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Alberta Energy Regulator  
Suite 1000, 250 - 5 Street SW  
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**Attention: Ayan Solomon, Statement of Concern Team, Regulatory Applications**  
**Meighan LaCasse, Counsel**  
**Will McClary, Counsel**

Dear Mr. Solomon, Ms. LaCasse and Mr. McClary,

**RE: Northback Holdings Corporation ("Northback")**  
**Application Nos. #A10123772, #00497386-001 and #1948547 (together, the**  
**"Applications")**  
**Statement of Concern ("SOC") Review Process**

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We are legal counsel to Northback and are writing with respect to the Applications. Specifically, Northback wishes to reiterate the short-term and small-scale nature of the Applications and to request that the Alberta Energy Regulator ("AER") take expeditious steps to advance the review process and approve the Applications without further regulatory process and delay.

## 1. Background

Northback filed the Applications on August 31 and September 5, 2023, over five months ago. The Applications are for a proposed coal exploration program and associated deep drilling permits and temporary water diversion licence (the "CEP") at the existing and already disturbed Grassy Mountain mine site north of Blairmore in the Crowsnest Pass. The CEP will comprise a core sampling and geotechnical data collection program. The Applications are for data collection purposes. They are not for a full commercial mine development.

Northback anticipates that the exploratory drilling program will remove a total quantity of approximately nine cubic metres of coal (approximately 10 tonnes) with a planned duration of 105 days, highlighting the small scope of the CEP.<sup>1</sup> This drilling program will have no long-lasting or

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<sup>1</sup> Northback, Coal Exploration Program Application No. #A10123772 (31 Aug 2023), at ss 2.6.6, 2.7.

permanent impacts, similar to other exploratory drilling programs where the AER has previously recognized that localized, temporary and short duration exploration programs "will not result in significant adverse effects on the environment."<sup>2</sup>

The *Water Act* application for a temporary diversion licence is for a relatively small quantity of water, up to 1,500 cubic metres to facilitate exploratory drilling operations.<sup>3</sup> This water will be sourced from a man-made abandoned end pit lake from legacy mining operations on Northback's privately held property that has collected surface water runoff. This pond has no hydraulic connectivity with any other surface water bodies or fish habitat.

In response to the Applications, 126 SOC's were filed. In addition, 43 letters of support for the CEP were filed, including letters of support from the Mayor of the Crowsnest Pass, the Crowsnest Pass Chamber of Commerce, and a letter of support from a citizens group called "Citizens Supportive of Crowsnest Coal" that attached a petition signed by 300 individuals.

The AER issued four rounds of information requests to Northback, on November 21 and 22, 2023 and two on January 19, 2024. Northback has provided comprehensive responses to all but one of these information requests. The one outstanding information request response relates to an outstanding clearance Northback is waiting on from the Rangeland Agrologist at Alberta Forestry and Parks. Northback has been diligently working with Forestry and Parks for the past several months to clarify the correct allotment numbers, provide requested information and secure the required clearance and expects to have this finalized within the next week. We note that this is an unprecedented number of information requests from the AER for a short-term and localized drilling program.

## 2. SOC Process

The AER's SOC process is intended to provide an opportunity for persons who may be "directly and adversely affected" by a given application to express their concerns. This process enables the AER to take these potentially affected persons' concerns into account when making decisions on energy resource exploration and development applications.<sup>4</sup>

The AER may also ask proponents to respond to persons filing SOC's to see if any legitimate concerns can be addressed before the AER decides whether to hold a hearing and ultimately whether to approve the application.<sup>5</sup>

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<sup>2</sup> *Re Teck Resources Limited, Application for Oil Sands Evaluation Well Licences* (21 Oct 2013), 2013 ABAER 017 at para 112 [*Teck Exploration Program Decision*].

<sup>3</sup> Northback, Temporary Diversion Licence Application No. #00497386-001.

<sup>4</sup> *Responsible Energy Development Act*, SA 2012, c R-17.3, at s 32.

<sup>5</sup> See AER, "Expressing Your Concerns – EnerFAQ: How to File a Statement of Concern About an Energy Resource Project" (Updated Dec 2022), online: <https://www.aer.ca/providing-information/news-and-resources/enerfaqs-and-fact-sheets/enerfaqs-expressing-your-concerns>.



SOCs must include certain information to enable the AER and the proponent to meaningfully review the potentially affected person's concerns, as set out in section 6(1)(a) of the *AER Rules of Practice*:

**6(1)** A statement of concern filed by a person under section 32 of the Act or under section 6.1 of these Rules must be in writing and must contain the following:

- (a) a concise statement indicating
  - (i) why the person believes that the person may be directly and adversely affected by a decision of the Regulator on the application,
  - (ii) the nature of the person's objection to the application, and
  - (iii) the outcome of the application that the person advocates[.]<sup>6</sup>

If the person filing the SOC does not demonstrate that they may indeed be directly and adversely affected by the application, the AER may disregard the SOC.<sup>7</sup> In addition, section 6.2(2) of the *AER Rules of Practice* provides a list of reasons why the AER may disregard a person's specific concerns:

- (a) the concern relates to a matter outside the Regulator's jurisdiction;
- (b) the concern is unrelated to, or relates to a matter beyond the scope of the application;
- (c) the concern has been adequately dealt with or addressed through a hearing or other proceeding under any other enactment or by a decision on another application;
- (d) the concern relates to a policy decision of the Government;
- (e) the concern is frivolous, vexatious, an abuse of process or without merit;
- (f) the concern is so vague that the Regulator is not able to determine the nature of the concern.

Finally, section 7 of the *AER Rules of Practice* set out a list of factors the AER may consider when deciding whether to conduct a hearing on an application. These include, among other things, whether one of the circumstances indicating an SOC should be disregarded applies, whether the application will result in minimal or no adverse effect on the environment (including the aquatic environment for *Water Act* applications), and whether the applicant has made efforts to resolve the issues in dispute directly with the party filing an SOC.<sup>8</sup>

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<sup>6</sup> Alta Reg 99/2013 [*AER Rules of Practice*].

<sup>7</sup> *Ibid* at s 6.2(1)(a).

<sup>8</sup> *Ibid* at s 7(a), (c), (g) and (h).

### 3. Review of the CEP SOC's

Most of the individuals who filed SOC's do not satisfy the threshold requirement of demonstrating that they may be directly and adversely affected by the CEP.

For example, of the 126 SOC's filed, 77 are from individuals who indicated in their SOC's that they reside at least 50 kilometres from the location of the CEP. In contrast, the vast majority of individuals who filed letters of support for the CEP or who signed the Citizens Supportive of Crowsnest Coal petition reside not only within 50 kilometres, but within the Municipality of Crowsnest Pass itself.

Of the remaining 49 SOC's, 24 relate primarily to concerns about full commercial mine development at the Grassy Mountain site, which is not the subject of the Applications.

Of the remaining 25 SOC's, the most consistently expressed concern is related to impacts on water quantity and quality. As explained above, the *Water Act* application is for a very small amount of water from a hydrologically isolated waterbody within a pre-existing disturbed site on Northback's privately held lands. Therefore, the CEP will not impact the quantity or quality of water available to other users. The balance of the concerns primarily relate to broader policy issues regarding the interpretation of Ministerial Order 002/2022, and other general concerns related to noise, dust, traffic, etc. that are clearly disproportionate to what Northback is applying for in the CEP.

Northback provided detailed responses to each SOC explaining its position on why the Applications would not result in significant adverse impacts, and providing a clear basis upon which the AER could disregard each individual SOC, with the exception of the SOC filed by the Blood Tribe/Kainai ("**Kainai**"). Northback has continued to engage with Kainai and on January 11, 2024, the Alberta Aboriginal Consultation Office ("**ACO**") confirmed that Kainai did not provide any site-specific concerns or comments regarding any potential adverse impacts of the CEP on the Kainai's Treaty rights and traditional uses. The ACO confirmed that consultation with Kainai is adequate pending the outcome of the AER process.

Northback remains committed to engaging with Treaty 7 Indigenous stakeholders. For example, Northback has committed to continue working with the Kainai to identify plants of medicinal and spiritual significance that may be impacted by the CEP and to identify appropriate mitigations.

### 4. Conclusion & Request

The Applications should be approved without further delay. It is exceptionally rare for a hearing to be held in connection with an exploration program such as the CEP. Our understanding is that this has only occurred once before, even though hundreds, if not thousands, of exploration drilling programs have been previously approved by the AER. The AER's *Teck Exploration Program Decision* confirmed that exploration programs are consistent with the statutory purpose of the *Oil Sands Conservation Act* "to effect conservation and prevent waste of the oil sands resources of Alberta; to ensure orderly, efficient and economical development in the public interest of the oil sands resources

of Alberta; and to provide for the appraisal of Alberta's oil sands resources."<sup>9</sup> The same reasoning applies in this case. The *Coal Conservation Act* contains the exact same statutory purposes: "to effect conservation, and prevent waste, of the coal resources of Alberta; to ensure orderly, efficient and economic development of Alberta's coal resources in the public interest; and to provide for the appraisal of Alberta's coal resources."<sup>10</sup>

Further, the AER found that exploration programs have minimal environmental effects, are short term in nature and any effects are localized:

The panel agrees that the volume of the water withdrawals is small and not likely to adversely or irreversibly affect any water bodies. The panel also notes that as a result of the planned uses of water by Teck, most of the water used for the program would be returned to the hydrologic cycle during spring breakup.<sup>11</sup>

The panel finds that the risk of water contamination from the Corehole Program is minimal due to the localized nature of activities and Teck's proposed mitigation.<sup>12</sup>

The panel therefore concludes that the preparation of well sites and access roads for the Corehole Program will not result in any significant or long-term adverse environmental or cumulative effects.<sup>13</sup>

The panel finds that any disturbance effects will be localized and temporary and that the mitigation measures proposed by Teck are appropriate. The panel does not believe that the resulting effects will prevent or significantly affect the ability of resource harvesters to conduct TLU activities in the vicinity of the Corehole Program.<sup>14</sup>

The panel finds that the evidence in this proceeding indicates that the effects associated with the Corehole Program will be localized, temporary, and of short duration. The panel concludes that the nature of the activities and the mitigation proposed by Teck are such that the activities will not result in significant adverse effects on the environment, the RLBH [bison], or Aboriginal traditional land use and rights.<sup>15</sup>

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<sup>9</sup> *Teck Exploration Program Decision* at para 28.

<sup>10</sup> *Coal Conservation Act*, RSA 2000, c C-17, at s 3(a)(c) and (d).

<sup>11</sup> *Teck Exploration Program Decision*, at para 50.

<sup>12</sup> *Teck Exploration Program Decision*, at para 51.

<sup>13</sup> *Teck Exploration Program Decision*, at para 65.

<sup>14</sup> *Teck Exploration Program Decision*, at para 104.

<sup>15</sup> *Teck Exploration Program Decision*, at para 112.



In conclusion, there is no basis for any further regulatory review of, or ongoing delay associated with, the Applications. Evaluating the extent of Alberta's steelmaking coal reserves is clearly in the public interest and the CEP will not result in any material environmental effects.

Therefore, Northback requests that the AER make an expeditious determination pursuant to section 33 of the *Responsible Energy Development Act* that no hearing is necessary to decide whether the Applications should be approved, and proceed to approve the Applications. The factors set out in section 7 of the *AER Rules of Practice* support such a determination. There is no credible basis for a hearing in advance of a determination of the Applications: no further information is required by the AER; the environmental effects are minimal; there is no *Water Act* application associated with the CEP that will impact other users; there are no outstanding Indigenous consultation issues; the SOCs, to the extent any are relevant to the CEP, do not establish the need for a hearing; and an exploration program is a routine and well-understood activity. The AER should rely on its expertise in assessing the CEP instead of deferring to a public hearing process when one is not warranted in advance of a decision.

Should you have any questions, please contact the undersigned.

Yours truly,

**BENNETT JONES LLP**



Martin Ignasiak KC

cc: All Parties Filing SOCs, Letters of Support, and "Citizens Supportive of Crowsnest Coal" Petition

