

Proceeding 449

July 23, 2025

To: Martin Ignasiak, KC Bennett Jones LLP
For: Summit Coal Inc.

To: Adam Bordignon, Napoli Shkolnik Canada
**For: Canadian Parks and Wilderness Society
Northern Alberta chapter (CPAWS NAB)**

To: Adam Bordignon, Napoli Shkolnik Canada
For: Alberta Wilderness Association (AWA)

To: Tyler Olsen
For: Municipal District (MD) of Greenview

[By email only]

**Re: Summit Coal Inc., Mine 14 Underground Coal Mine (Summit)
Applications 1945552, 1945553, 001-00496728, 001-00496729, 001-496730,
32212208 and 32900389 (the "Applications")
Panel Decision on Motion Filed by Summit Coal Inc.**

Dear Parties:

As the panel of Alberta Energy Regulator (AER) hearing commissioners presiding over this proceeding (the panel), we write to you to provide our decision on Summit's motion (the Motion), pursuant to section 44 of the *Alberta Energy Regulator Rules of Practice (Rules)*. Following review and consideration of the submissions provided by the Municipal District of Greenview (MD of Greenview), Canadian Parks and Wilderness Society Northern Alberta chapter (CPAWS NAB) and Alberta Wilderness Association (AWA), we have decided to deny Summit's request to cancel the hearing for the reasons set out below.

Background and Submissions

Through the Motion, Summit requests that we immediately cancel the scheduled hearing dates for the Applications and all other process steps set out in the Hearing Panel's letter of June 3, 2025, and proceed to render a decision. On July 2, 2025, we set a process to receive motion responses from full participants and a reply from Summit to the responses from full participants. We also suspended the submission schedule until further notice.¹

In the Motion, Summit argued that holding a hearing is not necessary because, after the withdrawal of four other full participants opposed to the Applications, proceeding 449 no longer contains any participants who are opposed to the Applications and may be directly and adversely affected by the AER's decision.

¹ Exhibit 84.0. Exhibits can be accessed at <https://apps.public.aer.ca/hearing/>

Summit submitted that both AWA and CPAWS have a long history of fervent opposition to natural resource development projects in Alberta and advocate against all forms of coal mining, they oppose coal mining generally rather than specifically the Applications, and they have no legal rights that may be impacted by Mine 14. Citing rules 6.2(1)(a) and 7 of the *Rules* in addition to several AER decisions, Summit argued that the AER has a standard practice of cancelling hearings where all parties who may be directly and adversely affected have withdrawn from the hearing process and asked us to cancel this hearing accordingly. Summit also argued that section 34 of the *Responsible Energy Development Act (REDA)* does not require the AER to hold a hearing and that only a person who may be directly and adversely affected by the application is entitled to be heard at a hearing. Summit further argued that all the remaining participants potentially affected by the Applications (MD of Greenview and the Limited Participants), are in favour of them. Summit also argued that CPAWS and AWA do not have sufficient connection to the area and are using the AER process for fundraising, and that AWA and CPAWS have not raised any new issues, so the hearing should be cancelled.

Motion responses from CPAWS NAB in conjunction with AWA² as well as the MD of Greenview³ were received on July 9th and 4th, 2025, respectively.

In their response, AWA and CPAWS NAB argued that they have, and will provide, specific information relevant to the biodiversity, wildlife, toxicology, water quality, watershed health, and the Applications' impacts if approved. AWA and CPAWS NAB submitted that cancelling the hearing would be a breach of natural justice, procedural fairness, reasonable expectations, and a failure to consult because they have undertaken extensive efforts such as retaining relevant experts to assist us in making a decision on the Applications. CPAWS NAB and AWA denied that they oppose natural resource development, that they have members in the Grand Cache area, and highlighted that they have raised significant issues and deficiencies in the Applications. CPAWS NAB and AWA stated that a focused and expedient hearing is necessary because the issues they raise have not been addressed by Summit.

In its response, the MD of Greenview submitted that it supports the Motion because Summit has prioritized both the environment and the best interests of the community. It stated that the withdrawal of all Indigenous groups meant that there were no longer any participants remaining in the proceeding that may be directly and adversely affected by the Applications. The MD of Greenview argued that continuing the hearing would waste government resources, disregard the position of the local community and Indigenous groups who support the project, and would directly and adversely affect those who support Summit.

Summit filed its reply on July 15, 2025.⁴ In its reply, Summit submitted that the AER is not required to hold a hearing in this case and reiterated that the hearing should be cancelled and the Applications approved.

² Exhibit 86.0.

³ Exhibit 85.0.

⁴ Exhibit 87.0.

Summit argued that the hearing is not important to AWA or CPAWS (collectively the ENGOs), they will not be directly and adversely affected by a cancellation, they have no connection to the Grande Cache area and have not raised any valid issues. Summit also stated that it is the standard practice of the AER to cancel hearings when certain parties withdraw and only ENGOs are left. It argued that the panel made it clear and created a legitimate expectation that the hearing may be cancelled after withdrawal of some full participants by saying in Exhibit 53.0 that "if those withdrawals occur, we will address them when they occur....". Summit also argued that the hearing should be cancelled because CPAWS and AWA have nothing constructive to offer and that these participants are abusing the AER's hearing process by advocating in the hearing process.

In addition, a number of responses were received from Limited Participants. Although these responses have been entered onto the record in Exhibit 88.0, responses were only requested of Full Participants. We appreciate the efforts of the Limited Participants but have not considered them in making our decision.

Reasons for Decision

CPAWS NAB and AWA are Parties to this Proceeding

Section 34(3) of the *REDA* states that: "... a person who may be directly and adversely affected by the application is entitled to be heard at the hearing". In addition, the *Rules* give the hearing panel discretion under sections 9(1) and 9(2)(c) to permit participation of persons who are not directly and adversely affected by a decision of the AER on the application, but have provided an explanation of how:

- (i) the person's participation will materially assist the Regulator in deciding the matter that is the subject of the hearing,
- (ii) the person has a tangible interest in the subject-matter of the hearing,
- (iii) the person's participation will not unnecessarily delay the hearing, and
- (iv) the person will not repeat or duplicate evidence presented by other parties,...

Once the panel has granted participation, there is no distinction between participants, as is confirmed by the following definitions in the *Rules*:

- 1(i.1) "participant" means, except in Division 2 of Part 5, a person who is permitted by the Regulator under section 9 or 31.2 to participate in a hearing on an application or regulatory appeal, but does not include an applicant or a requester;
- (j) "party" means
 - (ii) in the case of a hearing on an application,
 - (A) an applicant, or
 - (B) a participant...

Under section 9.1 of the *Rules*, a hearing panel may specify the limits and scope of any party's participation in the hearing, as has been done in this proceeding with the distinction between full and limited participants.

On February 7, 2025, the panel granted AWA and CPAWS NAB full participation rights in proceeding 449.⁵ As such, both AWA and CPAWS NAB are parties to this proceeding. We expect CPAWS NAB and AWA to provide information at the hearing that can assist us in reaching our decision on the Applications.

⁵ Exhibits 41.0 and 42.0, respectively.

The examples provided by Summit of prior AER decisions to cancel a hearing were situations in which all parties to the hearing withdrew. This is not the same situation. Both CPAWS NAB and AWA stated that they oppose the Motion and submitted that it would breach natural justice and their procedural rights to cancel the hearing at this stage. In our review of the caselaw presented to us and the AER decisions cited by Summit, we did not find situations where the AER cancelled a hearing with a party or parties objecting to the cancellation, nor caselaw that would clearly require us to do so when the remaining parties are of a certain type. In the cited examples all participants withdrew their objections and concurred with the cancellation. The caselaw cited advises us that a duty of procedural fairness is "highly contextual" and "eminently variable".⁶ We are not persuaded that the circumstances in this proceeding warrant cancelling the hearing. As noted above, the *Rules* provide no distinction between types of participants once they are granted participation. CPAWS NAB and AWA have been granted full participation and submit that they will materially assist us in our decision on these applications. We are not persuaded otherwise.

Summit relied on sections 6.2(1) and 7 of the *Rules*, which govern consideration of statements of concern. The statement of concern process has concluded and is no longer relevant. Furthermore, in support of its motion, Summit relied upon information from CPAWS Southern Alberta, which is a separate chapter from CPAWS Northern Alberta, who is a party to this proceeding.⁷

As the party advancing the Motion, Summit bears the onus to establish that the circumstances warrant a cancellation of the hearing. Summit has not provided prior decisions, evidence, or a legal basis sufficient to meet this onus. Rather, it argued that CPAWS NAB and AWA "...do not have a legal right to be heard at a hearing..."⁸ and paraphrased its previous arguments objecting to the participation of CPAWS NAB and AWA on the basis that they are not directly and adversely affected and that they are generally opposed to industrial development.⁹ This is an argument that has been heard and denied at the participation stage, and again in the panel's procedural decision in Exhibit 53.0. For clarity, the panel granted participation to CPAWS NAB and AWA. Any further challenges to the participation decisions will be construed as a collateral attack.

Discussion of Legitimate Expectations

Summit raised the doctrine of legitimate expectations in the course of their submissions and specifically cited one portion of the panel's procedural decision in Exhibit 53.0:

"If those withdrawals occur, we will address them when they occur."

Summit appears to take this statement to mean that it was promised that the hearing would be cancelled should a set of facts occur. Summit now uses this statement and alleged promise as a reason to cancel the hearing should only CPAWS NAB and AWA remain as participants.

⁶ *Landry v Rocky View County (Subdivision and Development Appeal Board)*, 2025 ABCA 34 at para 33, citing *Baker v Canada Minister of Citizenship and Immigration*, [1999 CanLII 699 \(SCC\)](#) [1999] 2 SCR 817 at para 21

⁷ Exhibit 83.1, Tab 1, Exhibit "B" to the Affidavit of Eva Lew.

⁸ Motion at para 27.

⁹ See Exhibit 33.0: Summit's response to CPAWS' and AWA's requests to participate.

We do not agree that this statement promised an outcome, rather it promised a process to address the facts that have since come to pass. Thus, the context of the impugned statement on the record of this hearing is important, and we review it in detail.

On February 25, 2025, Summit wrote to the panel to ask for the scheduling of a pre-hearing meeting. In this letter, which is Exhibit 52.0, Summit made the following submission:

The AER's standard practice has been to cancel hearings in cases where all parties who may be directly and adversely affected have withdrawn from the hearing process. In this case, however, it is unclear from the participation decisions whether the AER would proceed in this manner. Summit requires confirmation of the AER's intentions in this regard before it can engage in meaningful discussions with the four Indigenous groups granted participation rights.

Since receiving the Panel's participation decisions, Valory, as the potential future owner of Summit, has reached out to each of the Driftpile, SCFN, LBT and LSAMCA to request meetings to discuss their reasons for filing SOCs and RTPs in connection with the Applications.

These groups have already agreed to meeting with Valory in its capacity as the potential future owner of Summit. Valory fully expects that these meetings will include discussions regarding the compensation each of these groups will receive, if Valory becomes the owner of Summit, in exchange for withdrawing their SOCs and RTPs.

Valory, as the potential future owner of Summit, must carefully assess numerous factors before determining whether to provide such compensation. For instance, Valory, as the potential future owner of Summit, will have to consider how any compensation to these groups, which may include business opportunities in connection with Mine 14, will impact the AWN, which has been found by Alberta to have constitutionally recognized rights in the area. Another factor Valory, as the potential future owner of Summit, must consider is whether it will still be required to go through a hearing if the four Indigenous groups withdraw from this Proceeding. Without knowing this, Valory, as the potential future owner of Summit, cannot with any confidence determine whether any payment to these groups is appropriate or justified. Therefore, we seek the following:

1. Confirmation that, if the four Indigenous groups withdraw from the Proceeding, but AWA and CPAWS do not, the hearing will be cancelled. ...

The panel addressed this submission in Exhibit 53.0 as follows:

Another issue that Summit proposed is related to a future process and if some parties withdraw their participation. It would be inappropriate to predetermine a decision that we might make in the future on facts that we do not have in front of us today. If those withdrawals occur, we will address them when they occur.

CPAWS NAB, AWA, and the MD of Greenview are now the only remaining full participants, as contemplated by Summit in its argument in Exhibit 52.0. Summit has not provided a reference to a "clear, unambiguous, and unqualified" representation by the panel that the hearing will be cancelled if only certain parties withdraw from the hearing. As shown by the quotations set out above, the panel represented it would address the impact of some full participants withdrawing in the event those withdrawals occur.

In other words, the decision in Exhibit 53.0 promised a fair and comprehensive process by which the panel of this proceeding would consider a motion to cancel the hearing. In considering this Motion, we have done just that. In so doing we have fulfilled the legitimate expectations, if any such expectations do exist, arising from the discussion in Exhibit 53.0.

Conclusion on Motion

We have considered the Motion and concluded for the reasons set out above that Summit has not met its onus to establish that the hearing of the Applications should be cancelled notwithstanding the objection of two of the remaining parties.

Since the hearing will not be cancelled, the submission schedule is no longer suspended and is amended as set out in the following section.

Submission Schedule

The updated schedule for the remaining submissions is included below. The deadline for the filing of motions and the hearing start dates are unchanged.

Filing	Due Date
Reply submissions from Summit	July 30, 2025
Submissions from Limited Participants (optional)	August 13, 2025
Summit Reply to Limited Participants, adverse to Summit's interests (optional)	August 20, 2025
Deadline for Motions	September 3, 2025
Hearing commences – Limited Participants	October 7, 2025
Hearing continues – Full Participants	October 21, 2025

We remind all parties that submissions and evidence in this matter must be relevant and material to the Applications which are proposed for **underground mining**. As stated in the Notice of Hearing, issued November 26, 2024, Summit has submitted an integrated application under the *Environmental Protection and Enhancement Act (EPEA)*, the *Water Act (WA)*, the *Coal Conservation Act (CCA)*, and the *Public Lands Act (PLA)* to both update active approvals and for new approvals for the Mine 14 Underground Coal Mine, Mine Permit C 2009-6 and Mine License C 2011-9.

• **Coal Conservation Act – 1945552 / 1945553** Amendment applications to increase the Mine Permit C 2009-6 boundary by 130 ha and increase the Mine Licence C 2011-9 boundary by 82 ha. These changes are required to ensure all previously approved mining areas as well as the access road are wholly contained within the approval boundaries.

• **Environmental Protection and Enhancement Act – 001-00496728** An application for a new EPEA approval for the construction, operations and reclamation of the Mine 14 Underground Mine Project comprising the mine portal area, sedimentation ponds and associated water management structures and the access road.

- **Water Act – 001-00496729 / 001-00496730** The WA approval application is for a new approval to construct and operate the water management systems at the mining project to capture, contain, reroute and otherwise manage water at the project location. The WA licence application is for a new licence for the diversion and use of 55,000 m³ of water per year, consisting of 31,500 m³ per year from groundwater sources (groundwater pumped during mining operations), and 23,500 m³ per year from surface water sources (stormwater and snowmelt collected from the surface water management structures at the project location). The water will be used for mining operations.

- **Public Lands Act – 32212208 / 32903389** Applications to replace expired Mineral Surface Lease (MSL) 131303 and License of Occupation (LOC) 131361 which expired in June 2021.

We expect all parties to ensure that their future submissions are relevant to the scope of the Applications as detailed in the Notice of Hearing and re-iterated above.

Attendance and Scheduling – Limited Participants

As previously indicated, **all Limited Participants must** confirm, by **4:00 pm on August 13, 2025**, if they will be appearing in person to provide oral evidence at the hearing in Grande Cache. That is regardless of whether you filed a written statement or submission on August 13, 2025.

Conclusion

For the reasons noted above, Summit's motion is denied, and the proceeding schedule is updated accordingly.

Sincerely,

Shona Mackenzie
Presiding Hearing Commissioner

Cindy Chiasson
Hearing Commissioner

Andrew MacPherson
Hearing Commissioner

cc: Shauna Gibbons and Bronwynn Simmons, AER counsel for the panel
Elaine Arruda and Andrew Lung, AER hearing coordinators
Full Participants and Limited Participants, as identified in the attached 'Schedule of Participants for AER Proceeding 449'
Tim MacDonald, ACO

Schedule of Participants for AER Proceeding 449

Full Participants

Alberta Wilderness Association

CPAWS – Northern Alberta Chapter

Municipal District of Greenview

Limited Participants

Grande Cache Hotel	Richard Riva Cambrin
Grande Cache Golf and Country Club	Bob's Trucking Ltd.
Ridgeview Restaurant and Lounge	Grande Industrial Ltd.
Willmore Wilderness Foundation	Macro Properties
People and Peaks Productions Ltd.	McNeil Construction
Grande Cache Chamber of Commerce	C.C.'s Welding and Fabrication Ltd.
Spruce & Bean	Grande Cache Automotive
Eagle Rock Holdings	Verity LLP
Busy Beez Play Zone Ltd.	