

Costs Order 2025-01

Northback Holdings Corporation

**Applications for Coal Exploration
Program (CEP) A10123772, Deep
Drilling Permit (DDP) 1948547, and
Temporary Diversion Licence (TDL)
00497386**

Costs Awards

August 21, 2025

Alberta Energy Regulator

Costs Order 2025-01: Northback Holdings Corporation, Applications for Coal Exploration Program (CEP) A10123772, Deep Drilling Permit (DDP) 1948547, and Temporary Diversion Licence (TDL) 00497386

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Northback Holdings Corporation

Applications for Coal Exploration Program (CEP) A10123772, Deep Drilling Permit (DDP) 1948547, and Temporary Diversion Licence (TDL) 00497386

Costs Order 2025-01

Introduction

[1] Northback Holdings Corporation (Northback) submitted the following applications:

- Coal exploration program (CEP), application A10123772, under section 20(1) of the *Public Lands Act* and in accordance with the *Code of Practice for Exploration Operations* made under the *Environmental Protection and Enhancement Act (EPEA)*, to conduct a coal exploration program on public lands at Grassy Mountain.
- Deep drilling permit (DDP), application 1948547, under section 10(1)(a) of the *Coal Conservation Act* and section 2 of the *Coal Conservation Rules*, to drill to depths deeper than 150 metres (m) and no deeper than 550 m on public land and Northback's privately owned land.
- Temporary diversion licence (TDL), application 00497386, under section 62 of the *Water Act*, to withdraw 1500 cubic metres (m³) of water from end-pit lake 2 on Northback's private land to use in support of the exploration drilling activities.

[2] The AER held a public hearing on these applications before the hearing commissioners P. Meysami (presiding), M. Barker, and S. Mackenzie. The first part of the hearing was held in Pincher Creek, Alberta, on December 3 and 4, 2024. The hearing continued in Calgary, Alberta, on January 14, 15, and 16, 2025. The hearing was adjourned pending advice from the Aboriginal Consultation Office. That advice was received in the ACO's hearing reports on February 7, 2025. Final arguments were provided on March 4, 2025.

[3] The AER issued its decision approving the applications on May 15, 2025, in Decision 2025 ABAER 006: Northback Holdings Corporation, Applications for Coal Exploration Program (CEP) A10123772, Deep Drilling Permit (DDP) 1948547, and Temporary Diversion Licence (TDL) 00497386.

[4] The AER received costs claims from the following participants regarding their participation in the hearing:

- Livingstone Landowners Group (LLG)
- Municipal District of Ranchland No. 66 (Ranchland)
- Pekisko Group (Pekisko)

[5] Although commissioners P. Meysami, M. Barker, and S. Mackenzie presided over the public hearing and issued decision 2025 ABAER 006 on the applications, for the purpose of deciding these costs claims, S. Mackenzie has been appointed as the decision maker.

The AER's Authority to Award Costs

[6] Under the *Responsible Energy Development Act*, the AER has broad discretion when deciding whether and how to award costs. Section 64 of the *Alberta Energy Regulator Rules of Practice* states:

The Regulator may award costs to a participant if it finds that it is appropriate to do so in the circumstances of a case, taking into account the factors listed in section 58.1.

[7] In determining who is eligible to submit a claim for costs, the AER is guided by the *Rules of Practice*, particularly sections 58(1)(c) and 62:

58(1)(c) “participant” means a person or a group or association of persons who have been permitted to participate in a hearing for which notice of hearing is issued or any other proceeding for which the Regulator has decided to conduct binding dispute resolution, but unless otherwise authorized by the Regulator, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

62(1) A participant may apply to the Regulator for an award of costs incurred in a proceeding by filing a costs claim in accordance with the Directive.

(2) A participant may claim costs only in accordance with the scale of costs.

(3) Unless otherwise directed by the Regulator, a participant shall (a) file a claim for costs within 30 days after the hearing record is complete or as otherwise directed by the Regulator, and (b) serve a copy of the claim on the other participants.

(4) After receipt of a claim for costs, the Regulator may direct a participant who filed the claim for costs to file additional information or documents with respect to the costs claimed.

(5) If a participant does not file the information or documents in the form and manner, and when directed to do so by the Regulator under subsection (4), the Regulator may dismiss the claim for costs.

[8] Section 58.1 of the *Rules of Practice* states:

The Regulator shall consider one or more of the following factors when making a decision in respect of an application by a participant for an advance of funds request, an interim award of costs, or a final award of costs:

(a) whether there is a compelling reason why the participant should not bear its own costs;

- (b) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
- (c) in the case of an advance of funds, whether the submission of the participant will contribute to the binding dispute resolution meeting or hearing;
- (d) in the case of interim costs, whether the participant,
 - (i) has a clear proposal for the interim costs, and
 - (ii) has demonstrated a need for the interim costs;
- (e) whether the participant has made an adequate attempt to use other funding sources;
- (f) whether the participant has attempted to consolidate common issues or resources with other parties;
- (g) in the case of final costs, whether an advance of funds or interim costs were awarded;
- (h) whether the application for an advance of funds or for interim or final costs was filed with the appropriate information;
- (i) whether the participant required financial resources to make an adequate submission;
- (j) whether the submission of the participant made a substantial contribution to the binding resolution meeting, hearing or regulatory appeal;
- (k) whether the costs were reasonable and directly and necessarily related to matters contained in the notice of hearing on an application or regulatory appeal and the preparation and presentation of the participant's submission;
- (l) whether the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Regulator;
- (m) the conduct of any participant that tended to shorten or to unnecessarily lengthen the proceeding;
- (n) a participant's denial of or refusal to admit anything that should have been admitted;
- (o) whether any step or stage in the proceedings was
 - (i) improper, vexatious, or unnecessary, or
 - (ii) taken through negligence, mistake, or excessive caution;

(p) whether the participant refused to attend a dispute resolution meeting when required by the Regulator to do so;

(q) the participant's efforts, if any, to resolve issues associated with the proceeding directly with the applicant through a dispute resolution meeting or otherwise;

(r) any other factor that the Regulator considers appropriate.

[9] When assessing applications for an award of costs, the AER is guided by *Directive 031: REDA Energy Costs Claims*.

[10] I read and thoroughly considered all the submissions made in this costs claim process. The absence in this decision of a reference to a particular submission or aspect of a submission in no way indicates a failure to consider the entire submission. All material filed with the AER was carefully considered in coming to this decision.

Costs Claim of Livingstone Landowners Group

[11] LLG submitted a costs claim of \$55 921.00 (including GST), broken down as follows:

- | | |
|--------------------------------------------------|-------------|
| • legal fees (McLennan Ross LLP) | \$41 868.76 |
| • expert fees (Mr. Fitch and Dr. Stelfox) | \$13 471.92 |
| • participation honoraria (Mr. Trafford) | \$500.00 |
| • disbursements and expenses (McLennan Ross LLP) | \$80.32 |

[12] LLG's legal fees are broken down into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument, accounting for a total of 124.1 hours, consisting of

- 66.2 hours for preparation,
- 50 hours for hearing attendance, and
- 7.9 hours for final argument.

[13] Northback stated that the LLG costs claim should be denied in its entirety and that LLG's submissions and evidence focused almost exclusively on the following:

- Alberta land use planning policies related to commercial coal mining and the development of coal on Alberta's eastern slopes
- selenium, which is unrelated to coal exploration programs
- LLG's objections to the Grassy Mountain coal project

[14] Northback specifically objected to the study presented by Dr. Steflox, regarding the potential environmental impact of eight unapproved coal mines on the eastern slopes. Northback stated that this study was entirely out of scope and irrelevant to the proceeding; thus, no costs should be awarded for Dr. Steflox's preparation or attendance at the hearing.

[15] Northback was also of the opinion that Mr. Fitch's evidence was unhelpful to the hearing panel as it did not focus on the specific applications. Also, Mr. Fitch did not provide the panel with specific mitigation measures relevant to the applications.

[16] LLG rejected Northback's assertions and submitted the following:

- It acted responsibly and contributed to a better understanding of the issues before the AER.
- Its participation made a substantial contribution to the hearing.
- Its costs were reasonable and directly and necessarily related to the matters contained in the notice of hearing and were appropriate for a four-day hearing.
- The testimonies of LLG's President, Bill Trafford, and the expert witness, Mr. Lorne Fitch, were about the environmental impacts of coal exploration.
- As a volunteer association, LLG required financial resources to make an adequate submission.

Analysis and Decision

[17] Although some of LLG's submissions and evidence spoke broadly about coal mining, the hearing panel found that LLG provided some useful perspective on the subject applications throughout their participation in the proceeding and contributed to a better understanding of the issues before the panel. LLG presented counterarguments to the need for the project, the adequacy of Northback's proposed mitigation measures in addressing environmental concerns, and the reclamation work associated with coal exploration programs. In assessing the claim, I primarily considered whether the hours claimed were reasonable to support LLG's contribution to the proceeding.

[18] LLG predominantly used a single senior counsel throughout the proceeding, with occasional support from more junior counsel. This level of legal support appears appropriate for LLG's contribution to the proceeding, as there was no duplication in work associated with the fees submitted for counsel.

[19] LLG also submitted costs for a student-in-law. I have disallowed these costs as a third member of the legal team was not required.

[20] I find that LLG's expert witness, Mr. Fitch, provided submissions and testimony that were applicable to coal exploration programs. However, some of this information was quite generic and not necessarily specific to these applications. Some of Mr. Fitch's evidence was unhelpful to the hearing panel. The hearing panel was disappointed that he was unable to provide any recommendations for new

environmental mitigation measures that could improve upon the existing best practices used by operators. The panel also did not find the linear disturbance discussions useful, given that Northback's proposed activities would not change the existing linear disturbance in the area. Therefore, I award half of the costs associated with Mr. Fitch's itemized services listed under "literature review, consultation with subject matter experts, response preparation." I find the remainder of the costs are reasonable as they relate to reviewing submissions, meeting with legal counsel, and attending the hearing to provide testimony.

[21] I find that the evidence of LLG's expert witness, Dr. Stelfox, regarding watershed-scale consequences of coal surface mines in the headwaters of the Oldman River watershed was not relevant to these applications. Therefore, no costs are awarded for Dr. Stelfox. The hearing panel reminded participants in its hearing scope letter dated September 3, 2024, that this proceeding was limited to Northback's three applications for a coal exploration program and expected submissions to be specific to the applications. In the hearing decision, the panel stated that Dr. Stelfox's work did not address the specific impacts of the exploration program and that his evidence was not relevant to the applications.

[22] A claim was made for an honorarium for Mr. Trafford's part-time hearing attendance. Given his position as the President of LLG and his testimony regarding the potential environmental impact of coal exploration programs and subsequent need for reclamation, I find the honorarium claimed to be reasonable and therefore award this amount.

[23] LLG's disbursements are for printing and photocopying services. I find these costs to be reasonable and therefore award the claimed amount.

[24] I grant the following amounts from claimed fees and disbursements:

Type	Section	Claimed	Awarded
Legal fees	Preparation	\$22 869.00	\$22 771.00
	Attendance	\$14 285.00	\$13 095.00
	Argument	\$2721.00	\$2721.00
	GST	\$1993.75	\$1929.35
Expert fees	Dr. Stelfox	\$5000.40	\$0.00
	Mr. Fitch	\$7830.00	\$5670.00
	GST	\$641.52	\$283.50
Honoraria	Mr. Trafford	\$500.00	\$500.00
Disbursements	Legal related	\$76.50	\$76.50
	GST*	\$3.83	\$3.83
Total		\$55 921.00	\$47 050.18

* GST is included in the meals (maximum of \$40/day) and mileage (\$0.505/km) disbursement expenses and should not be added to these expenses.

[25] In summary:

- LLG original claim: \$55 921.00
- LLG costs awarded: \$47 050.18

Costs Claim of Municipal District of Ranchland No. 66

[26] Ranchland submitted a costs claim of \$59 670.36 (including GST), broken down as follows:

- | | |
|---------------------------------------|-------------|
| • legal fees (Carscallen LLP) | \$58 454.55 |
| • participation honoraria (Mr. Davis) | \$400.00 |
| • disbursements and expenses | \$815.81 |

[27] Ranchland's legal fees are broken down into three sections: preparation (in advance of the hearing), attendance at the hearing, and final argument, accounting for a total of 182.6 hours, consisting of:

- 130.7 hours for preparation,
- 39.4 hours for hearing attendance, and
- 12.5 hours for final argument.

[28] Ranchland submitted the following:

- It had to participate in the proceeding as Northback had not provided Ranchland with meaningful consultation on the exploration applications.
- It pursued several avenues of relief to stay or adjourn the proceeding, and its motions related to this were not frivolous.
- It made valuable and helpful contributions to the hearing panel by challenging the need for additional exploration drilling, discussing the existing disturbances on Grassy Mountain, the concerns about noxious weeds, and the inadequate reclamation activities.
- It did not file unnecessary evidence, kept to the allocated time during the hearing, and ensured no duplicative testimony with the other full participants.

[29] Northback stated that the Ranchland costs claim should be denied in its entirety as it did not provide a compelling reason why it should not bear all of its costs. Northback submitted that Ranchland's participation did not provide the hearing panel with a better understanding of the issues before them and focused almost exclusively on the following issues that were out of scope:

- Alberta land use planning policies related to commercial coal mining and the development of coal on Alberta's eastern slopes

- selenium, which is unrelated to coal exploration programs
- the Grassy Mountain coal project, the associated environmental liabilities, and concerns regarding the reclamation of the legacy mine
- allegations of conspiracies and improper conduct by the AER

[30] Northback specifically objected to Mr. Davis's testimony stating that he unnecessarily lengthened the proceeding and did not provide relevant information.

[31] Ranchland rejected Northback's assertions, stating that

- Northback's submissions also referred to the coal exploration program and the potential Grassy Mountain coal mine,
- the legal fees claimed are not full indemnification for the fees charged to the MD of Ranchland, and
- Northback chose not to cross-examine Mr. Davis, and it is inappropriate at the costs claim stage to dispute his evidence.

Analysis and Decision

[32] Although Ranchland's submissions and evidence spoke broadly about coal mining, the hearing panel found that Ranchland provided some useful perspective on the subject applications throughout their participation in the proceeding and contributed to a better understanding of the issues before the panel. Ranchland presented counterarguments to the need for the project, highlighted its concerns about the spread of weeds and Northbank's proposed mitigation measures, and the reclamation efforts required for coal exploration programs. In assessing the costs claim, I primarily considered whether the hours were reasonable to support Ranchland's contribution to the proceeding.

[33] The AER may award costs for fees for more than one lawyer where the nature of the matter justifies it and where the work associated with the fees is not inappropriately duplicative. Typically, this supports a legal team of no more than two lawyers (one senior and the other more junior) and is considered appropriate for complex proceedings. This proceeding was not complex. However, I can see from the submitted costs that the senior lawyer was used more extensively during the hearing, and the less experienced lawyer was more involved in the preparation phase of the proceeding. Therefore, I will allow some of the costs associated with the second lawyer.

[34] The preparation hours claimed were excessive given the nature of this proceeding. The time claimed was 130.7 hours; despite Ranchland making short submissions, not engaging expert witnesses, and Mr. Davis only providing brief introductory remarks. Ranchland only briefly touched on the environmental concerns that it initially raised. I recognize that some of the preparation time was related to Ranchland's stay request. However, given the minimal evidence filed regarding Ranchland's initial

environmental concerns of selenium and noxious weeds, I have reduced the preparation time of the less experienced lawyer by 50%. This reduces the total preparation time to 81.35 hours.

[35] Mr. Davis appeared before the panel in his role as the Reeve of the MD of Ranchland. A claim was made for an honorarium for his part-time hearing attendance and his related disbursements. Participation honorarium is not usually intended to reimburse elected officials for appearing as representatives of their municipal government; therefore, the claimed honorarium and disbursements are not awarded.

[36] Ranchland's other disbursements are for photocopying services and for counsel's travel to and from the community sessions in Pincher Creek. I find these costs to be reasonable and therefore award the claimed amount for Carscallen LLP.

[37] I grant the following amounts from claimed fees and disbursements:

Type	Section	Claimed	Awarded
Legal fees	Preparation	\$38 836.00	\$25 018.00
	Attendance	\$12 922.00	\$12 922.00
	Argument	\$3913.00	\$3913.00
	GST	\$2783.55	\$2092.65
Honoraria	Mr. Davis	\$400.00	\$0.00
Disbursements	Legal related	\$494.84	\$494.84
	Mr. Davis	\$282.12	\$0.00
	GST*	\$38.85	\$11.94
Total		\$59 670.36	\$44 452.43

* GST is included in the meals (maximum of \$40/day) and mileage (\$0.505/km) disbursement expenses and should not be added to these expenses.

[38] In summary:

- Ranchland original claim \$59 670.36
- Ranchland costs awarded \$44 452.43

Costs Claim of The Pekisko Group

[39] Pekisko submitted a costs claim of \$7345.24 (including GST), broken down as follows:

- expert fees (Ms. Olsgard and Mr. Eddy) \$4977.50 (no GST claimed)
- expert disbursements and expenses \$1091.85
- disbursements and expenses \$1275.89

[40] Pekisko did not submit its costs claim using the required forms provided in *Directive 031*. However, as most of the documents filed met the requirements outlined in the directive, I have decided to accept the costs claim for consideration. I note that the costs claim does not add up to the \$6040.73 claimed by Pekisko, but rather \$7345.24. I have assessed the claim based on the itemized list provided by Pekisko.

[41] Northback stated that the costs claim is deficient as it does not meet the requirements of *Directive 031* or the relevant sections of the *Rules of Practice*. Northback had significant concerns about the magnitude, reasonableness, and need for the costs claimed by Pekisko and submitted that the claim be denied in its entirety. Northback's view is that Pekisko's participation focused on selenium, government land use policies, and general air and water quality concerns related to coal mining and was not specific to the applications.

[42] Northback specifically objected to the submissions provided by both of Pekisko's expert witnesses. It stated that these submissions were irrelevant to the coal exploration applications under consideration and did not contribute to a better understanding of the issues before the hearing panel.

[43] Pekisko was given an opportunity to reply to Northback but did not do so.

Analysis and Decision

[44] Five members of Pekisko attended and participated in the community session in Pincher Creek on December 3 and 4, 2024. In addition, Pekisko filed written submissions from two expert witnesses. Both expert witnesses spoke at the community session.

[45] As Pekisko is an organization of ranchers with grazing rights in the MD of Ranchland, the hearing panel granted the group limited participation to provide their perspective on the applications at the community session. However, I find that the magnitude of the costs claim is not proportional to the extent of Pekisko's limited participation. Much of its submission was related to future commercial coal mining and was not reasonable and directly and necessarily related to the subject of this proceeding as set out in the notice of hearing and further communicated to the parties in subsequent correspondence. These considerations influenced my assessment of the claim.

[46] I find that the submissions of Pekisko's expert witness, Ms. Olsgard, regarding land use planning policies and a 2021 report on the cumulative air quality impacts and health risks of future potential coal mining on the eastern slopes were not directly and necessarily related to the applications. For this reason, I conclude that costs should not be awarded for expert fees related to this evidence. Following the issuance of the notice of hearing, the hearing panel reminded participants in its letter dated September 3, 2024, that this proceeding was limited to consideration of Northback's three applications for an exploration program and expected submissions to be directly related to those applications.

[47] I find that the submission of Pekisko's expert witness, Mr. Eddy, regarding the potential impacts of selenium contamination of watersheds due to the development of open-pit coal mines was not directly and necessarily related to these applications. In addition, Pekisko did not provide the required statement of account to support the claimed costs for this evidence. Accordingly, I conclude that costs should not be awarded for these expert fees.

[48] I accept some of Pekisko's claimed costs for disbursements. However, the costs claim has been reduced to meet the requirements of *Directive 031*, which states that the maximum allowable claim for meals is \$40 per day per person and the maximum allowable claim for hotel accommodation is \$140 per day. There was a discrepancy in the mileage claimed; therefore, the amount awarded is reduced to account for this miscalculation¹. The disbursements claimed for Pekisko's expert witnesses are not allowed as their evidence was not directly and necessarily related to this proceeding.

[49] I grant the following amounts from claimed fees and disbursements:

Type	Section	Claimed	Awarded
Expert fees	Ms. Olsgard	\$4237.50	\$0.00
	Mr. Eddy	\$740.00	\$0.00
	GST	\$0.00	\$0.00
Disbursements	Pekisko	\$1275.89	\$1170.57
	Ms. Olsgard	\$699.57	\$0.00
	Mr. Eddy	\$392.28	\$0.00
	GST*	\$0.00	\$0.00
Total		\$7345.24	\$1170.57

* GST is included in the meals (maximum of \$40/day) and mileage (\$0.505/km) disbursement expenses and should not be added to these expenses.

[50] In summary:

- Pekisko original claim \$7345.24
- Pekisko costs awarded \$1170.57

Order

[51] The AER hereby orders that Northback pay costs for the Livingstone Landowners Group in the amount of \$44 833.50 and GST in the amount of \$2216.68 for a total of \$47 050.18. This amount must be paid within 30 days from the issuance of this order to McLennan Ross LLP.

¹ Distance between Trails End Beef and Pincher Creek Community Centre is 116 km one way

[52] The AER hereby orders that Northback pay costs for the MD of Ranchland No. 66 in the amount of \$42 347.84 and GST in the amount of \$2104.59 for a total of \$44 452.43. This amount must be paid within 30 days from the issuance of this order to Carscallen LLP.

[53] The AER hereby orders that Northback pay costs for the Pekisko Group in the amount of \$1170.57. This amount must be paid within 30 days from the issuance of this order to Laura Laing on behalf of the Pekisko Group.

Dated in Calgary, Alberta, on August 21, 2025.

Alberta Energy Regulator

Shona Mackenzie, CDir, PEng
Hearing Commissioner