *The Journal of Wildlife Management*, Vol. 80, no. 7 (2016), 1153.

The Project is located in Alberta Bear Management Area 6 and on and adjacent to numerous Grizzly Bear Recovery Plan Zones, as demonstrated by the map of Alberta Bear Management Area 6, attached as Appendix “D”. In this regard, my clients support the detailed submissions contained in the AWA Designation Request Letter (Appendix “B”).

v. Significant public concern with coal mining in the Eastern Slopes of the Rocky Mountains

Pursuant to the *IAA*, you have the authority to designate a physical activity under section 9(1) of the *IAA*, either by request or under your own initiative, if you are of the opinion that either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, **or** public concern related to those effects warrants the designation.

In addition to the issues already raised in this correspondence, my clients note the high level of public concern in Alberta and across the country with respect to proposed coal developments in the Eastern Slopes of the Rocky Mountains, including the Project proposal. As public awareness of the coal mining issue increases, tens of thousands of Albertans have reached out to Alberta government representatives and to the Minister, raising concerns about the impact these developments will have on our headwaters and ecologically significant areas.

Our client NWP initiated an official House of Commons petition asking you to conduct a Regional Assessment of metallurgical coal mining in the Rocky Mountains and to delay the Joint Review Panel’s assessment decision regarding the nearby Grassy Mountain Coal Mine Project (the “Petition”)⁵⁴. On Monday, March 22, 2021, The Petition was sponsored and presented in the House of Commons by Edmonton-Strathcona Member of Parliament Heather McPherson (who has also written to you by way of correspondence dated March 10, 2021,⁵⁵ asking you to designate this Project pursuant to s 9(1)). The Petition garnered the following support by Canadians across the country:

Total Signatures: 18,333

Provincial Breakdown:

Alberta 15,171
British Columbia 1,145
Manitoba 171
New Brunswick 41
Newfoundland and Labrador 132
Northwest Territories 11
Nova Scotia 77
Nunavut 4

⁵⁴ House of Commons Petition e-3178 (Natural resources and energy) initiated by Latasha Calf Robe (of NWP) of Calgary, Alberta (accessed on 31 March 2021), online: <https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-3178>.

⁵⁵ Correspondence to Minister Wilkinson from Heather McPherson, MP, Edmonton-Strathcona, March 10, 2021 (accessed on 31 March 2021), online: <https://iaac-aeic.gc.ca/050/documents/p81436/138363E.pdf>.

Ontario 1021
Prince Edward Island 13
Quebec 178
Saskatchewan 303
Yukon 16

There are several other official House of Commons petitions supported by Canadians who oppose coal mining, including the following:

- e-2912 (Natural resources and energy):⁵⁶ opposing the Grassy Mountain Coal Mine Project
- Initiated by Robert Ketcheson from Blackfalds, Alberta
 - Presented to the House of Commons by Member of Parliament Elizabeth May on February 5, 2021; your response tabled March 22, 2021
 - 27,720 signatures, including 24,030 Albertans

There have also been a number of petitions and online and postcard letter-writing campaigns launched in recent months opposing coal mining in Alberta, including two created by my clients, NWP and LLG, and including (but not limited to) the following:

- LeadNow, “Stop the Massive Expansion of the Vista Coal Mine”:⁵⁷ **17,733 Canadians signed**, as of April 2, 2021
- LeadNow, “Stop the Vista coal mine — will you call Minister Wilkinson now?”:⁵⁸ **1,463 Canadians signed**, as of April 2, 2021
- Council of Canadians, “ALBERTA: STOP COAL MINE EXPLORATION AND DEVELOPMENT NOW!”⁵⁹
- Change.org, “Stop the Alberta Government from selling our Mountains”:⁶⁰ **48,510 Canadians have signed**, as of April 4, 2021
- Change.org, “Say No! To Stealing and Poisoning our Rocky Mountain Head Waters”:⁶¹ 625 Canadians have signed, as of April 2, 2021

⁵⁶ House of Commons Petition e-2912 (Natural resources and energy) initiated by Robert Ketcheson of Blackfalds, Alberta (accessed on 31 March 2021), online: <https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-2912>.

⁵⁷ “Stop the Massive Expansion of the Vista Coal Mine,” Lead Now (accessed on 2 April 2021), online: <https://www.leadnow.ca/vista-C2C/>.

⁵⁸ “Stop the Vista coal mine — will you call Minister Wilkinson now?” Lead Now (accessed on 2 April 2021), online: <https://www.leadnow.ca/stop-vista/>.

⁵⁹ “ALBERTA: STOP COAL MINE EXPLORATION AND DEVELOPMENT NOW!” Council of Canadians (accessed on 2 April 2021), online: https://canadians.org/action/alberta-no-coal?fbclid=IwAR1H6V_ iyO6paJOdwnqvBcHJZ5L8Rdqklt_wN7ITu_qdIQF5eELNWeD_5x0.

⁶⁰ “Stop the Alberta Government from selling our Mountains,” Change.org (accessed on 4 April 2021), online: https://www.change.org/p/alberta-government-stop-the-alberta-government-from-selling-our-mountains?use_react=false.

⁶¹ “Say No! To Stealing and Poisoning our Rocky Mountain Head Waters.” Change.org (accessed on 2 April 2021), online: https://www.change.org/p/alberta-energy-regulator-say-no-to-stealing-and-poisoning-our-rocky-mountain-head-waters?recruiter=78198147&recruited_by_id=f1b697f0-8aeb-11e3-8aa4-67542143fd88&utm_source=share_petition&utm_medium=copypink&utm_campaign=petition_dashboard.

- “The REAL Coal Consultation – By Albertans For Albertans”:⁶² according to the creator, 477 people have participated since it was initiated on March 28, 2021
- “Coal’s Not Cool Petition”⁶³
- Niitsitapi Water Protectors, “No Coal Mines on Niitsitapi Land: Please provide your Name and Postal Code to have a postcard sent on your behalf to the Federal Minister of Environment and Climate; Minister Wilkinson”⁶⁴
- Livingstone Landowners Group, “Send a Postcard: Fill out the form and we’ll send a postcard on your behalf to the Federal Minister of Environment and Climate Change”⁶⁵

There are also two online letter-writing campaigns Canadians are engaging in, specifically asking you to designate the Project pursuant to s. 9(1) of the IAA:

- LeadNow, “Send a Message to Minister Wilkinson to press pause on the Tent Mountain coal mine”:⁶⁶ **3,159 Canadians have signed it in just a week**, as of April 4, 2021
- Council of Canadians, “Tent Mountain Project Needs a Federal Review”⁶⁷

There is also a Facebook Group, “Protect Alberta’s Rockies and Headwaters”,⁶⁸ which has **36,258 active, engaged members (and increasing)** who oppose coal mining in the Rocky Mountains in Canada. The group recently submitted a letter to *The High River Times* outlining members’ opposition to coal mining in the area.⁶⁹

This level of concern alone should warrant the attention of the Federal Government and the designation of the Project for a federal impact assessment.

⁶² “The REAL Coal Consultation – By Albertans For Albertans” (accessed on 2 April 2021), online: https://docs.google.com/forms/d/e/1FAIpQLSdFOjsv3ENz_d_mwuSzfEuB_K1SYao0mh6ddVi_3OFa4QvdRg/viewform.

⁶³ “Coal’s Not Cool Petition” (accessed on 2 April 2021), online: https://www.thegroovenor.com/coal-s-not-cool-petition?fbclid=IwAR36Hnby37JJXB6rEfMJgDGyNmN-Ka_sLO6pNJdrHFNjc1sc2-uSfBgr8r8.

⁶⁴ “No Coal Mines on Niitsitapi Land: Please provide your Name and Postal Code to have a post card sent on your behalf to the Federal Minister of Environment and Climate; Minister Wilkinson,” Niitsitapi Water Protectors (accessed on 2 April 2021), online: <https://docs.google.com/forms/d/e/1FAIpQLSc5pJYLHnflimBuZdhGER1ggpZWYgByYQSNM1TKHfIF1CNwQ/viewform>.

⁶⁵ “Send a Postcard: Fill out the form and we’ll send a postcard on your behalf to the Federal Minister of Environment and Climate Change,” Livingstone Landowners Group (accessed on 2 April 2021), online: <https://www.livingstonelandowners.net/postcard>.

⁶⁶ “Send a Message to Minister Wilkinson to press pause on the Tent Mountain coal mine,” Lead Now (accessed on 2 April 2021), online: https://act.leadnow.ca/tent-impact/?utm_source=leadnow&utm_medium=email&utm_campaign=blast2021-03-26.

⁶⁷ “Tent Mountain Project Needs a Federal Review,” Council of Canadians (accessed on 4 April 2021), online: <https://canadians.org/action/alberta-tent-mountain>.

⁶⁸ “Protect Alberta’s Rockies and Headwaters,” Facebook Group (accessed on 2 April 2021), online: <https://www.facebook.com/groups/albertansagainstcoal>.

⁶⁹ “Protect Alberta’s Rockies and Headwaters,” *The High River Times* (29 March 2021; accessed on 2 April 2021), online: <https://www.highrivertimes.com/news/protect-albertas-rockies-and-headwaters?fbclid=IwAR0f5Ogqae1pbbzEtaYyyo2PLUFfa1LHs23AWK0T0jaTn1I7IqoTP1EkvNI>.

vi. Cross-border project affecting lands in Alberta **and** British Columbia

The proposed Project engages inter-provincial transboundary and interjurisdictional issues on account of its location, which straddles the border between Alberta and British Columbia. With respect to the international issues, they cannot be expected to be managed by the inadequate provincial regulatory process in Alberta as they relate to areas of federal jurisdiction and the federal government's international obligations.

With respect to the interprovincial issues, they likewise can't be adequately considered under provincial regulatory processes as they relate to areas of federal jurisdiction.

Montem's description of the Project, in multiple public documents, states that the mine area spans land in both Alberta and British Columbia. The company further identifies British Columbia Permit C-108 and British Columbia Environmental Release Permit PE-3986 as among its existing approvals for the project.⁷⁰

A description of the Project taken from the company's website states: "The project is situated in both Alberta and BC with the closest municipality, Coleman, Alberta, located 16 km to the east. The mine covers an area of approximately 1,700 ha, with the rail loadout located 8 km north of the proposed mine operations."⁷¹

Similar descriptions of the cross-border nature of the project are contained in the Proponent's [*Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada*](#),⁷² the [*Coal Resources for the Tent Mountain Mine, Alberta and British Columbia, Canada, Competent Person's Report*](#),⁷³ the [*Montem Resources Alberta Operations Ltd Tent Mountain Project, Resuming Activities – Tent Mountain Mine, Coal Handling and Processing*](#)

⁷⁰ Montem Resources Ltd. *Proposed Terms of Reference, Environmental Impact Assessment Report for Montem Resources Proposed Tent Mountain Project* (03 February 2021; accessed on 29 March 2021), see page 3, online: <https://montem-resources.com/wp-content/uploads/2021/02/Proposed-Terms-of-Reference-February-2021.pdf>.

⁷¹ Montem Resources "Tent Mountain Mine" (accessed on 29 March 2021), online: <https://montem-resources.com/projects/tent-mountain/>.

⁷² The Technical Assessment Report for the Project refers to British Columbia and notes a coal lease in that province: *Montem Resources Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada* (1 April 2020; accessed on 29 March 2021), see page 13 and maps on pages 16 & 69, online: https://montem-resources.com/wp-content/uploads/2020/09/Tent_Mtn_Technical_Assessment_Report_2CM044.003_20200819_updated_revised.._min.pdf.

⁷³ The Coal Resources report for the Project refers to Alberta and British Columbia: *Montem Resources Coal Resources for the Tent Mountain Mine, Alberta and British Columbia, Canada, Competent Person's Report* (07 April 2020; accessed on 29 March 2021), see page 9, map page 16, page 24 table 4-5, page 43 coal seam map, online: http://montem-resources.com/wp-content/uploads/2020/04/2020-04-07-JORC_Tent-Mountain-Mine_FINAL_Signed_small.pdf.

[Plant, Project Description and Project Summary Table](#),⁷⁴ and the [Montem Resources Ltd. Prospectus, Canadian Steelmaking Coal](#).⁷⁵

The company currently appears to be planning to phase the project to seek independent approvals from the Alberta Energy Regulator and the appropriate regulator in British Columbia. There is no provincial mechanism to manage cross border projects, and the respective provincial regulators do not examine project effects on areas across the border in the other respective province, reinforcing the need for federal review and oversight.

The Project has the potential to adversely impact areas of federal jurisdiction: the Project straddles a provincial border and has the potential for international impacts, and these will not only **not** be addressed by the provincial assessments, they include impacts that fall squarely within federal jurisdiction and would be *ultra vires* the provinces to consider.

Even if the resumption of mine operations for which approval is currently sought from the Alberta Energy Regulator will take place fully within the existing boundary of Alberta Mine Permit C85-16G as proposed, it is foreseeable that mining operations will impact or expand into British Columbia. This intent is clearly shown on the maps described below, taken from the [Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada](#).⁷⁶ In this document, it is evident that mining will be active in both jurisdictions by year five of the project.

Montem is planning, as described in the [Montem Resources Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada](#),⁷⁷ on hauling the coal produced by the Project on Coal Rd in B-Double trucks to a point near provincial Highway 3, right adjacent to the provincial border, where they will build a coal stockpile. From there, it will be loaded onto a pair of conveyors that will cross the border into British Columbia and be loaded into railcars in British Columbia. The railcars will be mustered during this process on sidings that are mostly in British Columbia but extend into Alberta as well. All this infrastructure will be right beside provincial Highway 3, at the south end of Summit Lake. See the maps attached as

⁷⁴ The Montem Resources Alberta Operations Ltd Tent Mountain Project shows the mine area spanning Alberta and British Columbia: the *Montem Resources Alberta Operations Ltd Tent Mountain Project, Resuming Activities – Tent Mountain Mine, Coal Handling and Processing Plant, Project Description and Project Summary Table* (11 February 2021; accessed on 29 March 2021), see map on page 3, online: <https://montem-resources.com/wp-content/uploads/2021/02/Project-Summary-Final-11-Feb2021.pdf45.pdf>.

⁷⁵ The Montem Prospectus states the Project straddles the Alberta-British Columbia border: *Montem Resources Ltd. Prospectus, Canadian Steelmaking Coal* (31 July 2020; accessed on 29 March 2021), see map on page 3, online: http://montem-resources.com/wp-content/uploads/2020/09/Montem-Resources_Prospectus_Final_no-AF.pdf.

⁷⁶ *Montem Resources Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada* (1 April 2020; accessed on 29 March 2021), see maps on pages 16 & 51, online: https://montem-resources.com/wp-content/uploads/2020/09/Tent_Mtn_Technical_Assessment_Report_2CM044.003_20200819_updated_revised..-min.pdf.

⁷⁷ *Montem Resources Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada* (1 April 2020; accessed on 29 March 2021), see pages 72 to 79, online: https://montem-resources.com/wp-content/uploads/2020/09/Tent_Mtn_Technical_Assessment_Report_2CM044.003_20200819_updated_revised..-min.pdf.

Appendices “E” and “F”, which are from the Montem Resources Technical Assessment Report for the Project.

This Project clearly straddles the border between two regulatory jurisdictions. On this basis alone – and without an interprovincial agreement for a joint review, which is not anticipated nor likely – it is not possible for the full potential impacts of this Project to be considered without a federal assessment.

vii. Cumulative impacts of coal mining and other developments in both Alberta and British Columbia

In the context of the Project, these potential impacts are even more probable when cumulative effects are considered, given that this development is occurring within the footprint of an existing operation that has never undergone a federal environmental or impact assessment, and there are numerous other projects, both operating and proposed (and being explored and developed) in the area of the Project, both in the province of Alberta and the province of British Columbia.

The Project history begins when “coal was discovered at Tent Mountain by prospectors in the early 1900s, and small-scale underground mining was carried out until 1948 when the first opencut mine was opened. Several phases of open-cut mining occurred until 1983 when operations of the Coleman Collieries were suspended due to weak market demand for metallurgical coal.”⁷⁸ The Project has never been fully developed and has been dormant since 1983, and therefore is essentially a new development in an area with a very high concentration of existing and proposed coal developments.

The concentration of intense open pit mining developments in an extremely ecologically sensitive area and in the primary watershed for the Canadian Prairies requires a regional cumulative impact assessment that includes British Columbia and Alberta, something only possible by designating the Project under the *IAA* for a federal impact assessment. The AER (and provincial regulatory bodies generally) do not have the constitutional jurisdiction to assess or regulate extra-provincial projects or issues.⁷⁹

A map (from the [Montem Resources Ltd. Prospectus, Canadian Steelmaking Coal](#)),⁸⁰ attached as Appendix “G”, demonstrates the close proximity of the Project to multiple existing and proposed coal mines in the same region.

⁷⁸ Montem Resources Ltd. *Proposed Terms of Reference, Environmental Impact Assessment Report for Montem Resources Proposed Tent Mountain Project* (03 February 2021; accessed on 29 March 2021), see page 3, online: <https://montem-resources.com/wp-content/uploads/2021/02/Proposed-Terms-of-Reference-February-2021.pdf>.

⁷⁹ “Canada: Energy and Natural Resources Law Overview,” Stikeman Elliott LLP (31 July 2018; accessed on 2 April 2021), see page R2, online: <https://www.stikeman.com/-/media/files/kh-guides/dbic/dbic-energy-and-natural-resources.ashx>.

⁸⁰ *Montem Resources Ltd. Prospectus, Canadian Steelmaking Coal* (31 July 2020; accessed on 29 March 2021), see map on page 21, online: http://montem-resources.com/wp-content/uploads/2020/09/Montem-Resources_Prospectus_Final_no-AF.pdf.

The Project will be located adjacent to the Michel Coal Project, just on the other side of the British Columbia-Alberta border, with a portion of the Project crossing the provincial border into British Columbia (as described above).

- viii. The Alberta Government has failed in its duty to consult with Albertans and First Nations regarding the development of coal mining policy and approvals of coal mine exploration and development, and in its duty to ensure mining projects are properly reclaimed

The policy of the Alberta Government regarding coal mining in the Rocky Mountains and their Eastern Slopes has been opaque and erratic at best. Late on a Friday afternoon before the Victoria Day long weekend in May 2020, announced only in a short media release, the Energy Ministry, after only consulting with coal mining companies and their lobby group, the Coal Association of Canada,⁸¹ rescinded a 1976-era provincial government policy (the “1976 Coal Policy”) that categorized all lands in the Rocky Mountains and the Eastern Slopes into four categories (Coal Categories 1-4).⁸² Lands in Categories 1 and 2 were largely protected from coal mining (some exploratory and even underground mining was allowed in Category 2 lands, but it was expected and understood by the industry that no mining would effectively be allowed there). This 1976 Coal Policy rescission then allowed the Energy Ministry to grant to industry proponents all the coal mining lease applications for Category 2 lands that were in the queue since 1976 (amounting to hundreds of thousands of hectares), and the AER began approving exploration permits for coal companies, many in just 24 hours.⁸³ The Energy Ministry then quietly granted 11 new coal mining leases in Category 2 lands in December 2020.

Concern amongst industry experts and then the Alberta public mounted, and opposition to the rescission of the 1976 Coal Policy and the Alberta Government’s plans for new coal mines across the Rockies and Eastern Slopes intensified, across all sectors of society, from First Nations to ranchers to rural and urban municipalities (that rely on the potentially-affected rivers for their drinking water) to urban hikers and campers to country music stars. At least five southern Alberta First Nations launched or intervened in judicial reviews of the rescission of the 1976 Coal Policy, along with a group of ranchers. These legal actions and public outcry forced Energy Minister Sonya Savage to belatedly announce a “reinstatement” of the 1976 Coal Policy and a cancellation of the 11 new coal mining leases granted in December. This “reinstatement,” however, only cancelled a tiny fraction of the hectares of Category 2 lands the Alberta

⁸¹ “Government records and other sources document the Alberta and international coal industry’s intense lobbying attempts to change Alberta’s regulatory system in the months leading into the changeover to the United Conservative Party government and in the year after, which eventually led to rescinding the 1976 Coal Policy” – from “Records show excessive lobbying to rescind 1976 Coal Policy,” *Medicine Hat News* (9 March 2021; accessed on 2 April 2021), online: <https://medicinehatnews.com/news/local-news/2021/03/09/records-show-excessive-lobbying-to-rescind-1976-coal-policy/>.

⁸² Nigel Bankes, “Coal Law and Policy in Alberta, Part One: the Coal Policy and Its Legal Status” (8 February 2021; accessed on 2 April 2021), online: ABlawg, <https://ablawg.ca/2021/02/08/coal-law-and-policy-in-alberta-part-one-the-coal-policy-and-its-legal-status/>.

⁸³ Nigel Bankes, “Coal Law and Policy in Alberta, Part Two: The Rules for Acquiring Coal Rights and the Royalty Regime” (11 February 2021; accessed on 2 April 2021), online: ABlawg, <https://ablawg.ca/2021/02/11/coal-law-and-policy-in-alberta-part-2-the-rules-for-acquiring-coal-rights-and-the-royalty-regime/>.

Government had issued, and did not affect all the coal exploration permits granted in the interim by the AER pursuant to a “complex and byzantine” regulatory scheme,⁸⁴ and, crucially, all the hundreds of thousands of hectares of coal mining leases granted by the Energy Ministry between June and December 2020.⁸⁵ The Alberta Government also offered flimsy, unsupportable pretenses for rescinding the 1976 Coal Policy to begin with:

The government could not have reasonably concluded that the [1976 Coal Policy] had been completely superseded or rendered obsolete. *The government’s own briefing papers make this abundantly clear.* The government went ahead and rescinded the [1976 Coal Policy] in order to encourage investment in coal exploration and development, all the while knowing that the ground rules necessary for ensuring healthy functioning ecosystems at the landscape level were not in place. This is a shaky foundation on which to build the respectful consultation framework that the Department of Energy now promises.⁸⁶ [bold emphasis added; italicized emphasis in original]

At her media conference announcing this “reinstatement”, Minister Savage also promised to order the AER to ban “mountain top removal coal mining” in Alberta. It later became clear, however, that this pronouncement only applied to Category 2 lands, and it is not even clear what type of mining it applies to: for example, whether her edict bans the type of open-pit mining that removes the sides of a whole mountain in stages (perhaps leaving the top), or strip-mining in non-mountainous areas.

At the same media conference, Minister Savage promised a new consultation process would be created to consult with Albertans on the development of a “modern” coal policy. This consultation process was announced on March 29, 2021, and will be headed by a committee of four men and one woman, including a municipal councillor from a town that relies on the coal mining industry (Hinton), and lacking any representatives from the environmental community. Minister Savage also told a meeting of southern Alberta Mayors and Reeves that this consultation process would not include issues around the environment and water pollution, as that fell under the purview of the Ministry of the Environment and Parks!⁸⁷

⁸⁴ Drew Yewchuk & Nigel Bankes, “Coal Law and Policy, Part Four: The Regulation of Coal Exploration” (9 March 2021; accessed on 2 April 2021), online: ABLawg, <https://ablawg.ca/2021/03/09/coal-law-and-policy-part-four-the-regulation-of-coal-exploration/>.

⁸⁵ Nigel Bankes, “Coal Law and Policy in Alberta, Part One: the Coal Policy and Its Legal Status” (8 February 2021; accessed on 2 April 2021), online: ABLawg, <https://ablawg.ca/2021/02/08/coal-law-and-policy-in-alberta-part-one-the-coal-policy-and-its-legal-status/>.

⁸⁶ Nigel Bankes, “Coal Law and Policy in Alberta, Part Three: Was the Public Rationale for Rescinding the Coal Policy Ever Convincing?” (15 February 2021; accessed on 2 April 2021), online: ABLawg, <https://ablawg.ca/2021/02/15/coal-law-and-policy-in-alberta-part-three-was-the-public-rationale-for-rescinding-the-coal-policy-ever-convincing/>.

⁸⁷ “M.D. concerned about coal production effects on water,” *The Taber Times* (24 March 2021; accessed on 2 April 2021), online: <http://www.tabertimes.com/news/2021/03/24/m-d-concerned-about-coal-production-effects-on-water/>.

There will apparently be a “parallel track” of consultations with First Nations “communities,” but this process is even more vague, and First Nations have very little faith in the Alberta Government’s track record in consulting with them.

The First Nations of Treaty Nos. 6, 7 & 8 were never consulted when the original 1976 Coal Policy was developed and implemented by the Alberta Government, and never consulted before the 1976 Coal Policy was rescinded by the Alberta Government. First Nations were not advised that this decision was going to be made, nor were they advised once the decision had been made. Rather, First Nations across Alberta learned of the decision by way of reports in the media. And, as discussed above, the Government of Alberta basically delegates decision-making authority for new mine exploration and development to the AER, which has a track record of proponent-friendly approvals and is prevented by law (and its own narrow interpretation of its mandate) to consider the constitutionally-protected rights of First Nations and Indigenous peoples in its decision-making processes.

Alberta, as the Crown, has a legal obligation to consult with Aboriginal peoples where it contemplates decisions or actions that may adversely impact asserted or established Aboriginal or Treaty rights. Aboriginal and treaty rights are protected under section 35 of the [*Constitution Act, 1982*](#). The Crown (Alberta in this instance) has a duty to consult with all First Nations and Métis who have traditional Aboriginal rights or title or Treaty claims over the areas impacted by the removal of the 1976 Coal Policy.

Areas previously protected by 1976 Coal Policy are critical to First Nations’ current and future ability to exercise their Treaty and Aboriginal rights. The rescission of the 1976 Coal Policy has resulted in an increase in coal mining exploratory activity in the area, including in areas of cultural significance.

On June 29, 2020, the Kainai/Blood Tribe and Siksika Nations wrote to the Government of Alberta expressing concerns their with the decision to rescind the 1976 Coal Policy and the failure of the Government of Alberta to consult with the Nations regarding this decision. The Nations also requested that they be engaged in consultation after the fact and proposed certain measures that could be taken to address their concerns and the failure to consult the Nations about the decision.

On August 25, 2020, the Kainai/Blood Tribe and Siksika Nations sent a follow-up memorandum to the Government of Alberta detailing their concerns with the rescission of the 1976 Coal Policy and providing suggestions for potential accommodation measures.

To date, the Government of Alberta has not responded to this correspondence sent by the Kainai/Blood Tribe and Siksika Nations or engaged in any post-decision consultation.

Similarly, First Nations were also not consulted on or included in the decision to “reinstate” (with exceptions) the 1976 Coal Policy.

There are real concerns, too, about the Alberta Government’s history of regulation of and ability to safely regulate the coal mining industry, especially with respect to clean up/remediation costs,

which are significant with any type of coal mining. In fact, there is evidence Coal exploration approvals already exceed legal road thresholds:

Road-building approvals for coal exploration already exceed legal limits in some parts of Alberta's Rocky Mountains and foothills, suggest documents from the province's energy regulator.

“It's part of why we are calling on this government to stop all exploration... until we have a new plan in place that actually directs the future of this landscape,” said Katie Morrison of the Canadian Parks and Wilderness Society.

The region where exploration leases have been sold is home to endangered species and holds the headwaters of much of Alberta's drinking water. Exploration and potential mines are opposed by area First Nations, municipalities, ranchers and many others.⁸⁸ [emphasis added]

A Professional conservation Biologist, retired Provincial Riparian Specialist for Alberta Cows and Fish and Adjunct Professor with the University of Calgary, and concerned citizen, Lorne Fitch, recently wrote to the AER, asking, *inter alia*, questions about the AER's process for environmental assessments of coal mining projects, watershed protection and water quality protection, linear road density of exploratory road permits and cumulative effects on wildlife, and reclamation/restoration of coal mining exploratory activity. The AER did not answer several of Mr. Fitch's questions in detail (much of the response was simply outlining the specific legislation and regulations it claims to follow), but it did confirm that it **“does not assess cumulative effects of overall impacts of all proposed CEPs [“coal exploration programs”],”** **“does not have requirements pertaining to linear density of roads and associated surface infrastructure for exploration activities,”** and while it “also requires CEP approval holders to reclaim disturbed areas,” the AER **“does not collect any bonds or security for CEPs”** [emphasis added]. Copies of this correspondence are attached as Appendix “H”.

The AER has never ever included the necessary internal expertise to understand and evaluate cumulative impact assessments. They have a very limited role in this regard that forces them to focus only on the merits of a proponent's project specific plans to mitigate their site-specific impacts. The idea that one can assess the cumulative impacts of an industry on the broader landscape and on a provincial scale by looking at it on a project by project basis is the glaring spotlight illuminating this weakness in the AER role. They do not set provincial policy or legislation and they are not responsible for determining what is in the broader public interest. This is not entirely the fault of the AER as that is the way it was set up when it replaced the ERCB. However, even the ERCB had to rely on government support for reviewing and approving the acceptance of any environmental impact statements submitted with a proponent's industrial applications.

⁸⁸ “Coal exploration approvals already exceed legal road thresholds, data suggests,” *Global News* (24 March 2021; accessed on 3 April 2021), online: <https://globalnews.ca/news/7715790/coal-exploration-approvals-exceed-legal-road-thresholds/>.

Given this government's clear intent to forge ahead on coal development in the Eastern Slopes (which is apparent, in spite of their temporary reprieve on issuing more coal leases), the AER is now going to be left with an even greater legislative and policy vacuum unless there is either a full reinstatement of the previous ban on coal mining in Category 1 and 2 lands (there were clearly some flaws with the old policy and how it was executed) or a new coal policy that more adequately assesses all the environmental, social, and economic pros and cons of expanding this activity. Such a policy will need to identify appropriate mitigation measures that are to be applied immediately (or in the very short term) by the Province such as no-go areas for mining and additional park expansions as permanent offsets (which is what was done in the Lower Athabasca Regional Plan to help offset and mitigate some of the environmental impacts of current and future oilsands developments) and those that will and/or might also be required by mining proponents if they were to get a mining approval. That new policy should also, if it determines there is some room for any amount of new mining in the Eastern Slopes, establish all of the necessary environmental thresholds for monitoring and any enforcement or other additional measures to be applied when critical thresholds are being approached and/or exceeded etc. Frankly, this new policy framework was supposed to be an outcome of the Land Use Framework and the LUF Regional Plans.

Most importantly, however we get there, if more coal mining is to be allowed at all in the Eastern Slopes there must be a self-funded account established by each proponent (that they can build as needed over time as their mine an impact grows) to be used when and as necessary for sequential and final reclamation activities and which is forfeit to the Crown for full reclamation of their mine and its impacts in the event of their bankruptcy or in the event they do not complete sequential reclamation as required. This is essentially what is required of Class One pipeline operators by the Canada Energy Regulator. The public purse should never be at risk of being on the hook for reclaiming one of these pipelines or mines.

The AER's dereliction of its stated responsibilities to require proponents to reclaim their resource extraction and distribution projects is highlighted in its failure to ensure there are sufficient resources and processes to address liabilities from the province's oil and gas industry. According to a staff lawyer at the University of Calgary's Public Interest Law Clinic:

Alberta's liability management system addresses the environmental liabilities of coalmines through the Mine Financial Security Program (MFSP), which has been due for reform since an Auditor General's report in 2015 found that the MFSP overstated asset values in a manner that could result in security amounts inconsistent with the "polluter pays" objective of the program. **The MFSP currently has \$1.47 billion in security compared to an estimated \$31.39 billion in liabilities.** Coalmine liabilities have not received much attention for the last few decades because they have been relatively small beside the gigantic liabilities of the oil sands mines that are also part of the MFSP, but

coalmine liabilities have the potential to become significant again with the new wave of coalmines now seeking licenses.⁸⁹ [emphasis added]

For the foregoing reasons, my clients submit that an assessment of the environmental, cumulative and interprovincial and international effects of the Project would not be adequately carried out by the Government of Alberta or the AER, and potential adverse effects cannot be adequately managed through existing provincial legislative or regulatory mechanisms. Indeed, even existing federal regulatory processes and protections may not be adequate to protect areas of federal jurisdiction from potential impacts of coal mining in Alberta.⁹⁰

ix. Greenhouse gas emissions and fugitive methane emissions

The Project will result in significant “upstream” Project-related and “downstream” greenhouse gas (“GHG”) emissions and fugitive methane emissions.

Measurements of GHG emissions from coal mining are documented as being woefully inadequate. A recent international study⁹¹ has concluded Canada’s coal mining activities will be a major source of GHG emissions:⁹²

CHINA LEADS, CANADA PLACES SEVENTH IN METHANE OUTPUT FROM FUTURE COAL MINES

With 12 new coal mines now at a pre-construction phase, Canada has vaulted into seventh place among the countries with the highest output of climate-busting methane from new mining projects, according to a new analysis released this morning by Global Energy Monitor (GEM).

...

Counting carbon dioxide as well as methane, emissions from new Canadian coal mines under construction or proposed total 39 Mt per year.

And that renewed embrace of coal mining is part of a much bigger global trend.

“A frenzy of new mine projects and proposals in some of the world’s gassiest coal seams could emit enough methane to rival the current CO₂ emissions from coal plants in the United States,” GEM writes in a new briefing paper. “Unless mitigated, methane

⁸⁹ Drew Yewchuk, “The 2020/2021 Orphan Fund Levy and the Missing Consultation on Environmental Liability Management Reform” (22 September 2020; accessed on 2 April 2021), online: ABlawg, http://ablawg.ca/wp-content/uploads/2020/09/Blog_DY_Orphan_Fund_Levy_2020.pdf.

⁹⁰ Drew Yewchuk, “Coal Law and Policy Part 5: What is the Role of the Federal Government in Relation to Alberta Coal Mines?” (24 March 2021; accessed on 2 April 2021), online: ABlawg, <https://ablawg.ca/2021/03/24/coal-law-and-policy-part-five-what-is-the-role-of-the-federal-government-in-relation-to-alberta-coal-mines/>.

⁹¹ “Coal Mine Methane On the Brink,” *Global Energy Monitor* (March 2021; accessed on 2 April 2021), online: <https://globalenergymonitor.org/report/coal-mine-methane-on-the-brink/>.

⁹² “CHINA LEADS, CANADA PLACES SEVENTH IN METHANE OUTPUT FROM FUTURE COAL MINES”, *The Energy Mix* (19 March 2021; accessed on 2 April 2021), online: [https://theenergymix.com/2021/03/19/china-leads-canada-places-seventh-in-methane-output-from-future-coal-mines/#:~:text=With%2012%20new%20coal%20mines,Global%20Energy%20Monitor%20\(GEM\).](https://theenergymix.com/2021/03/19/china-leads-canada-places-seventh-in-methane-output-from-future-coal-mines/#:~:text=With%2012%20new%20coal%20mines,Global%20Energy%20Monitor%20(GEM).)

emissions from these proposed mines, currently in construction or pre-construction planning, **would amount to 13.5 million tonnes of methane annually, a 30% increase over current emissions.**”

...

GEM warns that its estimates will likely rise as it expands its coverage of operating mines. [emphasis added]

This study also puts Canada in a tie for sixth place, alongside the United States, for the number of new mines in pre-construction, the Global Energy Monitor reports. To put this in context, Canada’s current CO₂-equivalent⁹³ emissions of methane are **17 Mt a year**, so developing all the coal mines proposed in Canada would **add another 39 Mt annually** to our GHG emissions (CO₂ and methane). This from a country that pledged to phase out coal-fired electricity generation by 2030⁹⁴ and helped lead a high-profile event⁹⁵ at the 2017 UN climate conference in Bonn as a co-founder of the Powering Past Coal Alliance.⁹⁶

Montem does not provide any estimate of GHG emissions, either upstream or downstream from the Project. On this basis alone, and based on the well-documented high level of methane emissions from coal mining operations, this constitutes a potential impact on an area of federal jurisdiction requiring an impact assessment, given the potential impact on the environment and on Canada’s ability to meet its climate change targets and its international commitments on climate change.

Based on a rough, very conservative estimate of GHG emissions using a number of conservative assumptions and insufficient data from nearby projects, these emissions would be significant and a potential impact on an area of federal jurisdiction. Based on these very conservative emissions estimates from Teck’s Fording River mine, we estimate that the Project would emit at least approximately 80 Kt CO₂ equivalent annually, well above the threshold required for reporting GHG emissions under the federal Greenhouse Gas Reporting Program.⁹⁷ These “upstream”

⁹³ CO₂e is a quantification of warming caused by a greenhouse gas. This GEM article reports there would be 13.5 Mt of methane which works out to be 1,135 Mt of CO₂e. This is because methane has a higher warming potential than CO₂. Therefore, emitting that much methane has the same warming potential as emitting the equivalent amount of CO₂.

⁹⁴ “CANADA TO PHASE OUT COAL POWER BY 2030”, *The Energy Mix* (23 November 2016; accessed on 2 April 2021), online: <https://theenergymix.com/2016/11/23/canada-to-phase-out-coal-power-by-2030/>.

⁹⁵ “BREAKING: 25 JURISDICTIONS JOIN CANADA, UK IN COAL PHASEOUT ALLIANCE”, *The Energy Mix* (16 November 2017; accessed on 2 April 2021), online: <https://theenergymix.com/2017/11/16/breaking-25-jurisdictions-join-canada-uk-in-coal-phaseout-alliance/>.

⁹⁶ “BREAKING: POWERING PAST COAL ALLIANCE URGES FASTER PHASEOUT WHILE CO-FOUNDERS ALLOW NEW COAL MINES”, *The Energy Mix* (3 March 2021; accessed on 2 April 2021), online: <https://theenergymix.com/2021/03/03/breaking-powering-past-coal-alliance-urges-faster-phaseout-while-co-founders-allow-new-coal-mines/>.

⁹⁷ Based on 0.67Mt CO₂ equivalent annually and an approximate production rate of 27,400t cleaned coal from Teck’s Fording River mine compared to 3,288 t/day for the Project. Teck Coal Limited, “Initial Project Description: Castle Project” (October 2020), online: <https://iaac-aeic.gc.ca/050/documents/p80702/136273E.pdf>, [Castle Initial Project Description] at 38. Emissions from the Project may be higher as Montem proposes use of diesel machinery (shovels, pumps, etc.), whereas Teck uses electrical machinery, and Montem proposes a significant truck haul of coal to rail loadout on provincial Highway 3.

emissions would be made up of CO₂ from fuel used in mining operations (primarily diesel for heavy equipment) and of fugitive methane emissions found within the coal formations, which typically make up nearly half of total emissions for surface coal mines. For the Project, we can estimate fugitive methane emissions specifically will be approximately 1.0 Kt of CH₄ per year or 28 Kt CO₂ equivalent.⁹⁸ There would additionally be significant GHG emissions from rail transport of the coal to the British Columbia coast. Along with the estimated emissions for the Project being significant, there are also uncertainties around emissions generally and with the Project that critically need to be assessed.

As noted, fugitive methane emissions from coal mining are poorly quantified, as the above emissions factor applied to all bituminous surface coal mines in Alberta is estimated based on data from a single coal mine in the northwest of the province.⁹⁹ It is well known that fugitive methane from coal mines varies widely, and there is some evidence that methane emissions from coal mines in the southern Rockies may significantly exceed those found in the northwest of Alberta.¹⁰⁰ The global warming potential of methane also varies greatly depending on the timescale considered. A shorter timescale for warming effects would be warranted when considering methane emissions, as we now understand that the threat of climate change is more immediate than the next 100 years.¹⁰¹ Federal assessment is necessary to evaluate the climate impacts of the Project given the poor current understanding of fugitive methane emissions.

Given Canada's commitment to a 30% reduction from 2005 GHG emissions levels by 2030 and the fact that this Project would add significant local carbon emissions from diesel combustion and fugitive methane, the Project may well hinder Canada's ability to meet its 2030 commitments under the Paris Agreement.

Additionally, steelmaking coal, when burned in the steelmaking process, is a major source of carbon emissions, accounting for 5% of total worldwide emissions. It is clear that to reduce the impact of global climate change, these steelmaking emissions will need to be drastically reduced. Fortunately, natural gas and electricity-based steelmaking processes are already in use around the world today, with significantly lower carbon emissions than coal-based steelmaking. Partially hydrogen-based steelmaking is already possible using existing plants and fully renewable

⁹⁸ With a daily production of 4925t ROM coal, an emissions factor of 0.55 t CH₄ /kt coal mined from ECCC, "2020 National Inventory Report 1990-2018: Greenhouse Gas Sources and Sinks in Canada" (2020), online: http://publications.gc.ca/collections/collection_2020/eccc/En81-4-2018-2-eng.pdf at 39.

⁹⁹ *Ibid.*

¹⁰⁰ Based on high emissions from the Elk Valley coal storage piles, as the geographically closest data shown in Western Climate Initiative, "Final Essential Requirements of Mandatory Reporting, Amended for Canadian Harmonization," Government of British Columbia (17 December 2010), online: <https://www2.gov.bc.ca/assets/gov/environment/climate-change/ind/quantification/wci-2011.pdf> at Table 100-2.

¹⁰¹ The above emissions estimate is based on a global warming potential of 28 for methane (i.e., methane is 28 times as potent as carbon dioxide). Current IPCC global warming potentials for methane are 28 over 100 years and 84 over 20 years, not including climate-carbon feedbacks. See Intergovernmental Panel on Climate Change, "Synthesis Report: Climate Change 2014" (2014), online: <https://www.ipcc.ch/report/ar5/syr/>.

argument would apply equally to all individual sources of emissions everywhere, so it must fail.¹⁰⁸

...

[Climate change] is threat of the highest order to the country, and indeed the world... The undisputed existence of a threat to the future of humanity cannot be ignored.¹⁰⁹ [emphasis added]

The Court of Appeal for Ontario similarly recognized that climate change resulting from human-caused GHGs is causing or exacerbating rising sea levels, ocean acidification, species loss and extinction, and threatening the ability of certain First Nations to maintain their traditional way of life or continue to exist as self-determining people.¹¹⁰ Indeed, Canadian courts are increasingly recognizing the serious adverse effects that GHG emissions cause on areas of federal jurisdiction and hence the importance of properly considering GHG impacts in environmental assessments.¹¹¹

Notably, the effects on federal jurisdiction of GHG emissions are the same regardless of whether these emissions occur as a direct or indirect result of the project being considered. In the Prime Minister's words, "the impact on our climate is the same...the atmosphere doesn't care where carbon is emitted."¹¹² The *IAA* applies so long as that impact on federal jurisdiction arises as a direct or indirect effect of the project. It is for this reason that past decision-makers have seen it well within their jurisdiction to consider downstream GHG emissions in environmental assessments¹¹³ – including when those emissions take place outside of Canada.¹¹⁴

Considering the upstream and downstream emissions of the Project is further necessary in light of the Government of Canada's commitments in respect of climate change – an important consideration under the *IAA*, which includes legally binding and non-binding instruments.¹¹⁵ The

¹⁰⁸ *Ibid.*, para 188

¹⁰⁹ *Ibid.*, para 167

¹¹⁰ *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544 at paras 11-14 [*Ontario Reference*].

¹¹¹ *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40 at paras 4, 16-17; *Ontario Reference*, *supra* note 109 at paras 6-17; *Synchrude Canada Ltd. v Canada (Attorney General)*, 2016 FCA 160 at paras 9, 12, 42 and 62; *Pembina Institute for Appropriate Development v. Canada (Attorney General)*, 2008 FC 302 at paras 78-80.

¹¹² Jason Fekete, "Trudeau to meet with Indian prime minister in hopes of convincing him to reduce country's emissions" (28 November 2015), *National Post*, online: <http://news.nationalpost.com/news/canada/trudeau-to-meet-with-indian-prime-minister-in-hopes-of-convincing-him-to-reduce-countrys-emissions>.

¹¹³ Minister of Environment, Government of Canada, "Foundation for a Sustainable Northern Future: Report of the Joint Review Panel for the Mackenzie Gas Project Volume 1", (December 2009) at 215 [*Mackenzie Gas Project Report*], online: http://reviewboard.ca/upload/project_document/EIR0405-001_JRP_Report_of_Environmental_Review_Executive_Volume_I.PDF.

¹¹⁴ See National Energy Board, "Letter to Interested Persons - Lists of Issues and Factors and Scope of the Factors for the Environmental Assessments – Energy East and Eastern Mainline" (23 August 2017), online: https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/2432218/2540913/2543424/3322976/A85619-1_NEB_Letter_to_Interested_Persons_-_List_of_Issues_and_EA_Factors_Document_-_Energy_Est_and_Eastern_Mainline_-_A5T4L9.pdf?nodeid=3320560&vernum=-2.

¹¹⁵ *IAA*, ss 22(1)(i) and 63(e); Government of Canada, "Policy Context: Considering Environmental Obligations and Commitments in Respect of Climate Change under the *Impact Assessment Act*" (last modified 17 January 2020),

stated purpose of the Project is to ship all metallurgical coal produced abroad, where it will be burned in steel plants. You and the Agency must consider whether the Project is consistent with such international commitments by conducting an impact assessment.

The issue before you and the Agency is not whether the emissions occur outside of Canada or not, it is whether the project may cause adverse effects within *federal jurisdiction*. And there can be little doubt that GHG emissions arising from the Project will do that. Further, even though GHG emissions are anticipated from the burning of the coal from the Project, and the related public concern related thereto, any of the adverse effects within federal jurisdiction and related concerns arising from the Project will not be appropriately managed through the existing federal and provincial regulatory processes – none of which consider the impact of GHG emissions. As such, these adverse impacts must be considered by an impact assessment pursuant to the *IAA*.

As with your decision to designate the Castle Coal Mine Project in British Columbia, it is well within your lawful powers to designate a coal mine of this sort for an impact assessment. While your decision to designate the Vista Thermal Coal Mine Expansion Project in Alberta is before the Court, the nature of the proponent's allegations in that matter are that your conduct was unlawful (an allegation my clients maintain is without basis) because that designation decision involved the reversal of a previous decision and the inclusion of an underground mine proposal in the designation. Neither of these alleged bases for the court challenge are present in this matter before you.

5. CONCLUSION

For all of the foregoing reasons, my clients submit that you and the Agency must consider:

- the fact that the Project as proposed barely skirts the thresholds set out for a project to be designated for a federal impact assessment in the Schedule to the *Regulations*;
- potential adverse impacts to an environmentally sensitive location, the drinking water for First Nations reserves and for Alberta, Western Canada and the United States, areas of federal jurisdiction including Indigenous peoples, federal reserve lands, transboundary waters, fish and fish habitat, species at risk, and Aboriginal and Treaty rights and Section 35 Rights;
- the cumulative impacts of coal mining and other developments in both the province of Alberta and the province of British Columbia the Project may give rise to; and
- based on very conservative estimates and assumptions, the 80Kt CO₂ equivalent annually of upstream project GHG emissions (including 1.0Kt of CH₄ per year or 28 Kt CO₂ equivalent annually of fugitive methane emissions, and not including GHG emissions related to coal transport and shipping) and 3 Mt annually of downstream GHG emissions resulting from the end use of the Project's coal;

online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/considering-environmental-obligations.html>.

in reaching a determination on this s. 9(1) request, and must designate the Project for an impact assessment, considering all its potential adverse effects.

My clients would like to thank you for your work toward clean energy – including Canada’s hydrogen strategy – that will help Canada become a leader in phasing out coal production and use, including for steel production. We also recognize and appreciate the other strong federal legislative policy initiatives being implemented by your government to address climate change and protect our fresh water and important ecosystems.

The intensive coal development proposed for the Eastern Slopes of the Rocky Mountains will have significant adverse consequences on this policy direction and will cause irreversible, devastating harm to this region.

The scale of the Project and the type of mining proposed are dramatically different from the mining that was done on the site in the past, the circumstances in the environmentally sensitive location (and the knowledge my clients have gained in that regard from participating in the joint federal-provincial impact assessment review panel hearings on the nearby Grassy Mountain Mine Project) are far better understood, the cumulative impact projections are far more detailed and more likely, the interprovincial and international nature and effects on federal waters and jurisdiction are undeniable, and public opposition to this Project and coal mining generally in Alberta is dramatically higher, all supporting federal re-engagement in the impact assessment of this Project.

For the reasons set out in this letter, my clients submit that the proximity of the production capacity of the Project to the threshold for designation pursuant to s. 18(a) of the Schedule to the *Regulations*, and the numerous potential adverse effects resulting from the Project, warrant designation of it by you pursuant to s. 9(1) of the *IAA*.

Based on the above information, we request that you designate the Project for a federal impact assessment pursuant to s. 9(1) of the *IAA*.

Sincerely,

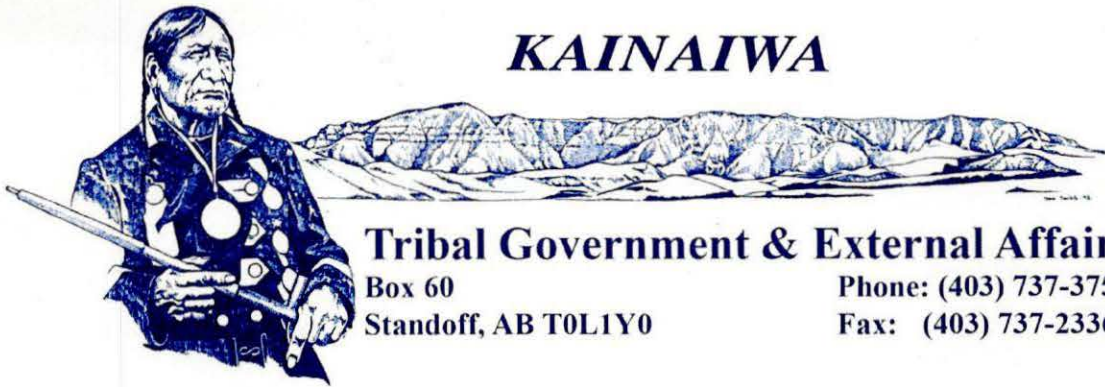


David Khan
Barrister & Solicitor

APPENDICES

- [A] **Appendix “A”**: 2021 03 02 - Blood Tribe/Kainai and Siksika Nations correspondence requesting designation of the Project (the “Kainai & Siksika Designation Request Letters”)
- [B] **Appendix “B”**: 2021 03 28 - Alberta Wilderness Association correspondence requesting the designation the Project (the “AWA Request Letter”)
- [C] **Appendix “C”**: Map of the Project and proposed recovery Whitebark Pine critical Habitat, listed as federally Endangered – courtesy Alberta Wilderness Association
- [D] **Appendix “D”**: Map of the Alberta Bear Management Area 6
- [E] **Appendix “E”**: Tent Mountain Tenure Map and Train Loadout Area Map, from pages 16 and 73 of the Montem Resources *Technical Assessment Report* for the Project
- [F] **Appendix “F”**: Tent Mountain Map – “Tent Mountain Development end of year 5”, from page 51 of the Montem Resources *Technical Assessment Report* for the Project
- [G] **Appendix “G”**: “Location of Montem’s Projects”, from page 21 of the Montem Resources Ltd. *Prospectus, Canadian Steelmaking Coal*
- [H] **Appendix “H”**: Lorne Fitch, P. Biol., correspondence to Laurie Pushor, President and Chief Executive Officer of the AER, 4 February 2021; Martin Foy, Chief Operating Officer of the AER, reply correspondence to Lorne Fitch, 15 March 2021

APPENDIX “A”



KAINAIWA

Tribal Government & External Affairs

Box 60
Standoff, AB T0L1Y0

Phone: (403) 737-3753
Fax: (403) 737-2336

March 2, 2021

Via email

(ec.ministre-minister.ec@canada.ca)
(iaac.vancouver.aeic@canada.ca)

Attn: The Honourable Jonathan Wilkinson
Minister of Environment and Climate Change
Environment and Climate Change Canada: Pacific and Yukon
Office
401 Burrard Street, Vancouver, BC V6C 3R2

Re: Request for federal review of Montem Resource's Tent Mountain Project

On behalf of the Blood Tribe/Kainai I write to request that the Minister designate Montem Resources' Tent Mountain Project ("Tent Mountain" or the "Project") for an impact assessment under section 9(1) of the *Impact Assessment Act*, SC 2019, c 28, s 1 (the "**Act**").

The Eastern Slopes of the Rocky Mountain have long been an area critical to the practice of Kainai rights, including harvesting, trade and spiritual practices. The traditional practices conducted on the land and waters are integral to Kainai's physical and cultural wellbeing. The Project is also within the headwaters of the Oldman River Basin which is source water to our community.

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 Kainai's traditional territory being taken up by

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activities that are inconsistent with the practice of Kainai's Treaty rights and culture. Kainai is becoming increasingly concerned with the level of proposed development, and particularly coal development, in and around the Eastern Slopes.

Kainai submits that Tent Mountain should be designated for federal review because the project:

- has a capacity near a threshold set out in the Project list – Tent Mountain is designed to release 4,925 raw tonnes per day, which is exceptionally close to the 5,000 tonnes per day threshold set out in s. 18(a) of the Physical Activities Regulations, SOR/2019-285;
- is located in an environmentally sensitive area - notably, it is located in the Livingstone Hills Land Management Zone protected by the Livingstone-Porcupine Hills Footprint Land Management Zone, which 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;
- may contribute to pollution of drinking water for Kainai's on-reserve population as well as Alberta's general population;
- may adversely impact areas of federal jurisdiction including: Indigenous peoples, federal reserve lands, transboundary waters, and fish and fish habitat.
- may significantly and adversely affect Kainai's ability to practice Aboriginal and Treaty rights; and
- will contribute to the cumulative impacts of coal and other development on both the BC and Alberta sides of the provincial border.

In addition, Kainai submits the proposed provincial review by the Alberta Energy Regulator is insufficient to appropriately identify the impacts to areas of federal jurisdiction, including on Kainai's rights.

Details of the above concerns are set out below.

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The Project

Tent Mountain is a coal mine proposed by Montem Resources Alberta Operation Ltd., a subsidiary of the Australian company Montem Resources Limited. If approved, the 750 ha Tent Mountain project area will be located 26 km west of Coleman, Alberta, within the municipality of Crowsnest Pass. The Project will include a 14-year open-pit mining program at the site, a new coal handling and processing plant adjacent to mine operations, and a loading facility located primarily in BC. This site previously hosted an operating mine from 1948 to 1983, and as such, already has an applicable mine permit (C85-16G) and an Environmental Protection and Enhancement Act approval (No. 47679).

Due to these existing permits and an environmental assessment that occurred sometime in the 1970s, we understand that Montem Resources initially expected to commence project operations without an additional environmental assessment. However, on January 8, 2021, the Alberta Energy Regulator determined that given the substantial changes to the previously authorized activity that would be required, a new provincial Environmental Impact Assessment would be necessary.

Tent Mountain requires a federal review

Following the guidance set out by the Impact Assessment Agency of Canada (the “**Agency**”) we provide the following information in support of the request to designate Tent Mountain for federal review.

a. The project capacity is exceptionally close to the threshold for federal review

Section 18(a) of the Physical Activities Regulations, SOR/2019-285 sets out that any coal mine with a coal production of 5,000 tonnes per day or more is subject to a federal review. Tent Mountain is designed to release 4,925 raw tonnes per day. Therefore, the Tent Mountain project is only 75 tonnes per day below the threshold.

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By skirting just below the thresholds for federal designation, Tent Mountain is just narrowly avoiding a federal impact assessment.

Taken together with the other proposed projects in the area, most notably North Coal's Michel Coal Project proposed directly adjacent to Tent Mountain on the BC side, the coal production capacity in this area, and the related environmental impacts, are slated to increase significantly. The proximity to the threshold and the significant coal development in the area gives rise to the need for a federal review.

b. The project is in an environmentally or otherwise sensitive location

The Project is located within areas identified as environmentally significant and of significant importance to Indigenous peoples and Albertans.

The Project is located within the area managed by the Livingstone-Porcupine Hills Land Footprint Management Plan (the "Livingstone-Porcupine Hills Plan" or the "Plan") - a sub-regional plan (under the South Saskatchewan Regional Plan) that provides direction for the long-term cumulative effects of development or other activities on public lands in the area.¹ The Livingstone-Porcupine Hills Plan:

outlines a system to minimize the extent, duration and rate of cumulative footprint to achieve landscapes with health, functioning ecosystems that provide a range of benefits to communities and all Albertans.²

The Plan recognizes the impacts of the use of the area for forestry, mining, grazing, tourism, and recreational activities and identifies how these "uses transform the landscape from its natural condition and contributes to the overall disturbance and human footprint".³ To manage the area, which includes the eastern slopes of the Rocky

¹ Government of Alberta, "Livingstone-Porcupine Hills Land Footprint Management Plan" (2018), [Livingstone-Porcupine Hills Plan]; Note: Specifically, Tent Mountain is located within the Livingstone Public Land Use Zone.

² Livingstone-Porcupine Hills Plan, p 3.

³ Livingstone-Porcupine Hills Plan, p 3.

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Mountains, the Government of Alberta, in the South Saskatchewan Regional Plan, set out a management intent which states:

The management intent for public land in the Eastern Slopes is for integrated management that incorporates the objectives for biodiversity and healthy, functioning ecosystems, to achieve multiple objectives. Watershed management and headwaters protection is the highest priority. Forests will be managed with this as the highest priority (including water storage, recharge and release functions) ... Other values such as biodiversity, forest ecosystem resiliency (natural disturbance patterns) and timber supply will be key secondary management priorities [citations omitted].⁴

This complex landscape is “an integral part of the internationally significant Crown of the Continent Ecosystem” an ecologically important area that “comprises the headwaters of North America’s three great watersheds (the Saskatchewan, Missouri and Columbia River systems) and is recognized as critical to the protection of wildlife, landscapes and water”.⁵

In addition to recognizing the important ecological areas and environmental features of the area, the Livingstone-Porcupine Hills Plan also notes that the area includes the “hunting and gathering, and ceremonial places that lie within traditional territories of multiple First Nations” and notes that the “Livingstone and Porcupine Hills area provided sustenance, materials, medicines, and sacred places for First Nations since time immemorial and is expected to continue to do so for generations yet to come”.⁶ Further strengthening the potential impact to Aboriginal and Treaty rights by development in the area, the Plan identifies the intimate connection amongst Indigenous peoples and the land and the risk for continued use due to “climate change, industrial development, and unmanaged recreational use”.⁷

⁴ Livingstone-Porcupine Hills Plan, p 4.

⁵ Livingstone-Porcupine Hills Plan, p 5.

⁶ Livingstone-Porcupine Hills Plan, p 25.

⁷ Livingstone-Porcupine Hills Plan, p 25.

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The Livingstone-Porcupine Hills Plan is intended to be “consistent with First Nations ability to continually exercise their Treaty rights and to acknowledge and maintains the relationship that Indigenous Peoples have with the land and the importance of their activities on the land”.⁸ Projects like Tent Mountain make this objective very difficult to achieve.

The Project Summary also notes that the Project area is at the headwaters of a drainage area that feeds the Crowsnest River and is part of the Oldman River Basin. The Proponent concedes that “[t]here are significant water quantity concerns in the Oldman River Basin for the use of water for industrial purposes” continuing that “[t]here are only limited amounts of groundwater available as the Project area is at higher elevations”.⁹

Issues with selenium and other metals associated with runoff water from mine operations elevate this concern.¹⁰ The Proponent states that these water quality concerns may be mitigated, and even improved, by a modern water management regime that meets or exceeds the licensed requirements but this remains to be seen. Kainai’s experience is that modern water management regimes for coal projects have not been effective in improving water quality in the region. This is of particular concern for Kainai as the Oldman River Basin provides drinking water for the approximately 8,500 Kainai members living on Kainai’s reserve lands.¹¹ The Project Summary also provides that the Project is located in management zones for Grizzly bear, Bighorn sheep, Mountain goat, Limba pine, and Whitebark pine. The Grizzly bear is a species of

⁸ Livingstone-Porcupine Hills Plan, p 25.

⁹ Project Summary, p 14, PDF p 16.

¹⁰ Note: Recognition of the water issues associated with coal mining have been noted in recent news articles: Croteau, Jill. Environmental groups warn Alberta about Elk Valley coal mine contamination, *Global News* (2 February 2021), online: <<https://globalnews.ca/news/7611152/environmental-groups-alberta-elk-valley-coal-contamination/>>.

¹¹ Statistics Canada, *Aboriginal Population Profile, 2016 Census: Blood Tribe* <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/details/page.cfm?Lang=E&Geo1=AB&Code1=2016C1005418&Data=Count&SearchText=Blood%20Tribe&SearchType=Begins&B1=All&GeoLevel=PR&GeoCode=2016C1005418&SEX_ID=1&AGE_ID=1&RESGEO_ID=1>

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special concern listed under Part 4 of the *Species at Risk Act* and Whitebark pine is listed as an Endangered Species under Part 2 of the *Species at Risk Act*.

These environmental impacts will also adversely affect Kainai's ability to exercise their Treaty rights and related cultural practices. For instance, Bighorn sheep are a species of cultural importance to Kainai. Impacts to the Bighorn sheep wintering range will likely have corresponding impacts on Kainai's ability to practice its treaty rights in relation to bighorn sheep. It is critical that these impacts be adequately considered and assessed.

c. The project has the potential to cause adverse effects that are of concern to Kainai and fall within federal jurisdiction

Tent Mountain may cause adverse effects to a number of resources that fall within the jurisdiction of the federal government, including fish and fish habitat, migratory birds, changes to the environment outside of Alberta, and importantly, adverse impacts on Kainai's Aboriginal and Treaty rights.

As Tent Mountain is in the early stages of exploration and environmental assessments have not yet been completed to determine the specific impact of this mine on the environment, we ask that you consider the precautionary principle noted as Principle 4 in the Sustainability Guide¹² and mandated in s. 6(1)(l) of the Act.

i. The project has the potential to cause adverse impacts on Kainai section 35 rights

Section 9(2) of the Act explicitly lists adverse impacts on the rights of Indigenous peoples as something that the Minister may consider when making a designation decision. Tent Mountain has the potential to cause adverse impacts to Kainai's ability to exercise their Aboriginal and Treaty rights.

Kainai are members of the Blackfoot Confederacy and made treaty with the British Crown in 1877 under the Blackfoot Treaty, also referred to as Treaty 7. Tent Mountain is

¹² Cite: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance.html>

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within the traditional territory of Kainai.¹³ The area in and around Tent Mountain was used extensively by Kainai for travel, trade, harvesting, and ceremonial purposes, and continues to be an area of importance for the exercise of Treaty rights and related cultural practices.¹⁴

The taking up of lands within Blackfoot traditional territory for coal mining, urban development, farming, and the loss of available crown land to oil and gas extraction and forestry has increased the importance of the foothills and front ranges of the Rocky Mountains for Kainai. The few remaining landscapes within Blackfoot territory where Kainai can still hunt, gather, trap, fish and camp include the Crowsnest Pass and Elk River valleys, which are at risk of destruction from large-scale coal projects like Tent Mountain.¹⁵ Kainai continues to hunt for elk, mule deer, bighorn sheep, moose and occasionally bear in the foothills and front slopes of the Rocky Mountains.¹⁶

The adverse effects to wildlife habitat, migratory birds, and fish and fish habitat outlined above will further impede Kainai's ability to carry out their hunting and fishing rights.

In addition to hunting, the Crowsnest Pass and East Kootenays are currently used by Blackfoot people to harvest a variety of food and medicinal plants.¹⁷ Blackfoot people continue to travel through the Crowsnest Pass, Sparwood, and Fernie areas to pick a variety of plants for food and medicinal purposes including roots, stems, leaves, and berries. Gathering plants for food, for medicines, and to use as fuel or for building materials brings Blackfoot people in touch with sacred sites.¹⁸

Tent Mountain may also interfere with Kainai's ability to carry out important religious, legal, and cultural practices.¹⁹ Blackfoot spiritual leaders and harvesters continue to use Crowsnest Pass, Elk Valley and upper Old Man River valley to obtain materials for

¹³ Dermot O'Connor, *Review of the Literature on Blackfoot Use and Occupancy of the Crowsnest Pass & East Kootenays*, Oak Road Concepts, (May 2020), p 2 [Oak Road Report].

¹⁴ Oak Road Report, p 3.

¹⁵ Please see enclosed cumulative impacts report produced by IEG for the Grassy Mountain Project, which identifies the diminishing lands available for Aboriginal and Treaty rights practice.

¹⁶ Oak Road Report, p 22.

¹⁷ Oak Road Report, p 23.

¹⁸ Oak Road Report, p 23.

¹⁹ Oak Road Report, pp 23-24.

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sacred materials such as ochre paint, pipestone, and rare plant species. Special locations for collection of these materials are still visited regularly by Blackfoot people, emphasizing the continued connection of these places to Blackfoot culture, spirituality, and material culture.²⁰ Seasonal pilgrimages and gathering expeditions to sacred sites in these areas demonstrate the ongoing centrality of the Crowsnest Pass in Blackfoot culture, spirituality, and traditional knowledge. Cultural transmission is integral to the ability of Kainai to pass down their ways of life.

More information about the Blackfoot's historic and continued use of this area can be found in the *Review of the Literature on Blackfoot Use and Occupancy of the Crowsnest Pass & East Kootenays* by Dermot O'Connor, to be considered in support of this request.

ii. *The project may adversely affect aquatic species, fish and fish habitat*

Kainai is concerned that Tent Mountain may have effects on aquatic species. Although the Proponent has not yet provided sufficient information to determine the extent of the impact on fish and fish habitat, similar proposed mines in the area have been determined to have detrimental effects on the high-value habitat of the Westslope Cutthroat trout, and other fish species of importance.

In BC, Teck's Fording River Operations have already had adverse effects on this species, with recent surveys showing a 93 percent decline in the Westslope Cutthroat trout population just downstream of its Fording River mine.²¹

The Initial Project Description for the Fording River Extension Project, recently designated for federal review, highlighted potential effects on aquatic species as defined in subsection 2(1) of the *Species at Risk Act*, including the effects on the westslope cutthroat trout. Also noted in that project, recent monitoring of certain sensitive benthic invertebrate communities has shown that mine exposure results in adverse effects like

²⁰ Oak Road Report, pp 23-24.

²¹ Paul Fischer, "Teck proposal to expand B.C.'s largest coal mine raises alarm about pollution on both sides of border", *The Narwhal* (17 June 2020) online: <thenarwhal.ca/teck-expand-castle-mountain-largest-coal-mine-selenium-pollution/>.

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reductions in the abundance of certain species (e.g. mayflies), and increased tissue selenium concentrations.²²

iii. The project will have impacts across provincial borders

Although Tent Mountain is located along the provincial border on the Alberta side, its proximity to the BC Border means that it has the potential to cause environmental changes across the provincial border. For instance, Tent Mountain will impact the wildlife habitats of species such as bighorn sheep. Bighorn sheep habitat lies on both sides of the Rocky Mountains. Impacts to that habitat on the BC side of the border may have impacts on the viability of the species more generally.

In addition, Tent Mountain may also create interprovincial impact through the pollution of the Oldman River, which flows across Alberta into Saskatchewan.

Selenium pollution has been a major issue with coal mines in this area. Across the border in BC, the Elk Valley Water Quality Plan, established by Teck and the BC Government, monitors selenium and other pollution from the mines in an attempt to stabilize and then reduce selenium quantities in the rivers. A recent release of previously unreported Government of Alberta data found that water samples taken from 1998 through 2016 averaged six (6) times higher selenium downstream from the Cheviot Mine than in upstream samples. For Gregg River and Luscar Creek, the pollution was even starker with samples average nine (9) and eleven (11) times higher selenium content, respectively.²³

Additionally, the US Environmental Protection Agency is currently calling for a review of Teck Coal Limited's contamination of the Kootenai watershed, which flows across Montana and Idaho. Moreover, the Tribal Councils of the Confederated Salish and Kootenai Tribes and the Kootenai Tribe of Idaho also requested that the Fording River Extension, the addition to the Fording River Operations, be designated for a federal

²² Teck Coal Limited, "Initial Project Description: Castle Project" (March 2020), pp 60-61 <[link](#)>.

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impact assessment due to potential cross-border impacts including contamination of transboundary waters.²⁴

Although the impacts of Tent Mountain appear to be on the Oldman River Basin, which does not flow directly into the United States, it flows across Alberta into Saskatchewan. Moreover, the Oldman River Basin is source water for drinking water systems and agriculture for Kainai's reserve – a supply for approximately 8,500 people on the largest First Nation reserve in Canada. Environmental impacts beyond the jurisdiction where the project is taking place and affecting Indigenous people and reserve lands fall well within the federal government's jurisdiction and should be reviewed by the federal government.

In addition to cross border environmental concerns, it appears the Tent Mountain project itself spans the AB-BC provincial border. The Project Summary notes in the project description that a new coal handling and processing plant will be built "immediately adjacent to the mine operations" and a loading facility will be "located primarily within the Province of BC".²⁵

d. The Project will contribute to the already significant level of cumulative development in the area

Given the significant level of historical, ongoing and future planned development, it is critical that the cumulative impacts of this development on both sides of the Alberta-British Columbia Border be adequately assessed. Please see Figure 2 below depicting the current total anthropogenic footprint from a cumulative effects assessment conducted for the Grassy Mountain Project in 2018.

²⁴ Letter from the Tribal Councils of the Confederated Salish and Kootenai Tribes and the Kootenai Tribe of Idaho to the Honourable Jonathan Wilkinson (12 May 2020) online (pdf): <iaac-aeic.gc.ca/050/documents/p80702/134822E.pdf>.

²⁵ Montem Resources, "Resuming Activities – Tent Mountain Mine Coal Handling and Processing Plan Project Description, Project Summary Table (February 2021), p 1, PDF p 3.

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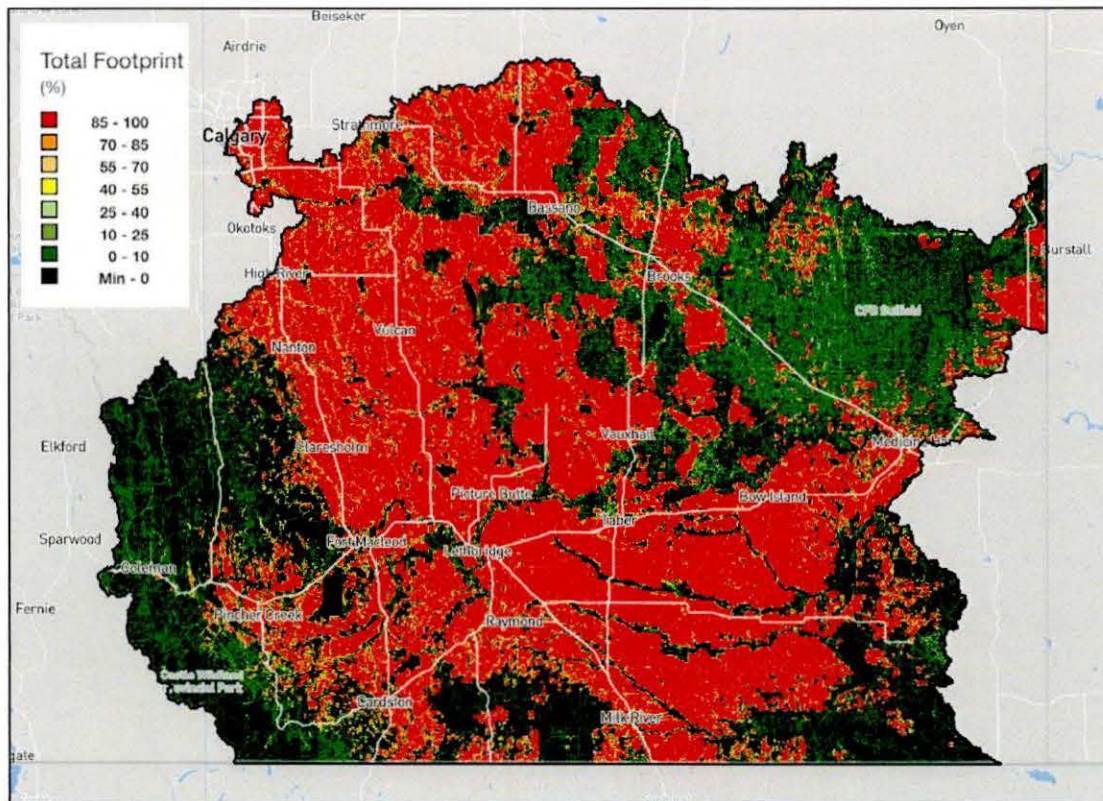


Figure 2 - Current total anthropogenic footprint in the regional study area. Red indicates high intensity footprint while green indicates low intensity footprint. The legend shows the proportion of each pixel occupied by footprint features.²⁶

Coal has been mined in the Elk Valley since the late 1890s, with the Elk Valley coalfield being one of the major coal-producing areas in Canada. This specific site has already been mined for nearly 40 years.

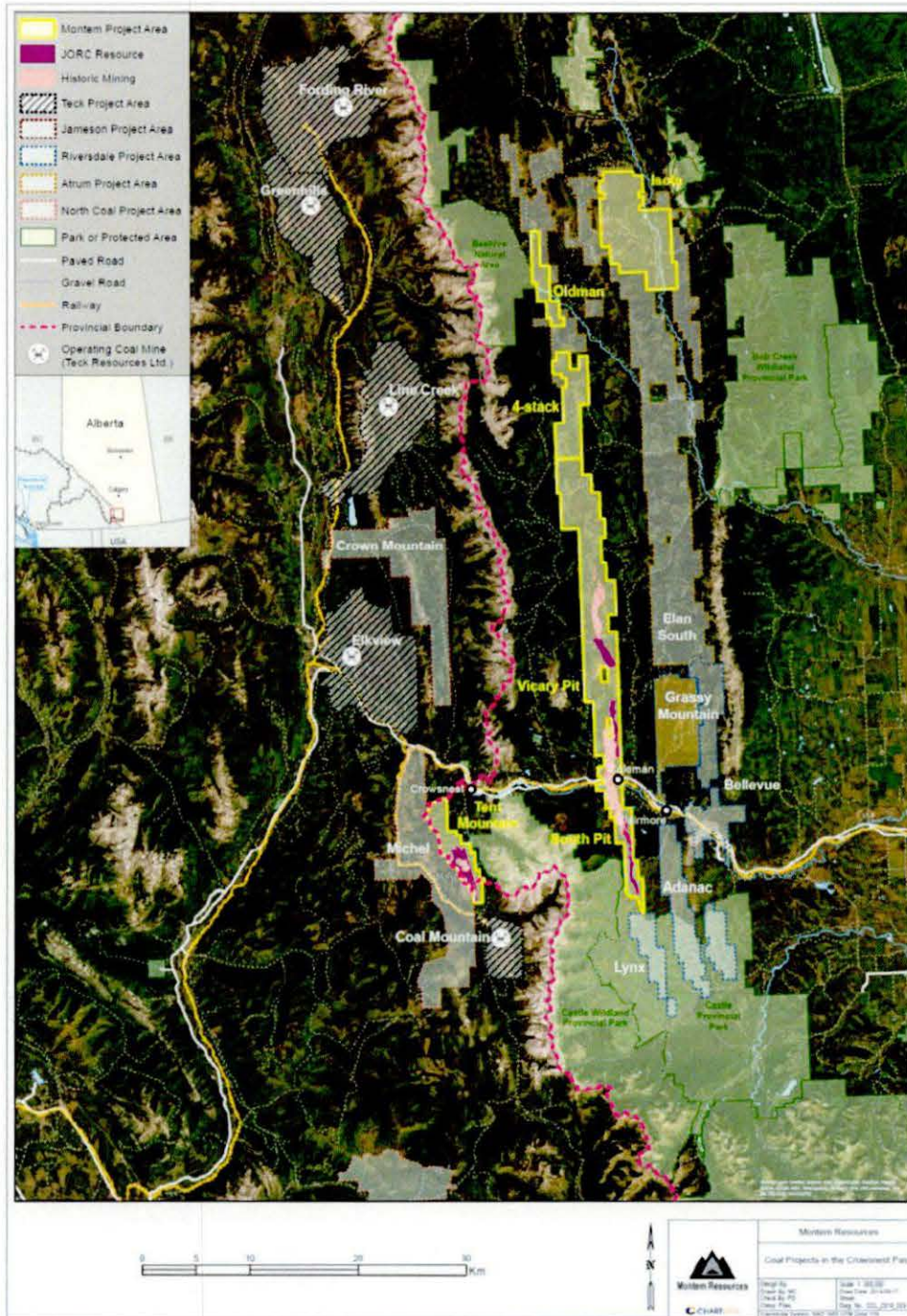
Other projects planned in the vicinity of Tent Mountain include North Coal's Michel Coal Project, an expansion of Teck's Fording River Operations, Atrium's Isolation South Lease, NWP's Crown Mountain Mine, and Riversdale Resource Limited's Grassy Mountain Coal Mine. This is in addition to the already existing projects including Teck's Line Creek Mine, Greenhills Mine, Elkview Mine, and Coal Mountain Mine. As well as Montem Resource's 10,000 ha Chinook Project near Coleman, Alberta, which it is

²⁶ IEG Consulting, "Cumulative effects assessment for Kainai First Nation" (9 November 2018) Figure 2, p 8, PDF p 17.

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pushing to develop, and its exploration projects: Isola, 4-Stack, and Oldman located further north of Tent Mountain and Chinook.

Please see below for a regional overview of the coal projects in the area.



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As noted, North Coal's Michel Coal Project is located directly adjacent to Tent Mountain on the BC side of the border. Please see the Michel Coal Project boundary outlined in green.

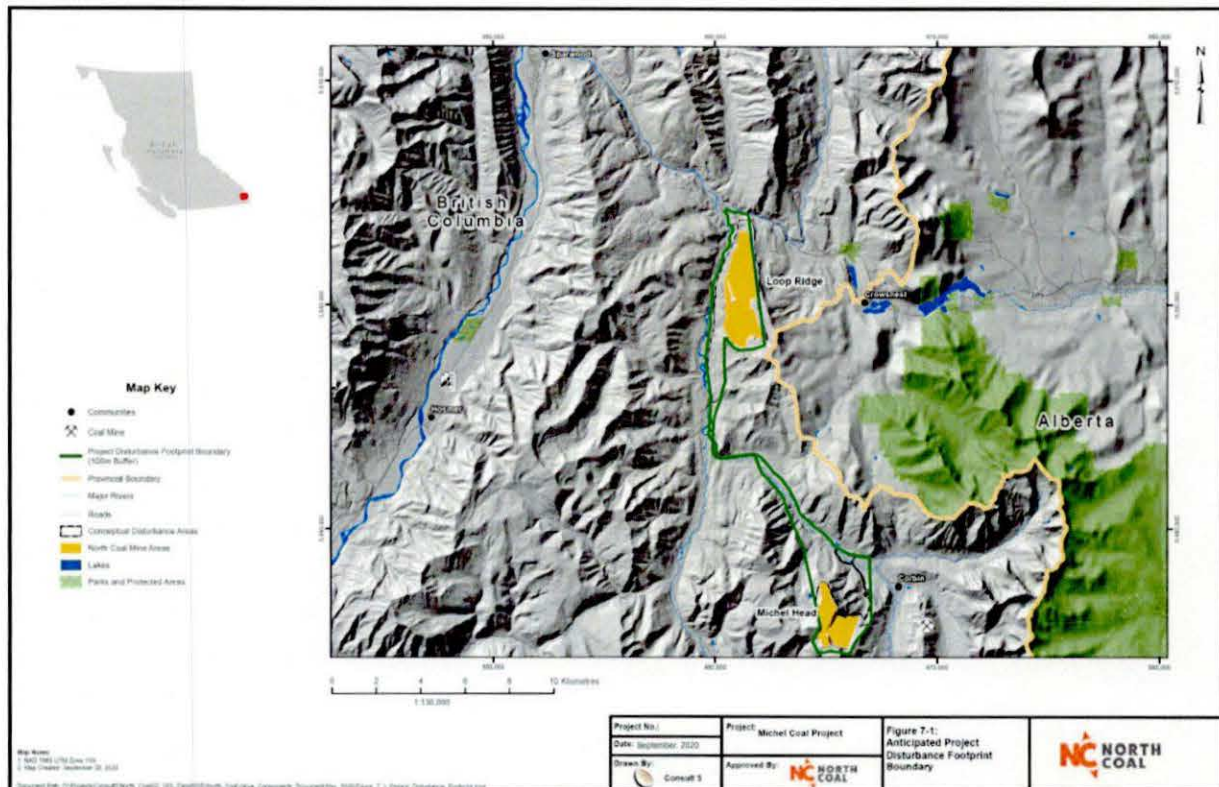


Figure 7-1: Anticipated Project Disturbance Footprint Boundary

Despite this extreme proximity, neither the Tent Mountain project Terms of Reference nor the Project summary expressly deal with the presence of the Michel Coal Project.

The cumulative impact of this activity has the potential to significantly and adversely impact the ecological integrity of the area, and Kainai's ability to use this area for the practice of their Aboriginal and Treaty rights now and well into the future. The combination of cumulative effects from existing and potential projects and the international effects of these mining activities requires assessment by the federal government.

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e. Concern with regulatory approach

i. Insufficient Terms of Reference

In addition to the concerns set out above, Kainai has significant concerns that the draft Terms of Reference document prepared by Montem is insufficient. We note several areas of concern, including:

- the lack of reference to impacts to Aboriginal or Treaty rights;
- insufficient reference to environmentally sensitive context in which the Project is located;
- insufficient discussion of transboundary impacts;
- insufficient discussion of the proximity to North Coal's Michel Coal Project; and
- insufficient weight given to specific concerns around drinking water and water quality.

Further to this designation request, we anticipate providing a supplemental report with a preliminary review of the Terms of Reference, providing further detail with respect to Kainai's concern in this regard.

ii. Montem's view of the Project as restarting an existing mine is troubling

It is apparent from Montem's Project Summary that they view the project as having little impact to new lands due to their plan to 'restart' a mine on previously disturbed sites. When contemplating impacts to vegetation and wetlands, Montem notes that "much of the Project area is previously disturbed lands, either by previous mining operations or by other activities in this historically active area, there is very limited areas of undisturbed vegetation".²⁷ They make the same assertion with regard to soils, finding that "there are limited native soils present".²⁸ They again make the same assertion with fish and other invertebrates.

²⁷ Project Summary, p 12, PDF p 14.

²⁸ Project Summary, p 12, PDF p 14.

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Kainai takes issue with this approach. If the baseline data collected reflects a significantly disturbed mine area with no wildlife, plants, or fish that shows only the adverse impact the previous mining operation had on the environment. The baseline data should not reflect a previously disturbed mine that operated for decades, but the site before mining began. This will give an accurate picture of what the impacts of mining on the site have been, and what the impacts will continue to be if mining continues.

Closing

There are strong indicators that Tent Mountain will have significant adverse effects that the Minister should consider in exercising their discretion to designate the Project under s. 9(1). Some of these effects include impacts on Kainai's Aboriginal and Treaty rights, environmental impacts that cross provincial borders, harmful cumulative effects from multiple projects in the area (including the directly adjacent Michel Coal Project), and adverse effects on fish and fish habitat, adverse effects on species of special importance, and environmentally sensitive conservation lands.

In addition to the concerns raised above, there are significant concerns related to the significant coal development 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. A push that led the Alberta Government to, without appropriate consultation, rescind a decades old Coal Policy that protected these areas. Although that decision has since been temporarily revoked subject to improved consultation, the area remains under immense pressure from coal development.

We also note again that the production capacity is only 75 tonnes per day below the threshold for automatic federal review.

Given all of these factors and the potential impacts of this project on multiple areas of federal jurisdiction, Kainai request that Tent Mountain be designated by the Minister under the discretion provided in s 9(1) of the Act.

#407736v2

Blood Tribe/Kainai

Per: <original signed by>

~~Makiinima/Chief Roy Fox~~

CC:

Janet Shaw, Impact Assessment Agency of Canada (janet.shaw@canada.ca)
Shireen Ouellet (souellet@montem-resources.com)
Mike Oka, Kainai (Blood Tribe), Consultation Manager (mike.oka@bloodtribe.org)
Clayton Leonard, JFK Law, (cleonard@jfklaw.ca)
Jeff Langlois, JFK Law, (jlanglois@jfklaw.ca)

Encl.

Government of Alberta, "Livingstone-Porcupine Hills Land Footprint Management Plan" (2018)

Dermot O'Connor, *Review of the Literature on Blackfoot Use and Occupancy of the Crowsnest Pass & East Kootenays*, Oak Road Concepts, (May 2020)

IEG Consulting, "Cumulative effects assessment for Kainai First Nation" (9 November 2018)

Montem Resources, "Resuming Activities – Tent Mountain Mine Coal Handling and Processing Plan Project Description, Project Summary Table" (February 2021)

Montem Resources, "Proposed Terms Of Reference Environmental Impact Assessment Report For Montem Resources Proposed Tent Mountain Project" (3 February 2021)

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Office of Chief and Council Government of Siksika Nation

March 2, 2021

Via email

[\(ec.ministre-minister.ec@canada.ca\)](mailto:ec.ministre-minister.ec@canada.ca)

[\(iaac.vancouver.aeic@canada.ca\)](mailto:iaac.vancouver.aeic@canada.ca)

Attn: The Honourable Jonathan Wilkinson
Minister of Environment and Climate Change
Environment and Climate Change Canada: Pacific and Yukon
Office
401 Burrard Street, Vancouver, BC V6C 3R2

Re: Request for federal review of Montem Resource's Tent Mountain Project

On behalf of Siksika Nation, I write to request that the Minister designate Montem Resources' Tent Mountain Project ("Tent Mountain" or the "Project") for an impact assessment under section 9(1) of the *Impact Assessment Act*, SC 2019, c 28, s 1 (the "**Act**").

The Eastern Slopes of the Rocky Mountain have long been an area critical to the practice of Siksika rights, including harvesting, trade and spiritual practices. The traditional practices conducted on the land and waters are integral to Siksika's physical and cultural wellbeing.

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 Siksika's traditional territory being taken up by activities that are inconsistent with the practice of Siksika's Treaty rights and culture.

P.O. box 1100 Siksika, AB T0J 3W0
(403) 734-5109 | Toll Free 1-800-551-5724
www.siksikanation.com

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Siksika is becoming increasingly concerned with the level of proposed development, and particularly coal development, in and around the Eastern Slopes.

Siksika submits that Tent Mountain should be designated for federal review because the project:

- has a capacity near a threshold set out in the Project list – Tent Mountain is designed to release 4,925 raw tonnes per day, which is exceptionally close to the 5,000 tonnes per day threshold set out in s. 18(a) of the Physical Activities Regulations, SOR/2019-285;
- is located in an environmentally sensitive area - notably, it is located in the Livingstone Hills Land Management Zone protected by the Livingstone-Porcupine Hills Footprint Land Management Zone, which 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;
- may contribute to pollution of drinking water for Siksika’s on-reserve population as well as Alberta’s general population;
- may adversely impact areas of federal jurisdiction including: Indigenous peoples, federal reserve lands, transboundary waters, and fish and fish habitat.
- may significantly and adversely affect Siksika’s ability to practice Aboriginal and Treaty rights; and
- will contribute to the cumulative impacts of coal and other development on both the BC and Alberta sides of the provincial border.

In addition, Siksika submits the proposed provincial review by the Alberta Energy Regulator is insufficient to appropriately identify the impacts to areas of federal jurisdiction, including on Siksika’s rights.

Details of the above concerns are set out below.

P.O. box 1100 Siksika, AB T0J 3W0
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The Project

Tent Mountain is a coal mine proposed by Montem Resources Alberta Operation Ltd., a subsidiary of the Australian company Montem Resources Limited. If approved, the 750 ha Tent Mountain project area will be located 26 km west of Coleman, Alberta, within the municipality of Crowsnest Pass. The Project will include a 14-year open-pit mining program at the site, a new coal handling and processing plant adjacent to mine operations, and a loading facility located primarily in BC. This site previously hosted an operating mine from 1948 to 1983, and as such, already has an applicable mine permit (C85-16G) and an Environmental Protection and Enhancement Act approval (No. 47679).

Due to these existing permits and an environmental assessment that occurred sometime in the 1970s, we understand that Montem Resources initially expected to commence project operations without an additional environmental assessment. However, on January 8, 2021, the Alberta Energy Regulator determined that given the substantial changes to the previously authorized activity that would be required, a new provincial Environmental Impact Assessment would be necessary.

Tent Mountain requires a federal review

Following the guidance set out by the Impact Assessment Agency of Canada (the “**Agency**”) we provide the following information in support of the request to designate Tent Mountain for federal review.

a. The project capacity is exceptionally close to the threshold for federal review

Section 18(a) of the Physical Activities Regulations, SOR/2019-285 sets out that any coal mine with a coal production of 5,000 tonnes per day or more is subject to a federal review. Tent Mountain is designed to release 4,925 raw tonnes per day. Therefore, the Tent Mountain project is only 75 tonnes per day below the threshold.

P.O. box 1100 Siksika, AB T0J 3W0
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By skirting just below the thresholds for federal designation, Tent Mountain is just narrowly avoiding a federal impact assessment.

Taken together with the other proposed projects in the area, most notably North Coal's Michel Coal Project proposed directly adjacent to Tent Mountain on the BC side, the coal production capacity in this area, and the related environmental impacts, are slated to increase significantly. The proximity to the threshold and the significant coal development in the area gives rise to the need for a federal review.

b. The project is in an environmentally or otherwise sensitive location

The Project is located within areas identified as environmentally significant and of significant importance to Indigenous peoples and Albertans.

The Project is located within the area managed by the Livingstone-Porcupine Hills Land Footprint Management Plan (the "Livingstone-Porcupine Hills Plan" or the "Plan") - a sub-regional plan (under the South Saskatchewan Regional Plan) that provides direction for the long-term cumulative effects of development or other activities on public lands in the area.¹ The Livingstone-Porcupine Hills Plan:

outlines a system to minimize the extent, duration and rate of cumulative footprint to achieve landscapes with health, functioning ecosystems that provide a range of benefits to communities and all Albertans.²

The Plan recognizes the impacts of the use of the area for forestry, mining, grazing, tourism, and recreational activities and identifies how these "uses transform the landscape from its natural condition and contributes to the overall disturbance and human footprint".³ To manage the area, which includes the eastern slopes of the Rocky

¹ Government of Alberta, "Livingstone-Porcupine Hills Land Footprint Management Plan" (2018), [Livingstone-Porcupine Hills Plan]; Note: Specifically, Tent Mountain is located within the Livingstone Public Land Use Zone.

² Livingstone-Porcupine Hills Plan, p 3.

³ Livingstone-Porcupine Hills Plan, p 3.

Mountains, the Government of Alberta, in the South Saskatchewan Regional Plan, set out a management intent which states:

The management intent for public land in the Eastern Slopes is for integrated management that incorporates the objectives for biodiversity and healthy, functioning ecosystems, to achieve multiple objectives. Watershed management and headwaters protection is the highest priority. Forests will be managed with this as the highest priority (including water storage, recharge and release functions) ... Other values such as biodiversity, forest ecosystem resiliency (natural disturbance patterns) and timber supply will be key secondary management priorities [citations omitted].⁴

This complex landscape is “an integral part of the internationally significant Crown of the Continent Ecosystem” an ecologically important area that “comprises the headwaters of North America’s three great watersheds (the Saskatchewan, Missouri and Columbia River systems) and is recognized as critical to the protection of wildlife, landscapes and water”.⁵

In addition to recognizing the important ecological areas and environmental features of the area, the Livingstone-Porcupine Hills Plan also notes that the area includes the “hunting and gathering, and ceremonial places that lie within traditional territories of multiple First Nations” and notes that the “Livingstone and Porcupine Hills area provided sustenance, materials, medicines, and sacred places for First Nations since time immemorial and is expected to continue to do so for generations yet to come”.⁶ Further strengthening the potential impact to Aboriginal and Treaty rights by development in the area, the Plan identifies the intimate connection amongst Indigenous peoples and the

⁴ Livingstone-Porcupine Hills Plan, p 4.

⁵ Livingstone-Porcupine Hills Plan, p 5.

⁶ Livingstone-Porcupine Hills Plan, p 25.

land and the risk for continued use due to “climate change, industrial development, and unmanaged recreational use”.⁷

The Livingstone-Porcupine Hills Plan is intended to be “consistent with First Nations ability to continually exercise their Treaty rights and to acknowledge and maintains the relationship that Indigenous Peoples have with the land and the importance of their activities on the land”.⁸ Projects like Tent Mountain make this objective very difficult to achieve.

The Project Summary also notes that the Project area is at the headwaters of a drainage area that feeds the Crowsnest River and is part of the Oldman River Basin. The Proponent concedes that “[t]here are significant water quantity concerns in the Oldman River Basin for the use of water for industrial purposes” continuing that “[t]here are only limited amounts of groundwater available as the Project area is at higher elevations”.⁹

Issues with selenium and other metals associated with runoff water from mine operations elevate this concern.¹⁰ The Proponent states that these water quality concerns may be mitigated, and even improved, by a modern water management regime that meets or exceeds the licensed requirements but this remains to be seen. Siksika’s experience is that modern water management regimes for coal projects have not been effective in improving water quality in the region. Water quality is of particular concern for Siksika.

The Project Summary also provides that the Project is located in management zones for Grizzly bear, Bighorn sheep, Mountain goat, Limba pine, and Whitebark pine. The

⁷ Livingstone-Porcupine Hills Plan, p 25.

⁸ Livingstone-Porcupine Hills Plan, p 25.

⁹ Project Summary, p 14, PDF p 16.

¹⁰ Note: Recognition of the water issues associated with coal mining have been noted in recent news articles: Croteau, Jill. Environmental groups warn Alberta about Elk Valley coal mine contamination, *Global News* (2 February 2021), online: <<https://globalnews.ca/news/7611152/environmental-groups-alberta-elk-valley-coal-contamination/>>.

Grizzly bear is a species of special concern listed under Part 4 of the *Species at Risk Act* and Whitebark pine is listed as an Endangered Species under Part 2 of the *Species at Risk Act*.

These environmental impacts will also adversely affect Siksika's ability to exercise their Treaty rights and related cultural practices. For instance, Bighorn sheep are a species of cultural importance to Siksika. Impacts to the Bighorn sheep wintering range will likely have corresponding impacts on Siksika's ability to practice its treaty rights in relation to bighorn sheep. It is critical that these impacts be adequately considered and assessed.

c. The project has the potential to cause adverse effects that are of concern to Siksika and fall within federal jurisdiction

Tent Mountain may cause adverse effects to a number of resources that fall within the jurisdiction of the federal government, including fish and fish habitat, migratory birds, changes to the environment outside of Alberta, and importantly, adverse impacts on Siksika's Aboriginal and Treaty rights.

As Tent Mountain is in the early stages of exploration and environmental assessments have not yet been completed to determine the specific impact of this mine on the environment, we ask that you consider the precautionary principle noted as Principle 4 in the Sustainability Guide¹¹ and mandated in s. 6(1)(l) of the Act.

i. The project has the potential to cause adverse impacts on Siksika section 35 rights

Section 9(2) of the Act explicitly lists adverse impacts on the rights of Indigenous peoples as something that the Minister may consider when making a designation decision. Tent Mountain has the potential to cause adverse impacts to Siksika's ability to exercise their Aboriginal and Treaty rights.

¹¹ Cite: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance.html>

Siksika are members of the Blackfoot Confederacy and made treaty with the British Crown in 1877 under the Blackfoot Treaty, also referred to as Treaty 7. Tent Mountain is within the traditional territory of Siksika.¹² The area in and around Tent Mountain was used extensively by Siksika for travel, trade, harvesting, and ceremonial purposes, and continues to be an area of importance for the exercise of Treaty rights and related cultural practices.¹³

The taking up of lands within Blackfoot traditional territory for coal mining, urban development, farming, and the loss of available crown land to oil and gas extraction and forestry has increased the importance of the foothills and front ranges of the Rocky Mountains for Siksika. The few remaining landscapes within Blackfoot territory where Siksika can still hunt, gather, trap, fish and camp include the Crowsnest Pass and Elk River valleys, which are at risk of destruction from large-scale coal projects like Tent Mountain.¹⁴ Siksika continues to hunt for elk, mule deer, bighorn sheep, moose and occasionally bear in the foothills and front slopes of the Rocky Mountains.¹⁵

The adverse effects to wildlife habitat, migratory birds, and fish and fish habitat outlined above will further impede Siksika's ability to carry out their hunting and fishing rights.

In addition to hunting, the Crowsnest Pass and East Kootenays are currently used by Blackfoot people to harvest a variety of food and medicinal plants.¹⁶ Blackfoot people continue to travel through the Crowsnest Pass, Sparwood, and Fernie areas to pick a variety of plants for food and medicinal purposes including roots, stems, leaves, and berries. Gathering plants for food, for medicines, and to use as fuel or for building materials brings Blackfoot people in touch with sacred sites.¹⁷

¹² Dermot O'Connor, *Review of the Literature on Blackfoot Use and Occupancy of the Crowsnest Pass & East Kootenays*, Oak Road Concepts, (May 2020), p 2 [Oak Road Report].

¹³ Oak Road Report, p 3.

¹⁴ Please see enclosed cumulative impacts report produced by IEG for the Grassy Mountain Project, which identifies the diminishing lands available for Aboriginal and Treaty rights practice.

¹⁵ Oak Road Report, p 22.

¹⁶ Oak Road Report, p 23.

¹⁷ Oak Road Report, p 23.

Tent Mountain may also interfere with Siksika's ability to carry out important religious, legal, and cultural practices.¹⁸ Blackfoot spiritual leaders and harvesters continue to use Crowsnest Pass, Elk Valley and upper Old Man River valley to obtain materials for sacred materials such as ochre paint, pipestone, and rare plant species. Special locations for collection of these materials are still visited regularly by Blackfoot people, emphasizing the continued connection of these places to Blackfoot culture, spirituality, and material culture.¹⁹ Seasonal pilgrimages and gathering expeditions to sacred sites in these areas demonstrate the ongoing centrality of the Crowsnest Pass in Blackfoot culture, spirituality, and traditional knowledge. Cultural transmission is integral to the ability of Siksika to pass down their ways of life.

More information about the Blackfoot's historic and continued use of this area can be found in the *Review of the Literature on Blackfoot Use and Occupancy of the Crowsnest Pass & East Kootenays* by Dermot O'Connor, to be considered in support of this request.

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In BC, Teck's Fording River Operations have already had adverse effects on this species, with recent surveys showing a 93 percent decline in the Westslope Cutthroat trout population just downstream of its Fording River mine.²⁰

¹⁸ Oak Road Report, pp 23-24.

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²⁰ Paul Fischer, "Teck proposal to expand B.C.'s largest coal mine raises alarm about pollution on both sides of border", *The Narwhal* (17 June 2020) online: <thenarwhal.ca/teck-expand-castle-mountain-largest-coal-mine-selenium-pollution/>.

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Although Tent Mountain is located along the provincial border on the Alberta side, its proximity to the BC Border means that it has the potential to cause environmental changes across the provincial border. For instance, Tent Mountain will impact the wildlife habitats of species such as bighorn sheep. Bighorn sheep habitat lies on both sides of the Rocky Mountains. Impacts to that habitat on the BC side of the border may have impacts on the viability of the species more generally.

In addition, Tent Mountain may also create interprovincial impact through the pollution of the Oldman River, which flows across Alberta into Saskatchewan.

Selenium pollution has been a major issue with coal mines in this area. Across the border in BC, the Elk Valley Water Quality Plan, established by Teck and the BC Government, monitors selenium and other pollution from the mines in an attempt to stabilize and then reduce selenium quantities in the rivers. A recent release of previously unreported Government of Alberta data found that water samples taken from 1998 through 2016 averaged six (6) times higher selenium downstream from the Cheviot Mine than in upstream samples. For Gregg River and Luscar Creek, the

²¹ Teck Coal Limited, "Initial Project Description: Castle Project" (March 2020), pp 60-61 <[link](#)>.

pollution was even starker with samples average nine (9) and eleven (11) times higher selenium content, respectively.²²

Additionally, the US Environmental Protection Agency is currently calling for a review of Teck Coal Limited's contamination of the Kootenai watershed, which flows across Montana and Idaho. Moreover, the Tribal Councils of the Confederated Salish and Kootenai Tribes and the Kootenai Tribe of Idaho also requested that the Fording River Extension, the addition to the Fording River Operations, be designated for a federal impact assessment due to potential cross-border impacts including contamination of transboundary waters.²³

Although the impacts of Tent Mountain appear to be on the Oldman River Basin, which does not flow directly into the United States, it flows across Alberta into Saskatchewan. Moreover, the Oldman River Basin is source water for drinking water systems and agriculture throughout Alberta. Environmental impacts beyond the jurisdiction where the project is taking place and affecting Indigenous people and reserve lands fall well within the federal government's jurisdiction and should be reviewed by the federal government.

In addition to cross border environmental concerns, it appears the Tent Mountain project itself spans the AB-BC provincial border. The Project Summary notes in the project description that a new coal handling and processing plant will be built "immediately adjacent to the mine operations" and a loading facility will be "located primarily within the Province of BC".²⁴

²² Bob Weber, "Contaminant from coal mines already high in some Alberta rivers: unreported data", *Global News* (25 January 2021) online: <<https://globalnews.ca/news/7597303/alberta-rivers-coal-mines-contamination/>>.

²³ Letter from the Tribal Councils of the Confederated Salish and Kootenai Tribes and the Kootenai Tribe of Idaho to the Honourable Jonathan Wilkinson (12 May 2020) online (pdf): <iaac-aeic.gc.ca/050/documents/p80702/134822E.pdf>.

²⁴ Montem Resources, "Resuming Activities – Tent Mountain Mine Coal Handling and Processing Plan Project Description, Project Summary Table (February 2021), p 1, PDF p 3.

d. The Project will contribute to the already significant level of cumulative development in the area

Given the significant level of historical, ongoing and future planned development, it is critical that the cumulative impacts of this development on both sides of the Alberta-British Columbia Border be adequately assessed. Please see Figure 2 below depicting the current total anthropogenic footprint from a cumulative effects assessment conducted for the Grassy Mountain Project in 2018.

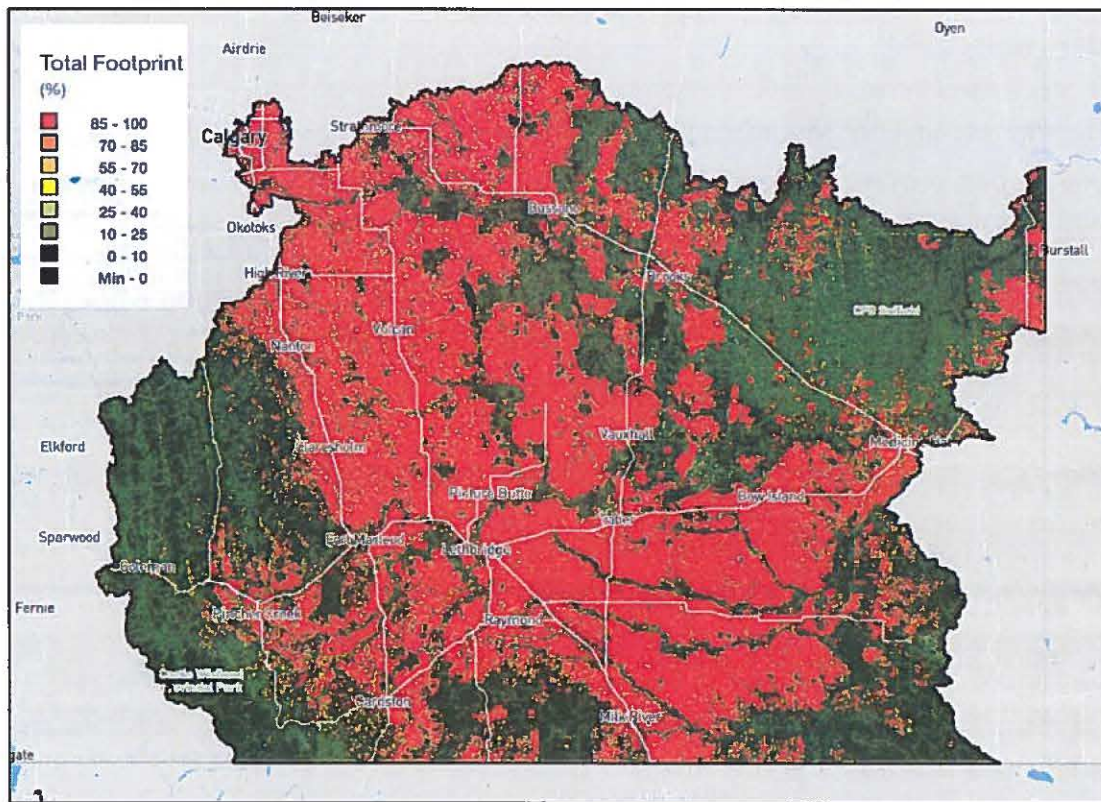


Figure 2 - Current total anthropogenic footprint in the regional study area. Red indicates high intensity footprint while green indicates low intensity footprint. The legend shows the proportion of each pixel occupied by footprint features.²⁵

²⁵ IEG Consulting, "Cumulative effects assessment for Kainai First Nation" (9 November 2018) Figure 2, p 8, PDF p 17.

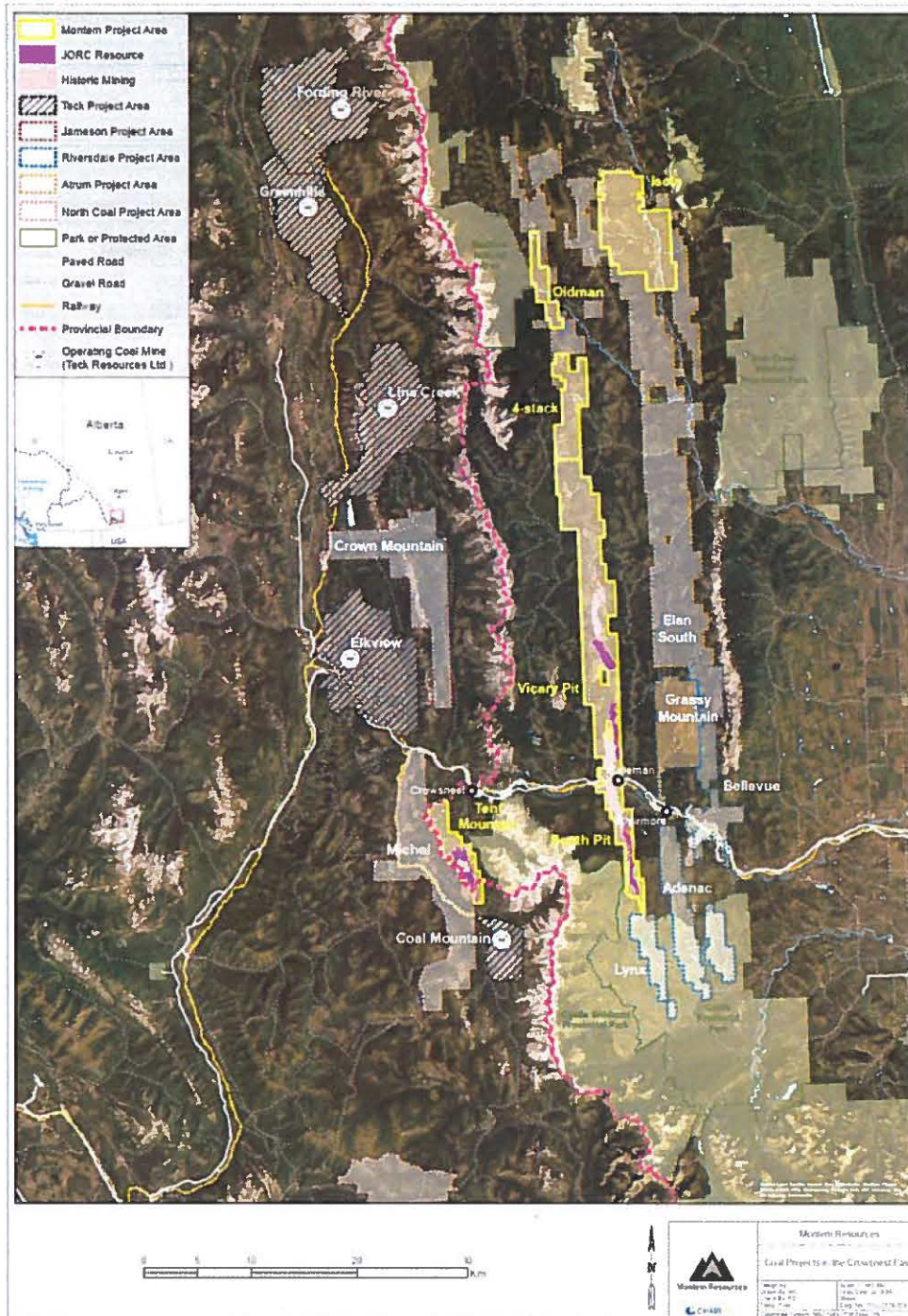
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Coal has been mined in the Elk Valley since the late 1890s, with the Elk Valley coalfield being one of the major coal-producing areas in Canada. This specific site has already been mined for nearly 40 years.

Other projects planned in the vicinity of Tent Mountain include North Coal's Michel Coal Project, an expansion of Teck's Fording River Operations, Atrum's Isolation South Lease, NWP's Crown Mountain Mine, and Riversdale Resource Limited's Grassy Mountain Coal Mine. This is in addition to the already existing projects including Teck's Line Creek Mine, Greenhills Mine, Elkview Mine, and Coal Mountain Mine. As well as Montem Resource's 10,000 ha Chinook Project near Coleman, Alberta, which it is pushing to develop, and its exploration projects: Isola, 4-Stack, and Oldman located further north of Tent Mountain and Chinook.

Please see below for a regional overview of the coal projects in the area.



As noted, North Coal's Michel Coal Project is located directly adjacent to Tent Mountain on the BC side of the border. Please see the Michel Coal Project boundary outlined in green.

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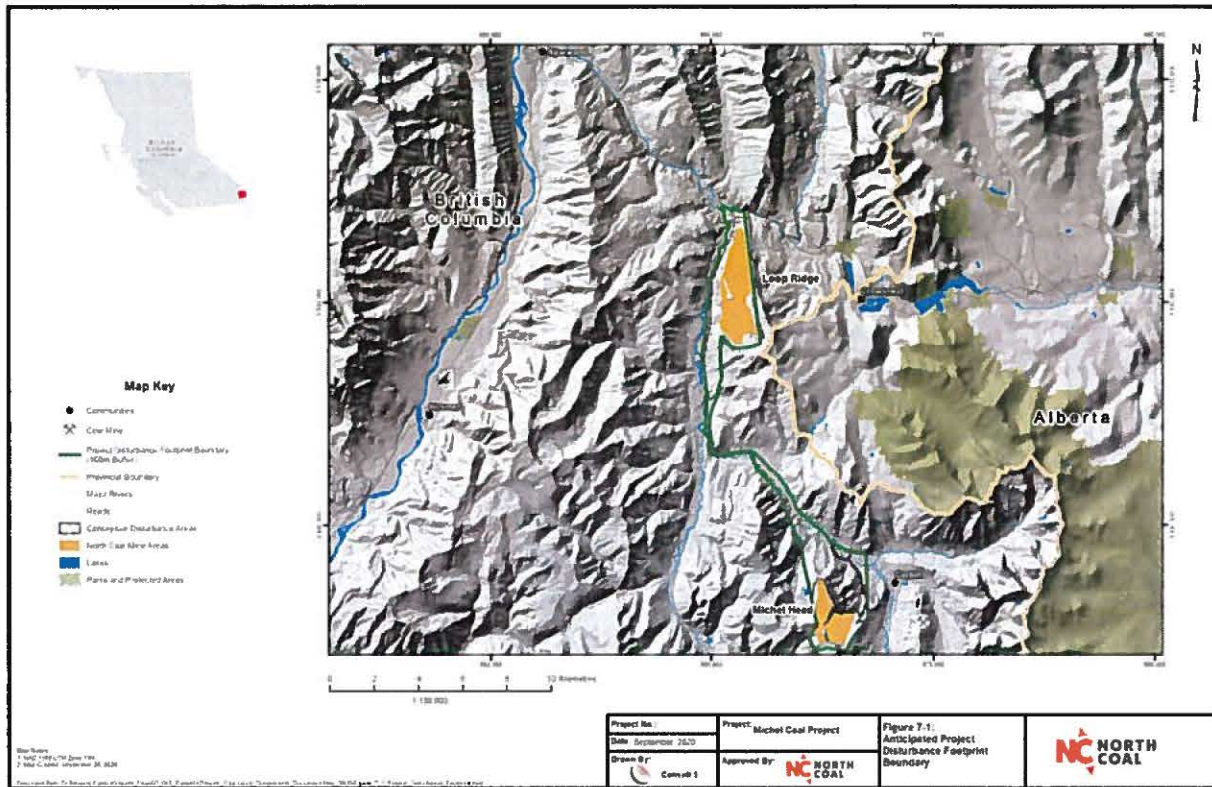


Figure 7-1: Anticipated Project Disturbance Footprint Boundary

Despite this extreme proximity, neither the Tent Mountain project Terms of Reference nor the Project summary expressly deal with the presence of the Michel Coal Project.

The cumulative impact of this activity has the potential to significantly and adversely impact the ecological integrity of the area, and Siksika's ability to use this area for the practice of their Aboriginal and Treaty rights now and well into the future. The combination of cumulative effects from existing and potential projects and the international effects of these mining activities requires assessment by the federal government.

e. Concern with regulatory approach

i. Insufficient Terms of Reference

In addition to the concerns set out above, Siksika has significant concerns that the draft Terms of Reference document prepared by Montem is insufficient. We note several areas of concern, including:

- the lack of reference to impacts to Aboriginal or Treaty rights;
- insufficient reference to environmentally sensitive context in which the Project is located;
- insufficient discussion of transboundary impacts;
- insufficient discussion of the proximity to North Coal's Michel Coal Project; and
- insufficient weight given to specific concerns around drinking water and water quality.

Further to this designation request, we anticipate providing a supplemental report with a preliminary review of the Terms of Reference, providing further detail with respect to Siksika's concern in this regard.

ii. Montem's view of the Project as restarting an existing mine is troubling

It is apparent from Montem's Project Summary that they view the project as having little impact to new lands due to their plan to 'restart' a mine on previously disturbed sites. When contemplating impacts to vegetation and wetlands, Montem notes that "much of the Project area is previously disturbed lands, either by previous mining operations or by other activities in this historically active area, there is very limited areas of undisturbed vegetation".²⁶ They make the same assertion with regard to soils, finding

²⁶ Project Summary, p 12, PDF p 14.

that “there are limited native soils present”.²⁷ They again make the same assertion with fish and other invertebrates.

Siksika takes issue with this approach. If the baseline data collected reflects a significantly disturbed mine area with no wildlife, plants, or fish that shows only the adverse impact the previous mining operation had on the environment. The baseline data should not reflect a previously disturbed mine that operated for decades, but the site before mining began. This will give an accurate picture of what the impacts of mining on the site have been, and what the impacts will continue to be if mining continues.

Closing

There are strong indicators that Tent Mountain will have significant adverse effects that the Minister should consider in exercising their discretion to designate the Project under s. 9(1). Some of these effects include impacts on Siksika’s Aboriginal and Treaty rights, environmental impacts that cross provincial borders, harmful cumulative effects from multiple projects in the area (including the directly adjacent Michel Coal Project), and adverse effects on fish and fish habitat, adverse effects on species of special importance, and environmentally sensitive conservation lands.

In addition to the concerns raised above, there are significant concerns related to the significant coal development 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. A push that led the Alberta Government to, without appropriate consultation, rescind a decades old Coal Policy that protected these areas. Although that decision has since been temporarily revoked subject to improved consultation, the area remains under immense pressure from coal development.

²⁷ Project Summary, p 12, PDF p 14.

We also note again that the production capacity is only 75 tonnes per day below the threshold for automatic federal review.

Given all of these factors and the potential impacts of this project on multiple areas of federal jurisdiction, Siksika request that Tent Mountain be designated by the Minister under the discretion provided in s 9(1) of the Act.

Siksika Nation

Per: <original signed by>

Chief Ouray Crowfoot

CC:

Janet Shaw, Impact Assessment Agency of Canada (janet.shaw@canada.ca)
Shireen Ouellet (souellet@montem-resources.com)
Cedric Solway, Siksika Nation, Consultation Manager (CedricS@siksikanation.com)
Clayton Leonard, JFK Law, (cleonard@jfkllaw.ca)
Jeff Langlois, JFK Law, (jlanglois@jfkllaw.ca)

Encl.

Government of Alberta, "Livingstone-Porcupine Hills Land Footprint Management Plan" (2018)

Dermot O'Connor, *Review of the Literature on Blackfoot Use and Occupancy of the Crowsnest Pass & East Kootenays*, Oak Road Concepts, (May 2020)

IEG Consulting, "Cumulative effects assessment for Siksika First Nation" (9 November 2018)

Montem Resources, "Resuming Activities – Tent Mountain Mine Coal Handling and Processing Plan Project Description, Project Summary Table" (February 2021)

Montem Resources, "Proposed Terms Of Reference Environmental Impact Assessment Report For Montem Resources Proposed Tent Mountain Project" (3 February 2021)

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APPENDIX “B”



Alberta Wilderness Association
"Defending Wild Alberta through Awareness and Action"

March 28, 2021

The Honourable Jonathan Wilkinson,
Minister of Environment and Climate Change,
House of Commons,
Ottawa, Ontario K1A 0A6

Request to Designate Montem Resources' Tent Mountain Project Under Section 9(1) of the *Impact Assessment Act*

Dear Minister Wilkinson:

Alberta Wilderness Association, formed in 1965, is one of the oldest wilderness conservation organizations in Alberta. Formed around a kitchen table within sight of the landscapes that concern us in this designation request, AWA now has more than 7,500 members and supporters; you will find our members in 224 Alberta communities as well as elsewhere in Canada and around the world.

In its early days, AWA played vital roles in creating Alberta's Coal Policy and Eastern Slopes Policy, policies that helped to protect the Eastern Slopes, an iconic Canadian landscape. This brief returns to those subjects. Alberta Wilderness Association ("AWA") is writing with respect to a proposal from Montem Resources Alberta Operations ("Montem") to commence metallurgical coal mining at its Tent Mountain project ("Tent Mountain") located adjacent to the British Columbia border in the Municipality of Crowsnest Pass. AWA requests you exercise your authority under section 9(1) of the *Impact Assessment Act* (the "IAA") to determine that Tent Mountain should be a designated project under the IAA.

Further to the Independent Assessment Agency of Canada's ("IAAC") "Operational Guide: Designating a Project under the *Impact Assessment Act*" the name of the project is the Tent Mountain Project; the project proponent is Montem Resources Alberta Operations Ltd., a subsidiary of Montem Resources Corp.; the corporation's address is 7720 17 Avenue, PO Box 610, Coleman, Alberta T0K 0M0 (Montem Resources Corp. is located at 415-938 Howe Street, Vancouver, BC V6Z 1N9; the project is located in the Municipality of Crowsnest Pass. The proposed mine is an "open-pit surface coal mine" designed to produce 4,925 raw tonnes of metallurgical coal per day.¹ Montem proposes a 14 year-program of operations.² Additional information about Tent Mountain is available on the company's website.³

¹ Montem Resources Ltd., "Proposed Terms of Reference, Environmental Impact Assessment Report For Montem Resources Proposed Tent Mountain Project," 5. <https://montem-resources.com/wp-content/uploads/2021/02/Proposed-Terms-of-Reference-February-2021.pdf>.

² Montem Resources Alberta Operations Ltd., "Tent Mountain Project: Project Description/Project Summary Table," 1. <https://montem-resources.com/wp-content/uploads/2021/02/Project-Summary-Final-11-Feb2021.pdf45.pdf>

³ Montem Resources, "Tent Mountain Mine," <https://montem-resources.com/projects/tent-mountain/>.

Minister Wilkinson, AWA requests you use your authority under section 9(1) of the IAA to designate Tent Mountain for a federal impact assessment for the following reasons:

1. The mine's production design of 4,925 tonnes of coal per day is just 75 tonnes (or 1.5%) shy of the threshold set in Section 18(a) of the Schedule to the *Physical Activities Regulations* (SOR/2019-285) for a new coal mine to be a designated project under Section 2 of the IAA.
2. Tent Mountain has the potential to cause adverse effects to species listed under Canada's *Species at Risk Act* ("SARA")
3. Tent Mountain has the potential to cause adverse effects to the environment in the United States.
4. Tent Mountain has the potential to cause adverse effects to the environment in adjacent provinces.
5. Tent Mountain has the potential to cause adverse effects to the environment that could affect detrimentally the Indigenous peoples of Canada.
6. As one of at least ten new coal mining projects being contemplated in Alberta's Rockies and Foothills Tent Mountain has the potential to contribute to cumulative effects with respect to greenhouse gases that will hinder Canada's ability to meet its climate change commitments.
7. Alberta's environmental assessment/regulatory processes are unlikely to give sufficient consideration to the significant public concerns that have been raised about coal mining in Alberta.

Each of these reasons will be addressed below.

Tent Mountain's declared production design capacity and the Section 18(a) Threshold

In the Annex to the IAAC's Operational Guide for designating a project under the IAA, the first question reads: "Is the project near a threshold set in the Project list?" The answer is yes.

Tent Mountain is a whisker short of triggering the 5,000 tonne per day designated project threshold for new coal mines outlined in Section 18(a) of the Schedule to the *Physical Activities Regulations*. The distinction between a mine producing 4,925 tonnes per day and one producing 5,000 tonnes per day is a distinction without a difference. Teck Resources featured a Komatsu 930E truck in a 2014 story about improving haul truck efficiency at its Elk Valley B.C. operations.⁴ The capacity of that truck is 290 metric tonnes. In other words, the slight difference between the new coal mines threshold set in the *Physical Activities Regulations* and Tent Mountain's declared production capacity constitutes just one-quarter of what a truck like the Komatsu 930E is rated to carry in one load. It seems unreasonable to suggest that, in respect to mining and coal processing infrastructure, there is a noticeable – let alone a significant difference – between a 4,925 tonne per day mining operation and a 5,000 tonne per day facility. Given the miniscule gap (1.5%) between Tent Mountain's declared production capacity and the Section 18(a) threshold the Minister should not interpret the guidance in Section 18(a) as an absolute threshold preventing the federal government from assessing the potential effects of Tent Mountain.

Tent Mountain's potential to cause adverse effects to species listed under Canada's *Species at Risk Act* ("SARA")

The second reason AWA requests a section 9 (1) designation is because Tent Mountain has the potential to cause adverse effects to species listed under SARA. These species are: Whitebark Pine,

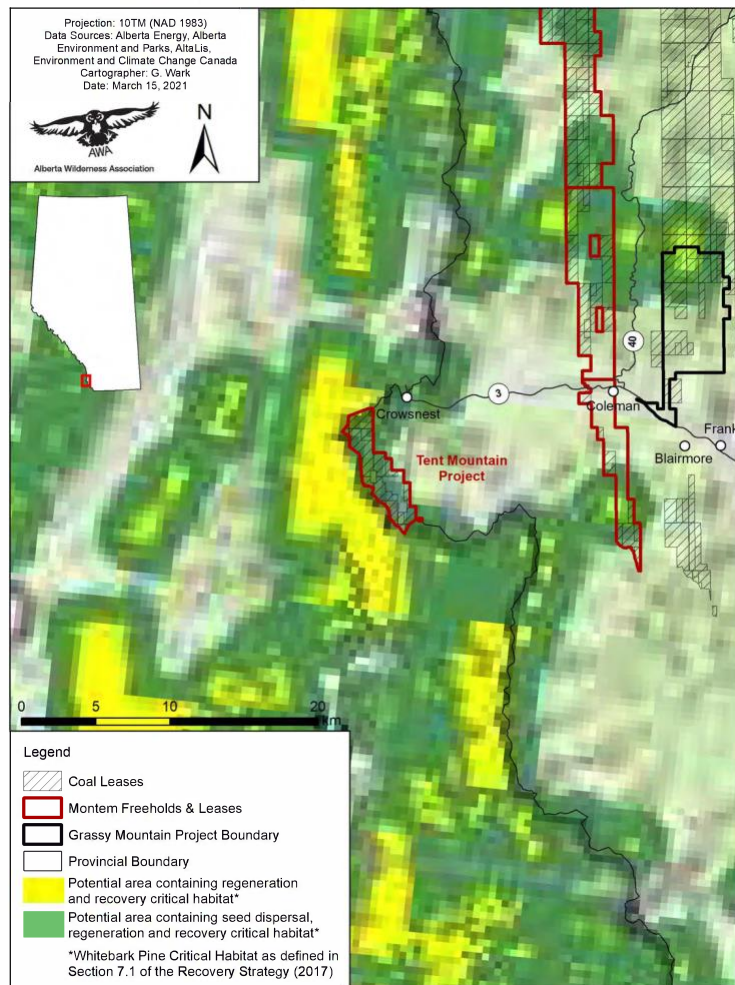
⁴ Teck Resources Ltd., "Improving Haul Truck Productivity," (2014), <https://www.teck.com/news/stories/2014/improving-haul-truck-productivity>.

Grizzly Bear, and Westslope Cutthroat Trout. Westslope Cutthroat Trout will be discussed in the cumulative effects section of this submission.

Whitebark Pine (*Pinus albicaulis*)

In 2012, whitebark pine was designated as Endangered in SARA Schedule 1. Environment and Climate Change Canada’s (“ECCC”) proposed recovery strategy for whitebark pine estimates that Canada is home to 56 percent of the world’s whitebark pine population.⁵ All of this Canadian population is found in Alberta and British Columbia. Figure 1 is derived from the data set ECCC used in the 2017 proposed recovery strategy to generate the range maps found there.⁶ Virtually the entire Tent Mountain site falls within the two kilometre “potential area containing regeneration and recovery critical habitat” stipulated in that recovery plan. As noted in the proposed recovery strategy, local inventory and assessment of whitebark pine density must be completed in order to see if this potential is realized. Figure 1 also indicates that other planned projects in the area such as Montem’s Chinook project and Benga Mining’s

Figure 1: Tent Mountain Project and Proposed Recovery Whitebark Pine Critical Habitat



Note (regarding resolution of imagery): Potential area containing regeneration and recovery critical habitat (yellow) for Whitebark Pine does not fall within the Tent Mountain Project Boundary.

⁵ Environment and Climate Change Canada, *Recovery Strategy for the Whitebark Pine (Pinus albicaulis) in Canada [Proposed]*, (Ottawa: Environment and Climate Change Canada, 2017), v.

⁶ *Ibid.*, 34.

Grassy Mountain project will be located in potential critical habitat locations for whitebark pine. If, as we argue later, these projects should be considered in a cumulative effects assessment, they create additional potential adverse effects possibilities for whitebark pine in southwestern Alberta.

Grizzly Bear (*Ursus arctos*)

In 2018 the grizzly bear population in western Canada was listed as a species of Special Concern in Schedule 1 of SARA. In its reason for this designation, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) estimated the Canadian population to be 26,000 but concluded the number of mature bears was uncertain and “could be close to 10,000.” While the overall Canadian population may not have declined over the past generation, “a number of populations in the southern extent of its range in Alberta and southern BC are known to be declining and there are concerns about unsustainable mortality rates there and in parts of Yukon.”⁷

Provincially, in 2002 Alberta’s Endangered Species Conservation Committee recommended assigning a *Threatened* designation to the province’s grizzly bear population under the *Wildlife Act*.⁸ The provincial government didn’t accept this recommendation until 2010. Prior to accepting the recommendation, the government published a grizzly bear recovery plan in 2008.⁹ While an update to Alberta’s first grizzly bear recovery plan was circulated for public comment in 2016, it was never implemented.¹⁰ In 2019, provincial carnivore specialist Paul Frame reportedly said that Alberta was still using the 2008 plan and didn’t feel a great deal of urgency to implement the updated planning document.¹¹

In 2010 Alberta estimated the grizzly bear population to be 691 animals, approximately 359 of which were likely to be mature enough to reproduce. This 2010 status update, prepared by Dr. Marco Festa-Bianchet, noted that south of Highway 1 “grizzly bears are restricted to a narrow strip of habitat along the B.C. border.”¹²

AWA requests a federal assessment of Tent Mountain because valued ecological components such as grizzly bears don’t respect political boundaries. In other words, this species of special concern is not a distinctive Alberta population – the grizzly bear population at risk here is a regional population that relies on healthy, intact landscapes in southeastern British Columbia, southwestern Alberta, and northwestern Montana. In this respect Tent Mountain has the potential to cause adverse effects to valuable environmental features in an adjacent province (British Columbia) and the United States.

⁷ Government of Canada, “Grizzly Bear (*Ursus arctos*), Western population,” https://species-registry.canada.ca/index-en.html#/species/1195-863#cosewic_assessment, accessed March 18, 2021.

⁸ In Alberta, a *Threatened* species is “(a) species likely to become endangered if limiting factors are not reversed.” An *Endangered* species describes “(a) species facing imminent extirpation or extinction.” Marco Festa-Bianchet, *Status of the Grizzly Bear (*Ursus arctos*) in Alberta: Update 2010*, (Government of Alberta, February 2010), 43.

⁹ Alberta, *Alberta Grizzly Bear Recovery Plan 2008-2013*, (Government of Alberta, March 2008).

¹⁰ Alberta, *Grizzly Bear Recovery Planning*, (Government of Alberta, May 2016), <https://open.alberta.ca/dataset/70a45aa0-91fa-43d1-826e-f96f5e0300cd/resource/4ccf2a04-b5a6-43c6-bd18-c743a4e8ebf4/download/2016-alberta-grizzly-bear-recovery-planning-may-2016.pdf>.

¹¹ Andrew Jeffrey, “More focus needed to recover grizzly population in Alberta, says bear safety expert,” *The Toronto Star*, 2 July 2019.

¹² Festa-Bianchet, *Status of the Grizzly Bear (*Ursus arctos*) in Alberta: Update 2010*, iv.

Governments and academics alike recognize the regional character of the grizzly bear population found in the corner of Alberta where Montem proposes to recommence open-pit coal mining. The Alberta government’s 2020 report on grizzly bear occurrence in Bear Management Area (BMA) 6 states:

Grizzly bears in BMA 6 are part of a larger population that includes Montana and British Columbia (Proctor et al, 2012). There is no ecological basis for partitioning an Alberta specific portion of this population.¹³ (my emphasis)

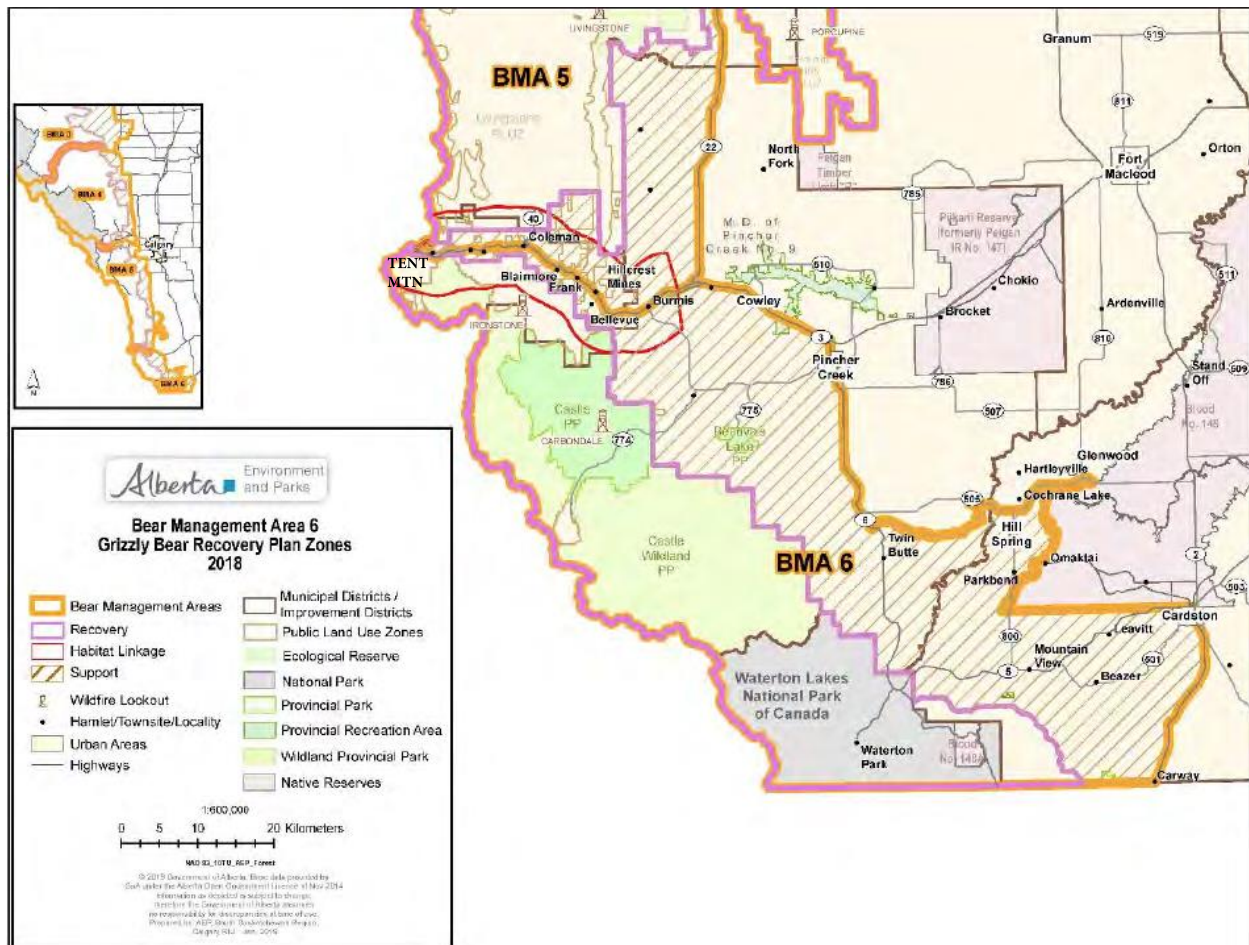


Figure 2: Alberta Bear Management Area 6

¹³ Alberta, Environment and Parks, *Grizzly Bear Occurrence Summary 2019: Bear Management Area (BMA) 6*, (Government of Alberta, December 2020), 8. This language is virtually to that used by Morehouse and Boyce four years earlier. They wrote in 2016: “Partitioning an Alberta portion of this inter-jurisdictional grizzly bear population as a separate management unit has no ecological basis.” See Andrea T. Morehouse and Mark S. Boyce, “Grizzly Bears Without Borders: Spatially Explicit Capture-Recapture in Southwestern Alberta,” *The Journal of Wildlife Management*, Vol. 80, no. 7 (2016), 1153.

As Figure 2 indicates, Tent Mountain would be located on the southwestern portion of a habitat linkage zone in Alberta. This zone “identifies key wildlife movement corridors that also have significant development within the urban areas, major highways and railways. In the case of BMA 6, this included Highway 3 in the Crowsnest Pass.”¹⁴ It is reasonable to surmise that Tent Mountain’s lease footprint (approximately 1,847 hectares or 18.47 square kilometres) with its accompanying infrastructure, activity, and noise will reduce the utility of this linkage zone for grizzly bears. Further to the interjurisdictional nature of the grizzly bear population in BMA 6, the Interagency Grizzly Bear Committee (IGBC), created in 1983, is an international intergovernmental response to the regional/international character of grizzly bear populations in this part of North America. The Alberta and British Columbia governments have members on the IGBC’s Northern Continental Divide Ecosystem Subcommittee.¹⁵

The regional character of the grizzly bear population is well-recognized in the academic literature. In this regard, Alberta’s 2019 occurrence summary for grizzly bears in BMA 6 referred to the 2012 Proctor et al study. That study opened by noting that species movement is important in meeting their ecological requirements and helping species to persist in the face of the types of dramatic changes raised by human settlement, development, and climate change; “(t)he interruption of movement by fragmentation is a major force underlying the recent extinction crisis.”¹⁶ The Crowsnest Pass region was included there in the territory identified as the southern limit of the grizzly’s contiguous range in North America. As such this region is part of “the active front for future changes in range.”¹⁷ (my emphasis) “Extensive fragmentation” characterized the area in the vicinity of the Canada-U.S. border. While both male and female bears exhibited reductions in their movement rates as settlement and traffic increased, the female movement rates dropped more dramatically in the presence of these factors. This difference between male/female movements concerned the researchers. “Without female connectivity,” they noted, “small populations are not viable over the long term. The persistence of this regional female metapopulation likely will require strategic connectivity management.”¹⁸ An important theme in this article is that fragmented populations of species such as grizzly bears threaten population health and diversity and that management should minimize obstacles contributing to population fragmentation.

Morehouse and Boyce highlighted the inter-jurisdictional nature of the grizzly bear population in southwest Alberta, southeast British Columbia, and northwest Montana in their 2016 article. To a significant degree, they explored the extent to which grizzly bears in BMA 6 were resident bears as opposed to bears that used the region but resided outside of the BMA. They concluded that a very significant proportion of the bears they identified in BMA 6 in 2013 and 2014 came from outside of the BMA. They estimated there were 82.4 resident Alberta bears there in 2013 and 54.6 resident bears there in 2014. But, they estimated that approximately 172 grizzly bears used the study area in both 2013 and

¹⁴ *Grizzly Bear Occurrence Summary 2019*, 5.

¹⁵ Interagency Grizzly Bear Committee, “Northern Continental Divide Ecosystem Subcommittee,” <http://igbconline.org/n-continental-divide-subcommittee/>. Representatives of the Alberta and British Columbia governments also are listed as Canadian partners of the IGBC Executive Committee. See <http://igbconline.org/executive-committee/>. British Columbia has a member of the IGBC’s Selkirk/Cabinet-Yaak Ecosystems Subcommittee. See <http://igbconline.org/selkirkcabinet-yaak-subcommittee/>.

¹⁶ Michael F. Proctor et al, “Population Fragmentation and Inter-Ecosystem Movements of Grizzly Bears in Western Canada and the Northern United States,” *Wildlife Monographs*, no. 180 (2012), 5.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 2.

2014.¹⁹ According to these estimates, a majority of the grizzly bears using BMA 6 were non-resident bears that were detected previously in either British Columbia or Montana. They hypothesized that the decline in the number of resident Alberta bears from 2013 to 2014 may have occurred because of a poor berry crop in Alberta relative to a good huckleberry crop in B.C.'s Flathead Valley.²⁰ If this hypothesis was correct, it further emphasizes the importance of ensuring that grizzly bears may move relatively freely from one jurisdiction to another. A coal mine such as Tent Mountain would erect a significant obstacle to such movement.

Cumulative Effects: Grizzly Bear, Whitebark Pine, Westslope Cutthroat Trout

The Impact Assessment Agency's operational guide to designating a project under the *IAA* states that the Agency may take into account if "there are proposals for multiple activities within the same region that may be a source of cumulative effects." AWA believes this factor is central to why a federal impact assessment should be conducted into Tent Mountain. Section 6 (1) (m) of the *IAA* describes one of the purposes of the Act, in part, as: "to encourage the assessment of the cumulative effects of physical activities in a region..." In the event Tent Mountain was categorized as a designated project, Section 22 (1)(a)(ii) of the Act states that one of the facts to be considered in an impact assessment would be: "any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out..."

Alberta's environmental assessment legislation, the *Environmental Protection and Enhancement Act (EPEA)*, has never explicitly included the phrase "cumulative effects." Introduced and passed in 1993, Section 47 (d) of the EPEA instead stated that an environmental impact assessment report normally shall include: "a description of potential positive and negative environmental, social, economic and cultural impacts of the proposed activity, including cumulative, regional, temporal and spatial considerations."²¹ But in 2000, a policy guide to preparing environmental impact assessments under the Act defined cumulative effects as "the changes to the environment caused by an activity in combination with other past, present, and reasonably foreseeable human activities."²² More recently, the *Livingstone-Porcupine Hills Land Footprint Management Plan* articulated a very similar understanding: "Cumulative effects, *cumulative impacts* – the combined effects of past, present and reasonably foreseeable future land-use activities on the environment."²³

If Tent Mountain is considered through a cumulative effects lens as defined in either the *IAA* or provincial policy documents, AWA is very concerned that the potential adverse effects of the Tent Mountain project will be magnified. The potential threats Tent Mountain will present to the inter-jurisdictional grizzly bear population will be magnified. So too will the threats to whitebark pine. Considering cumulative effects also raises the very real possibility that serious adverse effects will beset westslope cutthroat trout – another endangered species under SARA.

¹⁹ Morehouse and Boyce, "Grizzly Bears Without Borders," *The Journal of Wildlife Management*, Vol. 80, no. 7 (2016), 1160.

²⁰ *Ibid.*, 1162.

²¹ This identical section is 49(d) in the current version of the *Environmental Protection and Enhancement Act*.

²² Alberta, "Cumulative Effects Assessment in Environmental Impact Assessment Reports Required under the Alberta Environmental Protection and Enhancement Act," (January 2000), 2.

<https://open.alberta.ca/dataset/ffb3a8b8-8eab-421f-98aa-56f21dc98dbe/resource/a87805b5-96c4-45a8-8899-92fafa3b0503/download/cumulativeeffectseiareportsunderepea-a.pdf>

²³ Alberta Environment and Parks, *Livingstone-Porcupine Hills Land Footprint Management Plan*, (Government of Alberta: May 2018), 1.

AWA's concern arises from what we believe is a reasonable understanding of "other physical activities...that will be carried out..." or of "reasonably foreseeable human activities/ reasonably foreseeable future land-use activities on the environment." During the Joint Review Panel hearing into Benga Mining's Grassy Mountain Coal Project, BengaMining/Riversdale Resources officials argued that, with respect to future activities, a project must have applied for regulatory approval in order to be included in a cumulative effects analysis.²⁴ At that hearing, AWA's counsel argued that Benga's interpretation of what projects and activities should be considered in a cumulative effects analysis was too strict.²⁵

With respect to Tent Mountain, AWA submits that, at the very least, the ambitions and plans that Montem Resources itself is promoting for the Crowsnest Pass region must be considered in a cumulative effects assessment. Montem describes Tent Mountain as the first step in a multi-step program of coal development that would see Montem develop four additional mining projects: Chinook, Isola, 4-Stack, and Oldman. AWA has calculated that the coal leases for these projects cover approximately 17,740 hectares or 177.4 square kilometres of the Rockies/Foothills found in southwestern Alberta.²⁶

In a September 2020 video Montem states: "Our plan is to use the free cash flow from the restart of the Tent Mountain mine to fund the development of the larger Chinook project. We expect to receive permission for the restart in 2021 and intend to use a combination of equipment finance, offtake finance, debt, and contract mining services to reduce the equity required to restart the mine. A key component of the equity will be creating a joint venture at Tent Mountain with an aligned offtake partner and talks with customers are already underway."²⁷ In a second video, Peter Doyle, Montem's Managing Director and Chief Executive Officer, says: "We have three main projects. The first is the Tent Mountain mine which we are restarting and we expect first coal in 2022. The second is the Chinook project which has the potential for large scale developments of open-cut coking coal and the third being our exploration areas such as Isola where we've excitingly just found an exploration target of 900 million tonnes."²⁸

Figure 3 suggests how coal will industrialize the landscape of Alberta's Eastern Slopes if the coal development projects currently promoted by fledgling mining companies proceed.²⁹ Together, they promise to shrink severely, if not eliminate entirely, the "narrow strip of habitat along the B.C. border" where Festa-Bianchet concluded grizzly bears were restricted to in 2010. Much of the core grizzly bear habitat in southwestern Alberta will vanish if these projects proceed. Developing only the Montem properties, properties Montem clearly represents publicly as "foreseeable future land-use activities," heightens the risk that the regional grizzly bear population will become fragmented further. Grizzlies likely will be displaced and the future will darken in this part of North America for this SARA species of Special Concern, for this *Threatened* species under Alberta's *Wildlife Act*.

²⁴ Canada, Impact Assessment Agency, *Joint Review Panel Public Hearing, Grassy Mountain Coal Project – Benga Mining Limited*, Vol 13, November 12, 2020, 2601-2625. <https://www.iaac-aeic.gc.ca/050/documents/p80101/136732E.pdf>

²⁵ Alberta Wilderness Association participated in the Grassy Mountain hearing as part of the "Coalition of Alberta Wilderness Association and Grassy Mountain Group."

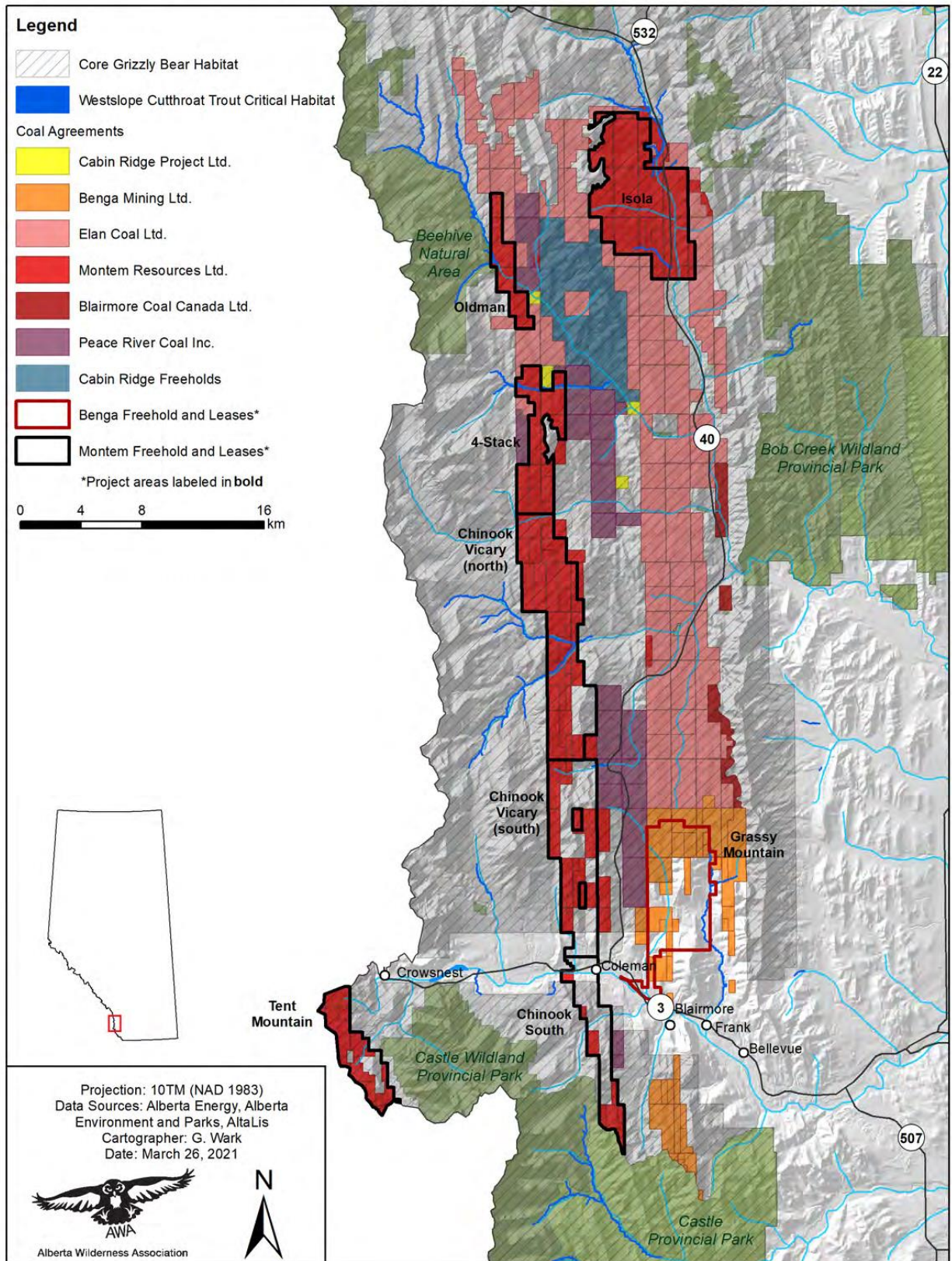
²⁶ AWA estimates the coal leases associated with the Chinook project to amount to 9,746 hectares. We estimate the lease footprints of Isola, 4-Stack, and Oldman respectively to be 4,832, 2,138, and 1,024 hectares.

²⁷ Montem Resources, "Montem Resources Company Overview," (video), September 14, 2020. <https://www.youtube.com/watch?app=desktop&v=ByYS9Ng-EuQ&feature=youtu.be>

²⁸ Montem Resources, "Montem Resources Overview with Managing Director & Chief Executive Officer Peter Doyle," (video), September 14, 2020. <https://www.youtube.com/watch?v=nIRNYQMfZaQ>

²⁹ None of the companies identified in Figure 3 have operating coal mines anywhere in the world.

Figure 3. Coal Leases and Species at Risk Habitat along the Southern Eastern Slopes



Minister Wilkinson might well wonder why a federal assessment, considering cumulative effects, is needed since the grizzly is a *Threatened* species in Alberta and provincial assessment legislation recognizes the need to consider cumulative considerations. Frankly, AWA seeks a federal assessment because Alberta's assessment and regulatory histories don't offer any promise that Alberta will conduct the robust, fair interpretation of cumulative effects that is essential to healthier futures for species at risk.

Recent support for AWA's skepticism comes from the frigid reception the Alberta Energy Regulator, the agency responsible for the assessment/regulatory processes for coal in Alberta, gave to the Alberta Chapter of the Wildlife Society's efforts to encourage the Regulator to consider the cumulative effects of coal exploration projects in the Oldman River watershed in southwestern Alberta. As part of a statement of concern the Society filed on this issue, the Society referred to a cumulative effects analysis of the area it had commissioned with ALCES, a well-known and respected consulting firm specializing in cumulative effects analysis.³⁰ The report was sent to the provincial government. The AER replied that a public hearing wasn't required to consider the Society's concerns. The AER said concerns about cumulative effects should be addressed to Alberta Environment and Parks. The research presented in the 86-page ALCES report was dismissed with this statement: "The concerns you expressed are general and not supported by any evidence." As is the norm in the provincial regulatory process whenever an organization bases a statement of concern on the "public interest," the AER disqualified the Society by asserting that it was not "directly and adversely affected" by industrial activity on the Eastern Slopes.³¹ AWA finds the AER's dismissive approach to cumulative effects especially concerning since the AER ordered Montem Resources to prepare an environmental impact assessment report for Tent Mountain, a report the EPEA says should include cumulative considerations.³² The AER official who dismissed the Society's cumulative effects evidence is the designated Director under the EPEA responsible for Tent Mountain's environmental impact assessment.

Cumulative Effects: Whitebark Pine

Earlier we noted the extent to which the Tent Mountain mine site overlaps with what the 2017 Whitebark Pine recovery strategy identified as lands with the potential to have seed dispersal, regeneration, and recovery critical habitat. But this recovery plan, as well as a provincial plan for limber pine, was prepared in a policy setting where coal mining was not considered to be a likely land use.³³ Dr. Peter Achuff, a co-author of COSEWIC's Whitebark Pine assessment and the sole author of COSEWIC's Limber Pine assessment, concludes that:

the recovery plans for both species are obsolete in that habitat destruction from coal development was not considered to be a threat, because of the land use/coal development policies of the time. With recent changes in

³⁰ ALCES, *Cumulative Effects of Land Uses and Conservation Priorities in Alberta's Southern East Slope Watersheds*, (Undertaken for the Alberta Chapter of the Wildlife Society), March 2020.

<https://www.actws.ca/blog/2020/04/22/cumulative-effects-of-land-uses-in-albertas-southern-east-slope-watersheds-final-report/>

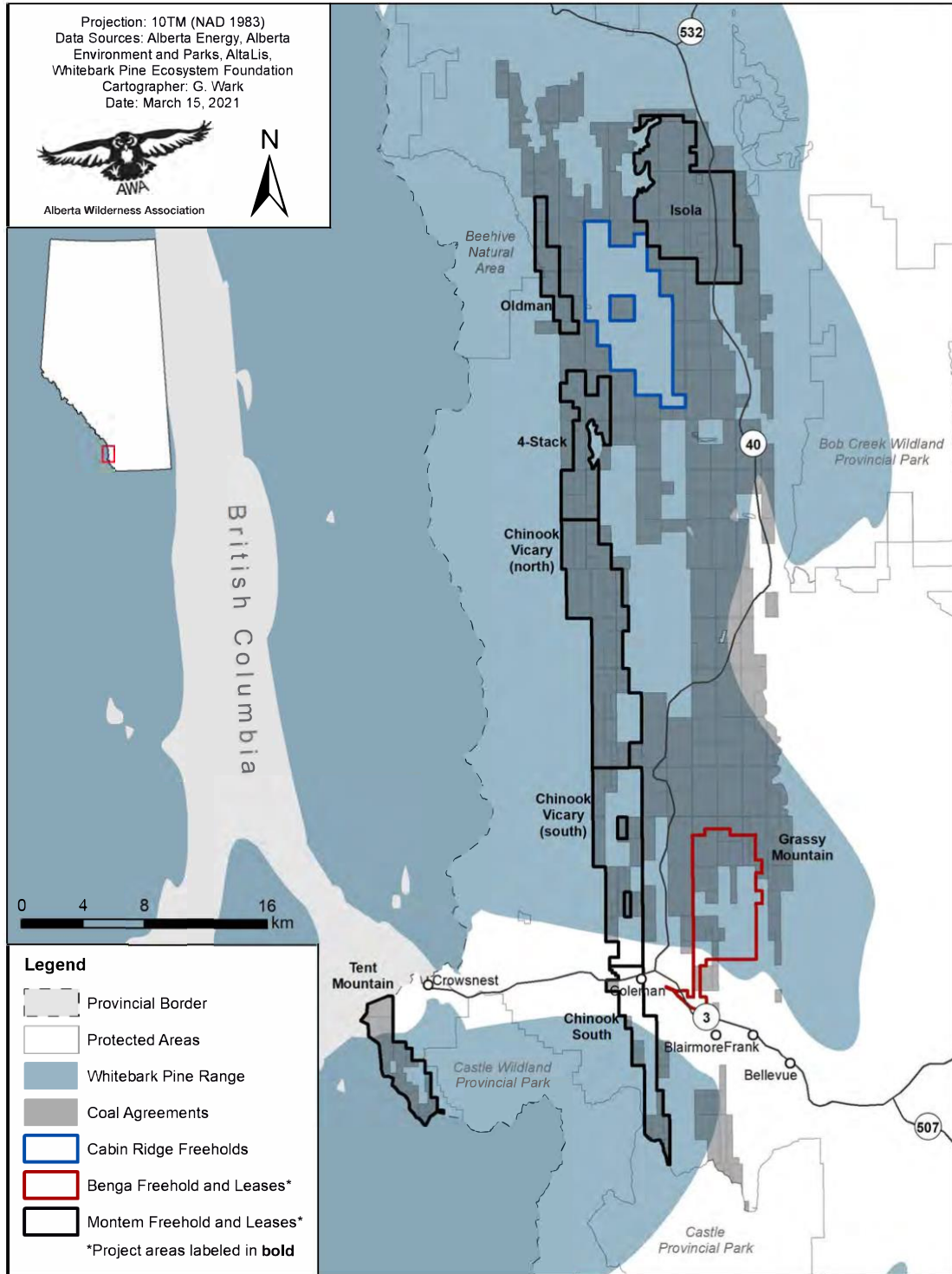
³¹ Letter from Steve Van Lingen, Director, Oil Sand Mining and Coal Regulatory Applications, Alberta Energy Regulator to Alex Beatty, Alberta Chapter of the Wildlife Society re Statement of Concern No. 31759, September 25, 2020.

³² Letter from Steven Van Lingen, Director, Mining, Regulatory Applications, Alberta Energy Regulator to Peter Doyle, Director and Chief Executive Officer, Montem Resources Alberta Operations Ltd, January 8, 2021.

³³ Limber pine is listed as Endangered in Alberta and has a provincial recovery plan. COSEWIC designated limber pine as Endangered in 2014. However, it hasn't been added yet to Schedule 1 of the *Species at Risk Act*, the list of wildlife species at risk in Canada. Committee on the Status of Endangered Wildlife in Canada, *COSEWIC Assessment and Status Report on the Limber Pine (Pinus flexilis) in Canada*, (Canada: 2014), https://www.registrelp-sararegistry.gc.ca/virtual_sara/files/cosewic/sr_Limber%20Pine_2014_e.pdf.

coal policy, habitat destruction becomes a major risk and the plans need to be revised.

Figure 4: Coal Leases and Whitebark Pine Range along Alberta's Southern Eastern Slopes



Achuff proceeds to question, given the absence of provincial regulations making it an offense to kill or harm these species and Ottawa's reluctance to intervene through SARA, whether either Alberta or Ottawa are fulfilling their duties to protect these legally listed species at risk.³⁴

Figure 4 graphically confirms Achuff's point about the adverse effects for Whitebark pine in Alberta that could accompany the scale of coal development some imagine for the future of Alberta's Eastern Slopes. Given the potential scale of these developments and the potential adverse effects for Endangered Whitebark Pine, AWA urges Minister Wilkinson to designate Tent Mountain for a federal impact assessment and establish the cumulative effects of coal mining on species at risk as an important priority of that assessment.

Cumulative Effects: Westslope Cutthroat Trout

COSEWIC designated the Westslope Cutthroat Trout (*Onchorhynchus clarkii lewisi*), Alberta population as a Threatened species in 2005.³⁵ In 2013, Alberta westslope cutthroat trout was added to the Threatened species list in Schedule 1 of SARA and a recovery strategy was published in 2014.³⁶ In 2015, a critical habitat order was issued. In 2019, Fisheries and Oceans Canada issued a recovery strategy and action plan for this Alberta population.³⁷ The species profile for the Alberta population notes that, over the last 100 years, its range has contracted by more than 80 percent of its historic extent.³⁸ Although the 2019 recovery strategy/action plan amended the critical habitat for the Alberta population it noted that this habitat was "only partially identified at this point in time," that further critical habitat studies were required, and that additional critical habitat would be identified courtesy of those studies.³⁹ Mining was listed in the 2019 recovery strategy/action plan as an activity that would destroy critical habitat through sedimentation and through habitat loss, fragmentation, and/or alteration.⁴⁰

During the Grassy Mountain Coal Project Joint Review Panel hearing evidence was presented about the impact of that project on Gold Creek, critical habitat for westslope cutthroat trout. The evidence of those who opposed the Project because they assert Grassy Mountain will have adverse effects on Gold Creek and its resident trout speaks to the relevance of considering the cumulative effects of resuscitating

³⁴ Peter Achuff "Email correspondence with Ian Urquhart, Subject: Whitebark pine recovery and the Alberta government," 18 March 2021

³⁵ Committee on the Status of Endangered Wildlife in Canada, *COSEWIC Assessment and Status Report on the westslope cutthroat trout (Onchorhynchus clarkia lewisi) British Columbia population, Alberta population, in Canada*, (Canada: 2006), https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/cosewic/sr_onchorhynchus_clarkii_lewisi_e.pdf.

³⁶ Canada, Fisheries and Oceans Canada, *Recovery Strategy for the Alberta populations of Westslope Cutthroat Trout (Onchorhynchus clarkia lewisi) in Canada [Final]*, https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/plans/rs_truite_fardee_wstslp_cutthroat_trout_0314_e.pdf.

³⁷ Canada, Fisheries and Oceans Canada, *Recovery Strategy and Action Plan for the Westslope Cutthroat Trout (Onchorhynchus clarkia lewisi) Alberta Population (also known as Saskatchewan-Nelson River Populations) in Canada*, https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/plans/RsAp-TruiteFardeeOuestWestslopeCutthroatTrout-v00-2019-Eng.pdf.

³⁸ Canada, "Species Profile: Westslope Cutthroat Trout Saskatchewan – Nelson Rivers populations," https://wildlife-species.canada.ca/species-risk-registry/species/speciesDetails_e.cfm?sid=861. David Mayhood, in his evidence to the Grassy Mountain Coal Project Joint Review Panel Hearing, presented maps comparing the pre-1900 distribution of Westslope Cutthroat Trout with the 2013 distribution. He used the verb "decimated" to describe what has happened to this population. See David W. Mayhood, "Proposed Grassy Mountain Mine Effects on Trout Populations & their Critical Habitats," <https://www.iaac-aeic.gc.ca/050/documents/p80101/136832E.pdf>.

³⁹ Fisheries and Oceans Canada, *Recovery Strategy and Action Plan for the Westslope Cutthroat Trout (Onchorhynchus clarkia lewisi) Alberta Population*, vi.

⁴⁰ *Ibid.*, 22-23.

coal mining in southwestern Alberta.⁴¹ The Tent Mountain project itself may not have potential adverse effects on westslope cutthroat trout critical habitat. But, as Figure 3 shows, all of the projects Montem Resources hopes to pursue, projects that hinge on the approval of Tent Mountain, pose threats to westslope cutthroat critical habitat. Chinook, Isola, Oldman, and 4-Stack are all proposed to mine in areas containing critical habitat. Given that more work needs to be done to identify critical habitat for this Alberta population it is certainly plausible that Figure 3 underestimates both that habitat and the cumulative effects that Montem’s projects will have on this threatened species at risk population.

At the Grassy Mountain hearing David Mayhood, a fisheries expert retained by Timberwolf Wilderness Society, said:

Most of the genetic diversity of these populations in Alberta has been lost, along with the loss of the populations as a whole, along with massive losses of the populations and a very strong reduction in range and in population abundances. Accordingly, every remaining population is needed to maximize the chances of recovering this species in Alberta.⁴² (my emphasis)

This expert opinion, from a contributor to developing the westslope cutthroat trout recovery strategy, makes it imperative to consider how the cumulative effects of Montem’s proposed projects will affect the prospects for recovering the Alberta population of westslope cutthroat trout.

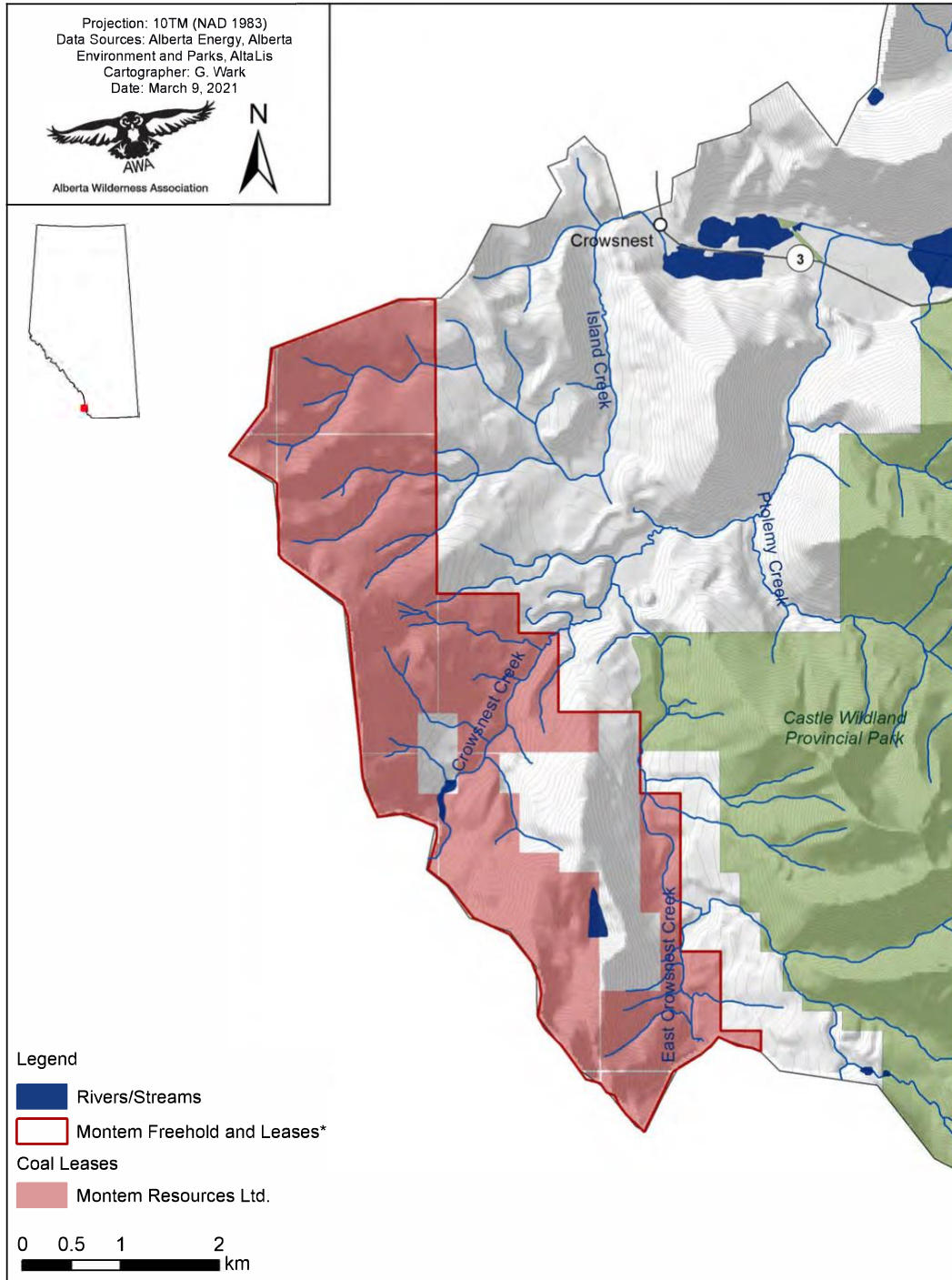
It also should be noted that, in the opinion of Lorne Fitch – another expert on westslope cutthroat trout in Alberta and member of the Alberta-Canada Westslope Cutthroat Trout Recovery Team, the Tent Mountain mine will destroy the possibility of stocking approximately 10 kilometres of potential habitat with pure strain westslope cutthroat trout. The Alberta government has deemed Crowsnest Creek and its tributary, East Crowsnest Creek, to be “fishless.” The potential habitat for westslope cutthroats is located above a waterfall on Crowsnest Creek. The waterfall is a natural barrier that would prevent fish below it from mixing with pure strain cutthroats that could be stocked above the waterfall.⁴³ Since these creeks run through Montem’s Tent Mountain leases a mine will take this trout recovery possibility off the table (see Figure 5). Potential cutthroat trout habitat will be destroyed.

⁴¹ For its part, Benga Mining asserted that the Grassy Mountain mine’s effects on westslope cutthroat trout would be “incidental to the Project, and will not jeopardize the survival or recovery of the species.” See Benga Mining Limited, “Final Argument,” (11 December 2020), 94, <https://jaac-aeic.gc.ca/050/documents/p80101/137172E.pdf>.

⁴² Canada, Impact Assessment Agency, *Joint Review Panel Public Hearing, Grassy Mountain Coal Project – Benga Mining Limited, Vol. 24, 26 November 2020*, 5134.

⁴³ Lorne Fitch, “Email correspondence with Ian Urquhart, Subject: The creek you mentioned,” 26 March 2021.

Figure 5: Crowsnest River Tributaries and Tent Mountain Project



Changes to the Environment That Occur in a Province or Territory Other Than the One Where the Project is Taking Place

Tent Mountain, as Montem Resources acknowledges, is a transboundary project. It “straddles both sides of the southwest Alberta and southeast British Columbia border.”⁴⁴ Its coal loading facility “will be located primarily with the Province of BC.”⁴⁵ Earlier in this designation request we noted how Tent Mountain, through its potential adverse effects on a regional grizzly bear population, may affect a valued ecological component in British Columbia. Figure 5 shows Tent Mountain is located in the headwaters of the Crowsnest River, a tributary through the Oldman River to the South Saskatchewan River, this coal project should be subject to a federal assessment due to its potential impact on waters in Saskatchewan. The purpose of the Master Agreement on Apportionment, an intergovernmental agreement between the governments of Canada, Alberta, Saskatchewan, and Manitoba, “is to apportion or share water equitably between the Prairie Provinces and to protect transboundary surface water quality and groundwater aquifers.”⁴⁶

Schedule A of the Master Agreement on Apportionment requires Alberta generally to “permit a quantity of water equal to one-half the natural flow of each watercourse to flow into the Province of Saskatchewan.” Figure 6 illustrates that Alberta has met the apportionment requirements of the Agreement.⁴⁷ Schedule E of the Agreement outlines water quality objectives. In 2018, the Prairie Provinces Water Board reported that water quality monitoring showed these objectives “were adhered to, on average, 97.1% for all parameters.”⁴⁸

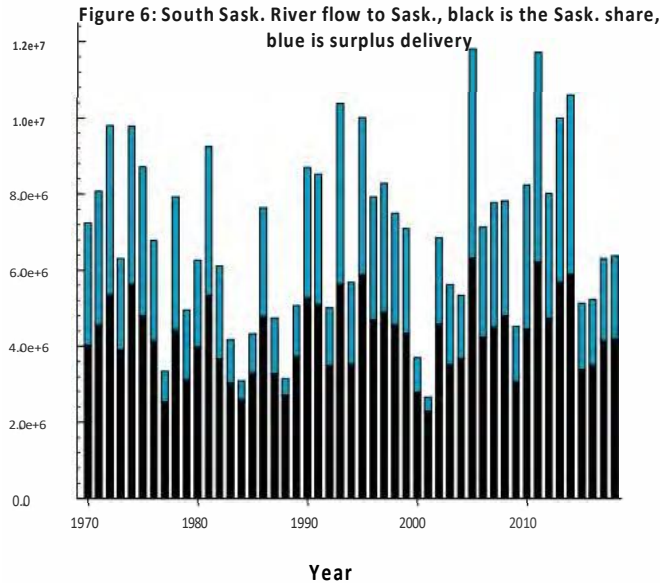
⁴⁴ Montem Resources, “Tent Mountain Mine,” <https://montem-resources.com/projects/tent-mountain/> (accessed March 20, 2021).

⁴⁵ Montem Resources, “Project Description,” 1, <https://montem-resources.com/wp-content/uploads/2021/02/Project-Summary-Final-11-Feb2021.pdf45.pdf> (accessed March 20, 2021).

⁴⁶ Prairie Provinces Water Board, <https://www.ppwb.ca>, (accessed March 21, 2021). The text of *The 1969 Master Agreement on Apportionment and By-Laws, Rules and Procedures*, (July 2015), may be found here: <https://www.ppwb.ca/uploads/media/5cad077eeae53/master-agreement.pdf?v1>

⁴⁷ Figure 6 is taken from Prairie Provinces Water Board, *Annual Report 2018-19*, 6. <https://www.ppwb.ca/uploads/media/6051ff1f2e92a/ppwb-annual-report-2018-19-web-locked.pdf?v1> The recorded flows are measured in cubic decametres. A cubic decametre has the capacity of one megalitre (one millions litres).

⁴⁸ *Ibid.*, 12.



Does coal mining in the headwaters of tributaries to the South Saskatchewan pose a risk to the aquatic environment in Saskatchewan that justifies a federal designation for Tent Mountain and similar projects? Dr. John Pomeroy, Canada Research Chair in Water Resources and Climate Change at the University of Saskatchewan, arguably thinks so. As an invited guest to CBC’s *Blue Sky*, a province-wide current affairs radio program in Saskatchewan, Pomeroy was asked what he thought of the proposed Grassy Mountain Coal Project in the Crowsnest Pass. He said:

It’s a great concern...For a water scientist to see this happen it’s just an abomination, to have these types of developments suggested in the headwaters of the rivers that supply drinking water and economy for most of Saskatchewan.⁴⁹

He added that Saskatchewan was “utterly reliant” on the South Saskatchewan. Only one percent of the stream flow to Lake Diefenbaker comes from runoff in Saskatchewan; 99 percent comes from the rivers and streams originating in Alberta.

With respect to selenium pollution, likely the most dangerous form of coal mining pollution in the public’s mind, Pomeroy noted that the water quality objective for selenium in the Master Agreement was one part per billion (Alberta’s water quality guideline for selenium, at two parts per billion, is more liberal). In B.C.’s Elk Valley, Teck has struggled to reduce selenium pollution levels. As Minister Wilkinson knows, the risks of selenium pollution to the Fording/Elk/Kootenay Rivers figured prominently in the requests he received to designate Teck’s Castle Project for an assessment under the IAA.⁵⁰ Pomeroy suggested the research on water quality in the Elk Valley showed that “the run-off from

⁴⁹ CBC, “Blue Sky with Gareth Materie: What effect could coal mining in Alberta have on water quality of Saskatchewan’s rivers?”, February 4, 2021. <https://www.cbc.ca/listen/live-radio/1-189-blue-sky/clip/15823131-what-effect-coal-mining-alberta-water-quality-saskatchewan>

⁵⁰ See, for example, the request from Ecojustice/Wildsight to designate Teck’s Castle Project under the *Physical Activities Regulation* and the *Impact Assessment Act*. Randy Christensen and Daniel Cheater, “Request for Designation of the Castle Project under s. 19(a) of the Schedule to the *Physical Activities Regulations* and s. 9(1) of the *Impact Assessment Act*,” (letter), 23 June 2020. <https://iaac-aeic.gc.ca/050/documents/p80702/135197E.pdf>

the mines in the Elk Valley...500 parts per billion of selenium...and a few spot cases of 800 parts per billion.” While water quality parameters for selenium and other toxic metals in the waters Albertans share with the people of Saskatchewan are thankfully met now, Canadians deserve assessments of coal mining projects in Alberta that will ensure those parameters are met in the future. The potential adverse effects that selenium pollution could have on aquatic life in the South Saskatchewan river system and on the drinking/irrigation supplies of water in Saskatchewan constitute another powerful reason why Minister Wilkinson should designate the Tent Mountain mine (and any other mine in Alberta’s Rocky Mountain headwaters) as a project requiring a federal assessment.

Potential Impact on the Section 35 Aboriginal and Treaty Rights

AWA supports the requests for designation of Tent Mountain the Minister has received from the Blood Tribe/Kainai and Siksika First Nations.⁵¹ They are correct to suggest Tent Mountain has the potential to cause adverse effects on their abilities to exercise the section 35 rights guaranteed to First Nations through the *Constitution Act, 1982*. AWA also suggests there is an important transboundary dimension to the Tent Mountain and other potential coal mines in the Crowsnest Pass region will have on First Nations. This transboundary dimension is best addressed through a federal assessment. The transboundary dimension is the fact that First Nations, who reside on the lands we call British Columbia, historically used lands in southwestern Alberta. During the Grassy Mountain Joint Review Panel hearing two “British Columbia” First Nations, the Ktunaxa Nation and the Shuswap Indian Band, participated to express their connections to the lands in the immediate vicinity of the Grassy Mountain Coal Project. Ray Warden, representing the Ktunaxa Nation, began by expressing his wish that the Panel would “understand that this area is important to Kutanaxa people. We will provide the Panel with evidence of Kutanaxa historic and contemporary use and occupation of the project area.”⁵² Regarding the importance of the Joint Review Panel Warden said “what this Panel does still matters as it is the Crown that must ensure its constitutional duties to Ktunaxa are upheld, and this Panel is a critical piece of that – of that work.”⁵³ Chief Barb Cote of the Shuswap Indian Band outlined the historical importance of the Crowsnest region to her people:

The Grassy Mountain Coal Project is situated within Shuswap Indian Band’s area of caretaker responsibility, also our traditional territory, which extends to the eastern foothills of the Rocky Mountains. Longstanding use of the Crowsnest Pass is known in our oral histories and documented in several archival documents, including that of the 1895 hunting agreement between the Shuswap Indian Band, Stoney Nakoda, St. Mary’s Band, also known as Aq’am, and Aikisqnuk. This agreement reflects our longstanding movement and governance through the Rocky Mountain range.⁵⁴

Since these Nations are located in British Columbia, Alberta’s Aboriginal Consultation Office never contacted them about the Grassy Mountain Coal Project. The Office did not prepare consultation reports

⁵¹ Chief Roy Fox, “Re: Request for federal review of Montem Resource’s Tent Mountain Project,” 2 March 2021, <https://iaac-aeic.gc.ca/050/documents/p81436/138289E.pdf>; Chief Ouray Crowfoot, “Re: Request for federal review of Montem Resource’s Tent Mountain Project,” 2 March 2021, <https://iaac-aeic.gc.ca/050/documents/p81436/138290E.pdf>.

⁵² Canada, Impact Assessment Agency, *Joint Review Panel Public Hearing, Grassy Mountain Coal Project – Benga Mining Limited, Vol. 1, 27 October 2020*, 88-89, <https://iaac-aeic.gc.ca/050/documents/p80101/136491E.pdf>.

⁵³ *Ibid.*, 90

⁵⁴ *Ibid.*, 99.

with respect to these British Columbia First Nations.⁵⁵ Federal involvement in the Grassy Mountain hearing facilitated the ability of these First Nations to realize their section 35 right to consult with the Crown about activities Benga Mining proposed to take place on portions of their traditional territories. First Nation traditional use and occupancy patterns in southeastern British Columbia and southwestern Alberta don't correspond well to the precise, tidy political borders settlers imposed on these lands in the 1800s. A federal impact assessment is better suited to this important transboundary reality.

Potential Greenhouse Gas Emissions Associated with Tent Mountain and Canada's Climate Change Commitments

Among the relevant factors the Agency may consider in developing a project designation for Minister Wilkinson is whether or not “the potential greenhouse gas emissions associated with the project may hinder 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...”⁵⁶ In the fall of 2016 Canada ratified the Paris Agreement, a legally binding international climate change treaty. Canada's Nationally Determined Contribution under the Paris Agreement is to reduce Canada's greenhouse gas (GHG) emissions by 30 percent below 2005 levels by 2030.⁵⁷ In November 2020, the federal government introduced Bill C-12, the *Canadian Net-Zero Emissions Accountability Act*, in the House of Commons.⁵⁸ If it becomes law, Bill C-12 will strengthen Canada's commitment to reduce GHG emissions; it calls for Canada to achieve net-zero GHG emissions by 2050.⁵⁹

Tent Mountain is one of at least ten metallurgical coal mining projects touted for exploiting coal in the Rockies and Foothills between the U.S. border and Highway 11.⁶⁰ The potential cumulative effects of coal development along Alberta's Eastern Slopes could be an important contributor to Canada's GHG emissions during the next 29 years as Canada strives to meet first, its Paris Agreement commitments, and then, its 2050 net zero ambitions. Since only one of those projects, Grassy Mountain, currently is subject to an assessment/regulatory review, it is obviously speculative to discuss the potential contributions the resuscitation of coal mining in Alberta could have for Canadian and global GHG emissions. But, AWA argues it's absolutely fundamental that government decisions about coal mining in southwestern Alberta do not repeat the pattern of oil sands development decisions in northeastern Alberta. There, federal and

⁵⁵ For a list of the Aboriginal Consultation Office reports see “List of submission of ACO reports,” <https://iaac-aeic.gc.ca/050/evaluations/document/136447>.

⁵⁶ Canada, Impact Assessment Agency of Canada, “Operational Guide: Designating a Project under the *Impact Assessment Act*.”

⁵⁷ Canada, “Canada's 2017 Nationally Determined Contribution Submission to the United Nations Framework Convention on Climate Change,” (October 2017), <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Canada%20First/Canada%20First%20NDC- Revised%20submission%202017-05-11.pdf>. Canada's Paris commitment was to reduce the country's emissions from 747 megatonnes in 2005 to 523 Mt in 2030.

⁵⁸ Canada, “Canada charts course for clean growth by introducing bill to legislate net-zero emissions by 2050,” (news release), 19 November 2020. <https://www.canada.ca/en/environment-climate-change/news/2020/11/government-of-canada-charts-course-for-clean-growth-by-introducing-bill-to-legislate-net-zero-emissions-by-2050.html>

⁵⁹ Canada, “Bill C-12: An Act respecting transparency and accountability in Canada's efforts to achieve net-zero greenhouse gas emissions by the year 2050,” <https://parl.ca/DocumentViewer/en/43-2/bill/C-12/first-reading>

⁶⁰ The Grassy Mountain Coal Project currently is undergoing a joint-federal impact assessment. Tent Mountain has started its environmental impact assessment process. In its appeals to investors, Montem Resources has identified four other future projects it would like to develop: Chinook, Isola, Oldman, and 4-Stack. Atrum Coal has promoted two potential projects: Isolation South and Elan South. Cabin Ridge is exploring actively with respect to advancing its Cabin Ridge Project. Ram River Coal and Valory Resources are the principals behind two projects – Aries and Blackstone – that are in the foothills southwest of Rocky Mountain House.

provincial decision makers have never considered adequately the cumulative effects of adding one approval to another approval to another approval – whether in the context of GHG emissions or of other environmental consequences of exploiting the oil sands.⁶¹

The 2016 air quality assessment consultant report prepared for Benga Mining estimated that the maximum equivalent carbon dioxide emissions from operations at the Grassy Mountain mine would be 362 kilotonnes per year in year 19 of the project. Direct GHG emissions from Grassy Mountain were estimated to be “approximately 0.14% of 2013 Alberta GHG emissions and 0.05% of national emissions.”⁶² These estimates do not appear to have been interrogated during the Joint Review Panel hearing.

This Grassy Mountain GHG emissions estimate falls within the range of actual GHG emissions reported in 2017 for Teck Resources’ open-pit coal mining operations in the Elk Valley. In 2017, Teck’s Coal Mountain, Line Creek, Elkview, Greenhills, and Fording River operations produced 25.44 million tonnes of metallurgical coal. Combined, those operations generated 1.71 million tonnes of GHG emissions.⁶³ If Tent Mountain and Grassy Mountain proceed, they will have the capacity to produce a total of 5.7 million tonnes of coal per year.⁶⁴ Since this would put their combined production very close to that of Teck’s Greenhills operations (5.9 million tonnes per year), for the purpose of this designation request, we estimate the combined greenhouse gas emissions from these two Alberta operations would approximate those of Greenhills – 449,058 tonnes.⁶⁵

Canada shows signs of struggling to meet its Paris Agreement commitment. Canada’s 2020 greenhouse gas inventory report to the United Nations Framework Convention on Climate Change noted that, in 2018, Canada emitted 729 megatonnes of GHG emissions, nine million tonnes more than the year when Canada signed the Paris Agreement in 2015.⁶⁶ Given this record the federal government should question how much encouragement and support it should give to how many economic projects and activities promising to add to GHG emissions in Canada. Identifying Tent Mountain as a designated project offers the federal government an opportunity to consider two important questions: “Is metallurgical coal mining in Alberta’s Eastern Slopes, whether pursued through one project, two projects, or ten projects consistent with Canada’s international legal commitments on climate change? Will

⁶¹ Ian Urquhart, *Costly Fix: Power, Politics, Nature and the Tar Sands*, (Toronto: University of Toronto Press, 2018). If the federal cabinet had rejected Teck’s Frontier Mine proposal that might have been based on the cumulative effects of GHG emissions.

⁶² Millennium EMS Solutions Ltd., *Air Quality Assessment Grassy Mountain Coal Project*, (July 2016), 39. <https://iaac-aeic.gc.ca/050/documents/p80101/115607E.pdf>. These estimated direct GHG emissions from the project would be 0.13% of 2018 Alberta GHG emissions and 0.05% of total Canadian emissions in 2018.

⁶³ Canada, “Facility greenhouse gas reporting: Greenhouse Gas Reporting Program data search,” <https://climate-change.canada.ca/facility-emissions/>, (accessed 24 March 2021). The 2017 emissions for each of Teck’s Elk Valley operations were: Coal Mountain (108,124 tonnes), Line Creek (187,483t), Elkview (438,799t), Greenhills (449,058t), and Fording River (521,744t). These emissions calculations are for the operations only. They do not include emissions associated with rail transport in Canada and sea transport from Canada to the export destination.

⁶⁴ Montem estimates that Tent Mountain will produce 1.2 million tonnes of clean metallurgical coal per year. See Montem Resources, “Project Description,” 19. Riversdale Resources/Benga Mining estimates that Grassy Mountain will produce 4.5 million tonnes of clean coal per year. See Riversdale Resources/Benga Mining Limited, *Grassy Mountain Coal Project – Updated Environmental Impact Assessment: Section A – Project Introduction*, (August 2016), A-1. <https://iaac-aeic.gc.ca/050/documents/p80101/115588E.pdf>

⁶⁵ Details on Greenhills operations are taken from Teck Resources Ltd., “Greenhills Operations,” <https://www.teck.com/operations/canada/operations/greenhills/>.

⁶⁶ Canada, Environment and Climate Change Canada, *National Inventory Report 1990-2018: Greenhouse Gas Sources and Sinks in Canada, Part 3, 5*.

resuscitating coal mining along Alberta's Eastern Slopes hinder the federal government's ability to meet its net-zero 2050 ambition?"

This concern about the GHG emissions implications of coal mining in Alberta is compounded if we acknowledge that, outside of Canada and beyond the control of Canadian governments, the tonnes of coal mined in Canada will contribute to many more tonnes of GHG emissions when Canadian coking coal is used to make steel. The U.S. Energy Information Administration has published carbon dioxide emissions coefficients. According to those estimates, the combustion of one short ton of anthracite generates 2578.68 kilograms of carbon dioxide (or 2339.34 kilograms per metric tonne).⁶⁷ Based on this coefficient AWA estimates that the combustion of metallurgical coal from Tent Mountain will generate 2.8 million tonnes of carbon dioxide annually. Annually, the combustion of Grassy Mountain's 4.5 million tonnes of clean metallurgical coal will generate approximately 10.5 million tonnes of carbon dioxide.⁶⁸ Using data from the Environmental Protection Agency, these out-of-country emissions from just two new Alberta mines would equal the average annual amount of carbon dioxide emitted by nearly 2.9 million typical passenger vehicles in the United States.⁶⁹ AWA hopes decision makers will not turn a blind eye to the fact that, if coal projects proceed in Alberta's Rockies and Foothills, Canada will facilitate the growth of greenhouse emissions elsewhere; while, strictly speaking, the GHG emissions generated elsewhere from burning Canadian coal don't hinder Canada's ability to reduce emissions in Canada it may hinder the global community from reducing emissions.

Public Concerns About the Effects of Coal Mining and the Responsiveness of Government Assessment Processes

The section of the Operational Guide describing the Agency's process for preparing a designation request recommendation for the Minister states in part: "The recommendation would consider whether the carrying out of the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, and public concerns related to such effects." (my emphasis) To try to gauge public concerns about the effects of projects like Tent Mountain, AWA analyzed the public comments submitted to the Joint Review Panel on the Grassy Mountain Coal Project. Grassy Mountain, despite not receiving nearly as much media attention as other contentious projects such as the Northern Gateway project, elicited more than 4,500 public comments to the project registry. Of the 4,553 comments left on the project registry, AWA's analysis determined that 4,335 of those comments opposed the project. Only 69 of the 4,553 public comments on the registry supported the project; AWA classified another 25 comments were as "not sure." Ninety-five percent of the public comments left on the registry opposed Grassy

⁶⁷ United States, Energy Information Administration, "Carbon Dioxide Emissions Coefficients," (2 February 2016), https://www.eia.gov/environment/emissions/co2_vol_mass.php.

⁶⁸ In 2011, Sierra Club B.C. used EIA carbon dioxide emissions coefficients to estimate the amount of carbon dioxide generated abroad from B.C. coal and natural gas exports. See Sierra Club BC, "The Real Story: B.C.'s Uncounted Greenhouse Gas Emissions Backgrounder," (September 30, 2011, <https://sierraclub.bc.ca/wp-content/uploads/2015/08/The-Real-Story-B.C.'s-Uncounted-Greenhouse-Gas-Emissions-GHG-Emissions-Backgrounder-September-2011.pdf>).

⁶⁹ United States, Environmental Protection Agency, "Greenhouse Gas Emissions from a Typical Passenger Vehicle," <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle>. How the EPA determined that the annual average CO₂ emissions from a passenger vehicle was 4.6 metric tonnes is explained here: <https://www.epa.gov/energy/greenhouse-gases-equivalencies-calculator-calculations-and-references>. To translate the CO₂ emissions from Alberta coal burned abroad into passenger car emissions, first, multiply the sum of estimated coal production from Tent Mountain and Grassy Mountain by the EIA CO₂ emissions coefficient for anthracite. Then, divide this annual total CO₂ emissions estimate (13,334,238 tonnes) by 4.6 (the EPA's estimate in metric tonnes of the annual CO₂ emissions from a typical passenger vehicle).

Mountain. This suggests that the public has serious concerns about the potential adverse effects of these projects on Alberta's Eastern Slopes.⁷⁰

AWA has little faith that Alberta's provincial assessment process will acknowledge the serious concerns that Albertans have regarding coal exploitation in Alberta's Rockies and Foothills. Historically, public participation in this process has been restricted. Looking to the purposes of provincial impact assessment legislation one might conclude that AWA's skepticism should be baseless. Subsection 40(d) of Alberta's *Environmental Protection and Enhancement Act* states that a purpose of the environmental impact assessment process is:

to provide for the involvement of the public, proponents, the Government and Government agencies in the review of proposed activities.⁷¹

The Alberta Energy Regulator (AER) is responsible for the environmental assessment process as it pertains to coal in Alberta. While the public may submit input on the terms of reference for the environmental assessment for Tent Mountain, the decision process becomes much less amenable to public participation after the AER develops the final terms of reference. Subsequent to the submission of an environmental impact assessment report as part of the integrated application process anyone may submit a statement of concern about the application. But, in order for the AER to consider that statement of concern, the individual or organization submitting it must be "directly and adversely affected" by the project. The AER has interpreted this "directly and adversely affected" test narrowly; the government's interpretation has limited severely public participation in environmental assessments and regulatory decisions. Law professor Sean Fluker pointedly noted this character of the Alberta process in 2013:

The overall message in these new Rules is that the Alberta government and the Regulator see little value in public participation concerning energy project decision-making and have little regard for participation even by landowners who may be directly affected by a project. Public participation in energy and environmental decision-making in Alberta is almost non-existent.⁷²

Richard Secord, a partner in Ackroyd LLP, Past-President of AWA, and regular participant in energy/environmental regulatory hearings, offered his views via email about the likelihood that a public interest organization such as AWA could participate meaningfully in a purely provincial assessment/regulatory process. In the first place, the AER isn't required legally to hold a public hearing into an application from a coal company to construct a mine and/or a coal processing plant.⁷³ Interested parties, therefore, have no guarantee they will be able to question the contents of an environmental impact assessment report in a public hearing. Secord also concluded the AER would dismiss any statement of concern AWA presented regarding the project on the grounds that the organization wouldn't be directly

⁷⁰ Another indication of public concern over proposals for open-pit coal mines in the Rockies and Foothills of Alberta is found in the spectacular growth of the "Protect Alberta's Rockies and Headwaters" Facebook group. Since the group was created on December 18, 2020 its membership has ballooned to 35,655 members (as of March 21, 2021). According to the group's administrators "this group is focused on stopping open pit coal development in Alberta."

⁷¹ Alberta, *Environmental Protection and Enhancement Act*, <https://www.qp.alberta.ca/documents/acts/e12.pdf>.

⁷² Shaun Fluker, "Amended Rules of Practice for the Alberta Energy Regulator: More Bad News for Landowners and Environmental Groups," <https://ablawg.ca/2013/12/11/amended-rules-of-practice-for-the-alberta-energy-regulator-more-bad-news-for-landowners-and-environmental-groups/>.

⁷³ Alberta, *Responsible Energy Development Act*, section 34, <https://www.qp.alberta.ca/documents/Acts/r17p3.pdf>.

and adversely affected. He went further to express his doubts that people who lived relatively close to a proposed mine site would satisfy this test.⁷⁴ The structure of Alberta's assessment and regulatory processes are inhospitable to considering the types of public concerns about coal mining identified at the beginning of this section. The assessment/regulatory history confirms this inhospitality.

The *Impact Assessment Act* arguably articulates a stronger commitment to public participation than Alberta's *Environmental Protection and Enhancement Act*. Subsection 6(1)(h) of the *IAA* states that one purpose of the Act is:

to ensure that opportunities are provided for meaningful public participation during an impact assessment, a regional assessment or a strategic assessment⁷⁵

The potential hospitality of the *IAA* to consider seriously the public's concerns over coal mining along the Eastern Slopes isn't undermined elsewhere by language approximating Alberta's "directly and adversely affected" test. In fact, by removing the "Interested Party" definition/section from the *Canadian Environmental Assessment Act, 2012* the *IAA* arguably increased the federal assessment process's receptiveness to public concerns.⁷⁶

Conclusion

Students of Canadian constitutional law and politics likely will debate for many years to come if a majority of the Supreme Court of Canada ruled correctly in *Reference re Greenhouse Gas Pollution Pricing Act (2021)*.⁷⁷ The majority there found that the federal government had jurisdiction to enact this law "as a matter of national concern under the peace, order, and good government ("POGG") clause of s. 91 of the *Constitution Act, 1867*." Central to the national concern analysis found in that decision is the effort "to identify matters of inherent national concern – matters which, by their nature, transcend the provinces." (my emphasis)

This designation request rests importantly on analogous grounds. AWA believes that, given the location of Tent Mountain, it engages issues that transcend the province of Alberta. AWA submits those issues cannot be addressed sufficiently through a provincial environmental assessment process. Tent Mountain is proposed to be placed near the heart of the transboundary range of the grizzly bear – a SARA species of Special Concern – and promises to restrict the movements of this regional bear population; it would be located in headwaters that feed the South Saskatchewan River and Tent Mountain's impact on water quality and possibly water quantity is of real interest to downstream populations, including the people of Saskatchewan; it would be located on lands that are important to First Nations who find themselves residing on the British Columbia side of provincial boundary lines.

Even in the absence of these significant transboundary dimensions that are unlikely to figure in a provincial environmental assessment, Tent Mountain engages areas of federal jurisdiction such as three

⁷⁴ Richard Secord, "Email correspondence with Ian Urquhart, Subject: AER public hearings," 30 January 2021.

⁷⁵ Canada, *Impact Assessment Act*, <https://laws.justice.gc.ca/PDF/I-2.75.pdf>.

⁷⁶ The *Canadian Environmental Assessment Act, 2012* tightened the definition of an interested party that was found in the original version of the Act that the Harper government repealed in 2012. That change, by introducing the condition that an interested party had to be "directly affected" by a designated project, arguably made public participation more difficult. The *Impact Assessment Act* eliminated this definition and qualification to public participation altogether.

⁷⁷ Supreme Court of Canada, *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/18781/1/document.do>

species listed under Canada's *Species at Risk Act* (whitebark pine – Endangered; westslope cutthroat trout – Threatened; grizzly bear – Special Concern).

The imperative for a federal impact assessment also is strengthened by cumulative effects considerations. Today's map of the Alberta Rockies and Foothills from west of Rocky Mountain House to the U.S./Canada border shows at least ten metallurgical coal projects in various stages of consideration and development. Governments should not ignore the possible cumulative effects of this potential. Individual coal project assessments must entertain cumulative effects possibilities. As AWA has tried to show in this designation request, possible cumulative effects will magnify the potential adverse effects individual coal mines will visit on species at risk, water quality/quantity, and Canada's ability to reach its climate change commitments.

Two final general points strengthen the need for a federal impact assessment. Alberta has witnessed very significant, I would argue unprecedented, public concerns expressed about coal mining and the effects it will have on areas of federal jurisdiction and concern. The provincial assessment/regulatory regime has shown no indication that it seriously will entertain those concerns; provincial departments with responsibilities for issues raised during the Grassy Mountain Joint Review Panel, unlike their federal counterparts, never offered one word of comment during that hearing. That experience doesn't instill any confidence that these concerns will be treated any more seriously in a provincial environmental assessment of Tent Mountain or Blackstone.⁷⁸

Finally, Tent Mountain's production capacity is just a whisker shy of the 5,000 tonne per day threshold set for federal assessments of new coal mines. Considering the many potentially adverse effects of Tent Mountain, is the spirit of the *IAA* followed if a federal assessment doesn't proceed based on the fact this project is one-quarter of one truckload short of reaching 5,0000 tonne per day trigger?

For all of these reasons AWA respectfully submits that Minister Wilkinson use his authority under section 9(1) of the *Impact Assessment Act* to decide that the Tent Mountain Mine Redevelopment Project should be a designated project and subject to a federal impact assessment.

Thank you very much for your time and consideration.

Yours sincerely,
ALBERTA WILDERNESS ASSOCIATION

<original signed by>

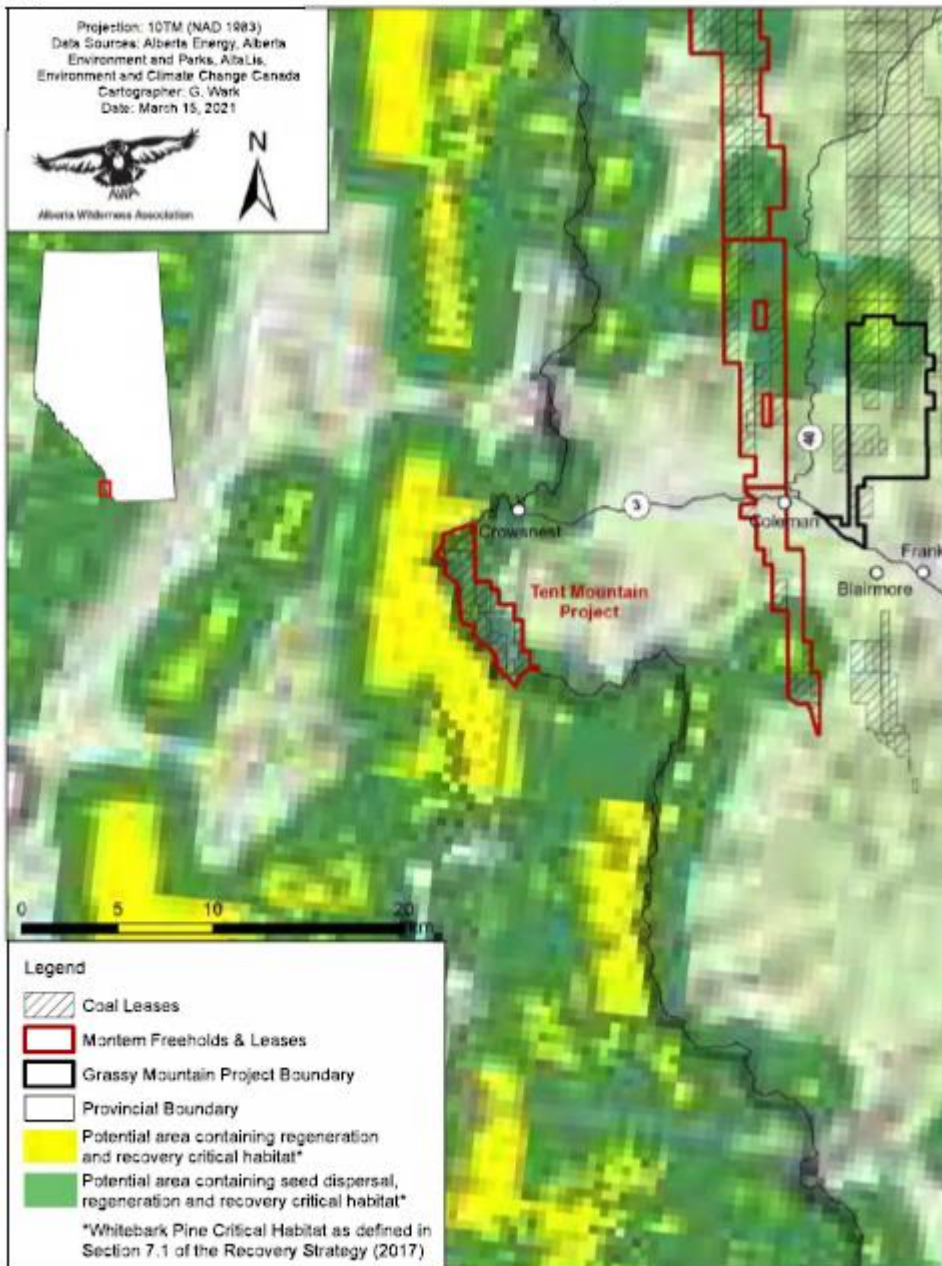
Dr. Ian Urquhart
Conservation Director
iurquhart@abwild.ca

<personal information removed>

⁷⁸ Like Tent Mountain the production capacity of Valory Resources' Blackstone project doesn't trigger the designated project threshold for a new coal mine set in Section 18(a) of the Schedule to the *Physical Activities Regulations* (SOR/2019-285).

APPENDIX “C”

Figure 1: Tent Mountain Project and Proposed Recovery Whitebark Pine Critical Habitat



Note (regarding resolution of imagery): Potential area containing regeneration and recovery critical habitat (yellow) for Whitebark Pine does not fall within the Tent Mountain Project Boundary.

APPENDIX "D"

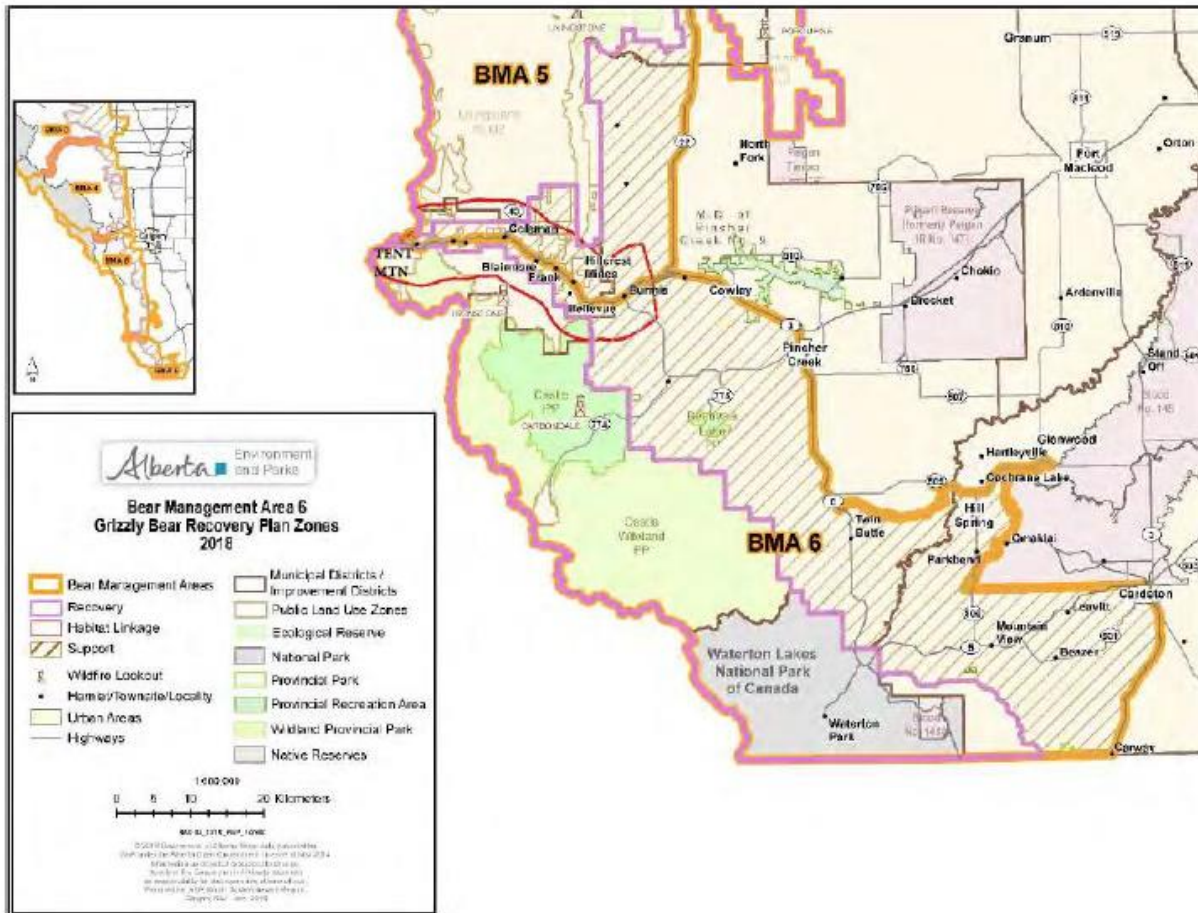


Figure 2: Alberta Bear Management Area 6

APPENDIX “E”

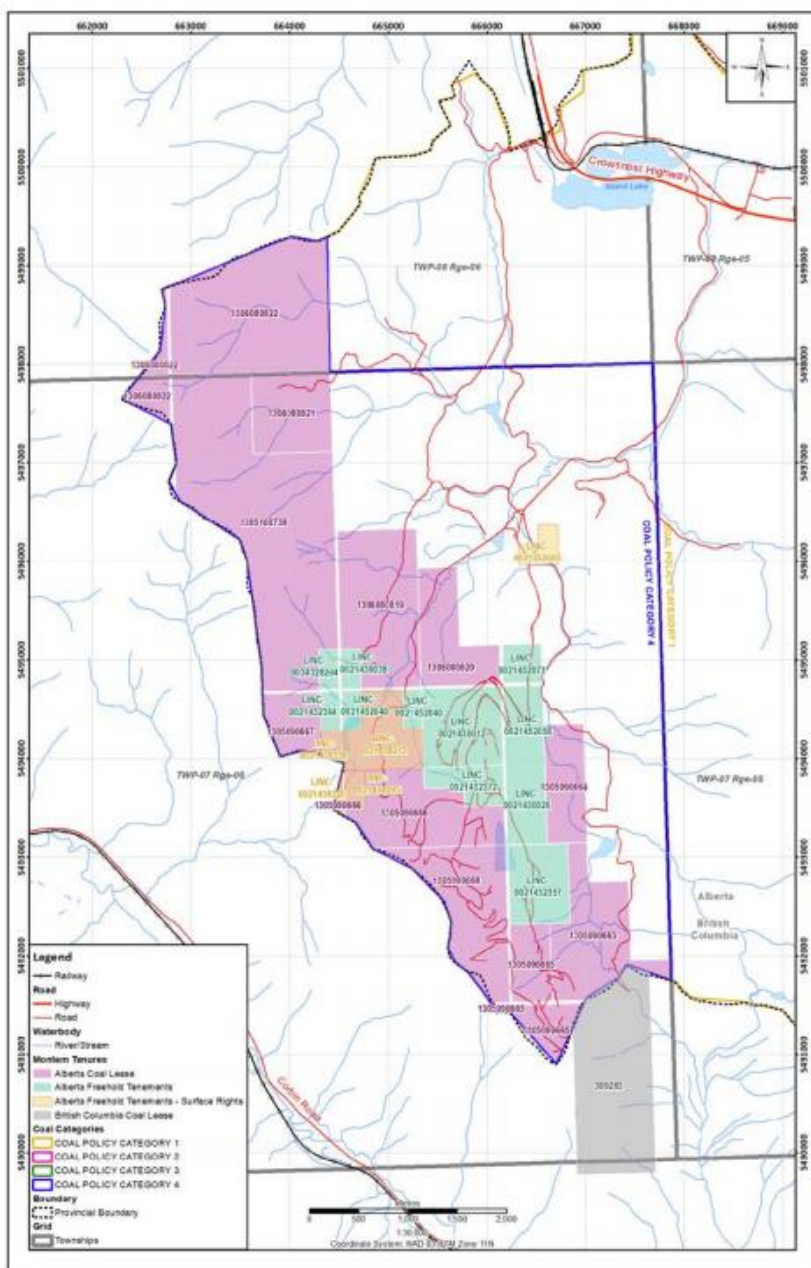


Figure 2.2 Tent Mountain tenure map



APPENDIX “F”

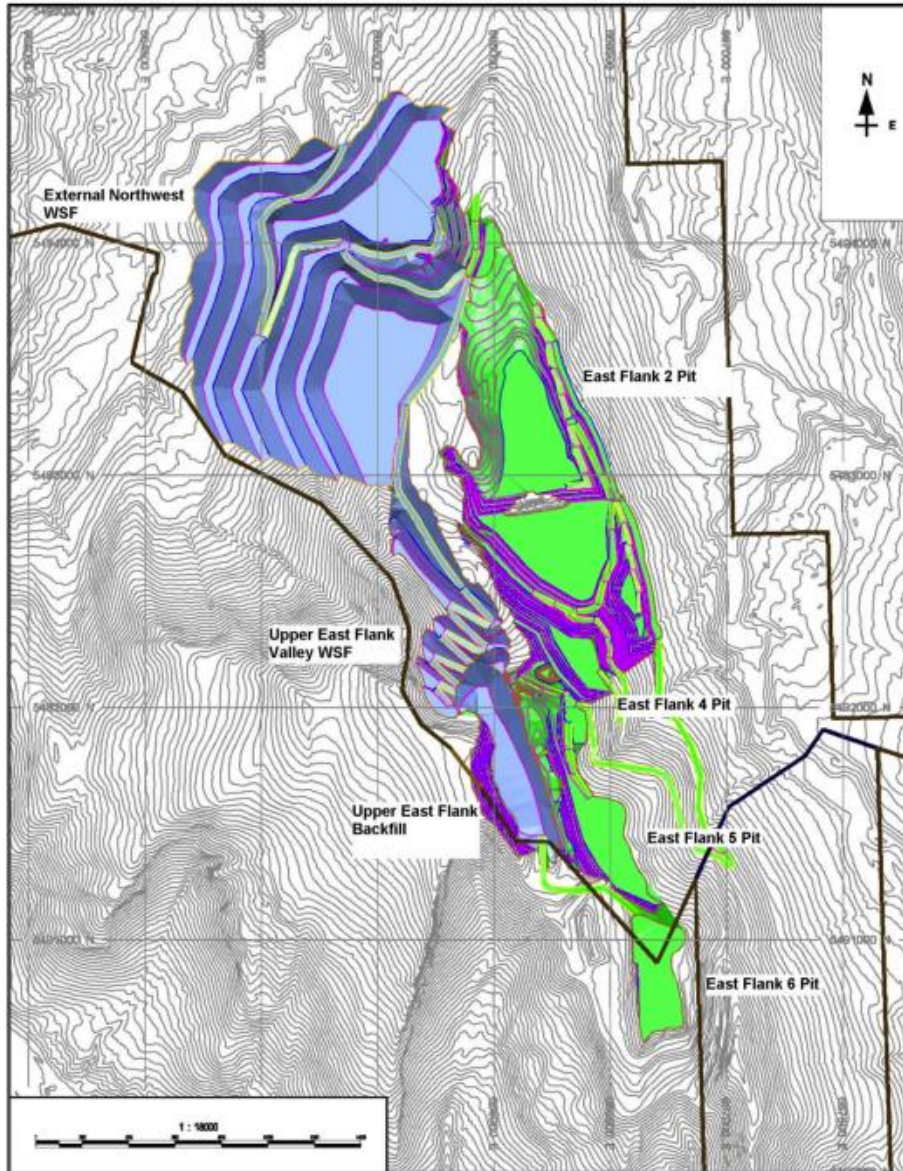


Figure 5.10 Tent Mountain development (end of Year 5)

APPENDIX "G"

Figure 2.2 – Location Of Montem's Projects



APPENDIX “H”

Laurie Pushor,
President and Chief Executive Officer of the Alberta Energy Regulator
Suite 1000 250 – 5th Street SW
Calgary, Alberta
T2P 0R4
Email: SOC@aer.ca

February 4, 2021

Subject: Questions related to coal exploration in the Oldman River headwaters

Dear President Pushor,

I am seeking some insight and clarification on the decision-making process and procedures the AER follows with respect to the environmental impacts of coal exploration, in particular approvals provided to a number of coal companies with leases in the headwaters of the Oldman River in southwestern Alberta.

When the AER receives an application for coal exploration what requirements are provided to the company that obligates them to undertake environmental impact assessments of their proposed activities? In the case of the coal companies undertaking exploration in the Oldman River headwaters, what was asked of them and what was provided to AER?

I am assuming the AER is following the linear disturbance density thresholds set out in the Livingstone-Porcupine Hills Land Footprint Management Plan (2018). What was the linear density of roads and trails prior to these coal exploration programs? What is the current linear density with new and re-opened roads? How many kilometers of new and re-opened roads has resulted from coal exploration programs to date?

Has the AER undertaken a cumulative effects assessment to determine the overall impact of all current and proposed coal exploration programs to ensure critical ecological thresholds will not, or have not been exceeded? If so, can you share that information?

What water quality monitoring has been asked of coal companies to ensure the impact of new and re-opened roads and drill sites will not, or has not affected

receiving streams containing trout species at risk? If so, can you share that monitoring information? For drilling programs, is there a requirement for water and if so, from where has the water been obtained? If it is from local sources, was a water license obtained by the coal company(s)? Did any of the water sources contain trout species at risk?

What is the timing and specifications for reclamation/restoration of the coal exploration footprint? What is the end target for restoration of new and re-opened roads and drill sites? What is the anticipated success of restoring these disturbed sites back to native vegetation, as would have existed before construction? Have performance bonds been requested of these companies, to ensure restoration is accomplished? If so, what is the dollar amount of such bonds?

I note that the AER has provided variances to allow coal exploration activities to occur within critical wildlife timing windows. Can you provide me with the rationale for allowing such variances and what wildlife studies were undertaken to ensure wildlife species were not put at risk by such decisions? Were provincial Fish and Wildlife biologists contacted and advice sought on such variances? If there were wildlife studies undertaken, please share this information with me.

Has the AER learned from these initial coal exploration programs and will the process and procedures change with any new exploration applications to ensure cumulative effects are assessed?

I would appreciate a timely and fulsome response to my questions.

Sincerely,

Lorne Fitch, P. Biol.

625 18th Street South

Lethbridge

March 15, 2021
By email only

Martin Foy
Chief Operations Officer
martin.foy@aer.ca

Lorne Fitch, P. Biol
625 18th Street South
Lethbridge, AB

tel 403-297-6131
cell 587-581-3549

www.aer.ca

Email: lafitch@shaw.ca

Coal Exploration in the Oldman River Headwaters

Dear Mr. Fitch:

Thank you for your letter dated February 4, 2021, to Laurie Pushor about the Alberta Energy Regulator's (AER) regulatory process on coal exploration in the Oldman River headwaters in southwestern Alberta, which has been forwarded to me for response.

You asked several questions about the AER's application requirements as well as environmental impacts and cumulative effects assessments for coal exploration, in particular for the Oldman River headwaters area.

The AER ensures that energy development is safe, environmentally responsible, and meets all requirements. The AER regulates the use of **public land** for coal exploration activities using the [Environmental Protection and Enhancement Act](#) and its *Code of Practice for Exploration Operations* and section 20 of the [Public Lands Act](#), which authorizes use of public land for exploration. Under section 3.1 of the *Code of Practice for Exploration Operations*, companies must notify us of coal exploration activities on **private/patented** lands.

Coal companies may apply for exploration programs without having the coal rights. [Manual 008: Oil Sands and Coal Exploration Application Guide](#) details our application requirements, processes, and timelines for all coal exploration programs (CEP). For both public and private lands, companies must provide all documentation listed in Schedules 1 and 2 of the *Code of Practice for Exploration Operations*.

With respect to exploration in southwestern Alberta, which includes the Oldman River headwaters, the AER considers all relevant policies established by the Government of Alberta. This includes the *Alberta Land Steward Act (ALSA)* and the regional plans under the *ALSA*, such as the [South Saskatchewan River Basin water management plan](#) and the [Oldman River Basin Water Allocation Order](#). All land-use

management plans are developed by Alberta Environment and Parks (AEP) and any questions regarding these plans should be directed to them.

The AER does not assess cumulative effects of overall impacts of all proposed CEPs as this is done by AEP through their land management framework and regional plans.

The AER does not have requirements pertaining to linear density of roads and associated surface infrastructure for exploration activities. AEP is responsible for implementing the Livingstone-Porcupine Hills Land Footprint Management Plan and managing the footprint allowance within the plan area. The AER's role is to ensure that proposed activities meet plan requirements including thresholds and to support AEP with footprint management.

When the AER receives an application for a CEP within the Livingstone-Porcupine plan area, the proposed access is added by AEP to a linear disturbance calculation tool to determine if the access falls within the access density threshold. The Livingstone-Porcupine plan provides direction when, and if, a proposed activity would cause the threshold to be exceeded.

The AER applies conditions to CEP approvals for maintaining water quality that are specific to the exploration program. A temporary diversion license (TDL) is required when there is a need to access water for exploration drilling. AER specialists review TDL applications against regulations in the *Water Act* and the *Water Ministerial Regulations*, water management frameworks under provincial land-use regional plans, and orders established by the Government of Alberta.

The AER thoroughly reviews all applications for CEPs and approvals are issued based on the merits of the application. The AER also requires CEP approval holders to reclaim disturbed areas. The specifics of reclamation are based on the conditions in the approval, which are determined based on the application's details. The AER does not collect any bonds or security for CEPs.

AEP has identified multiple sensitive wildlife zones within the Eastern Slopes and the Oldman River headwaters. The AER uses these sensitive wildlife zones to inform decisions and approval conditions for coal exploration activities. Some of these zones have timing restrictions associated with them, such as the Mountain Goat and Bighorn Sheep zone where activities must occur during the least sensitive time period between July 1 and August 22 each year. Companies can apply for a variance of these timing restrictions, but must include appropriate justification for why they need the waiver, the time needed within the timing restriction, as well as appropriate mitigation to address impacts to wildlife that could occur as a result of this activity.

Variance applications are reviewed by AER specialists, including wildlife biologists. If a waiver is approved, there are specific requirements for a wildlife monitoring and mitigation plan to minimize risk to wildlife and a time period within which this is done. In addition, the variance approval would also specify for how long the extension would be granted. Further information on the sensitive wildlife zones in Alberta can be found at: <https://www.alberta.ca/wildlife-sensitivity-maps.aspx>. Information on timing restrictions and approval conditions associated with these wildlife zones can be found in the Master Schedule of Standards and Conditions available at: <https://open.alberta.ca/publications/master-schedule-of-standards-and-conditions>.

Thank you again for taking the time to write. As the single regulator for energy development in the province, we are committed to ensuring that development is carried out in a manner that protects public safety and the environment. Please visit our [Coal](#) page at aer.ca if you have further questions.

Sincerely,

<original signed by>

Martin Foy
Chief Operations Officer

cc: Laurie Pushor, President and Chief Executive Officer, Alberta Energy Regulator
Jason Nixon, Minister of Environment and Parks