



Alberta Wilderness Association
"Defending Wild Alberta through Awareness and Action"

March 28, 2021

The Honourable Jonathan Wilkinson,
Minister of Environment and Climate Change,
House of Commons,
Ottawa, Ontario K1A 0A6

Request to Designate Montem Resources' Tent Mountain Project Under Section 9(1) of the *Impact Assessment Act*

Dear Minister Wilkinson:

Alberta Wilderness Association, formed in 1965, is one of the oldest wilderness conservation organizations in Alberta. Formed around a kitchen table within sight of the landscapes that concern us in this designation request, AWA now has more than 7,500 members and supporters; you will find our members in 224 Alberta communities as well as elsewhere in Canada and around the world.

In its early days, AWA played vital roles in creating Alberta's Coal Policy and Eastern Slopes Policy, policies that helped to protect the Eastern Slopes, an iconic Canadian landscape. This brief returns to those subjects. Alberta Wilderness Association ("AWA") is writing with respect to a proposal from Montem Resources Alberta Operations ("Montem") to commence metallurgical coal mining at its Tent Mountain project ("Tent Mountain") located adjacent to the British Columbia border in the Municipality of Crowsnest Pass. AWA requests you exercise your authority under section 9(1) of the *Impact Assessment Act* (the "IAA") to determine that Tent Mountain should be a designated project under the IAA.

Further to the Independent Assessment Agency of Canada's ("IAAC") "Operational Guide: Designating a Project under the *Impact Assessment Act*" the name of the project is the Tent Mountain Project; the project proponent is Montem Resources Alberta Operations Ltd., a subsidiary of Montem Resources Corp.; the corporation's address is 7720 17 Avenue, PO Box 610, Coleman, Alberta T0K 0M0 (Montem Resources Corp. is located at 415-938 Howe Street, Vancouver, BC V6Z 1N9; the project is located in the Municipality of Crowsnest Pass. The proposed mine is an "open-pit surface coal mine" designed to produce 4,925 raw tonnes of metallurgical coal per day.¹ Montem proposes a 14 year-program of operations.² Additional information about Tent Mountain is available on the company's website.³

¹ Montem Resources Ltd., "Proposed Terms of Reference, Environmental Impact Assessment Report For Montem Resources Proposed Tent Mountain Project," 5. <https://montem-resources.com/wp-content/uploads/2021/02/Proposed-Terms-of-Reference-February-2021.pdf>.

² Montem Resources Alberta Operations Ltd., "Tent Mountain Project: Project Description/Project Summary Table," 1. <https://montem-resources.com/wp-content/uploads/2021/02/Project-Summary-Final-11-Feb2021.pdf45.pdf>

³ Montem Resources, "Tent Mountain Mine," <https://montem-resources.com/projects/tent-mountain/>.

Minister Wilkinson, AWA requests you use your authority under section 9(1) of the *IAA* to designate Tent Mountain for a federal impact assessment for the following reasons:

1. The mine's production design of 4,925 tonnes of coal per day is just 75 tonnes (or 1.5%) shy of the threshold set in Section 18(a) of the Schedule to the *Physical Activities Regulations* (SOR/2019-285) for a new coal mine to be a designated project under Section 2 of the *IAA*.
2. Tent Mountain has the potential to cause adverse effects to species listed under Canada's *Species at Risk Act* ("SARA")
3. Tent Mountain has the potential to cause adverse effects to the environment in the United States.
4. Tent Mountain has the potential to cause adverse effects to the environment in adjacent provinces.
5. Tent Mountain has the potential to cause adverse effects to the environment that could affect detrimentally the Indigenous peoples of Canada.
6. As one of at least ten new coal mining projects being contemplated in Alberta's Rockies and Foothills Tent Mountain has the potential to contribute to cumulative effects with respect to greenhouse gases that will hinder Canada's ability to meet its climate change commitments.
7. Alberta's environmental assessment/regulatory processes are unlikely to give sufficient consideration to the significant public concerns that have been raised about coal mining in Alberta.

Each of these reasons will be addressed below.

Tent Mountain's declared production design capacity and the Section 18(a) Threshold

In the Annex to the IAAC's Operational Guide for designating a project under the *IAA*, the first question reads: "Is the project near a threshold set in the Project list?" The answer is yes.

Tent Mountain is a whisker short of triggering the 5,000 tonne per day designated project threshold for new coal mines outlined in Section 18(a) of the Schedule to the *Physical Activities Regulations*. The distinction between a mine producing 4,925 tonnes per day and one producing 5,000 tonnes per day is a distinction without a difference. Teck Resources featured a Komatsu 930E truck in a 2014 story about improving haul truck efficiency at its Elk Valley B.C. operations.⁴ The capacity of that truck is 290 metric tonnes. In other words, the slight difference between the new coal mines threshold set in the *Physical Activities Regulations* and Tent Mountain's declared production capacity constitutes just one-quarter of what a truck like the Komatsu 930E is rated to carry in one load. It seems unreasonable to suggest that, in respect to mining and coal processing infrastructure, there is a noticeable – let alone a significant difference – between a 4,925 tonne per day mining operation and a 5,000 tonne per day facility. Given the miniscule gap (1.5%) between Tent Mountain's declared production capacity and the Section 18(a) threshold the Minister should not interpret the guidance in Section 18(a) as an absolute threshold preventing the federal government from assessing the potential effects of Tent Mountain.

Tent Mountain's potential to cause adverse effects to species listed under Canada's *Species at Risk Act* ("SARA")

The second reason AWA requests a section 9 (1) designation is because Tent Mountain has the potential to cause adverse effects to species listed under SARA. These species are: Whitebark Pine,

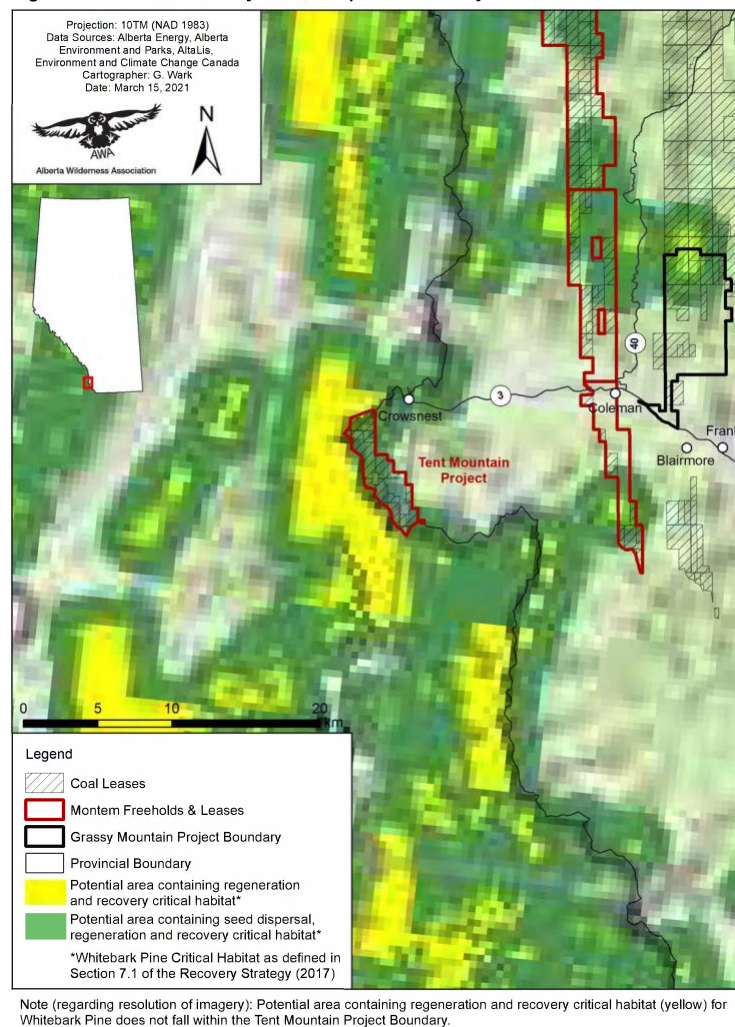
⁴ Teck Resources Ltd., "Improving Haul Truck Productivity," (2014), <https://www.teck.com/news/stories/2014/improving-haul-truck-productivity>.

Grizzly Bear, and Westslope Cutthroat Trout. Westslope Cutthroat Trout will be discussed in the cumulative effects section of this submission.

Whitebark Pine (*Pinus albicaulis*)

In 2012, whitebark pine was designated as Endangered in SARA Schedule 1. Environment and Climate Change Canada's ("ECCC") proposed recovery strategy for whitebark pine estimates that Canada is home to 56 percent of the world's whitebark pine population.⁵ All of this Canadian population is found in Alberta and British Columbia. Figure 1 is derived from the data set ECCC used in the 2017 proposed recovery strategy to generate the range maps found there.⁶ Virtually the entire Tent Mountain site falls within the two kilometre "potential area containing regeneration and recovery critical habitat" stipulated in that recovery plan. As noted in the proposed recovery strategy, local inventory and assessment of whitebark pine density must be completed in order to see if this potential is realized. Figure 1 also indicates that other planned projects in the area such as Montem's Chinook project and Benga Mining's

Figure 1: Tent Mountain Project and Proposed Recovery Whitebark Pine Critical Habitat



⁵ Environment and Climate Change Canada, *Recovery Strategy for the Whitebark Pine (Pinus albicaulis) in Canada [Proposed]*, (Ottawa: Environment and Climate Change Canada, 2017), v.

⁶ *Ibid.*, 34.

Grassy Mountain project will be located in potential critical habitat locations for whitebark pine. If, as we argue later, these projects should be considered in a cumulative effects assessment, they create additional potential adverse effects possibilities for whitebark pine in southwestern Alberta.

Grizzly Bear (*Ursus arctos*)

In 2018 the grizzly bear population in western Canada was listed as a species of Special Concern in Schedule 1 of SARA. In its reason for this designation, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) estimated the Canadian population to be 26,000 but concluded the number of mature bears was uncertain and “could be close to 10,000.” While the overall Canadian population may not have declined over the past generation, “a number of populations in the southern extent of its range in Alberta and southern BC are known to be declining and there are concerns about unsustainable mortality rates there and in parts of Yukon.”⁷

Provincially, in 2002 Alberta’s Endangered Species Conservation Committee recommended assigning a *Threatened* designation to the province’s grizzly bear population under the *Wildlife Act*.⁸ The provincial government didn’t accept this recommendation until 2010. Prior to accepting the recommendation, the government published a grizzly bear recovery plan in 2008.⁹ While an update to Alberta’s first grizzly bear recovery plan was circulated for public comment in 2016, it was never implemented.¹⁰ In 2019, provincial carnivore specialist Paul Frame reportedly said that Alberta was still using the 2008 plan and didn’t feel a great deal of urgency to implement the updated planning document.¹¹

In 2010 Alberta estimated the grizzly bear population to be 691 animals, approximately 359 of which were likely to be mature enough to reproduce. This 2010 status update, prepared by Dr. Marco Festa-Bianchet, noted that south of Highway 1 “grizzly bears are restricted to a narrow strip of habitat along the B.C. border.”¹²

AWA requests a federal assessment of Tent Mountain because valued ecological components such as grizzly bears don’t respect political boundaries. In other words, this species of special concern is not a distinctive Alberta population – the grizzly bear population at risk here is a regional population that relies on healthy, intact landscapes in southeastern British Columbia, southwestern Alberta, and northwestern Montana. In this respect Tent Mountain has the potential to cause adverse effects to valuable environmental features in an adjacent province (British Columbia) and the United States.

⁷ Government of Canada, “Grizzly Bear (*Ursus arctos*), Western population,” https://species-registry.canada.ca/index-en.html#/species/1195-863#cosewic_assessment, accessed March 18, 2021.

⁸ In Alberta, a *Threatened* species is “(a) species likely to become endangered if limiting factors are not reversed.” An *Endangered* species describes “(a) species facing imminent extirpation or extinction.” Marco Festa-Bianchet, *Status of the Grizzly Bear (*Ursus arctos*) in Alberta: Update 2010*, (Government of Alberta, February 2010), 43.

⁹ Alberta, *Alberta Grizzly Bear Recovery Plan 2008-2013*, (Government of Alberta, March 2008).

¹⁰ Alberta, *Grizzly Bear Recovery Planning*, (Government of Alberta, May 2016), <https://open.alberta.ca/dataset/70a45aa0-91fa-43d1-826e-f96f5e0300cd/resource/4ccf2a04-b5a6-43c6-bd18-c743a4e8ebf4/download/2016-alberta-grizzly-bear-recovery-planning-may-2016.pdf>.

¹¹ Andrew Jeffrey, “More focus needed to recover grizzly population in Alberta, says bear safety expert,” *The Toronto Star*, 2 July 2019.

¹² Festa-Bianchet, *Status of the Grizzly Bear (*Ursus arctos*) in Alberta: Update 2010*, iv.

Governments and academics alike recognize the regional character of the grizzly bear population found in the corner of Alberta where Montem proposes to recommence open-pit coal mining. The Alberta government's 2020 report on grizzly bear occurrence in Bear Management Area (BMA) 6 states:

Grizzly bears in BMA 6 are part of a larger population that includes Montana and British Columbia (Proctor et al, 2012). There is no ecological basis for partitioning an Alberta specific portion of this population.¹³ (my emphasis)

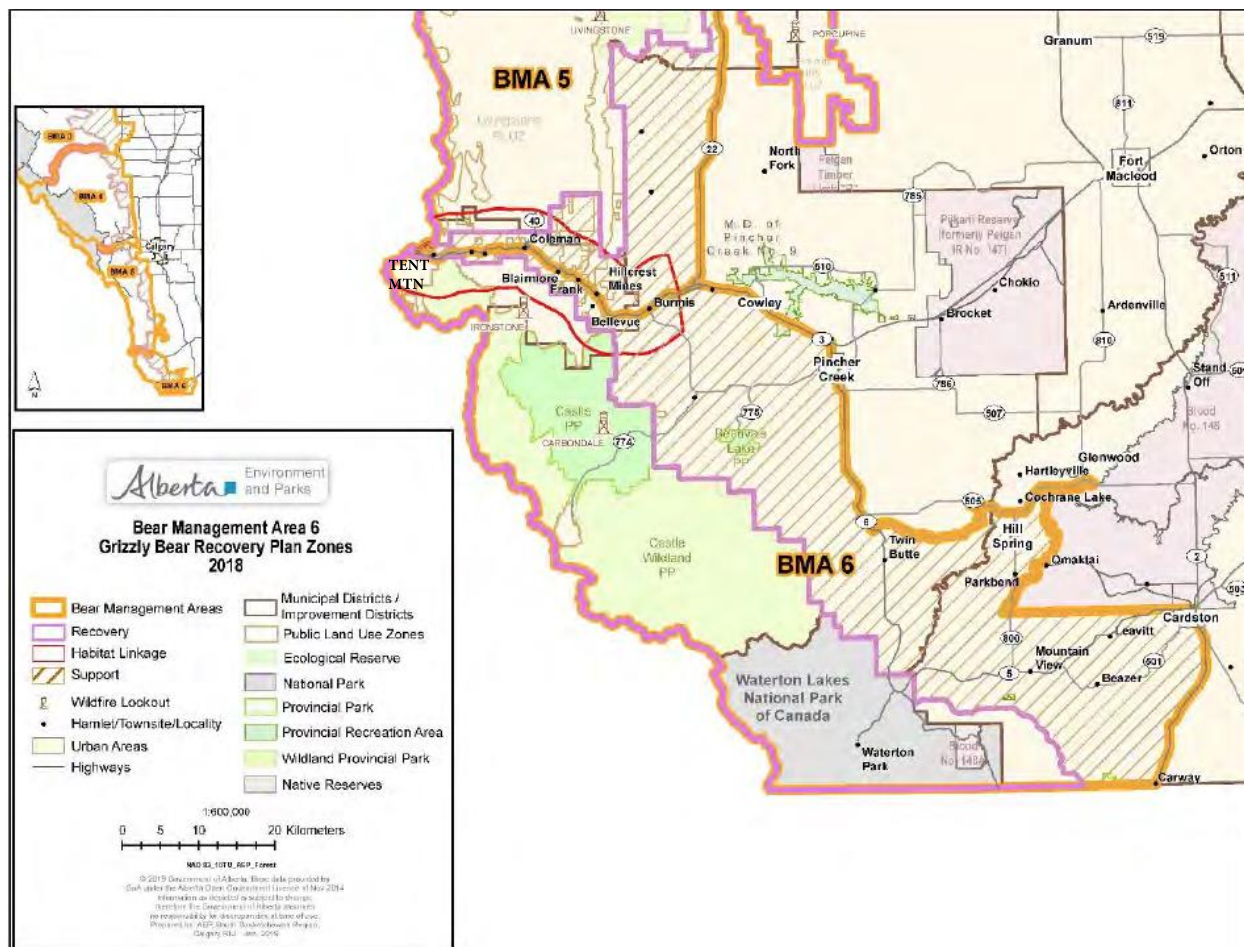


Figure 2: Alberta Bear Management Area 6

¹³ Alberta, Environment and Parks, *Grizzly Bear Occurrence Summary 2019: Bear Management Area (BMA) 6*, (Government of Alberta, December 2020), 8. This language is virtually to that used by Morehouse and Boyce four years earlier. They wrote in 2016: "Partitioning an Alberta portion of this inter-jurisdictional grizzly bear population as a separate management unit has no ecological basis." See Andrea T. Morehouse and Mark S. Boyce, "Grizzly Bears Without Borders: Spatially Explicit Capture-Recapture in Southwestern Alberta," *The Journal of Wildlife Management*, Vol. 80, no. 7 (2016), 1153.

As Figure 2 indicates, Tent Mountain would be located on the southwestern portion of a habitat linkage zone in Alberta. This zone “identifies key wildlife movement corridors that also have significant development within the urban areas, major highways and railways. In the case of BMA 6, this included Highway 3 in the Crowsnest Pass.”¹⁴ It is reasonable to surmise that Tent Mountain’s lease footprint (approximately 1,847 hectares or 18.47 square kilometres) with its accompanying infrastructure, activity, and noise will reduce the utility of this linkage zone for grizzly bears. Further to the interjurisdictional nature of the grizzly bear population in BMA 6, the Interagency Grizzly Bear Committee (IGBC), created in 1983, is an international intergovernmental response to the regional/international character of grizzly bear populations in this part of North America. The Alberta and British Columbia governments have members on the IGBC’s Northern Continental Divide Ecosystem Subcommittee.¹⁵

The regional character of the grizzly bear population is well-recognized in the academic literature. In this regard, Alberta’s 2019 occurrence summary for grizzly bears in BMA 6 referred to the 2012 Proctor et al study. That study opened by noting that species movement is important in meeting their ecological requirements and helping species to persist in the face of the types of dramatic changes raised by human settlement, development, and climate change; “(t)he interruption of movement by fragmentation is a major force underlying the recent extinction crisis.”¹⁶ The Crowsnest Pass region was included there in the territory identified as the southern limit of the grizzly’s contiguous range in North America. As such this region is part of “the active front for future changes in range.”¹⁷ (my emphasis) “Extensive fragmentation” characterized the area in the vicinity of the Canada-U.S. border. While both male and female bears exhibited reductions in their movement rates as settlement and traffic increased, the female movement rates dropped more dramatically in the presence of these factors. This difference between male/female movements concerned the researchers. “Without female connectivity,” they noted, “small populations are not viable over the long term. The persistence of this regional female metapopulation likely will require strategic connectivity management.”¹⁸ An important theme in this article is that fragmented populations of species such as grizzly bears threaten population health and diversity and that management should minimize obstacles contributing to population fragmentation.

Morehouse and Boyce highlighted the inter-jurisdictional nature of the grizzly bear population in southwest Alberta, southeast British Columbia, and northwest Montana in their 2016 article. To a significant degree, they explored the extent to which grizzly bears in BMA 6 were resident bears as opposed to bears that used the region but resided outside of the BMA. They concluded that a very significant proportion of the bears they identified in BMA 6 in 2013 and 2014 came from outside of the BMA. They estimated there were 82.4 resident Alberta bears there in 2013 and 54.6 resident bears there in 2014. But, they estimated that approximately 172 grizzly bears used the study area in both 2013 and

¹⁴ *Grizzly Bear Occurrence Summary 2019*, 5.

¹⁵ Interagency Grizzly Bear Committee, “Northern Continental Divide Ecosystem Subcommittee,” <http://igbconline.org/n-continental-divide-subcommittee/>. Representatives of the Alberta and British Columbia governments also are listed as Canadian partners of the IGBC Executive Committee. See <http://igbconline.org/executive-committee/>. British Columbia has a member of the IGBC’s Selkirk/Cabinet-Yaak Ecosystems Subcommittee. See <http://igbconline.org/selkirkcabinet-yaak-subcommittee/>.

¹⁶ Michael F. Proctor et al, “Population Fragmentation and Inter-Ecosystem Movements of Grizzly Bears in Western Canada and the Northern United States,” *Wildlife Monographs*, no. 180 (2012), 5.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 2.

2014.¹⁹ According to these estimates, a majority of the grizzly bears using BMA 6 were non-resident bears that were detected previously in either British Columbia or Montana. They hypothesized that the decline in the number of resident Alberta bears from 2013 to 2014 may have occurred because of a poor berry crop in Alberta relative to a good huckleberry crop in B.C.'s Flathead Valley.²⁰ If this hypothesis was correct, it further emphasizes the importance of ensuring that grizzly bears may move relatively freely from one jurisdiction to another. A coal mine such as Tent Mountain would erect a significant obstacle to such movement.

Cumulative Effects: Grizzly Bear, Whitebark Pine, Westslope Cutthroat Trout

The Impact Assessment Agency's operational guide to designating a project under the *IAA* states that the Agency may take into account if "there are proposals for multiple activities within the same region that may be a source of cumulative effects." AWA believes this factor is central to why a federal impact assessment should be conducted into Tent Mountain. Section 6 (1) (m) of the *IAA* describes one of the purposes of the Act, in part, as: "to encourage the assessment of the cumulative effects of physical activities in a region..." In the event Tent Mountain was categorized as a designated project, Section 22 (1)(a)(ii) of the Act states that one of the facts to be considered in an impact assessment would be: "any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out..."

Alberta's environmental assessment legislation, the *Environmental Protection and Enhancement Act (EPEA)*, has never explicitly included the phrase "cumulative effects." Introduced and passed in 1993, Section 47 (d) of the EPEA instead stated that an environmental impact assessment report normally shall include: "a description of potential positive and negative environmental, social, economic and cultural impacts of the proposed activity, including cumulative, regional, temporal and spatial considerations."²¹ But in 2000, a policy guide to preparing environmental impact assessments under the Act defined cumulative effects as "the changes to the environment caused by an activity in combination with other past, present, and reasonably foreseeable human activities."²² More recently, the *Livingstone-Porcupine Hills Land Footprint Management Plan* articulated a very similar understanding: "Cumulative effects, *cumulative impacts* – the combined effects of past, present and reasonably foreseeable future land-use activities on the environment."²³

If Tent Mountain is considered through a cumulative effects lens as defined in either the *IAA* or provincial policy documents, AWA is very concerned that the potential adverse effects of the Tent Mountain project will be magnified. The potential threats Tent Mountain will present to the inter-jurisdictional grizzly bear population will be magnified. So too will the threats to whitebark pine. Considering cumulative effects also raises the very real possibility that serious adverse effects will beset westslope cutthroat trout – another endangered species under SARA.

¹⁹ Morehouse and Boyce, "Grizzly Bears Without Borders," *The Journal of Wildlife Management*, Vol. 80, no. 7 (2016), 1160.

²⁰ *Ibid.*, 1162.

²¹ This identical section is 49(d) in the current version of the *Environmental Protection and Enhancement Act*.

²² Alberta, "Cumulative Effects Assessment in Environmental Impact Assessment Reports Required under the Alberta Environmental Protection and Enhancement Act," (January 2000), 2.

<https://open.alberta.ca/dataset/ffb3a8b8-8eab-421f-98aa-56f21dc98dbe/resource/a87805b5-96c4-45a8-8899-92fafa3b0503/download/cumulativeeffectseiareportsunderepea-a.pdf>

²³ Alberta Environment and Parks, *Livingstone-Porcupine Hills Land Footprint Management Plan*, (Government of Alberta: May 2018), 1.

AWA's concern arises from what we believe is a reasonable understanding of "other physical activities...that will be carried out..." or of "reasonably foreseeable human activities/ reasonably foreseeable future land-use activities on the environment." During the Joint Review Panel hearing into Benga Mining's Grassy Mountain Coal Project, BengaMining/Riversdale Resources officials argued that, with respect to future activities, a project must have applied for regulatory approval in order to be included in a cumulative effects analysis.²⁴ At that hearing, AWA's counsel argued that Benga's interpretation of what projects and activities should be considered in a cumulative effects analysis was too strict.²⁵

With respect to Tent Mountain, AWA submits that, at the very least, the ambitions and plans that Montem Resources itself is promoting for the Crowsnest Pass region must be considered in a cumulative effects assessment. Montem describes Tent Mountain as the first step in a multi-step program of coal development that would see Montem develop four additional mining projects: Chinook, Isola, 4-Stack, and Oldman. AWA has calculated that the coal leases for these projects cover approximately 17,740 hectares or 177.4 square kilometres of the Rockies/Foothills found in southwestern Alberta.²⁶

In a September 2020 video Montem states: "Our plan is to use the free cash flow from the restart of the Tent Mountain mine to fund the development of the larger Chinook project. We expect to receive permission for the restart in 2021 and intend to use a combination of equipment finance, offtake finance, debt, and contract mining services to reduce the equity required to restart the mine. A key component of the equity will be creating a joint venture at Tent Mountain with an aligned offtake partner and talks with customers are already underway."²⁷ In a second video, Peter Doyle, Montem's Managing Director and Chief Executive Officer, says: "We have three main projects. The first is the Tent Mountain mine which we are restarting and we expect first coal in 2022. The second is the Chinook project which has the potential for large scale developments of open-cut coking coal and the third being our exploration areas such as Isola where we've excitingly just found an exploration target of 900 million tonnes."²⁸

Figure 3 suggests how coal will industrialize the landscape of Alberta's Eastern Slopes if the coal development projects currently promoted by fledgling mining companies proceed.²⁹ Together, they promise to shrink severely, if not eliminate entirely, the "narrow strip of habitat along the B.C. border" where Festa-Bianchet concluded grizzly bears were restricted to in 2010. Much of the core grizzly bear habitat in southwestern Alberta will vanish if these projects proceed. Developing only the Montem properties, properties Montem clearly represents publicly as "foreseeable future land-use activities," heightens the risk that the regional grizzly bear population will become fragmented further. Grizzlies likely will be displaced and the future will darken in this part of North America for this SARA species of Special Concern, for this *Threatened* species under Alberta's *Wildlife Act*.

²⁴ Canada, Impact Assessment Agency, *Joint Review Panel Public Hearing, Grassy Mountain Coal Project – Benga Mining Limited*, Vol 13, November 12, 2020, 2601-2625. <https://www.iaac-aec.gc.ca/050/documents/p80101/136732E.pdf>

²⁵ Alberta Wilderness Association participated in the Grassy Mountain hearing as part of the "Coalition of Alberta Wilderness Association and Grassy Mountain Group."

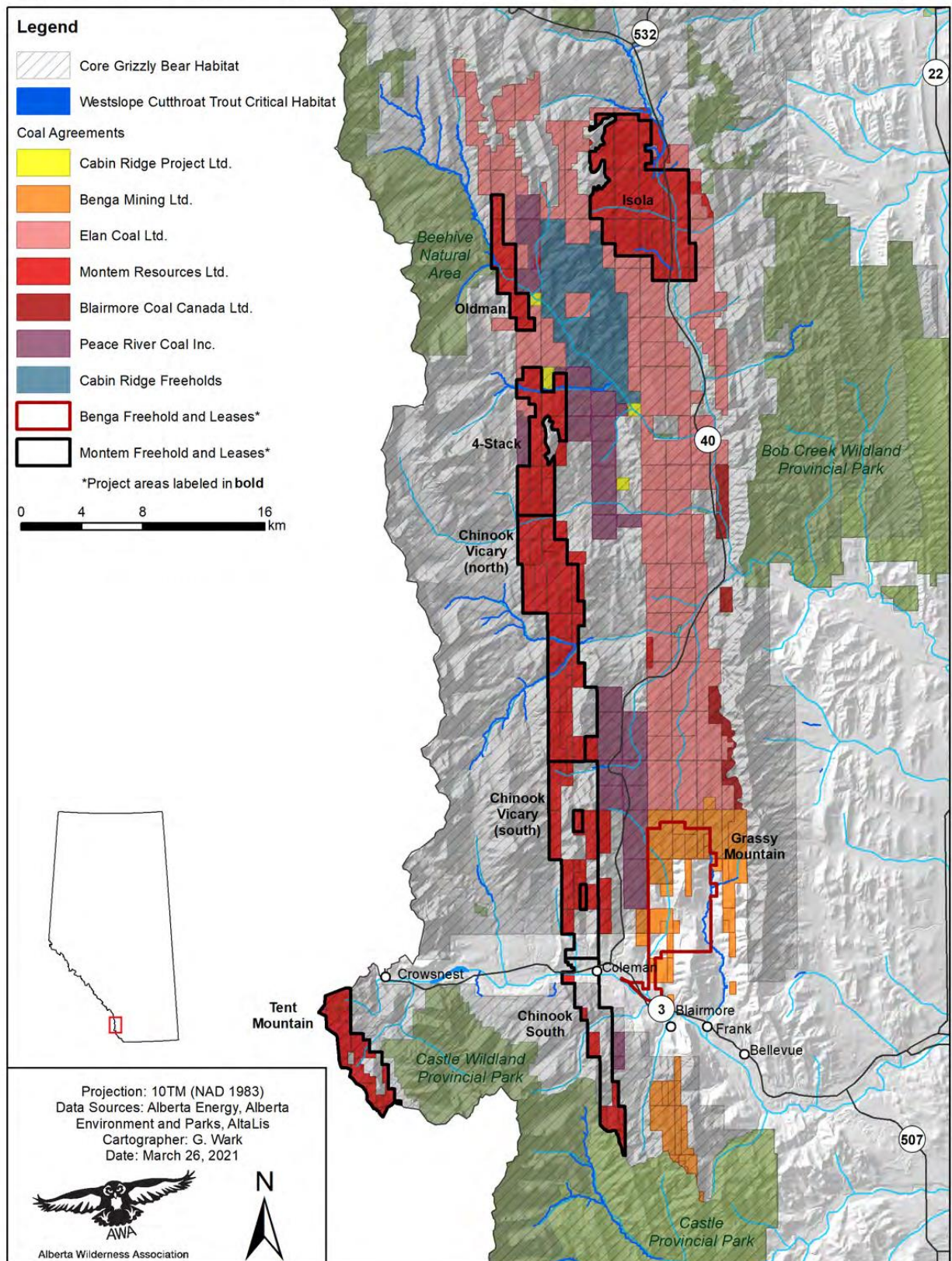
²⁶ AWA estimates the coal leases associated with the Chinook project to amount to 9,746 hectares. We estimate the lease footprints of Isola, 4-Stack, and Oldman respectively to be 4,832, 2,138, and 1,024 hectares.

²⁷ Montem Resources, "Montem Resources Company Overview," (video), September 14, 2020. <https://www.youtube.com/watch?app=desktop&v=ByYS9Ng-EuQ&feature=youtu.be>

²⁸ Montem Resources, "Montem Resources Overview with Managing Director & Chief Executive Officer Peter Doyle," (video), September 14, 2020. <https://www.youtube.com/watch?v=nIRNYQMfZaQ>

²⁹ None of the companies identified in Figure 3 have operating coal mines anywhere in the world.

Figure 3. Coal Leases and Species at Risk Habitat along the Southern Eastern Slopes



Minister Wilkinson might well wonder why a federal assessment, considering cumulative effects, is needed since the grizzly is a *Threatened* species in Alberta and provincial assessment legislation recognizes the need to consider cumulative considerations. Frankly, AWA seeks a federal assessment because Alberta's assessment and regulatory histories don't offer any promise that Alberta will conduct the robust, fair interpretation of cumulative effects that is essential to healthier futures for species at risk.

Recent support for AWA's skepticism comes from the frigid reception the Alberta Energy Regulator, the agency responsible for the assessment/regulatory processes for coal in Alberta, gave to the Alberta Chapter of the Wildlife Society's efforts to encourage the Regulator to consider the cumulative effects of coal exploration projects in the Oldman River watershed in southwestern Alberta. As part of a statement of concern the Society filed on this issue, the Society referred to a cumulative effects analysis of the area it had commissioned with ALCES, a well-known and respected consulting firm specializing in cumulative effects analysis.³⁰ The report was sent to the provincial government. The AER replied that a public hearing wasn't required to consider the Society's concerns. The AER said concerns about cumulative effects should be addressed to Alberta Environment and Parks. The research presented in the 86-page ALCES report was dismissed with this statement: "The concerns you expressed are general and not supported by any evidence." As is the norm in the provincial regulatory process whenever an organization bases a statement of concern on the "public interest," the AER disqualified the Society by asserting that it was not "directly and adversely affected" by industrial activity on the Eastern Slopes.³¹ AWA finds the AER's dismissive approach to cumulative effects especially concerning since the AER ordered Montem Resources to prepare an environmental impact assessment report for Tent Mountain, a report the EPEA says should include cumulative considerations.³² The AER official who dismissed the Society's cumulative effects evidence is the designated Director under the EPEA responsible for Tent Mountain's environmental impact assessment.

Cumulative Effects: Whitebark Pine

Earlier we noted the extent to which the Tent Mountain mine site overlaps with what the 2017 Whitebark Pine recovery strategy identified as lands with the potential to have seed dispersal, regeneration, and recovery critical habitat. But this recovery plan, as well as a provincial plan for limber pine, was prepared in a policy setting where coal mining was not considered to be a likely land use.³³ Dr. Peter Achuff, a co-author of COSEWIC's Whitebark Pine assessment and the sole author of COSEWIC's Limber Pine assessment, concludes that:

the recovery plans for both species are obsolete in that habitat destruction from coal development was not considered to be a threat, because of the land use/coal development policies of the time. With recent changes in

³⁰ ALCES, *Cumulative Effects of Land Uses and Conservation Priorities in Alberta's Southern East Slope Watersheds*, (Undertaken for the Alberta Chapter of the Wildlife Society), March 2020. <https://www.actws.ca/blog/2020/04/22/cumulative-effects-of-land-uses-in-albertas-southern-east-slope-watersheds-final-report/>

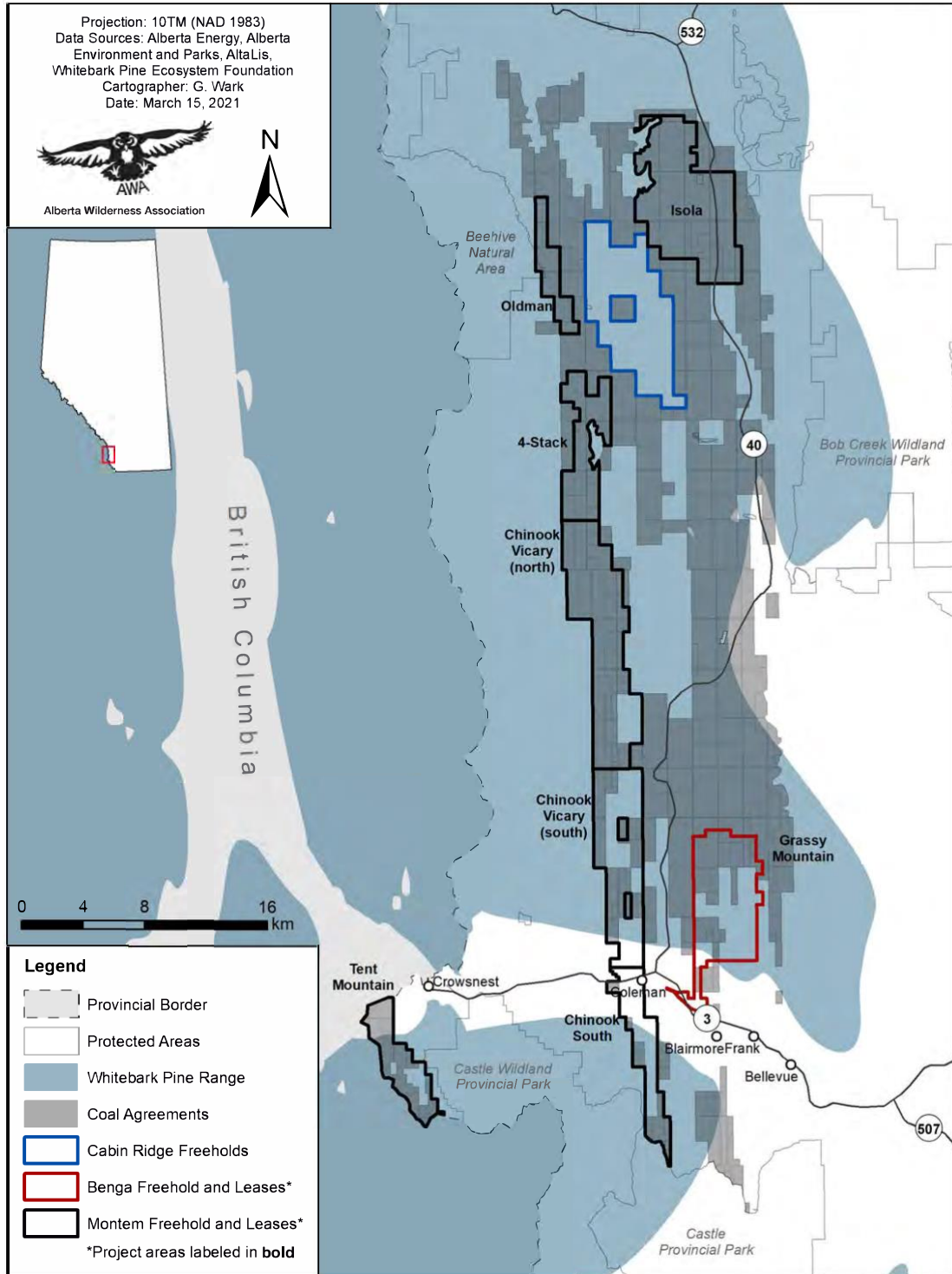
³¹ Letter from Steve Van Lingen, Director, Oil Sand Mining and Coal Regulatory Applications, Alberta Energy Regulator to Alex Beatty, Alberta Chapter of the Wildlife Society re Statement of Concern No. 31759, September 25, 2020.

³² Letter from Steven Van Lingen, Director, Mining, Regulatory Applications, Alberta Energy Regulator to Peter Doyle, Director and Chief Executive Officer, Montem Resources Alberta Operations Ltd, January 8, 2021.

³³ Limber pine is listed as Endangered in Alberta and has a provincial recovery plan. COSEWIC designated limber pine as Endangered in 2014. However, it hasn't been added yet to Schedule 1 of the *Species at Risk Act*, the list of wildlife species at risk in Canada. Committee on the Status of Endangered Wildlife in Canada, *COSEWIC Assessment and Status Report on the Limber Pine (Pinus flexilis) in Canada*, (Canada: 2014), https://www.registrelep-sararegistry.gc.ca/virtual_sara/files/cosewic/sr_Limber%20Pine_2014_e.pdf.

coal policy, habitat destruction becomes a major risk and the plans need to be revised.

Figure 4: Coal Leases and Whitebark Pine Range along Alberta's Southern Eastern Slopes



Achuff proceeds to question, given the absence of provincial regulations making it an offense to kill or harm these species and Ottawa's reluctance to intervene through SARA, whether either Alberta or Ottawa are fulfilling their duties to protect these legally listed species at risk.³⁴

Figure 4 graphically confirms Achuff's point about the adverse effects for Whitebark pine in Alberta that could accompany the scale of coal development some imagine for the future of Alberta's Eastern Slopes. Given the potential scale of these developments and the potential adverse effects for Endangered Whitebark Pine, AWA urges Minister Wilkinson to designate Tent Mountain for a federal impact assessment and establish the cumulative effects of coal mining on species at risk as an important priority of that assessment.

Cumulative Effects: Westslope Cutthroat Trout

COSEWIC designated the Westslope Cutthroat Trout (*Oncorhynchus clarkii lewisi*), Alberta population as a Threatened species in 2005.³⁵ In 2013, Alberta westslope cutthroat trout was added to the Threatened species list in Schedule 1 of SARA and a recovery strategy was published in 2014.³⁶ In 2015, a critical habitat order was issued. In 2019, Fisheries and Oceans Canada issued a recovery strategy and action plan for this Alberta population.³⁷ The species profile for the Alberta population notes that, over the last 100 years, its range has contracted by more than 80 percent of its historic extent.³⁸ Although the 2019 recovery strategy/action plan amended the critical habitat for the Alberta population it noted that this habitat was "only partially identified at this point in time," that further critical habitat studies were required, and that additional critical habitat would be identified courtesy of those studies.³⁹ Mining was listed in the 2019 recovery strategy/action plan as an activity that would destroy critical habitat through sedimentation and through habitat loss, fragmentation, and/or alteration.⁴⁰

During the Grassy Mountain Coal Project Joint Review Panel hearing evidence was presented about the impact of that project on Gold Creek, critical habitat for westslope cutthroat trout. The evidence of those who opposed the Project because they assert Grassy Mountain will have adverse effects on Gold Creek and its resident trout speaks to the relevance of considering the cumulative effects of resuscitating

³⁴ Peter Achuff "Email correspondence with Ian Urquhart, Subject: Whitebark pine recovery and the Alberta government," 18 March 2021

³⁵ Committee on the Status of Endangered Wildlife in Canada, *COSEWIC Assessment and Status Report on the westslope cutthroat trout (Oncorhynchus clarkia lewisi) British Columbia population, Alberta population, in Canada*, (Canada: 2006), https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/cosewic/sr_oncorhynchus_clarkii_lewisi_e.pdf.

³⁶ Canada, Fisheries and Oceans Canada, *Recovery Strategy for the Alberta populations of Westslope Cutthroat Trout (Oncorhynchus clarkia lewisi) in Canada [Final]*, https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/plans/rs_truite_fardee_wstslp_cutthroat_trout_0314_e.pdf.

³⁷ Canada, Fisheries and Oceans Canada, *Recovery Strategy and Action Plan for the Westslope Cutthroat Trout (Oncorhynchus clarkia lewisi) Alberta Population (also known as Saskatchewan-Nelson River Populations) in Canada*, https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/plans/RsAp-TruiteFardeeOuestWestslopeCutthroatTrout-v00-2019-Eng.pdf.

³⁸ Canada, "Species Profile: Westslope Cutthroat Trout Saskatchewan – Nelson Rivers populations," https://wildlife-species.canada.ca/species-risk-registry/species/speciesDetails_e.cfm?sid=861. David Mayhood, in his evidence to the Grassy Mountain Coal Project Joint Review Panel Hearing, presented maps comparing the pre-1900 distribution of Westslope Cutthroat Trout with the 2013 distribution. He used the verb "decimated" to describe what has happened to this population. See David W. Mayhood, "Proposed Grassy Mountain Mine Effects on Trout Populations & their Critical Habitats," <https://www.iaac-aeic.gc.ca/050/documents/p80101/136832E.pdf>.

³⁹ Fisheries and Oceans Canada, *Recovery Strategy and Action Plan for the Westslope Cutthroat Trout (Oncorhynchus clarkia lewisi) Alberta Population*, vi.

⁴⁰ *Ibid.*, 22-23.

coal mining in southwestern Alberta.⁴¹ The Tent Mountain project itself may not have potential adverse effects on westslope cutthroat trout critical habitat. But, as Figure 3 shows, all of the projects Montem Resources hopes to pursue, projects that hinge on the approval of Tent Mountain, pose threats to westslope cutthroat critical habitat. Chinook, Isola, Oldman, and 4-Stack are all proposed to mine in areas containing critical habitat. Given that more work needs to be done to identify critical habitat for this Alberta population it is certainly plausible that Figure 3 underestimates both that habitat and the cumulative effects that Montem's projects will have on this threatened species at risk population.

At the Grassy Mountain hearing David Mayhood, a fisheries expert retained by Timberwolf Wilderness Society, said:

Most of the genetic diversity of these populations in Alberta has been lost, along with the loss of the populations as a whole, along with massive losses of the populations and a very strong reduction in range and in population abundances. Accordingly, every remaining population is needed to maximize the chances of recovering this species in Alberta.⁴² (my emphasis)

This expert opinion, from a contributor to developing the westslope cutthroat trout recovery strategy, makes it imperative to consider how the cumulative effects of Montem's proposed projects will affect the prospects for recovering the Alberta population of westslope cutthroat trout.

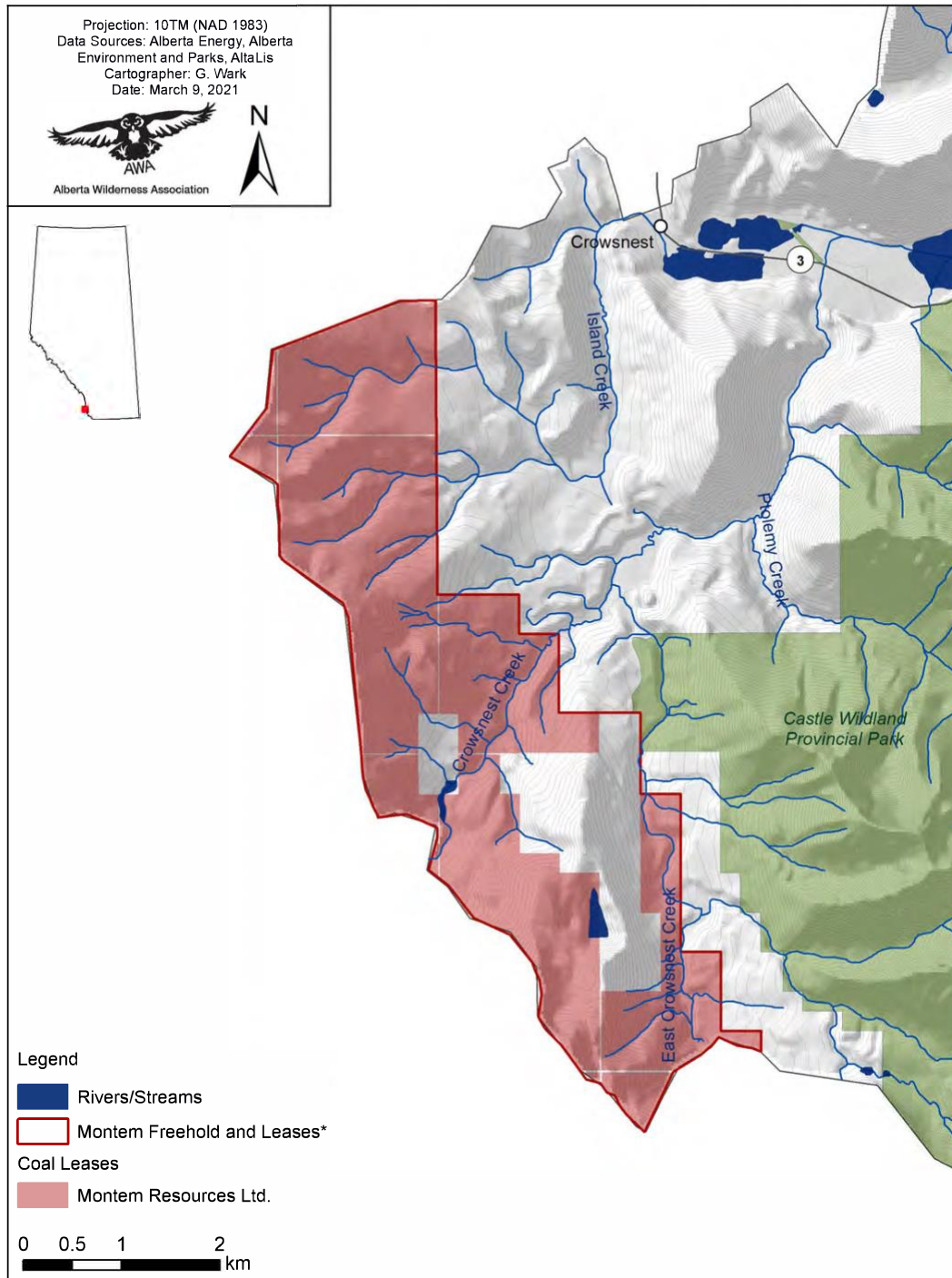
It also should be noted that, in the opinion of Lorne Fitch – another expert on westslope cutthroat trout in Alberta and member of the Alberta-Canada Westslope Cutthroat Trout Recovery Team, the Tent Mountain mine will destroy the possibility of stocking approximately 10 kilometres of potential habitat with pure strain westslope cutthroat trout. The Alberta government has deemed Crowsnest Creek and its tributary, East Crowsnest Creek, to be “fishless.” The potential habitat for westslope cutthroats is located above a waterfall on Crowsnest Creek. The waterfall is a natural barrier that would prevent fish below it from mixing with pure strain cutthroats that could be stocked above the waterfall.⁴³ Since these creeks run through Montem's Tent Mountain leases a mine will take this trout recovery possibility off the table (see Figure 5). Potential cutthroat trout habitat will be destroyed.

⁴¹ For its part, Benga Mining asserted that the Grassy Mountain mine's effects on westslope cutthroat trout would be “incidental to the Project, and will not jeopardize the survival or recovery of the species.” See Benga Mining Limited, “Final Argument,” (11 December 2020), 94, <https://iaac-aeic.gc.ca/050/documents/p80101/137172E.pdf>.

⁴² Canada, Impact Assessment Agency, *Joint Review Panel Public Hearing, Grassy Mountain Coal Project – Benga Mining Limited*, Vol. 24, 26 November 2020, 5134.

⁴³ Lorne Fitch, “Email correspondence with Ian Urquhart, Subject: The creek you mentioned,” 26 March 2021.

Figure 5: Crowsnest River Tributaries and Tent Mountain Project



Changes to the Environment That Occur in a Province or Territory Other Than the One Where the Project is Taking Place

Tent Mountain, as Montem Resources acknowledges, is a transboundary project. It “straddles both sides of the southwest Alberta and southeast British Columbia border.”⁴⁴ Its coal loading facility “will be located primarily with the Province of BC.”⁴⁵ Earlier in this designation request we noted how Tent Mountain, through its potential adverse effects on a regional grizzly bear population, may affect a valued ecological component in British Columbia. Figure 5 shows Tent Mountain is located in the headwaters of the Crowsnest River, a tributary through the Oldman River to the South Saskatchewan River, this coal project should be subject to a federal assessment due to its potential impact on waters in Saskatchewan. The purpose of the Master Agreement on Apportionment, an intergovernmental agreement between the governments of Canada, Alberta, Saskatchewan, and Manitoba, “is to apportion or share water equitably between the Prairie Provinces and to protect transboundary surface water quality and groundwater aquifers.”⁴⁶

Schedule A of the Master Agreement on Apportionment requires Alberta generally to “permit a quantity of water equal to one-half the natural flow of each watercourse to flow into the Province of Saskatchewan.” Figure 6 illustrates that Alberta has met the apportionment requirements of the Agreement.⁴⁷ Schedule E of the Agreement outlines water quality objectives. In 2018, the Prairie Provinces Water Board reported that water quality monitoring showed these objectives “were adhered to, on average, 97.1% for all parameters.”⁴⁸

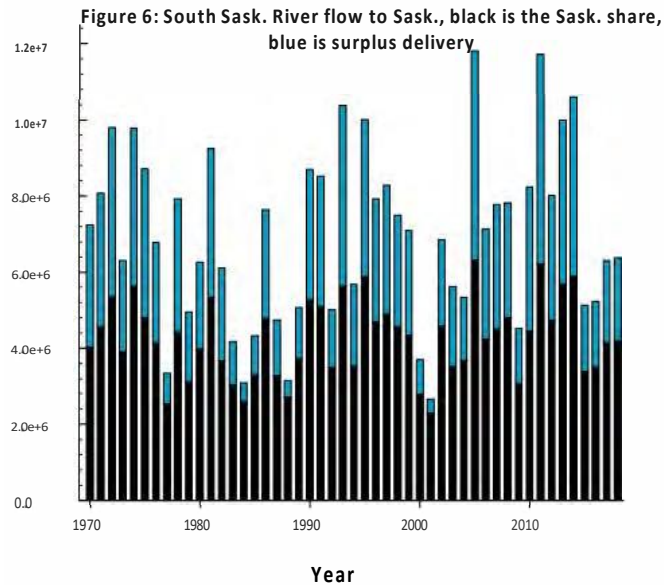
⁴⁴ Montem Resources, “Tent Mountain Mine,” <https://montem-resources.com/projects/tent-mountain/> (accessed March 20, 2021).

⁴⁵ Montem Resources, “Project Description,” 1, <https://montem-resources.com/wp-content/uploads/2021/02/Project-Summary-Final-11-Feb2021.pdf45.pdf> (accessed March 20, 2021).

⁴⁶ Prairie Provinces Water Board, <https://www.ppwb.ca>, (accessed March 21, 2021). The text of *The 1969 Master Agreement on Apportionment and By-Laws, Rules and Procedures*, (July 2015), may be found here: <https://www.ppwb.ca/uploads/media/5cad077eeae53/master-agreement.pdf?v1>

⁴⁷ Figure 6 is taken from Prairie Provinces Water Board, *Annual Report 2018-19*, 6. <https://www.ppwb.ca/uploads/media/6051ff1f2e92a/ppwb-annual-report-2018-19-web-locked.pdf?v1> The recorded flows are measured in cubic decametres. A cubic decametre has the capacity of one megalitre (one millions litres).

⁴⁸ *Ibid.*, 12.



Does coal mining in the headwaters of tributaries to the South Saskatchewan pose a risk to the aquatic environment in Saskatchewan that justifies a federal designation for Tent Mountain and similar projects? Dr. John Pomeroy, Canada Research Chair in Water Resources and Climate Change at the University of Saskatchewan, arguably thinks so. As an invited guest to CBC's *Blue Sky*, a province-wide current affairs radio program in Saskatchewan, Pomeroy was asked what he thought of the proposed Grassy Mountain Coal Project in the Crowsnest Pass. He said:

It's a great concern...For a water scientist to see this happen it's just an abomination, to have these types of developments suggested in the headwaters of the rivers that supply drinking water and economy for most of Saskatchewan.⁴⁹

He added that Saskatchewan was “utterly reliant” on the South Saskatchewan. Only one percent of the stream flow to Lake Diefenbaker comes from runoff in Saskatchewan; 99 percent comes from the rivers and streams originating in Alberta.

With respect to selenium pollution, likely the most dangerous form of coal mining pollution in the public's mind, Pomeroy noted that the water quality objective for selenium in the Master Agreement was one part per billion (Alberta's water quality guideline for selenium, at two parts per billion, is more liberal). In B.C.'s Elk Valley, Teck has struggled to reduce selenium pollution levels. As Minister Wilkinson knows, the risks of selenium pollution to the Fording/Elk/Kootenay Rivers figured prominently in the requests he received to designate Teck's Castle Project for an assessment under the IAA.⁵⁰ Pomeroy suggested the research on water quality in the Elk Valley showed that “the run-off from

⁴⁹ CBC, “Blue Sky with Gareth Materie: What effect could coal mining in Alberta have on water quality of Saskatchewan's rivers?”, February 4, 2021. <https://www.cbc.ca/listen/live-radio/1-189-blue-sky/clip/15823131-what-effect-coal-mining-alberta-water-quality-saskatchewan>

⁵⁰ See, for example, the request from Ecojustice/Wildsight to designate Teck's Castle Project under the *Physical Activities Regulation* and the *Impact Assessment Act*. Randy Christensen and Daniel Cheater, “Request for Designation of the Castle Project under s. 19(a) of the Schedule to the *Physical Activities Regulations* and s. 9(1) of the *Impact Assessment Act*,” (letter), 23 June 2020. <https://iaac-aeic.gc.ca/050/documents/p80702/135197E.pdf>

the mines in the Elk Valley...500 parts per billion of selenium...and a few spot cases of 800 parts per billion.” While water quality parameters for selenium and other toxic metals in the waters Albertans share with the people of Saskatchewan are thankfully met now, Canadians deserve assessments of coal mining projects in Alberta that will ensure those parameters are met in the future. The potential adverse effects that selenium pollution could have on aquatic life in the South Saskatchewan river system and on the drinking/irrigation supplies of water in Saskatchewan constitute another powerful reason why Minister Wilkinson should designate the Tent Mountain mine (and any other mine in Alberta’s Rocky Mountain headwaters) as a project requiring a federal assessment.

Potential Impact on the Section 35 Aboriginal and Treaty Rights

AWA supports the requests for designation of Tent Mountain the Minister has received from the Blood Tribe/Kainai and Siksika First Nations.⁵¹ They are correct to suggest Tent Mountain has the potential to cause adverse effects on their abilities to exercise the section 35 rights guaranteed to First Nations through the *Constitution Act, 1982*. AWA also suggests there is an important transboundary dimension to the Tent Mountain and other potential coal mines in the Crowsnest Pass region will have on First Nations. This transboundary dimension is best addressed through a federal assessment. The transboundary dimension is the fact that First Nations, who reside on the lands we call British Columbia, historically used lands in southwestern Alberta. During the Grassy Mountain Joint Review Panel hearing two “British Columbia” First Nations, the Ktunaxa Nation and the Shuswap Indian Band, participated to express their connections to the lands in the immediate vicinity of the Grassy Mountain Coal Project. Ray Warden, representing the Ktunaxa Nation, began by expressing his wish that the Panel would “understand that this area is important to Kutanaxa people. We will provide the Panel with evidence of Kutnaxa historic and contemporary use and occupation of the project area.”⁵² Regarding the importance of the Joint Review Panel Warden said “what this Panel does still matters as it is the Crown that must ensure its constitutional duties to Ktunaxa are upheld, and this Panel is a critical piece of that – of that work.”⁵³ Chief Barb Cote of the Shuswap Indian Band outlined the historical importance of the Crowsnest region to her people:

The Grassy Mountain Coal Project is situated within Shuswap Indian Band’s area of caretaker responsibility, also our traditional territory, which extends to the eastern foothills of the Rocky Mountains. Longstanding use of the Crowsnest Pass is known in our oral histories and documented in several archival documents, including that of the 1895 hunting agreement between the Shuswap Indian Band, Stoney Nakoda, St. Mary’s Band, also known as Aq’am, and Aikisqnuk. This agreement reflects our longstanding movement and governance through the Rocky Mountain range.⁵⁴

Since these Nations are located in British Columbia, Alberta’s Aboriginal Consultation Office never contacted them about the Grassy Mountain Coal Project. The Office did not prepare consultation reports

⁵¹ Chief Roy Fox, “Re: Request for federal review of Montem Resource’s Tent Mountain Project,” 2 March 2021, <https://iaac-aeic.gc.ca/050/documents/p81436/138289E.pdf>; Chief Ouray Crowfoot, “Re: Request for federal review of Montem Resource’s Tent Mountain Project,” 2 March 2021, <https://iaac-aeic.gc.ca/050/documents/p81436/138290E.pdf>.

⁵² Canada, Impact Assessment Agency, *Joint Review Panel Public Hearing, Grassy Mountain Coal Project – Benga Mining Limited, Vol. 1, 27 October 2020*, 88-89, <https://iaac-aeic.gc.ca/050/documents/p80101/136491E.pdf>.

⁵³ *Ibid.*, 90

⁵⁴ *Ibid.*, 99.

with respect to these British Columbia First Nations.⁵⁵ Federal involvement in the Grassy Mountain hearing facilitated the ability of these First Nations to realize their section 35 right to consult with the Crown about activities Benga Mining proposed to take place on portions of their traditional territories. First Nation traditional use and occupancy patterns in southeastern British Columbia and southwestern Alberta don't correspond well to the precise, tidy political borders settlers imposed on these lands in the 1800s. A federal impact assessment is better suited to this important transboundary reality.

Potential Greenhouse Gas Emissions Associated with Tent Mountain and Canada's Climate Change Commitments

Among the relevant factors the Agency may consider in developing a project designation for Minister Wilkinson is whether or not “the potential greenhouse gas emissions associated with the project may hinder the Government of Canada's ability to meet its commitments in respect of climate change, including in the context of Canada's 2030 emissions targets and forecasts...”⁵⁶ In the fall of 2016 Canada ratified the Paris Agreement, a legally binding international climate change treaty. Canada's Nationally Determined Contribution under the Paris Agreement is to reduce Canada's greenhouse gas (GHG) emissions by 30 percent below 2005 levels by 2030.⁵⁷ In November 2020, the federal government introduced Bill C-12, the *Canadian Net-Zero Emissions Accountability Act*, in the House of Commons.⁵⁸ If it becomes law, Bill C-12 will strengthen Canada's commitment to reduce GHG emissions; it calls for Canada to achieve net-zero GHG emissions by 2050.⁵⁹

Tent Mountain is one of at least ten metallurgical coal mining projects touted for exploiting coal in the Rockies and Foothills between the U.S. border and Highway 11.⁶⁰ The potential cumulative effects of coal development along Alberta's Eastern Slopes could be an important contributor to Canada's GHG emissions during the next 29 years as Canada strives to meet first, its Paris Agreement commitments, and then, its 2050 net zero ambitions. Since only one of those projects, Grassy Mountain, currently is subject to an assessment/regulatory review, it is obviously speculative to discuss the potential contributions the resuscitation of coal mining in Alberta could have for Canadian and global GHG emissions. But, AWA argues it's absolutely fundamental that government decisions about coal mining in southwestern Alberta do not repeat the pattern of oil sands development decisions in northeastern Alberta. There, federal and

⁵⁵ For a list of the Aboriginal Consultation Office reports see “List of submission of ACO reports,” <https://iaac-aeic.gc.ca/050/evaluations/document/136447>.

⁵⁶ Canada, Impact Assessment Agency of Canada, “Operational Guide: Designating a Project under the *Impact Assessment Act*.”

⁵⁷ Canada, “Canada's 2017 Nationally Determined Contribution Submission to the United Nations Framework Convention on Climate Change,” (October 2017), <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Canada%20First/Canada%20First%20NDC-Revised%20submission%202017-05-11.pdf>. Canada's Paris commitment was to reduce the country's emissions from 747 megatonnes in 2005 to 523 Mt in 2030.

⁵⁸ Canada, “Canada charts course for clean growth by introducing bill to legislate net-zero emissions by 2050,” (news release), 19 November 2020. <https://www.canada.ca/en/environment-climate-change/news/2020/11/government-of-canada-charts-course-for-clean-growth-by-introducing-bill-to-legislate-net-zero-emissions-by-2050.html>

⁵⁹ Canada, “Bill C-12: An Act respecting transparency and accountability in Canada's efforts to achieve net-zero greenhouse gas emissions by the year 2050,” <https://parl.ca/DocumentViewer/en/43-2/bill/C-12/first-reading>

⁶⁰ The Grassy Mountain Coal Project currently is undergoing a joint-federal impact assessment. Tent Mountain has started its environmental impact assessment process. In its appeals to investors, Montem Resources has identified four other future projects it would like to develop: Chinook, Isola, Oldman, and 4-Stack. Atrum Coal has promoted two potential projects: Isolation South and Elan South. Cabin Ridge is exploring actively with respect to advancing its Cabin Ridge Project. Ram River Coal and Valory Resources are the principals behind two projects – Aries and Blackstone – that are in the foothills southwest of Rocky Mountain House.

provincial decision makers have never considered adequately the cumulative effects of adding one approval to another approval to another approval – whether in the context of GHG emissions or of other environmental consequences of exploiting the oil sands.⁶¹

The 2016 air quality assessment consultant report prepared for Benga Mining estimated that the maximum equivalent carbon dioxide emissions from operations at the Grassy Mountain mine would be 362 kilotonnes per year in year 19 of the project. Direct GHG emissions from Grassy Mountain were estimated to be “approximately 0.14% of 2013 Alberta GHG emissions and 0.05% of national emissions.”⁶² These estimates do not appear to have been interrogated during the Joint Review Panel hearing.

This Grassy Mountain GHG emissions estimate falls within the range of actual GHG emissions reported in 2017 for Teck Resources’ open-pit coal mining operations in the Elk Valley. In 2017, Teck’s Coal Mountain, Line Creek, Elkview, Greenhills, and Fording River operations produced 25.44 million tonnes of metallurgical coal. Combined, those operations generated 1.71 million tonnes of GHG emissions.⁶³ If Tent Mountain and Grassy Mountain proceed, they will have the capacity to produce a total of 5.7 million tonnes of coal per year.⁶⁴ Since this would put their combined production very close to that of Teck’s Greenhills operations (5.9 million tonnes per year), for the purpose of this designation request, we estimate the combined greenhouse gas emissions from these two Alberta operations would approximate those of Greenhills – 449,058 tonnes.⁶⁵

Canada shows signs of struggling to meet its Paris Agreement commitment. Canada’s 2020 greenhouse gas inventory report to the United Nations Framework Convention on Climate Change noted that, in 2018, Canada emitted 729 megatonnes of GHG emissions, nine million tonnes more than the year when Canada signed the Paris Agreement in 2015.⁶⁶ Given this record the federal government should question how much encouragement and support it should give to how many economic projects and activities promising to add to GHG emissions in Canada. Identifying Tent Mountain as a designated project offers the federal government an opportunity to consider two important questions: “Is metallurgical coal mining in Alberta’s Eastern Slopes, whether pursued through one project, two projects, or ten projects consistent with Canada’s international legal commitments on climate change? Will

⁶¹ Ian Urquhart, *Costly Fix: Power, Politics, Nature and the Tar Sands*, (Toronto: University of Toronto Press, 2018). If the federal cabinet had rejected Teck’s Frontier Mine proposal that might have been based on the cumulative effects of GHG emissions.

⁶² Millennium EMS Solutions Ltd., *Air Quality Assessment Grassy Mountain Coal Project*, (July 2016), 39. <https://iaac-aeic.gc.ca/050/documents/p80101/115607E.pdf>. These estimated direct GHG emissions from the project would be 0.13% of 2018 Alberta GHG emissions and 0.05% of total Canadian emissions in 2018.

⁶³ Canada, “Facility greenhouse gas reporting: Greenhouse Gas Reporting Program data search,” <https://climate-change.canada.ca/facility-emissions/>, (accessed 24 March 2021). The 2017 emissions for each of Teck’s Elk Valley operations were: Coal Mountain (108,124 tonnes), Line Creek (187,483t), Elkview (438,799t), Greenhills (449,058t), and Fording River (521,744t). These emissions calculations are for the operations only. They do not include emissions associated with rail transport in Canada and sea transport from Canada to the export destination.

⁶⁴ Montem estimates that Tent Mountain will produce 1.2 million tonnes of clean metallurgical coal per year. See Montem Resources, “Project Description,” 19. Riversdale Resources/Benga Mining estimates that Grassy Mountain will produce 4.5 million tonnes of clean coal per year. See Riversdale Resources/Benga Mining Limited, *Grassy Mountain Coal Project – Updated Environmental Impact Assessment: Section A – Project Introduction*, (August 2016), A-1. <https://iaac-aeic.gc.ca/050/documents/p80101/115588E.pdf>

⁶⁵ Details on Greenhills operations are taken from Teck Resources Ltd., “Greenhills Operations,” <https://www.teck.com/operations/canada/operations/greenhills/>.

⁶⁶ Canada, Environment and Climate Change Canada, *National Inventory Report 1990-2018: Greenhouse Gas Sources and Sinks in Canada, Part 3*, 5.

resuscitating coal mining along Alberta's Eastern Slopes hinder the federal government's ability to meet its net-zero 2050 ambition?"

This concern about the GHG emissions implications of coal mining in Alberta is compounded if we acknowledge that, outside of Canada and beyond the control of Canadian governments, the tonnes of coal mined in Canada will contribute to many more tonnes of GHG emissions when Canadian coking coal is used to make steel. The U.S. Energy Information Administration has published carbon dioxide emissions coefficients. According to those estimates, the combustion of one short ton of anthracite generates 2578.68 kilograms of carbon dioxide (or 2339.34 kilograms per metric tonne).⁶⁷ Based on this coefficient AWA estimates that the combustion of metallurgical coal from Tent Mountain will generate 2.8 million tonnes of carbon dioxide annually. Annually, the combustion of Grassy Mountain's 4.5 million tonnes of clean metallurgical coal will generate approximately 10.5 million tonnes of carbon dioxide.⁶⁸ Using data from the Environmental Protection Agency, these out-of-country emissions from just two new Alberta mines would equal the average annual amount of carbon dioxide emitted by nearly 2.9 million typical passenger vehicles in the United States.⁶⁹ AWA hopes decision makers will not turn a blind eye to the fact that, if coal projects proceed in Alberta's Rockies and Foothills, Canada will facilitate the growth of greenhouse emissions elsewhere; while, strictly speaking, the GHG emissions generated elsewhere from burning Canadian coal don't hinder Canada's ability to reduce emissions in Canada it may hinder the global community from reducing emissions.

Public Concerns About the Effects of Coal Mining and the Responsiveness of Government Assessment Processes

The section of the Operational Guide describing the Agency's process for preparing a designation request recommendation for the Minister states in part: "The recommendation would consider whether the carrying out of the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, and public concerns related to such effects." (my emphasis) To try to gauge public concerns about the effects of projects like Tent Mountain, AWA analyzed the public comments submitted to the Joint Review Panel on the Grassy Mountain Coal Project. Grassy Mountain, despite not receiving nearly as much media attention as other contentious projects such as the Northern Gateway project, elicited more than 4,500 public comments to the project registry. Of the 4,553 comments left on the project registry, AWA's analysis determined that 4,335 of those comments opposed the project. Only 69 of the 4,553 public comments on the registry supported the project; AWA classified another 25 comments were as "not sure." Ninety-five percent of the public comments left on the registry opposed Grassy

⁶⁷ United States, Energy Information Administration, "Carbon Dioxide Emissions Coefficients," (2 February 2016), https://www.eia.gov/environment/emissions/co2_vol_mass.php.

⁶⁸ In 2011, Sierra Club B.C. used EIA carbon dioxide emissions coefficients to estimate the amount of carbon dioxide generated abroad from B.C. coal and natural gas exports. See Sierra Club BC, "The Real Story: B.C.'s Uncounted Greenhouse Gas Emissions Backgrounder," (September 30, 2011, <https://sierraclub.bc.ca/wp-content/uploads/2015/08/The-Real-Story-B.C.'s-Uncounted-Greenhouse-Gas-Emissions-GHG-Emissions-Backgrounder-September-2011.pdf>).

⁶⁹ United States, Environmental Protection Agency, "Greenhouse Gas Emissions from a Typical Passenger Vehicle," <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle>. How the EPA determined that the annual average CO₂ emissions from a passenger vehicle was 4.6 metric tonnes is explained here: <https://www.epa.gov/energy/greenhouse-gases-equivalencies-calculator-calculations-and-references>. To translate the CO₂ emissions from Alberta coal burned abroad into passenger car emissions, first, multiply the sum of estimated coal production from Tent Mountain and Grassy Mountain by the EIA CO₂ emissions coefficient for anthracite. Then, divide this annual total CO₂ emissions estimate (13,334,238 tonnes) by 4.6 (the EPA's estimate in metric tonnes of the annual CO₂ emissions from a typical passenger vehicle).

Mountain. This suggests that the public has serious concerns about the potential adverse effects of these projects on Alberta's Eastern Slopes.⁷⁰

AWA has little faith that Alberta's provincial assessment process will acknowledge the serious concerns that Albertans have regarding coal exploitation in Alberta's Rockies and Foothills. Historically, public participation in this process has been restricted. Looking to the purposes of provincial impact assessment legislation one might conclude that AWA's skepticism should be baseless. Subsection 40(d) of Alberta's *Environmental Protection and Enhancement Act* states that a purpose of the environmental impact assessment process is:

to provide for the involvement of the public, proponents, the Government and Government agencies in the review of proposed activities.⁷¹

The Alberta Energy Regulator (AER) is responsible for the environmental assessment process as it pertains to coal in Alberta. While the public may submit input on the terms of reference for the environmental assessment for Tent Mountain, the decision process becomes much less amenable to public participation after the AER develops the final terms of reference. Subsequent to the submission of an environmental impact assessment report as part of the integrated application process anyone may submit a statement of concern about the application. But, in order for the AER to consider that statement of concern, the individual or organization submitting it must be "directly and adversely affected" by the project. The AER has interpreted this "directly and adversely affected" test narrowly; the government's interpretation has limited severely public participation in environmental assessments and regulatory decisions. Law professor Sean Fluker pointedly noted this character of the Alberta process in 2013:

The overall message in these new Rules is that the Alberta government and the Regulator see little value in public participation concerning energy project decision-making and have little regard for participation even by landowners who may be directly affected by a project. Public participation in energy and environmental decision-making in Alberta is almost non-existent.⁷²

Richard Secord, a partner in Ackroyd LLP, Past-President of AWA, and regular participant in energy/environmental regulatory hearings, offered his views via email about the likelihood that a public interest organization such as AWA could participate meaningfully in a purely provincial assessment/regulatory process. In the first place, the AER isn't required legally to hold a public hearing into an application from a coal company to construct a mine and/or a coal processing plant.⁷³ Interested parties, therefore, have no guarantee they will be able to question the contents of an environmental impact assessment report in a public hearing. Secord also concluded the AER would dismiss any statement of concern AWA presented regarding the project on the grounds that the organization wouldn't be directly

⁷⁰ Another indication of public concern over proposals for open-pit coal mines in the Rockies and Foothills of Alberta is found in the spectacular growth of the "Protect Alberta's Rockies and Headwaters" Facebook group. Since the group was created on December 18, 2020 its membership has ballooned to 35,655 members (as of March 21, 2021). According to the group's administrators "this group is focused on stopping open pit coal development in Alberta."

⁷¹ Alberta, *Environmental Protection and Enhancement Act*, <https://www.qp.alberta.ca/documents/acts/e12.pdf>.

⁷² Shaun Fluker, "Amended Rules of Practice for the Alberta Energy Regulator: More Bad News for Landowners and Environmental Groups," <https://ablawg.ca/2013/12/11/amended-rules-of-practice-for-the-alberta-energy-regulator-more-bad-news-for-landowners-and-environmental-groups/>.

⁷³ Alberta, *Responsible Energy Development Act*, section 34, <https://www.qp.alberta.ca/documents/Acts/r17p3.pdf>.

and adversely affected. He went further to express his doubts that people who lived relatively close to a proposed mine site would satisfy this test.⁷⁴ The structure of Alberta's assessment and regulatory processes are inhospitable to considering the types of public concerns about coal mining identified at the beginning of this section. The assessment/regulatory history confirms this inhospitality.

The *Impact Assessment Act* arguably articulates a stronger commitment to public participation than Alberta's *Environmental Protection and Enhancement Act*. Subsection 6(1)(h) of the *IAA* states that one purpose of the Act is:

to ensure that opportunities are provided for meaningful public participation during an impact assessment, a regional assessment or a strategic assessment⁷⁵

The potential hospitality of the *IAA* to consider seriously the public's concerns over coal mining along the Eastern Slopes isn't undermined elsewhere by language approximating Alberta's "directly and adversely affected" test. In fact, by removing the "Interested Party" definition/section from the *Canadian Environmental Assessment Act, 2012* the *IAA* arguably increased the federal assessment process's receptiveness to public concerns.⁷⁶

Conclusion

Students of Canadian constitutional law and politics likely will debate for many years to come if a majority of the Supreme Court of Canada ruled correctly in *Reference re Greenhouse Gas Pollution Pricing Act (2021)*.⁷⁷ The majority there found that the federal government had jurisdiction to enact this law "as a matter of national concern under the peace, order, and good government ("POGG") clause of s. 91 of the *Constitution Act, 1867*." Central to the national concern analysis found in that decision is the effort "to identify matters of inherent national concern – matters which, by their nature, transcend the provinces." (my emphasis)

This designation request rests importantly on analogous grounds. AWA believes that, given the location of Tent Mountain, it engages issues that transcend the province of Alberta. AWA submits those issues cannot be addressed sufficiently through a provincial environmental assessment process. Tent Mountain is proposed to be placed near the heart of the transboundary range of the grizzly bear – a SARA species of Special Concern – and promises to restrict the movements of this regional bear population; it would be located in headwaters that feed the South Saskatchewan River and Tent Mountain's impact on water quality and possibly water quantity is of real interest to downstream populations, including the people of Saskatchewan; it would be located on lands that are important to First Nations who find themselves residing on the British Columbia side of provincial boundary lines.

Even in the absence of these significant transboundary dimensions that are unlikely to figure in a provincial environmental assessment, Tent Mountain engages areas of federal jurisdiction such as three

⁷⁴ Richard Secord, "Email correspondence with Ian Urquhart, Subject: AER public hearings," 30 January 2021.

⁷⁵ Canada, *Impact Assessment Act*, <https://laws.justice.gc.ca/PDF/I-2.75.pdf>.

⁷⁶ The *Canadian Environmental Assessment Act, 2012* tightened the definition of an interested party that was found in the original version of the Act that the Harper government repealed in 2012. That change, by introducing the condition that an interested party had to be "directly affected" by a designated project, arguably made public participation more difficult. The *Impact Assessment Act* eliminated this definition and qualification to public participation altogether.

⁷⁷ Supreme Court of Canada, *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/18781/1/document.do>

species listed under Canada's *Species at Risk Act* (whitebark pine – Endangered; westslope cutthroat trout – Threatened; grizzly bear – Special Concern).

The imperative for a federal impact assessment also is strengthened by cumulative effects considerations. Today's map of the Alberta Rockies and Foothills from west of Rocky Mountain House to the U.S./Canada border shows at least ten metallurgical coal projects in various stages of consideration and development. Governments should not ignore the possible cumulative effects of this potential. Individual coal project assessments must entertain cumulative effects possibilities. As AWA has tried to show in this designation request, possible cumulative effects will magnify the potential adverse effects individual coal mines will visit on species at risk, water quality/quantity, and Canada's ability to reach its climate change commitments.

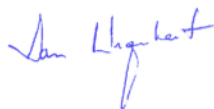
Two final general points strengthen the need for a federal impact assessment. Alberta has witnessed very significant, I would argue unprecedented, public concerns expressed about coal mining and the effects it will have on areas of federal jurisdiction and concern. The provincial assessment/regulatory regime has shown no indication that it seriously will entertain those concerns; provincial departments with responsibilities for issues raised during the Grassy Mountain Joint Review Panel, unlike their federal counterparts, never offered one word of comment during that hearing. That experience doesn't instill any confidence that these concerns will be treated any more seriously in a provincial environmental assessment of Tent Mountain or Blackstone.⁷⁸

Finally, Tent Mountain's production capacity is just a whisker shy of the 5,000 tonne per day threshold set for federal assessments of new coal mines. Considering the many potentially adverse effects of Tent Mountain, is the spirit of the *IAA* followed if a federal assessment doesn't proceed based on the fact this project is one-quarter of one truckload short of reaching 5,0000 tonne per day trigger?

For all of these reasons AWA respectfully submits that Minister Wilkinson use his authority under section 9(1) of the *Impact Assessment Act* to decide that the Tent Mountain Mine Redevelopment Project should be a designated project and subject to a federal impact assessment.

Thank you very much for your time and consideration.

Yours sincerely,
ALBERTA WILDERNESS ASSOCIATION



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⁷⁸ Like Tent Mountain the production capacity of Valory Resources' Blackstone project doesn't trigger the designated project threshold for a new coal mine set in Section 18(a) of the Schedule to the *Physical Activities Regulations* (SOR/2019-285).

