Alberta Energy Regulator

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By email only
October 22, 2025

Ecojustice
Attention: Matt Hulse, Counsel
Susanne Calabrese, Counsel

Lawson Lundell
Attention: Shailaz Dhalla

Dear Parties:

RE: Request for Regulatory Appeal filed on behalf of the Athabasca River Basin
Canadian Natural Upgrading Limited (CNUL)
Application Nos.: 023-00153125, 019-00205433, 002-00329253, 011-00186157, and 002-00329252 (Applications)
***Environmental Protection and Enhancement Act* (*EPEA*) Approval No.: 00153125-02; Licence to Divert Water Nos.: 00186157-02-00 & 00329252-01-00, and *Water Act* Approval Nos: 00329253-01-00 & 00205433-02-00 (together, the Jackpine Mine Approvals)**
Locations: Jackpine Mine contained in Townships 95, 96, and 97 and Ranges 8 and 9, W4M
Request for Regulatory Appeal No.: 1956708

The Alberta Energy Regulator (**AER**) has considered the request for regulatory appeal of the AER's Jackpine Mine Approvals, submitted by Ecojustice on behalf of the Athabasca River Basin under section 38 of the *Responsible Energy Development Act* (***REDA***). In reaching its decision, the AER considered the submissions of both Ecojustice and CNUL.

For the reasons that follow, the AER has decided that the Athabasca River Basin (**Athabasca**) does not meet the definition of "eligible person" under s. 38 of *REDA* and the request for a Regulatory Appeal is accordingly dismissed.

Section 38 of *REDA* provides:

> 38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules. [emphasis added]

The term "eligible person" is defined in section 36(b)(ii) of *REDA* to include:

> a person who is directly and adversely affected by a decision [made under an energy resource enactment] …

Reasons for Decision

On February 6, 2024, the AER issued public notice that it had received a renewal application from CNUL for the Jackpine Mine Approvals.

On March 7, 2024, the Alberta Wilderness Association (**AWA**) and Keepers of the Water submitted Statement of Concern No. 32476 (**SOC**) to the AER on behalf of the Athabasca. In the SOC, AWA and Keepers of the Water requested that the AER recognize the Athabasca as a "directly and adversely affected person" for the purposes of submitting the SOC.

On March 10, 2025, the AER issued a decision to CNUL (**Decision**) without a hearing, approving the Applications and issuing all requested approvals and licenses. The Decision declined to determine the status of the Athabasca as it relates to being a directly and adversely affected person, stating it was not necessary to do so given that the AER had already considered the content of the SOC and determined a hearing was not required.

On April 9, 2025, Ecojustice requested a Regulatory Appeal (**Request**), under section 38 of *REDA*, with respect to the Decision. Ecojustice asserted that the Decision wrongly rejected many of the substantive concerns raised in the SOC and further submitted that the Athabasca is an eligible person as it relates to requesting a regulatory appeal. Ecojustice submitted that the AER has the power to deem the Athabasca an "eligible person" under section 14 of *REDA*. On the same date, Ecojustice submitted a stay request in the same matter. The stay request was denied by the AER on June 10, 2025.

On July 3, 2025, the AER received CNUL's response. CNUL submitted that the Athabasca is not an "eligible person" and there is no Canadian precedent that demonstrates a situation in which a natural feature of the environment has been granted legal personhood in a manner that is binding on courts, regulators or other parties. CNUL submitted that recognition of personhood is beyond the AER's powers and proper role as a regulatory tribunal. CNUL further submitted that Ecojustice had further failed to establish the Athabasca as "eligible" as it did not meet the "directly and adversely affected" test - Ecojustice had only submitted that the Athabasca is harmed by the Jackpine Mine Project in general, not specifically from the Decision.

On July 24, 2025, Ecojustice replied to CNUL's response. Ecojustice submitted that CNUL's interpretation of "eligible person" is incorrect, and that determining who qualifies as an eligible person under *REDA* with respect to appeal rights falls squarely within the AER's jurisdiction. Ecojustice further submitted that CNUL had falsely stated that there is no Canadian precedent that demonstrates a situation in which a natural feature of the environment has been granted legal personhood and cited the Magpie River case in Quebec.[1] Ecojustice further submitted that it is unreasonable and nonsensical to distinguish between the Decision and the Jackpine Mine Project as a whole, because the Jackpine Mine Project relies on the Decision to continue operating.

The AER has considered the content of all the submissions and has determined that the Athabasca is not an eligible person under section 38(1) of *REDA*.

[1] Regional Municipality of Comté de Minganie, Resolution No. 025-21 recognising the legal personality of the Magpie River (Mutehekau-shipu), 16 February 2021, Québec, Canada. personnalité juridique de la rivière Magpie (Mutehekau-shipu), 16 February 2021, Quebec, Canada. Available at: https://mrc.minganie.org/wp-content/uploads/2021/02/resolution-025-21-Reconnaissance-de-la-personnalite-juridique-et-des-droits-de-la-riviere-Magpie---Mutehekau-Shipu-1.pdf.

The AER is a statutory corporation established pursuant to *REDA*. As such, its mandate, power and authorities are provided in *REDA* and related regulations and it has no jurisdiction outside of that which is conveyed by statute. While the AER has the jurisdiction to apply its statutes, it must do so within the confines of the law. Various provisions in *REDA* apply to a "person", including the section at issue in this request for regulatory appeal, s. 38. However, there is no definition of "person" in *REDA* itself. It is clear that the Athabasca is neither a natural person (a human), nor is it a legal person as that term is defined. While, as Ecojustice points out, the definition of "person" in s. 28(1)(nn) of the *Interpretation Act*, RSA 2000, c I-8 is inclusive rather than exclusive or prescriptive, the inclusive wording does not confer upon the AER the liberty to prescribe any meaning it chooses.

Ecojustice refers to the Magpie River case as support for its argument that Canadian law has already recognized a river as a "person" under law. However, with respect, that decision does not stand for the proposition that Ecojustice claims. In that case, the Minganie Regional County Municipality declared the Mutuhekau Shipu a legal person. As CNUL submits, the AER differs from that municipality in that as a statutory body it does not have this type of declaratory power. To date, in Alberta the legal status of "person" has not been conferred on a natural feature, such as a river. The AER as a statutory body has no authority to expand the definition of "person" beyond what has already been recognized by law in the province.

Furthermore, the AER disagrees with Ecojustice's assertion that recognizing the Athabasca's personhood is necessary to support the purposes of *EPEA* and the *Water Act*. Although the AER concurs with the statement that the purposes of *EPEA* and the *Water Act* are to protect the environment through public engagement, the Alberta Legislature has not imbued the AER with the jurisdiction to endow a natural feature with legal personhood as part of fulfilling that purpose. Presumably, if the Alberta Legislature was of the opinion such jurisdiction was necessary for the AER to fulfil the purposes of these Acts, it would have bestowed it upon the AER.

The purpose of *EPEA* is to support and promote the protection, enhancement and wise use of the environment by designating proposed activities for which an approval or registration is required. The purpose of *EPEA* is not to determine who can file a regulatory appeal, nor to determine the definition of "person". The purpose of the *Water Act* is to provide for the management of the water resources of Alberta, including research and the planning and implementation of programs relating to the conservation, development and utilization of water resources. Similar to *EPEA*, the purpose of the *Water Act* is not to make procedural determinations or to interpret "person" to include water resources. The purposes of neither Act require the recognition of the Athabasca or any natural feature as a person in order to be achieved. Further, the procedural provisions under both *EPEA* and the *Water Act* regarding who can make an appeal are supplanted by *REDA* for energy resource activities.[2]

The AER further notes that if a lawmaker with sufficient authority were to deem the Athabasca a person, the Athabasca's correct representation would be determined by the Crown, as the Athabasca is Crown property – s.

[2] *Specified Enactments (Jurisdiction) Regulation*, Alta Reg 202/2013, s. 19(4)(d)(iii) *(EPEA*) and s. 6(2), Schedule 4, s. 7(b) (*Water Act*).

3(2) of the *Water Act* states that all surface and groundwater in Alberta legally belongs to the Crown. Furthermore, s. 3(1) of the *Public Lands Act*, RSA 2000, c P-40 sets out that the bed and shore of the Athabasca are also Crown land. In this regard, Ecojustice's claim to speak for the Athabasca is usurping the Crown's ownership and fiduciary role to manage public resources on behalf of the citizens of Alberta. The fiduciary responsibility toward the environment cannot be delegated to a private body without explicit statutory authority; only the Legislature can confer authority to manage or represent public resources.

Further and in any event, irrespective of its determination that the Athabasca is not a person under the law, for the Athabasca to be eligible for regulatory appeal, it must demonstrate that it may be "directly and adversely affected" by the decision. The "directly affected" test by the Alberta Court of King's Bench requires a person to demonstrate, on a *prima facie* basis, that there is a potential or reasonable probability that he or she may be harmed by the approved project. A reasonably direct causal connection between the potential harm and the decision must be shown and the causal connection cannot be speculative.[3] Furthermore, the AER has previously expanded on the "directly affected" requirement by stating that one must consider how the person will be individually and personally affected. Factors for consideration include how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area.[4]

Ecojustice has submitted that the Athabasca is directly and adversely affected by the JPM Project:

> "through the withdrawal of water from the Athabasca River, the discharge of contaminants of concern into the air (which are deposited locally), the discharge of industrial wastewater into the Basin's waterways, the destruction of wetlands and old growth forests in the [Jackpine Mine Project's] footprint, the leakage of tailing effluent into groundwater, and the release of greenhouse gas emissions."

However, these assertions are general and vague and not clearly linked to any actual and specific adverse effects of the Decision.

Furthermore, the asserted impacts arise from the Jackpine Mine Project in its entirety, not the Decision, which dealt solely with renewal applications. The Jackpine Mine Project has been operating since 2005, and the AER has recognized in the past that renewal applications do not invite a full review of the project's potential effects. Such a review is beyond the scope of renewal applications as provided in section 6.2(2)(b) of the *AER Rules of Practice.*[5]

The AER does not consider Ecojustice to have established the Athabasca as an "eligible person" under section 38(1) of *REDA*, as it fails the legal test on both accounts, and dismisses the Request.

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[3] *Normtek* at paras 66-67; Letter Decision from the AER to the Sorensons Re: Request for Regulatory Appeal No.: 1954608, dated March 7, 2025.

[4] Letter Decision from the AER to Fort McKay First Nation Re: Request for Regulatory Appeal No.: 1924230, dated May 13, 2020, at PDF p 6.

[5] Letter Decision from AER to Mikisew Cree First Nation Re: Statement of Concern in Relation to Canadian Natural Resources Limited Application for Renewal of *EPEA* and *Water Act* Approvals for Horizon Oil Sands Project, dated August 5, 2015 at PDF p 2.; Letter Decision from AER to CNUL and ISH Energy Ltd. Re: Request for Regulatory Appeal No.: 1910998, dated July 31, 2019 at PDF p 2.

Having decided that the Athabasca is not an eligible person to request a regulatory appeal, it is not necessary to consider CNUL's argument that the Request is without merit.

Sincerely,

<Original signed by>

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