

April 25, 2024

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By email only

Lac Ste. Anne Métis Community Association
Attn: Tracy L. Friedel, PhD

Prairie Mines & Royalty ULC
Attn: Trent Steil

www.aer.ca

**Re: Statement of Concern 32472
Coal Valley Mine Pit 26 Extension
Coal Conservation Act – Application 1949811
Environmental Protection and Enhancement Act 040-11066
Water Act 003-00383119
Lac St. Anne Métis Community Association Confidentiality Request**

Dear Madam and Sir:

The Alberta Energy Regulator (AER) has now considered the request of the Lac Ste. Anne Métis Community Association (LSAMCA), submitted on April 4, 2023, under section 49(4) of the *Alberta Energy Regulator Rules of Practice (Rules)* for confidentiality (Confidentiality Request) over portions of a report entitled “Potential Impacts to Current use of Lands and resources for Traditional Purposes from the Coal Valley Pit 26 Extension Project”. The LSAMCA requests confidentiality over portions of the report, that are currently redacted, which contain a traditional land use study and maps showing members of Lac Ste. Anne Métis’ (LSAM) current and historical land use in the area of Prairie Mines & Royalty ULC’s (Prairie Mines) proposed extension of the Coal Valley Mine (the Report) in the above identified applications (Applications). The LSAMCA submits that if the unredacted Report were to form part of the public record, its publication is reasonably expected to cause significant harm to the competitive position of LSAMCA members and to cause them undue financial loss.

The LSAMCA proposes to submit an unredacted version of the Report in support of Statement of Concern 32472 (SOC), which it filed on March 4, 2024, in respect of the Applications, if its Confidentiality Request is granted.

The AER has considered the Confidentiality Request, as well as Prairie Mines’ response of April 12, 2024, advising that it has no objection to the Request.

The Report discusses LSAM’s current and historical use of lands and resources for traditional purposes in or within 5 km of the Coal Valley Mine proposed extension. The LSAMCA describes the report as follows:

The Report contains traditional knowledge inclusive of oral history, cultural and geographical information regarding the location and use of certain species. The Report’s information is also commercial or financial in that LSAM members use this traditional knowledge to sustain themselves

as a way of life. The Report discusses patterns and locations of traditional and contemporary use of specific locations and trails for hunting, fishing, gathering, and incidental activities and refers to the presence of historical and cultural sites within the vicinity of the Project. The Report also includes a map indicating the exact locations of traditional use and occupancy points and harvesting areas.

The LSAMCA submits that publication of the Report is reasonably expected to cause significant harm to the competitive position of the LSAM and to cause members undue financial loss. It provides the following reasons for the Confidentiality Request:

- 1) The Report reveals information that could be used by others in ways that are inconsistent with the value of that information to the LSAM. The Report reveals information, such as hunting, trapping, gathering, and fishing locations that could be used by others in a way that results in harm to the competitive position of the LSAM harvesters.
- 2) Publication of the Report could also cause undue financial hardship to the LSAM. If the public were to become aware of the location of its traditional hunting, trapping, gathering, and fishing locations, these areas may become overharvested, leading to a loss of the LSAM's abilities to practice its Métis Aboriginal rights in its traditional territory. If this were to occur, the ability of the LSAM to support themselves via their traditional lifestyle would be lost, resulting in undue financial loss.
- 3) Publication of the Report could also result in public interference with the cultural and historical sites referred to in the Report, or could interfere with LSAM members' ability to visit, pay homage to, or practice their spirituality at these sites.

For the reasons that follow, the AER has decided to grant the Confidentiality Request.

Reasons for decision

It is a fundamental premise of the AER's decision making process, and a requirement under section 49(1) of the *Rules*, that all documents filed in respect of a proceeding be placed on the public record. Public disclosure in the name of procedural fairness and transparency is the overriding general principle reinforced in subsection 49(1) of the *Rules*.

However, section 49 also recognizes the legitimate need, when established, of a party to protect confidential or sensitive information where disclosure of that information is likely to result in harm to such party's competitive, financial, or personal interest, and such harm outweighs the benefit to the public interest of disclosure. Exceptions to disclosure will only be granted in the clearest and most compelling cases and will be limited to those situations where the party requesting confidentiality has positively and demonstrably met the subsection 49(4) criteria. A confidentiality ruling is highly fact and situation specific.

Under section 49(3) of the *Rules*, a request for confidentiality must "(b) briefly describe (i) the nature of the information in the document that is the subject of the request, and (ii) the reasons for the request,

including the specific harm that might result if the document were placed on the public record.” The AER is satisfied the Confidentiality Request meets these requirements.

The LSAMCA submitted its request under section 49(4)(b) of the *Rules*. Accordingly, the AER has considered whether the information contained in the redacted portions of the Report falls under the category of information that, if disclosed, “could reasonably be expected (i) to cause significant harm to the competitive position of a party, or (ii) to result in undue financial loss or gain to any person or organization.”

The AER has determined that the redacted portions of the Report, as described in the Confidentiality Request, contain information that meets the criteria in section 49(4)(b) of the *Rules* for confidentiality on the basis submitted by LSAMCA. Also of significance is the fact that Prairie Mines has not opposed the Confidentiality Request. The AER is therefore prepared to grant confidentiality over the redacted portions of the Report, subject to the limitation below. The AER requires that the redacted version of the Report be filed on the public record of the Applications, as only the requested portions of the Report have been granted confidentiality, not the full document.

The AER is currently considering whether a hearing should be held on the Applications, which includes consideration of statements of concern filed in respect of the Applications. If a hearing is set down, participation in such a hearing would be determined by a hearing panel based on information submitted in response to a notice of hearing. Accordingly, this grant of confidentiality over the redacted portions of the Report is only for the purpose of considering the SOC and deciding whether a hearing should be held. If a hearing is held, LSAMCA will need to reapply for confidentiality for the purposes of the hearing.

The AER asks that the LSAMCA file both the redacted Report and the confidential unredacted Report by no later than May 7, 2024. The AER also expects the LSAMCA to provide the unredacted Report to Prairie Mines, provided Prairie Mines files an undertaking stating that it will hold the unredacted Report in confidence and use it only for the purpose of this proceeding. The unredacted Report will not be placed on the public record.

Sincerely,

<Original signed by>

Stephanie Latimer
Vice President and Associate General Counsel, Law Branch

cc: Jessica D. Buhler
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