

BY E-MAIL ONLY

June 22, 2018

Ryan McQuilter, Consultation Specialist

**Alexis Nakota Sioux First Nation**

Box 337, Glenevis, Alberta

T0E 0X0

**RE: Applications 1909050 *et al.* from CST Coal Limited (CST Coal)  
Statement of Concern 31183  
Grande Cache Coal Mine (the Mine)**

**Edmonton Regional Office**  
Suite 205, 4999 – 98 Avenue  
Edmonton, Alberta T6B 2X3  
Canada

[www.aer.ca](http://www.aer.ca)

Dear Mr. McQuilter,

You are receiving this letter because you filed a statement of concern about Applications 1909050 *et al.* (the Applications) on behalf of the Alexis Nakota Sioux First Nation (ANSN). The Alberta Energy Regulator (AER) has reviewed ANSN's statement of concern along with the Applications, the applicable requirements, and other submissions or information about the Applications and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in ANSN's statement of concern.

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

- ANSN states that it was not consulted with respect to prior operations at the Mine by Grande Cache Coal Corporation (GCC) or the Crown, and has not been properly consulted by CST Coal respecting the Applications. However, section 21 of the *Responsible Energy Development Act (REDA)* states that the AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of indigenous peoples.
- ANSN also states that the Mine is in an area of importance to ANSN, and that the Applications have the potential to interfere with the quality of traditional resources relied upon for the exercise of ANSN's Treaty and Aboriginal rights. Although the Mine is located on lands ANSN identifies as within its traditional territory, the statement of concern does not identify specific locations where ANSN's members

might be affected or provide the detail needed to show a degree of location or connection with the Mine that would demonstrate that the ANSN and its members are directly and adversely affected by the AER's decision regarding the Applications.<sup>1</sup> The fact that the Mine may be within ANSN's traditional territory does not by itself demonstrate that ANSN is directly and adversely affected by the Applications.<sup>2</sup>

- The Mine is approximately 190 kilometers away from the closest ANSN reserve lands (Alexis Cardinal River #234).
- CST Coal provided a response, on June 1, 2018, to a number of ANSN's concerns, including a brief overview of CST Coal's background in mining, a summary of CST Coal's consultation activities to date, and CST Coal's intentions regarding start-up and operation of the Mine.
- CST Coal confirms in its June 1, 2018 response that if the approvals are transferred to CST Coal, it will contact ANSN to discuss any outstanding concerns ANSN may have with operations at the Mine.
- The requirements of *Directive 056: Energy Development Applications and Schedules* do not apply in this case because the Applications relate to the transfer of permits, licences, approvals, dispositions and existing applications for a coal mine rather than the construction or operation of a petroleum industry energy development that includes facilities, pipelines or wells.
- ANSN will have further opportunity to voice its concerns regarding CST Coal's proposed activities at the Mine on subsequent applications CST Coal may seek approval for in relation to same provided ANSN meets the AER's filing requirements.

Based on the foregoing, the majority of the concerns raised by ANSN relate to a matter outside of the AER's jurisdiction and have been or will be addressed to the AER's satisfaction. Further, ANSN has not demonstrated that ANSN may be directly and adversely affected by approval of the Applications. **In recognition of ANSN's concerns regarding the lack of information it has received to date about the Mine, the AER is**

---

<sup>1</sup> *Dene Tha' First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68 at paras 10, 14, 18.

<sup>2</sup> *Ibid; O'Chiese First Nation v. Alberta (Energy Regulator)*, 2015 ABCA 348 at paras 43-45.

**encouraged that CST Coal has committed to contacting ANSN if the approvals are transferred to discuss any outstanding concerns ANSN may have and asks CST Coal to, as part of this outreach, provide ANSN with copies of the Applications.**

The AER has not made a decision on the Applications at this time and ANSN will be provided notice when that decision is made. If a hearing on the Applications is to be held for another reason, a notice of hearing will be published.

Under the *REDA* 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 *REDA* 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](http://www.aer.ca) under Applications & Notices: Appeals.

If you have any questions, contact Corey MacGarva at 780-642-9342 or e-mail [Corey.MacGarva@aer.ca](mailto:Corey.MacGarva@aer.ca), or [SOC@aer.ca](mailto:SOC@aer.ca)

Sincerely,

<Original signed by>

Erik Kuleba  
Director of Mining, Authorizations

cc: Brad Gilmour, Bennett Jones LLP for CST Canada Coal Limited, [gilmourb@bennettjones.com](mailto:gilmourb@bennettjones.com)  
Corey MacGarva, AER Application Coordinator, [Corey.MacGarva@aer.ca](mailto:Corey.MacGarva@aer.ca)  
AER Statement of Concern Inbox, [SOC@aer.ca](mailto:SOC@aer.ca)  
AER Drayton Valley Field Centre, [DraytonValley.FieldCentre@aer.ca](mailto:DraytonValley.FieldCentre@aer.ca)  
Fiona LeBlanc, ASE Regional Manager, [Fiona.LeBlanc@aer.ca](mailto:Fiona.LeBlanc@aer.ca)  
  
ADR Mailbox, AER, [ADR@aer.ca](mailto:ADR@aer.ca)  
  
AER Public Lands Regional Office, [AERAuth.Mining@aer.ca](mailto:AERAuth.Mining@aer.ca)  
  
AER Environmental Protection & Enhancement and Water Statements of concern, [EPEA.WASOC@aer.ca](mailto:EPEA.WASOC@aer.ca)  
  
AER Indigenous Engagement, [AR.Director@aer.ca](mailto:AR.Director@aer.ca)  
  
Aboriginal Consultation Office, [IR.SOCContact@gov.ab.ca](mailto:IR.SOCContact@gov.ab.ca)

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