

BY E-MAIL ONLY

June 13, 2016

Andrew Scott
O'Chiese First Nation

Coal Conservation Act Application No. 1828666

Water Act Application No. 010-00205213

Environmental Protection and Enhancement Act Amendment to Approval No. 017-00046972

Land use Amendment Application No. MSL0041321

Cardinal River Coals Limited
Statement of Concern No. 29814

Dear Mr. Scott:

You are receiving this letter because you filed a statement of concern about Applications No. 1828666, 010-00205213, and 017-00046972, on behalf of the Chief and Council of the O'Chiese First Nation (OCFN). The Alberta Energy Regulator (AER) has reviewed OCFN's statement of concern, along with the application, the applicable requirements, and other submissions or information about the application and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in your statement of concern.

In its review of OCFN's concerns, the AER considered the following:

- OCFN does not own lands on which the project is proposed, and the project is located approximately 105 km west of OCFN's closest reserve lands;
- The proposed Upper Harris Extension Amendment (UHEA) is located within the boundaries of the existing Cheviot Coal Mine (Mine Permit No. C2003-4A), and the proposed extension was anticipated in the original mine approval;
- In *O'Chiese First Nation v Alberta Energy Regulator*, the Court of Appeal stated that whether a decision of the AER directly and adversely affects a party such as OCFN is to be considered by the AER in light of the evidence properly adduced before it. The mere fact that the proposed developments would be located within an area claimed by OCFN as part of its traditional territory, does not, in and of

itself, mean that the AER's decision on the applications directly and adversely affect the OCFN.

- OCFN noted OCFN members carry out traditional activities in the MacKenzie Gap, but did not provide a specific location as to where the Gap was located. In response, CRC explained that the two possible locations of where the Gap may be are not within the mine permit area.
- In the Occupied Lands Inventory OCFN filed it provided extensive detail on the types of activities its members carry out in its traditional territory. OCFN described how OCFN members will avoid the mine area, however, OCFN did not provide information on where its members carry out activities within the Mineral Surface Lease area, either currently or historically.
- OCFN's concerns are of a general nature and the information provided by OCFN does not establish a sufficient degree of location or connection between the Applications and the potential interference or impacts on its asserted Treaty and Aboriginal rights. Accordingly, OCFN has not demonstrated that it may be directly and adversely affected by the Application.
- An Environmental Impact Assessment (EIA) was completed at the time of the original mine applications. The AER determined that an additional EIA was not required and is satisfied the information provided by CRC addresses the environmental concerns raised by OCFN.

The AER has issued the applied-for licence amendments and approvals, and this is your notice of that decision. Copies of the licence amendment and approvals are attached. Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals.

If you have any questions, please contact Nadia Haider at XXX-XXX-XXXX or email XXXXXXXX

Sincerely,

<original signed by>

<original signed by>

Elizabeth Grilo
Director, Mining Authorizations

Tara Hosick
Director, Land Use Authorizations

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

Attachment: (5 approvals)

cc: Richard LaBoucane, Cardinal River Coals Ltd.

AER Drayton Valley Field Centre

Aboriginal Relations, AER

Aboriginal Consultation Office