

Costs Order 2026-01

## **Summit Coal Inc.**

**Applications for Mine 14  
Underground Coal Mine  
Applications CCA 1945552/1945553,  
EPEA 001-00496728, WA 001-  
00496729/001-00496730, PLA  
32212208/32900389**

## **Costs Awards**

February 5, 2026

**Alberta Energy Regulator**

Costs Order 2026-01: Summit Coal Inc., Applications for Mine 14 Underground Coal Mine.  
Applications CCA 1945552/1945553, EPEA 001-00496728, WA 001-00496729/001-  
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Suite 1000, 250 – 5 Street SW

Calgary, Alberta

T2P 0R4

Telephone: 403-297-8311

Toll free: 1-855-297-8311

Email: [inquiries@aer.ca](mailto:inquiries@aer.ca)

Website: [www.aer.ca](http://www.aer.ca)

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**Summit Coal Inc.****Applications for Mine 14 Underground Coal Mine****Costs Order 2026-01****Applications CCA 1945552/1945553, EPEA 001-00496728, WA 001-00496729/001-00496730, PLA 32212208/32900389****Introduction**

[1] Summit Coal Inc. (Summit) submitted an integrated application under the *Environmental Protection and Enhancement Act (EPEA)*, the *Water Act*, the *Coal Conservation Act*, and the *Public Lands Act* for Mine 14, an underground coal mine. The applications were for new approvals for Mine 14 and to update existing active approvals:

- *Coal Conservation Act*: amendment applications (1945552 and 1945553) to increase the mine permit C 2009-6 boundary by 130 hectares (ha) and the mine licence C 2011-9 boundary by 82 ha.
- *Environmental Protection and Enhancement Act*: a new application (001-00496728) to construct, operate, and reclaim Mine 14.
- *Water Act*: new applications (001-00496729 and 001-00496730) to construct and operate the water management systems at the Mine 14 location.
- *Public Lands Act*: applications (32212208 and 32900389) to replace the expired mineral surface lease (MSL) 131303 and licence of occupation (LOC) 131361.

**Procedural Background**

[2] The notice of hearing was issued on November 26, 2024.

[3] The Alberta Energy Regulator (AER) planned to hold a public hearing on these applications before a panel of hearing commissioners (the panel) with S. Mackenzie (presiding), C. Chiasson, and A. MacPherson. The hearing was scheduled to begin on October 7, 2025.

[4] On June 27, 2025, Summit filed a motion requesting that the panel cancel the hearing and issue a decision on the applications. On July 23, 2025, the panel denied Summit's request to cancel the hearing.

[5] On July 29, 2025, Summit filed a motion with the panel to adjourn the proceeding *sine die* (indefinitely), stating that it needed time to assess whether to apply for a reconsideration or permission to appeal the panel's July 23, 2025, decision. On August 8, 2025, the panel declined to adjourn the hearing indefinitely and instead granted an adjournment to February 9, 2026.

[6] On August 6, 2025, Summit filed a motion with the Chief Executive Officer (CEO) of the AER to reconsider the panel's July 23, 2025, decision to deny Summit's motion to cancel the hearing.

[7] On August 21, 2025, the AER's CEO issued his reconsideration decision. Pursuant to the reconsideration decision, the hearing was cancelled, and the applications were returned to the AER Regulatory Applications branch for consideration and decision. Accordingly, on August 29, 2025, the hearing dates for October were released. On September 24, 2025, the AER approved the Mine 14 applications.

[8] Given the unique circumstances of this proceeding, we provide this costs decision based on the information before us at the time of writing. This decision does not preclude Alberta Wilderness Association (AWA) and Canadian Parks and Wilderness Society, Northern Alberta (CPAWS NAB), from filing an application for costs in the future should a new or revived proceeding occur as a result of the appeal currently before the Alberta Court of Appeal.

### Costs Claim

[9] On September 18, 2025, AWA and CPAWS NAB filed a joint costs claim regarding their participation in the proceeding.

[10] The panel has decided to exercise its discretion and award costs of \$12 100.89 (including GST) to AWA and \$7014.69 (including GST) to CPAWS NAB. The reasons for the awards are set out in this decision.

### The AER's Authority to Award Costs

[11] 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 (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.

[12] 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.

[13] Furthermore, 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.

[14] When assessing applications for an award of costs, the AER is guided by *Directive 031: REDA Energy Costs Claims*. Section 6.6 of the directive addresses the situation of when a hearing is not held, stating that "claims for participant costs if no hearing is held should be filed with the AER as soon as possible. If such a claim is being made regarding an application that was withdrawn, the claim must be filed within 30 days of the date upon which the AER accepts the withdrawal of the application."

[15] The AER considers the notice of hearing date as the date the hearing process starts. The 30-day period for filing a costs claim application began on August 21, 2025, the date the CEO's reconsideration decision was released.

## Costs Claim of the Participants

[16] AWA and CPAWS NAB filed a joint claim, we have assessed it as such. In certain circumstances, costs were itemized at the individual organization level, and we have discussed these separately. The joint claim totalled \$30 621.43 (including GST).

[17] The AWA portion of this claim is \$18 801.97 (including GST), broken down as follows:

- legal fees (Napoli Shkolnik Canada) \$10 226.09
- expert fees (Ms. Olsgard) \$7194.38
- disbursements and expenses (AER document request) \$661.50

[18] The CPAWS NAB portion of this claim is \$11 819.47 (including GST), broken down as follows:

- legal fees (Napoli Shkolnik Canada) \$10 226.09
- expert fees (Ms. Andersen) \$1593.38

[19] AWA and CPAWS NAB submitted that they jointly hired a single legal team to assist them and coordinated their efforts to avoid duplication of resources and maximize efficiency. They retained Ecojustice Canada on a pro bono basis, which lowered their legal expenses. In addition, Napoli Shkolnik Canada (NSC) billed at half of its standard rate, and the majority of the work was completed by junior counsel.

[20] The submissions included contributions from two experts, Ms. Olsgard and Ms. Andersen. AWA and CPAWS NAB noted that Ms. Olsgard's expert report supported the hearing submissions of both organizations, whereas Ms. Andersen's work aligned with the scope of CPAWS NAB's submission. The disbursement claimed by AWA was for access to *EPEA* reports, which were used in Ms. Olsgard's analysis.

[21] AWA and CPAWS NAB stated that they were open to dispute resolution measures. They had planned to meet with Summit prior to the AER's CEO issuing his reconsideration decision to discuss the adequacy of Summit's response to the conditions proposed by AWA and CPAWS NAB.

[22] Summit stated that the costs claim should be denied in its entirety for the following reasons:

- The submissions and evidence focused on general opposition to coal mining and issues outside the scope of the applications, such as the Government of Alberta's land use planning policies.
- The involvement of AWA and CPAWS NAB in the proceeding was part of their ongoing campaigns to oppose natural resource development in Alberta rather than specific objections to these applications.
- Investors in Alberta's natural resources should not be required to pay for political campaigns when people choose to advance them through Alberta's regulatory processes.

[23] AWA and CPAWS NAB rejected Summit's assertions and submitted the following:

- Summit's attempts to discredit and delegitimize their organizations are improper, unfounded, and have no place in a regulatory proceeding.
- Summit's improper conduct increased the workload and costs, as it was necessary to respond to several procedural items that were rendered moot due to Summit's reconsideration request.
- The contributions to the proceeding by AWA and CPAWS NAB and their experts were relevant and reflected in the terms and conditions of the subsequent approvals issued by the AER Regulatory Applications branch.

### Legal Fees

[24] AWA and CPAWS NAB claimed total legal fees of \$20 452.16 (including GST), separated into four discrete tasks:

- |  |           |
|--|-----------|
| • AWA and CPAWS NAB written submissions                      | \$8191.58 |
| • Summit's informal request and motion to cancel the hearing | \$4017.04 |
| • Summit's adjournment motion                                | \$2047.50 |
| • Summit's reconsideration request                           | \$6196.05 |

[25] Summit objected to the legal fees. It submitted that AWA and CPAWS NAB did not make a meaningful attempt to use other funding sources, did not make a substantial contribution to the hearing, and did not contribute to a better understanding of the issues before the panel, raising irrelevant and out-of-scope issues. Summit's view is that a total billed time of 90 hours is excessive for a proceeding that did not involve a public hearing. In addition, the hours billed in connection with the reconsideration motion were not part of this proceeding and should be disallowed.

[26] Summit specifically objected to the legal fees filed for Ms. Wozniuk, who was identified as a legal assistant in the initial costs claim. Summit submitted that, as per section 6.2.1 of *Directive 031*, these costs should be considered as an overhead expense and already be included in counsel's hourly rate.

[27] AWA and CPAWS NAB cited the costs savings they had obtained from NSC and the pro bono work of Ecojustice Canada as examples of their successful efforts to use other funding sources. The legal fees claimed were for preparing the written submissions and responding to various procedural steps that were part of the proceeding. NSC filed time summaries to provide additional detail supporting the necessity and relevance of the claimed legal fees. NSC clarified that Ms. Wozniuk is an experienced licensed paralegal, and the tasks she completed were not secretarial work and are consistent with *Directive 031* requirements.

## Expert Fees

[28] Summit objected to the report prepared by AWA's expert, Ms. Olsgard. This report referred to Ms. Olsgard's conclusions that Summit's application has shortcomings, risks, and potential negative impacts on health, water, air, and habitat. Summit stated that the submissions from AWA and CPAWS NAB did not meaningfully engage with this report and that Ms. Olsgard discussed matters outside her expertise, such as dam safety, hydrological risk, soil reclamation, and groundwater transportation mechanisms. In Summit's opinion, this report was unhelpful to the panel.

[29] Summit also objected to the report prepared by CPAWS NAB's expert, Ms. Andersen. It stated that the work was unnecessary and unhelpful as the deficiencies identified were already addressed in Summit's applications and in its responses to the AER's supplemental information requests.

[30] Summit further submitted that the costs claims for the two experts were excessive and unreasonable.

[31] AWA and CPAWS NAB responded that Summit's criticisms were baseless and Ms. Olsgard's work remained within her areas of expertise. Her report evaluated toxicological pathways, contaminant transport, and health and ecological risk implications using publicly available data and regulatory standards. The identification of deficiencies in Summit's application materials was necessary to assess potential exposure and risk, and was not an overreach into areas outside of Ms. Olsgard's expertise. In their opinion, Ms. Olsgard's report identified data gaps that were directly relevant to the AER's statutory duty to assess the protection of the environment and human health.

[32] AWA and CPAWS NAB rejected Summit's assertions regarding Ms. Andersen's work. They stated that her report identified deficiencies in Summit's *EPEA* and *Water Act* applications and was relevant and aligned with the scope of the submission filed by CPAWS NAB. The matters raised in the report are tied to the merits of Summit's applications and cannot be properly determined as the hearing was cancelled.

[33] AWA and CPAWS NAB provided several examples identifying specific work by their two experts and their respective organizations that informed the AER's assessment of the Mine 14 applications.

## Analysis and Decision

[34] We have read and thoroughly considered all the submissions made in this costs claim process. 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.

[35] In assessing the claimed legal fees, we primarily considered whether the hours were reasonable to support the contributions of AWA and CPAWS NAB to the proceeding. We find that AWA and CPAWS

NAB made a meaningful attempt to reduce their legal expenses by negotiating discounted rates with NSC and obtaining pro bono work from Ecojustice Canada. In addition, we find that AWA and CPAWS NAB did coordinate their efforts and attempted to consolidate common issues and resources. This was demonstrated through their joint retention of the legal team and the sharing of expert witnesses.

[36] The costs claim indicates that junior counsel was used throughout the proceeding, with the senior counsel used occasionally in a review capacity. A paralegal was also used to further reduce costs, which is an acceptable professional fee as per appendix D of *Directive 031*. The AER may award costs for fees for more than one lawyer where it is justified due to the nature of the matter and the work associated with the fees is not inappropriately duplicative. Our review of the costs claim, invoices, and time summaries indicates that this is the case, and we accept the use of more than one counsel.

[37] Due to the unique circumstances of this proceeding, it is difficult to assess how substantially the written submissions contributed to the matter before us, as a hearing on the applications did not occur and, consequently, the written submissions were not tested.

[38] The CEO's reconsideration decision resulted in the applications being returned to the AER's Regulatory Applications branch for consideration and decision. In addition, the CEO's reconsideration decision stated that the "information they have already provided in this regard in their hearing submissions will greatly assist AER staff subject matter experts in technical and environmental sciences with a comprehensive review of the applications" and "will still be 'heard' and considered by the AER, just not at an oral hearing." The panel was not involved in the application approval process; therefore, we cannot fully quantify the extent and relevance of the individual contributions from AWA and CPAWS NAB. They submitted to us that their input was reflected in the approvals issued on September 24, 2025.

[39] From our review of the submissions, the information provided was generally related to the matters in this proceeding. Our review of the submitted time summaries indicates that the legal fees were reasonable and directly related to the preparation and presentation of submissions. Therefore, under these unique circumstances, we find it appropriate to award 70% of the legal fees associated with the task identified as "AWA and CPAWS NAB written submissions."

[40] We award the full amount for the legal fees associated with the procedural steps itemized in the costs claim as "responding to Summit's informal letter to the AER and formal motion to cancel the public hearing," and "responding to Summit's motion to adjourn the public hearing *sine die*." These legal costs were a direct result of procedural motions made on the record of the hearing. We note that we needed to remind Summit to file procedural motions in accordance with section 44 of the *Rules of Practice*, but only after AWA and CPAWS NAB had responded to an improperly filed request. Additionally, there were several interlocutory steps throughout the hearing, most of which were the actions of Summit. We accept that AWA and CPAWS NAB responded to these interlocutory steps as efficiently as possible.

[41] We disallow the legal fees claimed by AWA and CPAWS NAB in relation to Summit’s reconsideration motion to the CEO of the AER. Section 5.1 of *Directive 031* states that “a submission for costs will not include arguments about things not being considered or not related to the application.” The reconsideration motion was not before the panel and was not part of this proceeding.

[42] Due to the previously described unique circumstances of this hearing, we were unable to fully determine the relevancy of the expert witness reports, as their work was not tested before us through the process of direct examination and cross-examination. AWA and CPAWS NAB stated that the submissions of their experts were reflected in the Mine 14 application approvals issued on September 24, 2025, and provided several examples of how their work informed the AER’s assessment of the applications. However, we find that some components of the expert reports do not appear to directly and necessarily relate to the Mine 14 underground mine applications and have therefore decided to award 70% of the expert fees to account for this.

[43] We award the claimed amount for the AWA disbursement to access the *EPEA* approval 00155804 report, which could not be obtained through the AER self-serve system.

[44] We grant the following amounts to AWA:

| Type          | Section     | Claimed            | Awarded            |
|---------------|-------------|--------------------|--------------------|
| Legal fees    | Argument    | \$9 739.13         | \$5 618.40         |
|               | GST         | \$486.96           | \$280.92           |
| Expert fees   | Ms. Olsgard | \$7 537.50         | \$5 276.25         |
|               | GST         | \$376.88           | \$263.82           |
| Disbursements | AER report  | \$661.50           | \$661.50           |
| <b>Total</b>  |             | <b>\$18 801.97</b> | <b>\$12 100.89</b> |

[45] We grant the following amounts to CPAWS NAB:

| Type         | Section      | Claimed            | Awarded           |
|--------------|--------------|--------------------|-------------------|
| Legal fees   | Argument     | \$9 739.13         | \$5 618.40        |
|              | GST          | \$486.96           | \$280.92          |
| Expert fees  | Ms. Andersen | \$1 532.13         | \$1 072.49        |
|              | GST          | \$61.25            | \$42.88           |
| <b>Total</b> |              | <b>\$11 819.47</b> | <b>\$7 014.69</b> |

[46] In summary<sup>1</sup>:

- AWA original claim: \$18 801.97                      AWA costs awarded: \$12 100.89
- CPAWS NAB original claim: \$11 819.47            CPAWS NAB costs awarded: \$7014.69

## **Order**

[47] The AER hereby orders that Summit pay costs for Alberta Wilderness Association in the amount of \$11 556.15 and GST in the amount of \$544.74 for a total of \$12 100.89. This amount must be paid within 30 days from the issuance of this order to Napoli Shkolnik Canada.

[48] The AER hereby orders that Summit pay costs for the Canadian Parks and Wilderness Society, Northern Alberta in the amount of \$6690.89 and GST in the amount of \$323.80 for a total of \$7014.69. This amount must be paid within 30 days from the issuance of this order to Napoli Shkolnik Canada.

Dated in Calgary, Alberta, on February 5, 2026.

## **Alberta Energy Regulator**

Shona Mackenzie, CDir, PEng  
Presiding Hearing Commissioner

Cindy L.F. Chiasson, LLB  
Hearing Commissioner

Andrew MacPherson, PEng  
Hearing Commissioner

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<sup>1</sup> Due to rounding, the numbers presented in this document may not add up precisely to the totals provided, and there may be slight differences (<\$ 0.02) compared with the original costs claim.