



Calgary Head Office

📍 Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

tel 403-297-8311

aer.ca

October 21, 2026

By email only

MLT Aikins LLP

Attention: Jessica Buhler, Partner

TransAlta Corporation

Attention: Vincent Light, Sr. Legal Counsel

Dear Parties:

RE: Request for Regulatory Appeal by Lac Ste Anne Métis Community Association (LSAMCA)

TransAlta Corporation (TransAlta)

Alberta Energy Regulator's Decision on TransAlta's Integrated Application for Closure and Reclamation of the Highvale Mine, February 26, 2026 (Integrated Application Decision)

Location: Highvale Coal Mine (Mine No. 1769)

Request for Regulatory Appeal No.: 1961658

The Alberta Energy Regulator (AER) has considered LSAMCA's request under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's February 26, 2026 Integrated Application Decision (Appeal Request), consisting of the following approvals to TransAlta:

- *Coal Conservation Act* (CCA) Approval Nos.: C 2015-4B, C 2015-5B, C 2016-4B, C 2016-5A, C 2016-6C, C2016-7B, C 2016-8A, C 2016-9B, C 93-29B, and C 93-30B (the CCA Approvals);
- *Water Act* Approval Nos.: 00240557-02-00 and 00079264-02-00 (the *Water Act* Approvals); and,
- *Environmental Protection and Enhancement Act* (EPEA) Approval No.: 00011187-04-00 (the EPEA Approval)

(together, the Highvale Mine Approvals).

The Highvale Mine Approvals relate to plans for activities aimed at the closure, abandonment, reclamation and decommissioning of the Highvale Coal Mine.

The AER has reviewed LSAMCA's submissions and the submissions made by TransAlta.

For the reasons that follow, the AER has decided that LSAMCA is not eligible to request a regulatory appeal in this matter, and therefore the Appeal Request is dismissed.

Background

On March 27, 2026, the AER received the Appeal Request on behalf of LSAMCA in relation to the issuance of the Highvale Mine Approvals.

On April 10, 2026, the AER issued correspondence to the parties advising that the timeline for filing a request for regulatory appeal of the *Water Act* Approvals appeared to have lapsed, and providing a timeline for LSAMCA to request an extension of the time limit, as well as a response from TransAlta and final reply of LSAMCA.

On June 11, 2026, after receiving and considering submissions of the parties, the AER issued its decision exercising its discretion under section 41 of the *Alberta Energy Regulator Rules of Practice* (Rules) to extend the time within which LSAMCA was permitted to file its request for regulatory appeal of the *Water Act* Approvals.

On June 30, 2026, TransAlta provided a response to LSAMCA's Appeal Request (Appeal Response).

On July 14, 2026, LSAMCA provided its reply submissions.

In TransAlta's Appeal Response, TransAlta stated that it "largely reiterates its previous submission in response to the LSAMCA's Statement of Concern". On September 28, 2026, following correspondence from the AER Regulatory Appeals Coordinator, TransAlta confirmed that this statement was in relation to its response to LSAMCA's Statement of Concern (SOC) No. 32450, in relation to the Integrated Applications for the Highvale Mine Approvals. On September 29, 2026, LSAMCA confirmed that it had no further comments regarding this matter.

Reasons for Decision

The applicable provision of REDA in regard to regulatory appeals, section 38, states:

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]

Each of the threshold issues for granting or denying the Appeal Request is discussed below.

Appealable Decision

REDA subsections 36(a)(i), (ii), and (iv) define "appealable decision" as including:

- (i) a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under section 91(1) of [EPEA], if that decision was made without a hearing,
- (ii) a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under section 115 of the *Water Act*, if that decision was made without a hearing,

[...]

- (iv) a decision of the Regulator that was made under an energy resource enactment, if that decision was made without a hearing.

The parties both submit, and the AER agrees, that the Integrated Application Decision is an Appealable Decision as defined in the applicable sections of EPEA, the *Water Act*, and REDA.

In Accordance with the Rules

The Appeal Request, with the exception of the appeal of the *Water Act* Approvals, was initially filed in accordance with the Rules. The AER granted LSAMCA's request for an extension of time to appeal the *Water Act* Approvals, and therefore any initial deficiency was remedied. The AER finds that this criterion is met.

Eligible Person

The term "eligible person" is defined in subsection 36(b) of REDA as follows:

- (i) **a person referred to in clause (a)(i), (ii) or (iii),**
- (ii) **a person who is directly and adversely affected by a decision referred to in clause (a)(iv), or**
- (iii) any other person or class of persons described in the regulations.

[emphasis added]

For the CCA Decisions, which were made under an energy resource enactment, an eligible person is a person who is directly and adversely affected by a decision made without a hearing. For the EPEA Decision and *Water Act* Decisions, an eligible person is a person who previously submitted a statement of concern in response to a public notice and who is directly affected by the AER's decision. While there appears to be a difference at first glance between the standard of "directly and adversely affected" under the energy resource enactments and "directly affected" under EPEA and the *Water Act*, the Alberta Court of Appeal has indicated that "'directly affected' connotes directly affected in an adverse fashion."¹

Therefore, in order for the Appeal Request to be granted, LSAMCA must demonstrate that they are directly and adversely affected by the Integrated Application Decision.

The Alberta Court of Appeal has held that whether someone is directly and adversely affected is largely a question of fact for the AER to determine based on the information before them in a particular matter.² In the case of an Aboriginal or treaty right, some degree of location or connection between the work proposed and the right asserted is required, although the degree of evidence required is a question for the AER.³ Some "hard" information or evidence must be provided that demonstrates a reasonable potential or probability

¹ *Normtek Radiation Services Ltd v Alberta Environmental Appeal Board*, 2020 ABCA 456, at para 79.

² *Fort McMurray 468 First Nation v Alberta Energy Regulator*, 2026 ABCA 197 at paras 44, 65 [**Fort McMurray 468**]; *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 at paras 10, 14 [**Dene Tha'**]; *O'Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348 at para 43.

³ *Dene Tha'* at para 14.

that the person will be affected by the decision.⁴ However, it is not necessary to show that the approval will certainly cause, or will even probably cause, an adverse effect. Rather, what matters is the “magnitude of risk”, which is a function of the probability of adverse effect and how serious it is.⁵

LSAMCA submits that the activities permitted by the Integrated Application Decision have the potential to directly and adversely affect the traditional use locations in and around the Mine site, including Wabamun Lake, which sustain LSAMCA members’ Métis Aboriginal rights to hunt, trap, gather and fish. LSAMCA is particularly concerned about impacts to water quality and quantity, and access to ample and healthy lands and resources which LSAMCA submits are critical to its members’ ongoing meaningful exercise of their rights.

TransAlta submits that LSAMCA is not directly and adversely affected by the Integrated Application Decision. TransAlta submits that there is no additional incremental disturbance resulting from the Highvale Mine Approvals, and rather the Approvals would materially if not completely reduce or eliminate pre-existing impacts to LSAMCA by reclaiming the lands comprising the Mine site to equivalent land use. TransAlta also submits that the alleged impacts asserted by LSAMCA are pre-existing, largely speculative and generally imply that TransAlta will fail to adequately or properly undertake what it has applied to do. Additionally, TransAlta submits that LSAMCA has not provided any information about the location, severity or extent of the alleged adverse impacts.

In reply to the argument that LSAMCA has not provided adequate information on alleged impacts, LSAMCA submits that its SOC provided enough evidence to explain its use of the area surrounding the Mine and the risk posed by the activities to be undertaken under the Highvale Mine Approvals. LSAMCA submits that its SOC tied LSAMCA’s members’ traditional activities to the North Saskatchewan River and Wabamun Lake, which are in proximity to the Highvale Mine. Because contamination of bodies of water is not restricted to one particular plot of land, LSAMCA submits that it cannot be expected to provide a narrowly defined area where its members engage in traditional activities. LSAMCA submits it provided the particular fish, plants, and animals its members harvest from the affected area, and identified 30 of its members as active users of the area affected by the Highvale Mine Approvals. Although LSAMCA acknowledges that the Highvale Mine currently restricts its members’ full use of the surrounding area, LSAMCA submits that it also identified ongoing use that continues to the present day and would be affected by the Highvale Mine Approvals. LSAMCA also submits that its standing is grounded in the nature of the regulatory process itself, and that standing may be grounded in a broad range of effects, not only adverse effects to the use of natural resources.

LSAMCA submits that the ameliorative nature of a reclamation plan should not bar potentially affected parties from having standing.⁶ LSAMCA submits that the fact that TransAlta must undertake reclamation and decommissioning activities presupposes that there is an underlying risk to the environment.

⁴ *Dene Tha’* at paras 14-18; *Fort McMurray* 468 at paras 48-49.

⁵ *Kelly v Alberta (ERCB)*, 2011 ABCA 325 at para 26 [**Kelly**]; *Fort McMurray* 468 at para 51.

⁶ *Kelly* at para 24.

We agree with LSAMCA that the ameliorative nature of TransAlta's reclamation plans, as approved in the Integrated Application Decision, is not in itself a reason to find that a party could never be directly and adversely affected.

However, based on the evidence before us, we are not convinced that LSAMCA stands to be directly and adversely affected by these particular Highvale Mine Approvals. The Highvale Mine Approvals do not permit activities beyond the existing footprint of the Mine. The Highvale Mine Approvals approve activities to decrease the risks associated with the existing Highvale Mine site. Notably, the Highvale Mine Approvals are not the final reclamation certificate, which TransAlta will need to apply for once reclamation is complete.

According to the conditions of the Highvale Mine Approvals, TransAlta must take care to ensure impacts outside the Highvale Mine site do not occur. For example, regarding water contamination, which was of particular concern to LSAMCA, the conditions of the EPEA Approval require:

- Mine wastewater handling facilities must be constructed in order to retain mine wastewater from a storm event;⁷
- TransAlta is prohibited from releasing any substances from the mine to the surrounding watershed, including wastewater discharge to the North Saskatchewan River and Wabamun Lake watershed, except as authorized;⁸
- Mine runoff from revegetated and/or reclaimed lands may not be released unless authorized in writing by the Director;⁹
- TransAlta may not add flocculants to the mine wastewater handling facilities unless authorized by in writing by the Director;¹⁰ If flocculants are added to the mine wastewater, TransAlta must record the type and amount of flocculant added and is then responsible for any adverse effect on downstream aquatic and ecological resources;¹¹
- TransAlta must comply with monitoring and reporting requirements including for all releases from the mine wastewater handling facilities, results from sampling mine wastewater and inspections of all major ponds and certain minor ponds, fish lethality tests, among other requirements;¹² and
- TransAlta must submit a Closure Surface Water Monitoring plan to the Director on or before December 31, 2026.¹³

⁷ EPEA Approval, section 3.1.2.

⁸ EPEA Approval, sections 4.2.1, 4.2.6, 4.2.7.

⁹ EPEA Approval, section 4.2.8.

¹⁰ EPEA Approval, section 4.2.9.

¹¹ EPEA Approval, sections 4.2.11, 4.2.12.

¹² EPEA Approval, sections 4.2.18 to 4.2.33.

¹³ EPEA Approval, section 4.2.34.

Regarding LSAMCA's arguments that the Integrated Application Decision relies on documents that do not yet exist, including an updated Groundwater Monitoring Program, a new Closure and Reclamation Groundwater Level Monitoring Program proposal, a new Groundwater Response Plan, and an End Pit Lake Monitoring and Development Program proposal, the AER notes that these plans, programs, and proposals, must meet conditions set out in the Highvale Mine Approvals. If these documents are deficient, TransAlta will be required to correct deficiencies, or will otherwise be in non-compliance with its Approvals.¹⁴ The creation of these documents, plans, and program proposals does not itself give rise to direct and adverse impacts on LSAMCA. Potential for future non-compliance with the Approvals is not relevant to LSAMCA's eligibility for a regulatory appeal.

Other Considerations

LSAMCA's Appeal Request set out three main grounds of appeal, respecting the AER's consideration of relevant technical evidence filed by LSAMCA in support of its SOC, the AER's application of the public interest test through reliance on future plans and programs in the Highvale Mine Approval conditions, and the AER's alleged failure to consider whether TransAlta met its obligations under the Participant Involvement Program (PIP). TransAlta provided response submissions to these grounds of appeal.

We note that the submissions of the parties in relation to the substance of the regulatory appeal are not relevant to the current decision on whether the threshold requirements for granting an appeal are met. The AER may at times conduct a preliminary assessment of the merits of a regulatory appeal when considering whether to dismiss the request under REDA section 39(4). However, since we have determined that LSAMCA does not meet the threshold requirement of demonstrating it is an eligible person, an assessment of the merits of the appeal is not required.

Conclusion

For the foregoing reasons, the AER finds that LSAMCA is not an "eligible person" as required by REDA. Accordingly, LSAMCA's Appeal Request is dismissed.

Sincerely,

<Original signed by>

Erik Kuleba

Director, Field Operations, Safety & Analytics

¹⁴ See e.g. EPEA Approval section 4.2.36 regarding the Closure Surface Water Monitoring Plan proposal.

<Original signed by>

Tyler Callicott

Director, Enforcement & Orphaning

<Original signed by>

Jason Brunet

Director, Science & Innovation

cc: Steven Van Lingen, AER
Shauna Gibbons, AER
Brent Kingston & Jody Butt, ACO