



340 – 1122 Mainland Street  
Vancouver, BC V6B 5L1  
T 604 687 0459 ext 300  
F 604 687 2696  
[www.jfklaw.ca](http://www.jfklaw.ca)

**Blair Feltmate**  
*He/him/his*  
Associate  
C 604 831 7804  
E [bfeltmate@jfklaw.ca](mailto:bfeltmate@jfklaw.ca)

August 15, 2022

**Via Email**

ministre-minister@ec.gc.ca;  
information@iaac-aeic.gc.ca

**Honourable Minister Steven Guilbeault**  
**Environment and Climate Change**  
**Canada**  
Fontaine Building  
12th Floor, 200 Sacré-Coeur Blvd  
Gatineau, QC K1A 0H3

**Impact Assessment Agency of Canada**  
757 W Hastings St.  
Suite 210A  
Vancouver, BC V6W 3M2

Dear Honourable Minister Guilbeault and the Impact Assessment Agency of Canada:

**Re: Designation of Summit Coal - Mine 14 under the IAA**

We are legal counsel to Aseniwuche Winewak Nation (“**AWN**”) and write in respect of Summit Coal Inc. (the “**Proponent**”) and their application for the approval of the Mine 14 Project (the “**Project**”). We request that the Minister of Environment and Climate Change (the “**Minister**”) designate the Project for federal review under section 9(1) of the *Impact Assessment Act* SC 2019, c 28, s. 1 (the “**IAA**”).

AWN requests that the Minister designate the Project for federal review using their discretion under section 9(1) of the *IAA*. The Project warrants federal designation because it:

- has the potential to cause adverse impacts to AWN’s asserted section 35 rights;
- may impact the health of AWN members;
- is located in an environmentally sensitive location;
- has the potential to cause adverse effects that fall within federal jurisdiction; and
- will contribute to the already significant level of cumulative development in the area.

The Project is not listed in the *Physical Activities Regulations* (“**Regulations**”). Unless it is designated under s. 9(1) of the *IAA*, it will not be subject to a federal review.

**1.0 ASENIWUCHE WINEWAK NATION**

## 1.1 The Aseniwuche Winewak and Grande Cache

The AWN are non-status Indigenous peoples descended from Cree and Beaver Tribes from the Northern Rocky Mountains. AWN traditional territory stretches from Jasper National park to the upper Smoky River north of Grande Cache. Aseniwuche Winewak means “Rocky Mountain People” in Cree.

Prior to 1910, AWN members resided in the Jasper Valley along the Athabasca River and at Jasper Lake. Upon the creation of Jasper National Park, individuals living in the area were evicted from the parklands and were forced to leave behind residences, trap lines, and part of their traditional hunting grounds. After their eviction, these individuals headed north to an area occupied by Aseniwuche Winewak ancestors – the drainage basin of the Muskeg, Jackpine, Sulphur, and Smoky Rivers near present day Grande Cache – and continued their traditional way of life.

Upon the discovery of coal around Grande Cache in the 1960’s, significant industrial and residential development began, which significantly disrupted AWN’s traditional way of life. During this period, AWN was neither consulted nor invited to participate in any development decisions. As a result, many traditional sites, homes, and gravesites were destroyed.

In 1970, in partial recognition of Aseniwuche Winewak presence in the area, the significant loss and displacement experienced by the Aseniwuche Winewak, and to minimize conflict among Aseniwuche Winewak peoples, developers, and settlers, Alberta and AWN started formal discussions about accommodations. In 1974, land settlement agreements were reached between Alberta and some Aseniwuche Winewak, which allocated seven fee-simple parcels of land totalling 4,150 hectares. Located around Grande Cache, these parcels were set aside for the use and benefit of Aseniwuche Winewak family groups (“**Co-operative Lands**”). These lands, set aside for the use of Indigenous peoples in recognition of their presence in the area, are in some ways akin to reserve lands set aside for Indian bands. AWN’s position is that the Co-Operative Lands are protected by section 35 of the *Constitution Act*, 1982 and the honour of the Crown.

Today, AWN represents over 400 members and is made up of four co-operatives: Victor Lake, Susua Creek, Muskeg Seepee, and Wanyandie Flats; as well as two enterprises: Grande Cache Lake (Kamisak) and Joachim. Approximately 70% of AWN members live on Co-operative Lands and are impacted directly by the ongoing legacy of coal mining in and around the area.

Despite facing significant industrial development, forced displacement, and attacks on their traditional way of life, many AWN members maintain a traditional life and traditional economy. AWN members have long used and continue to use the lands, waters and resources surrounding Grande Cache and the Co-operative Lands for multiple purposes, including: trapping, hunting, fishing, trading, spiritual practices, travelling, and other cultural practices. This way of life and economy has persisted throughout AWN’s time in and around Grande Cache. The health of the lands, waters, and resources surrounding Grande Cache is integral for the practice of AWN’s asserted Aboriginal rights, traditional values, health systems, and governance. For AWN, land is inseparable from identity.

AWN has been engaged for many years in the pursuit of recognition of their rights as Indigenous peoples under section 35 of the *Constitution Act*, 1982. In July 2017, Canada and AWN engaged in a Recognition of Rights and Self-Determination Table at the invitation of Canada. Although these negotiations have since been placed on hold, AWN continues to engage with federal government processes for the recognition of their section 35 protected Aboriginal rights and their inherent rights on and to the land.

## 1.2 AWN has experienced the adverse impacts of coal mining for decades

For many years, coal has been extracted from the area surrounding Grand Cache and AWN's larger traditional territory. In particular, the Grande Cache Coal Mine has operated adjacent to Co-operative Lands discharging pollutants into the Smoky River and distributing coal dust across homes, roads, playgrounds, and anywhere the wind sends it. Coal dust is a constant for AWN members living and working adjacent to the existing coal mine, particularly for members residing at Wanyandie Flats (East and West).

AWN is deeply concerned about any new coal projects in the area. Direct and cumulative adverse effects of coal mining are felt daily and AWN has little faith in the ability for the Government of Alberta or coal proponents to manage environmental contamination in the air, on the land, and in the waterways.

## 2.0 PROJECT DESCRIPTION AND BACKGROUND

<b>Project Name:</b>	Mine 14 Project
<b>Project Proponent:</b>	Summit Coal Inc.
<b>Proponent Contact Information:</b>	Shaun McNamara, M.Sc, EP Director, Environment and Safety Summit Coal Inc. 1800, 715 – 5 Avenue SW Calgary, Alberta T2P 2X6 503-263-3021 smcnamara@maximpowercorp.com

The Project is an underground metallurgical coal mine located on Crown land in west-central Alberta, approximately 4kms northeast of the town of Grande Cache (east of the Smoky River and north and east of Provincial Highway 40).<sup>1</sup> The Project is set to produce up to 1.3 million raw metric tonnes annually. The Project will have a surface footprint of 53.5 hectares and a subsurface area of 1.6 km long, and 3.2 km wide.<sup>2</sup> If approved, it will remain functional until 2032, and restoration will be completed 2-3 years following the Project's closure.<sup>3</sup>

<sup>1</sup> Summit Coal Inc, *Summit Coal Inc Mine 14 EPEA Approval Application*, April 15, 2022 [*EPEA Approval Application*] at PDF p 1 and 11.

<sup>2</sup> *EPEA Approval Application* at p 11 (PDF p 23).

<sup>3</sup> *EPEA Approval Application* at p 20 (PDF p 32).

Construction of the Project is set to begin once all permits and licenses are approved. Coal operations are expected to begin in early 2023.<sup>4</sup>

The Project is directly uphill from much of the Co-operative Lands and within viewing distance of Grande Cache. The Project appears to be approximately 10km uphill from Joachim, Kamisak, and Victor Lake, and approximately 20km from Wanyandie Flats (West) and Susa Creek.

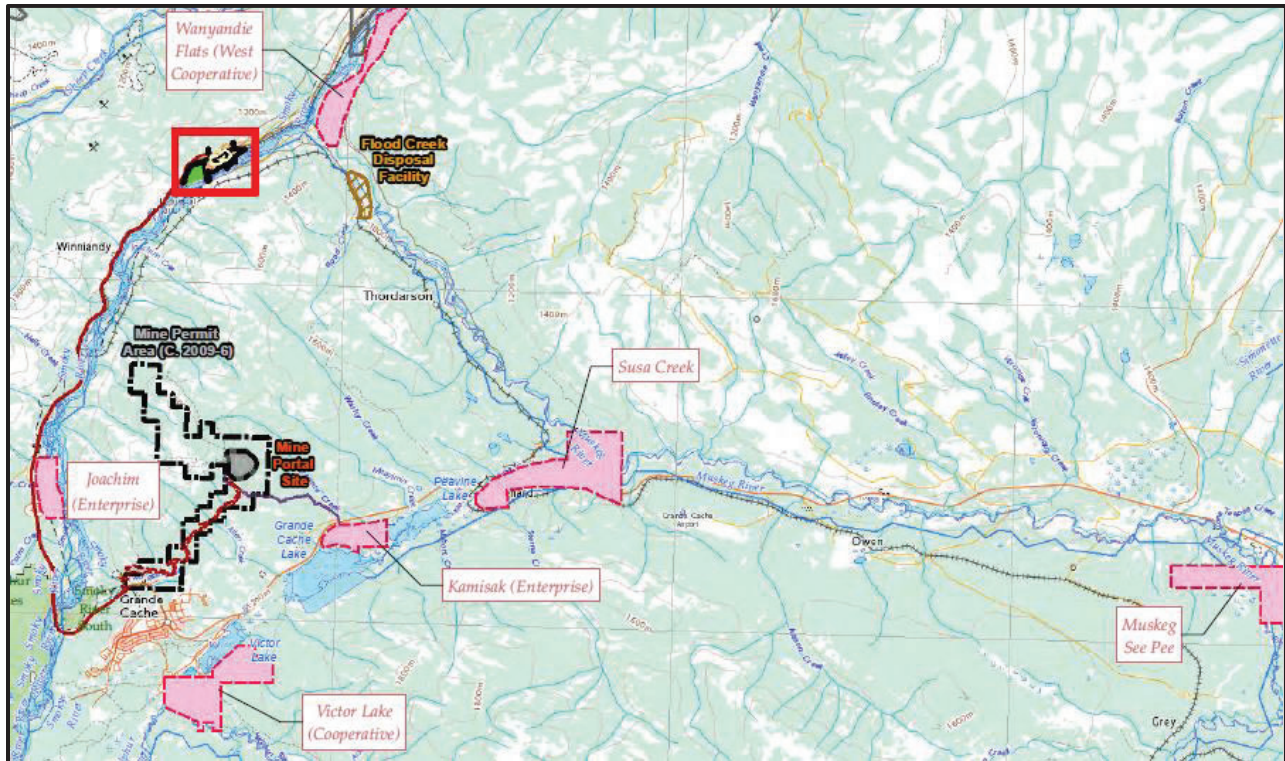


Figure 1: Cut-out from Regional Project Area map (Figure 1-2 from EPEA Application at PDF p 160). Included in full at Appendix A.

To date, the Project has historical approvals from the Alberta Energy Regulator for a mine permit (issued in 2009) and a mine licence (issued in 2011). It is AWN's view that these approvals, and the environmental reviews that informed them, should be considered out of date. The Proponent recently filed:

- EPEA Application (No. 001-00234735);
- Water Act Fence-Line Approval Application (No. 001-00241239); and
- Water Act Licence (No. 001-00242507).

AWN has viewed the draft EPEA Application prepared by Summit Coal Inc. We note that the environmental baseline identified by the Proponent is largely based on dated environmental

<sup>4</sup> EPEA Approval Application at P 35 (PDF p 47).



reviews. For example, the local groundwater, air quality, vegetation, and soils assessment are all based on a report prepared in August 2007 – 15 years ago.<sup>5</sup>

### 3.0 DESIGNATION REQUEST

AWN requests this Project be designated for federal review pursuant to s. 9(1) of the *IAA* for the reasons set out below.

#### 3.1 The Project has the potential to cause adverse impacts to AWN's asserted section 35 rights

AWN members have used and continue to use their traditional lands to maintain their way of life through subsistence and cultural practices. In particular, AWN exercise their asserted Aboriginal rights through the following activities:

- trapping;<sup>9</sup>
- fishing;<sup>10</sup>
- harvesting elk, moose, deer, Bighorn sheep, and mountain goats;
- gathering plants, berries, and medicines;<sup>11</sup>
- camping; and
- guiding and outfitting.

In 2008, the Proponent and AWN prepared a Traditional Knowledge and Land Use Study (the "**TK/TLU Study**"). The TK/TLU Study found considerable and varied uses throughout the study area.<sup>12</sup> We note certain highlights of this study for your review below.

AWN members hunt everywhere throughout the Project area and surroundings lands.<sup>13</sup> The species of greatest importance to AWN include moose, deer, elk, and porcupine. AWN members previously hunted Woodland caribou, but given the conservation protections in place, this no longer occurs. Black bears are hunted during the autumn months for consumption and the grease is used in traditional medicines. Bighorn sheep are hunted throughout the Project area.<sup>14</sup>

AWN members fish in the rivers and creeks adjacent to the Project, including: Beaver Dam Creek, Caw Creek, Cheep Creek, Grizzly Creek, and Smoky River. Bull trout were once a key part of AWN traditional foods but can no longer be caught due to their endangered status. Further, limits have been placed on the consumption of burbot and mountain whitefish in the

---

<sup>5</sup> *EPEA Approval Application* at pp 28-36 (PDF pp 40-48).

<sup>9</sup> Stanley Environmental, "Assessment of Environmental Impacts of Coal Mining Developments in the Grande Cache Area from the Perspective of the Aseniwuche Winewak Nation" (February 1998) at 5.6-5.7 (PDF pp 42-43) [*1998 Report*]; The 1998 Report identified the following species of interest for trapping: beaver, coyote, cross-fox, fisher, lynx, marten, mink, muskrat, otter, red fox, squirrel, rabbit, timber wolf, weasel, wolverine.

<sup>10</sup> 1998 Report at 5.5 (PDF p 41) identified the following species of interest for fishing: Brook trout, Rainbow trout, bull trout, dolly varden, Arctic grayling, Ling cod, Northern pike, Rocky Mountain whitefish, Lake whitefish

<sup>11</sup> 1998 Report at 5.10 (PDF p 46) identified the following plants of interest for consumption; blueberries, huckleberries, saskatoon berries and chokecherries

<sup>12</sup> FMA Heritage Inc., "*Traditional Knowledge and Land Use Study: Aseniwuche Winewak Nation*" (December 2008) [TK/TLU Study].

<sup>13</sup> Please see Appendix B for a map of AWN Traditional Hunting Areas included as part of the TK/TLU Study at p 35.

<sup>14</sup> TK/TLU Study at p 34.

Smoky River and tributaries due to toxic airborne substances from burning organics and waste-water discharge from industrial sites.<sup>15</sup>

Medicinal plant gathering is an integral component of AWN traditional land uses.<sup>16</sup> AWN Elders have indicated that industrial development impacts medicinal plant gathering, stating: “When they kill the plants at the mountain –top, where do people go? Can’t pick there anymore; have to go somewhere else for medicines”.<sup>17</sup> Many avoid the areas around the existing coal facility, creating a buffer of around six miles where they do not harvest any medicinal plants.<sup>18</sup>

These and other activities have been consistently practiced by AWN members throughout their traditional lands since their evolution as a distinct Indigenous peoples.

The Project has the potential to impact these activities through:

- directly reducing lands available and accessible for harvesting and gathering;
- impacting the health and habitat of big game and other resources; and
- reducing confidence in resources due to potential contamination from coal dust or selenium pollution, which leads to fear of consuming natural resources.

Impacts to traditional activities, such as those listed above, can drastically reduce the ability for AWN members to pass down knowledge from generation to generation, disrupt language transmission from elders to youth, and disconnect members from a sense of place in their traditional lands. According to community members, these impacts are already occurring.<sup>19</sup>

AWN has a comprehensive catalogue of historical data, elder interviews, and community information related to traditional land use and occupancy practices. This information is currently being organized and catalogued by AWN consultation staff. We expect this additional information will highlight the Project’s high potential for impacts to key traditional land use activities practiced by AWN.

### **3.2 The Project will contribute to the already significant level of cumulative development in the area**

Given the significant level of historical development in the area, it is critical that the cumulative impacts of the Project be adequately assessed. Coal has been mined in and around the Grande Cache area since the 1960s. Additional mining projects in the vicinity include the Grande Cache Mine, and Vista Coal Underground Mine Phase I Project. The area is also subject to other development such as the Trans Mountain pipeline project, intensive oil and gas exploration and operations, and forestry. The cumulative impact of all of these activities have the potential to significantly and adversely impact the ecological integrity of the area, and AWN’s ability to use this area for the practice of their asserted Aboriginal rights. The

---

<sup>15</sup> My Wild Alberta, “Fish Consumption Advisory” <<https://mywildalberta.ca/fishing/advisories-corrections-closures/fish-consumption-advisory.aspx>>

<sup>16</sup> Please see Appendix C for a map of AWN Plant Gathering Sites and Areas included as part of the TK/TLU Report at p 40.

<sup>17</sup> TK/TLU Study at pp 38-39.

<sup>18</sup> TK/TLU Study at p 39.

<sup>19</sup> 1998 Report, at 5.7 (PDF p 43).

combination of cumulative effects from existing projects requires assessment by the federal government.

Industrial land uses have the following cumulative effects on AWN members within their traditional lands:

- reducing the area in which AWN members can exercise their Aboriginal rights;
- removing important tracts of land available for the exercise of AWN Aboriginal rights;
- limiting access to preferred hunting, trapping and/or fishing areas;
- limiting access to important traditional cultural and/or spiritual sites;
- reducing abundance of wildlife, fish, and plants on which AWN members depend for sustenance and livelihood;
- reducing or degrading habitat for wildlife, fish, and plants;
- eliminating traditional migration and access routes including trails;
- decreasing areas where it is safe to hunt; and
- increasing fears of contamination and pollution of water, lands and natural resources for the exercise of Aboriginal rights.

In a 1998 report prepared for the Grande Cache Coal project, it was found that the:

impact of resource development activities in the 1960 – 1980's on the Grande Cache Native people was considerable. The town was located on lands used by them, and mining and logging developments coincided with areas of their livelihood and activities.<sup>20</sup>

The Project will exacerbate these concerns and contribute to the continued degradation of the local environment within AWN's traditional territory and the asserted section 35 rights practiced within.

### **3.3 The Project may impact the health of AWN members**

AWN is deeply concerned about the impact of additional coal development in the areas in close proximity to the Co-operative Lands on the health and well-being of AWN members. AWN members have stated residents of the community of Wanyandie Flats (West), the closest in proximity to the Grande Cache Coal mine, "are stricken with more illness than people in the other AWN communities".<sup>21</sup> Stating that "[c]hildren have more respiratory problems, "stuffiness," "bronchitis," "cough a lot," and have fevers more frequently".<sup>22</sup> Community members directly attribute these health effects to "coal mining and power plant activities and to the coal dust produced from these activities".<sup>23</sup> There is significant concern that additional mining activity will exacerbate these adverse impacts.

#### **(a) Pollutants from the Project may contaminant AWN's water and cause adverse health conditions**

---

<sup>20</sup> 1998 Report at 2.1 (PDF p 13).

<sup>21</sup> TK/TLU Study at p 32.

<sup>22</sup> TK/TLU Study at p 32.

<sup>23</sup> TK/TLU Study at p 32.

Pollutants from coal mining, such as selenium, can enter rivers and groundwater that AWN currently relies on for drinking water. Grande Cache and the surrounding area relies on the Grande Cache Lake watershed and Victor Lake watershed for its water needs.

AWN's Co-operative Lands do not have direct access to Grand Cache's treated water system.<sup>24</sup> The 1998 Report identified that "members of the cooperatives and enterprises use surface water from the local creeks, snowmelt, and water from shallow wells for drinking and domestic purposes".<sup>25</sup> This remains true for some members today. Many AWN households who use well water or river water observe high hardness and high iron levels in their water.<sup>26</sup> Members relying on well water and river water are much more susceptible to sickness from selenium exposure. Selenium exposure can cause hair loss, nausea, vomiting, fatigue, and other adverse health impacts.

AWN's concern around the health and well-being of their members has been affirmed in the United Nations Declaration on the Rights of Indigenous Peoples. Article 24 (1) states that:

Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right [Emphasis added].

Taken on its own, the significant potential impacts to AWN drinking water and the resulting impact on AWN members' health justifies designation for federal review by the Minister.

**(b) Coal dust from the Project can affect AWN's air quality and cause adverse health conditions**

Since the 1960s, AWN has contended with the effects of coal mining on their traditional territory. AWN members have observed and experienced coal dust permeating their laundry, their children's playgrounds, and settling on their homes and yards. The 1998 Report noted that "[t]he most common complaints included the presence of a black deposit on buildings, or snow during the winter, on clothing hung out to dry, and ultimately on human skin as a result of contact with soiled items".<sup>27</sup>

Although the Project is proposed as an underground mine, coal dust from both the preparation, and transportation of coal will still be present. This coal dust may affect the health of AWN members. There are growing reports that coal dust is responsible for "asthma, chronic obstructive pulmonary disease, stunted lung development, pneumoconiosis and lung cancer, cardiac arrhythmias, and acute myocardial infarction."<sup>28</sup>

---

<sup>24</sup> Jennifer Chen, "Drinking Water Issues and Options in Indigenous Households in Communities near Grande Cache, Alberta," *University of Calgary's Digital Repository*, 2021, [https://prism.ucalgary.ca/bitstream/handle/1880/114712/capstone\\_Chen\\_2021.pdf?sequence=1](https://prism.ucalgary.ca/bitstream/handle/1880/114712/capstone_Chen_2021.pdf?sequence=1) at page 9.

<sup>25</sup> 1998 Report at 11.3 (PDF p 95).

<sup>26</sup> Jennifer Chen, "Drinking Water Issues and Options in Indigenous Households in Communities near Grande Cache, Alberta," *University of Calgary's Digital Repository*, 2021, [https://prism.ucalgary.ca/bitstream/handle/1880/114712/capstone\\_Chen\\_2021.pdf?sequence=1](https://prism.ucalgary.ca/bitstream/handle/1880/114712/capstone_Chen_2021.pdf?sequence=1) at page ii, 19, and page 32.

<sup>27</sup> 1998 Report at PDF p 38.

<sup>28</sup> Ting Liu and Shimin Liu, "The impacts of coal dust on miners' health: A review," *Environmental Research* 190 (2020), <https://www.sciencedirect.com/science/article/abs/pii/S0013935120307441?via%3Dihub>.



### 3.4 The Project is located in an environmentally sensitive location

#### (a) The Project is located near multiple waterways

The Project is located directly above multiple waterways and the confluence of two major rivers relied upon by AWN – the Smoky River and the Muskeg River. These rivers flow east into Grande Cache Lake and Victor Lake. These waterways, and the ecosystems that depend on them, will be impacted by the Project. For instance, operating coal mines release selenium. Selenium is toxic and can cause liver, kidney, and heart damage within fish and other aquatic species. It also can reduce the number of reproducible eggs from fish, and cause structural deformities.

Data for the upper Smoky River surface water from 1998 to 2003 shows selenium concentrations that were at least ten times higher than water quality guidelines. Selenium rates may be higher today,<sup>31</sup> and there is no accounting for how much selenium will enter the Smoky River as a result of the Project. Federal review will help ensure that any potential selenium release from the Project is within acceptable limits and the Proponent's plans for selenium management are robust and effective.

This issue is particularly acute given the extensive legacy of coal mining in this area. The cumulative effects of the coal mining in the area must be considered.

#### (b) The Project is in the vicinity of critical wildlife habitat

Wildlife from this region is already under immense pressure from industrial development and the environmental degradation and pollution that comes along with it. For example: a herd of Bighorn sheep on Smoky River, Greff River and Muscar were found to have traces of selenium outside of the safe range of contamination.<sup>32</sup> These sheep have the lowest reproductive levels measured in Canada.<sup>33</sup>

Additionally, the Project is located between two Woodland caribou ranges (threatened species under the *Species at Risk Act*). The federal government has previously taken action to protect this habitat through the release of the *Critical Habitat of the Woodland Caribou (Rangifer tarandus caribou)*, *Boreal Population Order ("Order")*. The objective of the Order is to provide legal protection of caribou's critical habitat on federal land.<sup>34</sup> Further traffic disturbance and selenium contaminated waterways could impact the A La Peche caribou herd. The herd is already struggling with mortality caused by heavy traffic along Highway 40. Further habitat disturbance and traffic may increase the mortality rate of the already fraught herd. The introduction of additional surface disturbance and environmental pollutants will

---

<sup>31</sup> Science and Standards Alberta Environment, [Results of Aquatic Studies in the McLeod and Upper Smoky River Systems](#), August 2005 at i.

<sup>32</sup> Bob Weber, "Alberta Government Knew Bighorn Sheep Contaminated with Coal-mine Selenium: Scientist," CBC, last modified November 23, 2018, <https://www.cbc.ca/news/canada/edmonton/alberta-government-knew-bighorn-sheep-contaminated-with-coal-mine-selenium-scientist-1.6022966>.

<sup>33</sup> [Ibid.](#)

<sup>34</sup> *Critical Habitat of the Woodland Caribou (Rangifer tarandus caribou) Boreal Population Order*: SOR/2019-188, June 7, 2019, <https://canadagazette.gc.ca/rp-pr/p2/2019/2019-06-26/html/sor-dors188-eng.html>

contribute to the habitat destruction of the Woodland caribou and place this threatened species at further risk.

Beyond the impacts to Bighorn sheep and Woodland caribou, the Project area is also home to multiple species and plants that are listed as Endangered, Threatened, or of Special Concern under the *Species at Risk Act*, such as grizzly bears and wolverines.

We also note the presence of multiple protected areas in and around the Project, including: Kakwa Provincial Park and Protected Area and Mt Robson Provincial Park in BC, as well as Kakwa Wildland Provincial Park, Willmore Wilderness Park, and Rock Lake Solomon Creek Wildland in Alberta. These parks and wildland areas have been established to protect wildlife habitat and it is unclear how further coal development around Grande Cache will impact these habitats. Further, we note that Jasper National Park is directly to the south of the Project.

Provincial legislation alone will not adequately assess the impacts to wildlife and their critical habitat.

### **3.5 The Project has the potential to cause adverse effects that fall within federal jurisdiction**

The Project has the potential to 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, federal lands, and importantly, AWN's Aboriginal rights.

#### **(a) The Project will adversely affect fish and fish habitat**

The Project will have detrimental effects on the high-value habitat of bull trout and Arctic grayling as a result of selenium release. Selenium can have adverse effects on fish and fish habitat by decreasing their reproduction rates, and increasing anatomy deformities.

Historically, the northern foothills (including Grande Cache) had an abundance of Arctic grayling and bull trout that AWN fished. The Arctic Grayling and bull trout in Alberta are now in serious decline. Today, Arctic grayling are classified as high risk.<sup>35</sup> Similarly, bull trout are classified as threatened under Alberta's *Wildlife Act*. Bull trout has a naturally slow reproductive rate because of its slow sexual maturity. Any mining development that contaminates its waterways will further limit the bull trout's spawn production and could potentially impact Arctic Grayling and their habitat.

An elder interview for TK/TLU Study prepared in 2008 for this Project identified that a "[l]ong time ago, there were lots of fish in the [Smoky] River, still some, but not that much as they're really skinny".<sup>36</sup> Elders at the time further noted "morphological changes in fish species such as discolouration, internal "bubbles" or "blisters", and disproportionate head to body ratios (large heads and short bodies)".<sup>37</sup>

---

<sup>35</sup> Alberta Government, "Arctic Grayling FSI," Government of Alberta, <https://www.alberta.ca/arctic-grayling-fsi.aspx>.

<sup>36</sup> TK/TLU Study at p 29.

<sup>37</sup> TK/TLU Study at p 29.

Contaminated waterways from the Project will impact both the quality and quantity of fish available to support AWN's asserted section 35 rights. AWN used to have an abundant supply of bull trout and Arctic Grayling in their waterways to harvest. Selenium contamination from the Project threatens the arctic grayling and bull trout's reproduction rates. This in turn impedes AWN's ability to harvest arctic grayling and bull trout as an exercise of their section 35 rights. AWN is abundantly aware of the devastating impacts coal mining has had on the Westslope Cutthroat trout throughout the eastern slopes of the Rockies, and in particular the Fording River and connected waterways. We expect the federal government to step in to ensure that these same impacts do not occur in our waterways.

**(b) The Project has the potential to cause adverse effects on aquatic species**

The Project will have adverse effects on aquatic species as defined in subsection 2(1) of the *Species at Risk Act*, including the effects on the Arctic grayling and bull trout's habitat. The development of and survival of their larvae is a particular concern. As the Proponent notes, sediment releases from the mine can adversely affect water quality and can change benthic invertebrate communities.<sup>38</sup> If sediment releases, such as selenium, enter the waterways, benthic invertebrate communities can reduce the viability of other species on the food chain.

**(c) The Project will adversely affect migratory birds**

The Project will have adverse effects on migratory birds protected under the *Migratory Birds Convention Act* through the contamination of drinkable water sources with selenium. High concentrations of selenium in water can impair bird reproduction. Migratory birds in the area include the yellow-bellied flycatcher, common yellowthroat, black-throated green warbler, harlequin duck, Cassin's vireo, barred owl, and western toad. These birds are known to be near the Project's vicinity.<sup>39</sup>

**(d) The Project will have impacts across provincial borders**

Although the Project is located within Alberta, its proximity to the British Columbia border means that it has the potential to cause environmental changes in British Columbia. For instance, the Project will impact the wildlife habitats of species such as Bighorn sheep. Bighorn sheep range on both sides of the Rocky Mountains. Impacts to the viability of the Bighorn Sheep from selenium on the Alberta side of the border may impact the sustainability of the species more generally. These interprovincial impacts must be considered by the federal government to ensure they are properly studied and understood. In particular, we note the potential impact to the transboundary park – Kakwa Wildland Provincial Park (Alberta) and Kakwa Provincial Park and Protected Area (BC).

**(e) The Project will have impacts to potential federal lands**

Although AWN's Co-operative Lands are not reserve lands under the *Indian Act*, they are in some ways akin to reserve lands. The Co-operative Lands are fee simple lands held

---

<sup>38</sup> EPEA Approval Application at p 6-111 (PDF p 421).

<sup>39</sup> EPEA Approval Application at p 50 (PDF p 62).

collectively for the use and benefit of AWN family groups – primarily Indigenous peoples protected under section 35 of the *Constitution Act*, 1982.

The Co-operative Lands, which are located downhill and downstream from the Project will be subject to potential adverse impacts from the Project and require protection. One potential outcome of negotiations with Canada on the recognition of AWN's section 35 rights, is that these lands become reserve lands. Given the honour of the Crown, and Canada's responsibilities to Indigenous peoples it would be prudent to protect these lands from further adverse impacts from coal mining.

We further note the potential impacts to Jasper National Park – located directly south of the Project. Any adverse impact to wildlife may impact the conservation priorities within the park.

### **3.6 Failure to designate the Project may undermine confidence in assessment process**

#### **(a) The Proponent's assessment of the Project's environmental impacts are outdated**

The Proponent's application for a mine permit was submitted in 2007. The mine permit was approved on December 7, 2009.<sup>40</sup> On April 20, 2011, the Energy Resources Conservation Board ("ERCB") issued ERCB Mine Licence C2011-9. AWN is concerned that the Proponent's predicted impacts as set out in its original Project application will no longer be accurate considering the time that has passed since the original application date.

In particular, we note the following outdated studies that are informing the most recent application:

- Groundwater Assessment (2007)<sup>41</sup>
- Air Quality Assessment (2007)<sup>42</sup>
- Vegetation Assessment (2007)<sup>43</sup>
- Soils Assessment (2007)<sup>44</sup>
- Wildlife Assessment (2007)<sup>45</sup>
- Aquatic and Hydrology Assessment (2007)<sup>46</sup>
- Water Management Plan (2012)<sup>47</sup>
- Waste Management Plan (2007)<sup>48</sup>
- Surface Water Monitoring Program (2008)<sup>49</sup>

---

<sup>40</sup> Milner Power Inc, the proponent at the time, was issued Mine Permit C2009-6, which designated the Mine 14 Project as Mine #1814.

<sup>41</sup> *EPEA Approval Application* at Appendix 3 (PDF p 231).

<sup>42</sup> *EPEA Approval Application* at Appendix 4 (PDF p 241).

<sup>43</sup> *EPEA Approval Application* at Appendix 5 (PDF p 259).

<sup>44</sup> *EPEA Approval Application* at Appendix 6 (PDF p 305).

<sup>45</sup> *EPEA Approval Application* at Appendix 7 (PDF p 316).

<sup>46</sup> *EPEA Approval Application* at Appendix 10 (PDF p 407).

<sup>47</sup> *EPEA Approval Application* at Appendix 12 (PDF p 401).

<sup>48</sup> *EPEA Approval Application* at Appendix 13 (PDF p 658).

<sup>49</sup> *EPEA Approval Application* at Appendix 14 (PDF p 662).

- Air Quality and Dust Management Plan (2007)<sup>50</sup>
- Environmental Protection Plan (2007)<sup>51</sup>

The baseline has changed since 2007. The sustainability of the ecosystems around the Project will require updated assessments to present all considerations to AWN and the regulators prior to Project approval.

Further, the consultation requirements under the duty to consult and the requirements to understand cumulative impacts on section 35 rights have expanded in the past decade. The Agency has made considerable progress incorporating assessment of section 35 rights and cumulative effects into their impact assessments. Given the nature of the impacts on AWN, these mechanisms will provide the necessary information for the Crown to make an informed decision about the Project.

**(b) The Ministry of Environment and Climate Change Canada supports federal impact assessments for Projects that release selenium into the waterways**

Finally, designating this Project under section 9(1) of the *IAA* is consistent with the 2021 announcement by then Minister of Environment and Climate Change, Jonathan Wilkinson, that all projects that have the potential to release selenium into waterways should undergo a federal impact assessment. The Minister's statement was very clear:

For any new proposed metallurgical coal mine or the expansion of an existing mine that is not already described in the *Physical Activities Regulations* and that has the potential to release selenium into water bodies, it is my intention to designate such projects for entry into the impact assessment process using my authority under the *IAA*.<sup>63</sup>

Given this Project will very likely release selenium into the surrounding bodies of water, allowing the Project to proceed without a federal assessment has the potential to undermine public confidence in government supported assessment processes and would appear to go against public statements made by the Minister.

#### **4.0 CONCLUSION**

This Project requires a federal review. As described above, the Project:

- has the potential to cause adverse impacts to AWN's asserted section 35 rights;
- may impact the health of AWN members;
- is located in an environmentally sensitive location;
- has the potential to cause adverse effects that fall within federal jurisdiction; and
- will contribute to the already significant level of cumulative development in the area.

<sup>50</sup> *EPEA Approval Application* at Appendix 15 (PDF p 672).

<sup>51</sup> *EPEA Approval Application* at Appendix 16 (PDF p 675).

<sup>63</sup> Jonathan Wilkinson, "Minister's response - Canada.ca," June 18, 2021, <https://iaac-aeic.gc.ca/050/evaluations/document/139435>.



Failure to designate the Project may undermine confidence in the assessment process.

AWN requests that the Minister designate the Project using their discretion under section 9(1) of the *IAA*. Thank you for your time and consideration of this request.

Yours truly,

**JFK Law LLP**

Per:

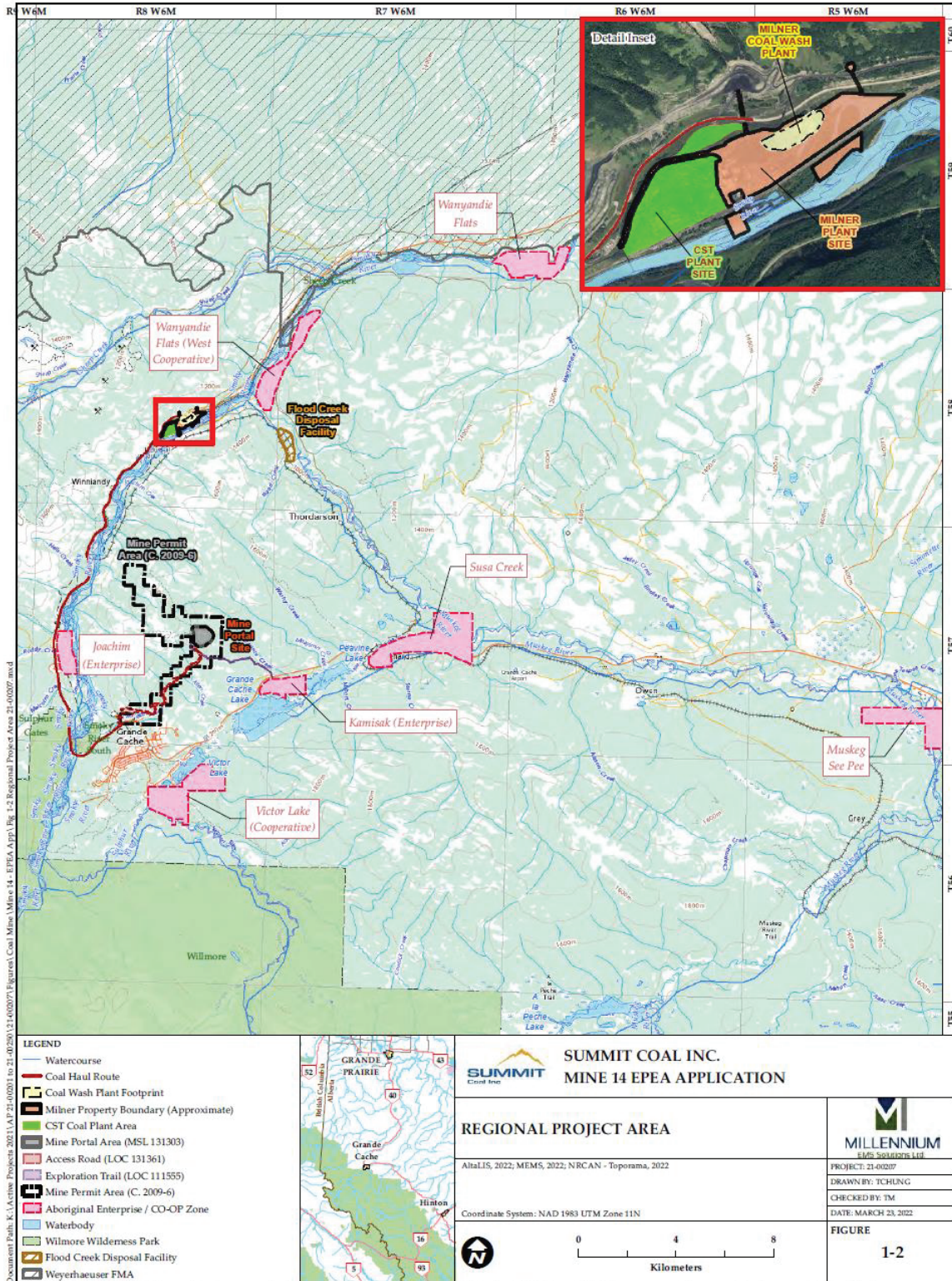
**Blair Feltmate**

Associate

BLF/bkcm

cc: David MacPhee, Aseniwuche Winewak Nation  
Courtney Wanyandie-Smith, Aseniwuche Winewak Nation  
Jason Veness, Aseniwuche Winewak Nation  
Clayton Leonard, JFK Law LLP  
Martin Ignasiak, Osler, Hoskin & Harcourt LLP

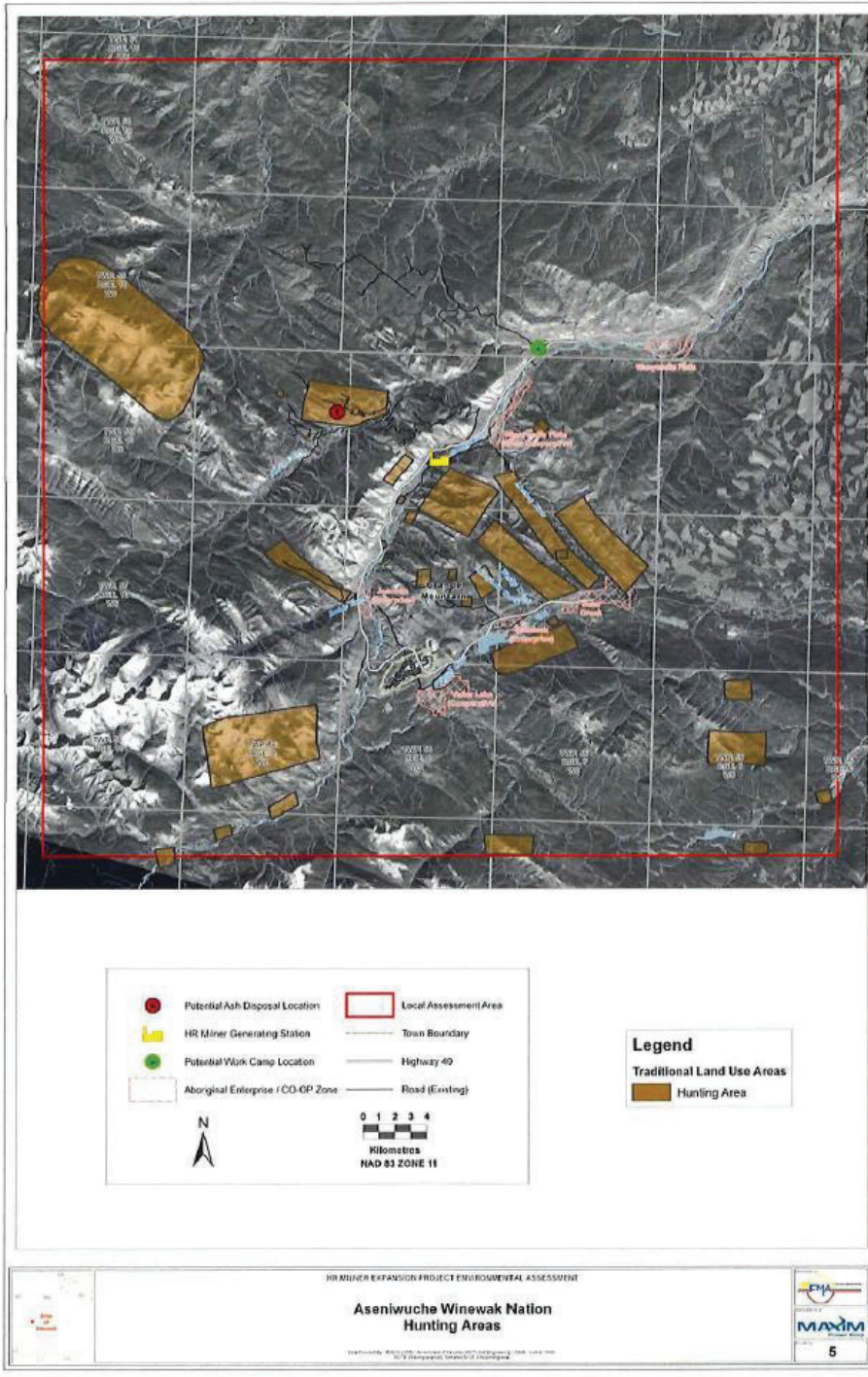
# APPENDIX A





# APPENDIX B

Figure 5 Aseniwuche Winewak Nation Traditional Hunting Areas



# APPENDIX C

Figure 7 Aseniwuche Winewak Nation Plant Gathering Sites and Areas

