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November 9, 2023

**By Email:** brendadavison52@gmail.com

Crowsnest Conservation Society

Brenda Davison

**RE: Northback Holdings Corp. ("Northback") Application Nos. #A10123772, #00497386-001, and #1948547 (the "Applications")  
Statement of Concern 32296**

Dear Brenda,

We act on behalf of Northback with respect to the Applications for a coal exploration permit, a deep drilling permit, and a temporary water diversion licence for 1,500 m<sup>3</sup> (1.2 acre-feet) respectively. Please see the attached responses from Northback to the concerns you expressed in statement of concern no. #32296 filed with the Alberta Energy Regulator ("AER").

We reiterate on behalf of Northback that the Applications are in relation to an exploration program and not a mine development. Pursuant to section 31 of the *Responsible Energy Development Act*, SA 2012, c R-17.3, any potential future application for mine development at the Grassy Mountain site would be subject to mandatory public notice.

The AER has previously determined that applications for localized exploration programs of short duration with adequate mitigation measures are not likely to result in significant adverse effects on the environment.<sup>1</sup> Similarly, Northback's Applications present minimal risks and will not result in significant adverse effects on the environment due to the temporary nature and small scale of the exploration program and the proposed mitigations.

In light of the above, Northback is of the view that the Applications are not likely to directly and adversely affect you, and that to the extent your concerns relate to potential future development of the Grassy Mountain site, the statement of concern is not properly before the AER at this time because it exceeds the scope of the Applications. The AER has the discretionary authority to

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<sup>1</sup> *Re Teck Resources Limited, Application for Oil Sands Evaluation Well Licences* (21 Oct 2013), 2013 ABAER 017 at para 112.

disregard statements of concern that fail to demonstrate direct and adverse effects arising from the Applications at issue or which are not properly before the AER for any other reason.<sup>2</sup>

We have attached a map prepared by Northback as Appendix 1 to this letter to illustrate the geographic location of the parties who have expressed either support for or concerns about the Applications. As is immediately obvious from the map, the local community overwhelmingly supports the Applications, and a significant number of the parties that filed concerns reside a large distance away from the location of the exploration program. To clarify, the dots on the map representing support petitions include the named parties who signed the Citizens Supportive of Crowsnest Coal's Petition in Favor of Northback Drilling Program submitted to the AER on October 2, 2023. Northback appreciates the local support, which reflects the significant positive effects of responsible steelmaking coal resource development to the residents of the Crowsnest Pass and neighbouring communities.

We have also attached with the map a few photos and a link to a video of aerial footage from the Grassy Mountain site demonstrating the extensively disturbed and unreclaimed state of the site.

Northback remains committed to conducting its exploration program in an environmentally responsible manner in collaboration with local stakeholders, Indigenous nations, the Alberta Government, and the AER.

Yours truly,

**BENNETT JONES LLP**



Martin Ignasiak KC

cc: Ayan Solomon, AER  
Rushang Joshi, AER

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<sup>2</sup> *Alberta Energy Regulator Rules of Practice*, Alta Reg 99/2013 at ss 6.2(1)(a), 6.2(1)(d) and 6.2(2)(b).

# Appendix 1: Map Spatially Demonstrating Expressions of Support for and Concerns About the Applications



This map is for reference purposes only and is not to be used for surveying, engineering or legal purposes. No warranties, either expressed or implied, are made by Trace for the accuracy, completeness, reliability, usability or suitability of the information presented, as generated by Trace or other third party sources. Users should refer to the original source datasets to ascertain the usability of the information displayed.

## Appendix 2: Grassy Mountain Mine Current Condition – Extensively Disturbed and Unreclaimed Site

Photos from September and October 2023



Previously mined open pit looking south



Previously mined open pit with former underground mine entry and associated debris



Previously mined open pit looking north

See recent video footage at:  
<https://youtu.be/KzfWlfqYWeE>

## Response to Statement of Concern

Page and Paragraph	Concern	Response	References
Page 3, Concern 1	Crowsnest Conservation Society has written and approved a letter to describe our concerns. It has been attached below under "supporting documentation."	Northback confirms receipt of the SOC form and attachment. Concerns from the attached email have been responded to below.	N/A
Page 5, Attached Letter, Paragraphs 2 & 3	<p><b><u>PROCESS</u></b></p> <p>We do not believe that the AER should consider the application because there is a Ministerial Order in place that allows exploration only for active coal mines or those that are advanced. Before 2020, the Grassy Mine would have been considered an advanced project. However, it was denied advancement by the Joint Review Panel in 2021. Although the proponents of the Grassy Mine then tried to get that decision overturned at both provincial and federal levels, they were denied there as well. We believe that the AER is consequently honor bound if not legally bound to deny these applications.</p> <p>As well, we believe that the Coal Policy Committee found that many Albertans were against coal development in the Rockies. Those citizens should be consulted before any decision is made. Consultation needs to be expanded with</p>	<p>Section 6 of Ministerial Order 002/2022 states that "an 'advanced coal project' is a project for which the proponent has submitted a project summary to the AER for the purposes of determining whether an environmental impact assessment is required" (GoA 2022). Northback, operating under its previous name Benga Mining Ltd., submitted a Project Summary Table to AER on September 29, 2014 for the purposes of determining if an environmental impact assessment was required.</p> <p>The Ministerial Order does not indicate that statutory decisions made on applications under the Energy Resource and Specified Enactments impact the standing of advanced coal projects. This is supported by the fact that the Ministerial Order repeatedly refers to the Coal Policy Committee and the Committee explicitly confirmed that the Grassy Mountain Project is an "advanced coal project" (CPC 2021). The Committee's Report was issued approximately 6 months after the AER's decision on the Grassy Mountain Project. Therefore, neither the Ministerial Order nor the Committee's</p>	<p>CPC (Coal Policy Committee). 2021. Final Report: recommendations for the management of coal resources in Alberta. Prepared by Coal Policy Committee on behalf of Government of Alberta. Available online: <a href="https://open.alberta.ca/publications/recommendations-for-the-management-of-coal-resources-in-alberta">https://open.alberta.ca/publications/recommendations-for-the-management-of-coal-resources-in-alberta</a></p> <p>GoA (Government of Alberta). 2022. Ministerial Order 002/2022. Alberta Energy. Available online: <a href="https://open.alberta.ca/publications/energy-002-2022">https://open.alberta.ca/publications/energy-002-2022</a></p>

Page and Paragraph	Concern	Response	References
	Albertans especially those living on the Eastern Slopes before a permit for exploration is given.	Report provide any basis on which it can be concluded that the subject lands are no longer subject to the exemption provided for an "advanced coal project" due to the statutory review and decisions made on the previously submitted development applications for the Grassy Mountain Project.	
Page 5, Attached Letter, Paragraph 4	<p><b><u>ENVIRONMENTAL ISSUES</u></b></p> <p>None of those problems have changed since 2020. In fact, many have worsened and become even more pertinent.</p>	Northback acknowledges receipt of this introduction statement in the attached letter. Responses to each concern are provided below.	N/A
Attached Letter, Pages 5 & 6, Paragraph 5 leading into paragraph 1	Water quantity has been a tremendous problem in the Oldman River Watershed this year. The Town of Pincher Creek has had to truck in water because the water level in the Oldman Reservoir is so low this year that its pumps aren't submerged enough to function. As well as the need for human use, the Westslope Cutthroat Trout, a Species at Risk, are being stressed by the low water. In particular, the temperature of the water is very warm when it is so low. We do not believe that the AER should consider any project that would decrease the flow any further. Even a temporary water diversion will add additional pressure on endangered fish species and the health of watercourses to survive. To help you understand just how dire this is, we have included a picture of the Oldman Reservoir taken last week. The lack of water is evident and frightening.	<p>Northback has applied for a temporary diversion licence (TDL) in accordance with Sections 35, 62, and 63 of the Water Act (WA 2023). The TDL meets the requirements of the AER in regard to requested volume and duration of use. No allocation application under the Water Act has been submitted in association with the proposed exploration program. Northback will follow all approval conditions of the TDL.</p> <p>The TDL will draw water from an existing, man-made waterbody on Northback's privately held lands. The man-made waterbody has no hydraulic connectivity with other surface water bodies or fish habitat.</p>	WA (Water Act). Revised Statutes of Alberta 200 Chapter W-3. Edmonton, AB: Alberta King's Printer. Current to April 1, 2023.

Page and Paragraph	Concern	Response	References
	[NTD: Refer to SOC 32296 for provided photo]		
Attached Letter, Page 6, Paragraphs 2 through 5	<p>Water quality is also an important issue for us. There is still no provably effective technology for containing selenium and other minerals that contaminate the ground water within and adjacent to the footprint of the proposed Grassy Mountain Project. Again, selenium is a contaminate that has dire effects on SARA listed fish.</p> <p>The executive summary of the 2021 Joint Panel Report that denied coal mining on Grassy Mountain speaks clearly to the problem.</p> <p><i>“The project is likely to cause significant adverse effects on surface water quality. The project is located in a sensitive mountain environment and has the potential to adversely affect the water quality of Gold Creek and Blairmore Creek, which are within the headwaters of the Crowsnest River, Oldman River, and South Saskatchewan River. These creeks contain populations of threatened westslope cutthroat trout. The Oldman watershed contributes to the water supply for residential, tourism, and business users, including agricultural and livestock operations. The project is in an area governed by the South Saskatchewan Regional Plan (SSRP) under Alberta’s Land-Use Framework, which includes a focus on protection of water quality. These waters have a connection to Indigenous people and their traditional</i></p>	<p>Northback has not submitted a mine development application. Refer to Section 6(1) of the AER Rules of Practice for the required form of a Statement of Concern. Section 6.2(b) of the AER Rules of Practice specifically notes that the Regulator may disregard a concern raised in Statement of concern is "(b) the concern is unrelated to, or relates to a matter beyond the scope of the application." Application Nos. #00497386-001, and #1948547 are strictly in relation to drilling activities and do not contemplate any other development. Concerns related to activities outside the scope of any application do not meet AER's requirements for consideration.</p>	<p>REDA-Alberta Energy Regulator Rules of Practice. Alberta Regulation 99/2013. Edmonton, AB: Alberta King's Printer. Current as of February 28, 2023.</p>

Page and Paragraph	Concern	Response	References
	<p><i>territory. Experience in the nearby Elk Valley in British Columbia illustrates the challenges and potential costs of dealing with the water quality issues that this project may face."</i></p> <p>Since nothing has changed in the sensitivity or vulnerability of the environment, CCS believes that the ruling denying the Benga Mine be maintained. Thus exploration, a process that has large impacts on habitat and water quality, should not be allowed either.</p>		
<p>Page 7, Attached Letter, Paragraphs 1 through 2</p>	<p>Air quality is also an important issue for us. The wind in southern Alberta is legendary and weather forecasters have created a different set of values for wind warnings here than other areas in Canada. Environment Canada usually issues a warning when the winds will be "sustained 70km/hr with gusts of 90km/hr" but here we don't get them until the wind will be "sustained 80km/hr with gusts of 100km/hr." Coal dust will be spread widely from any open pit mining here, and affect human health. It will also collect on the land and run off into the rivers increasing selenium and exacerbating the problem for fish and humans. Recently Alberta Government researchers found that airborne fugitive coal dust from BC coal mines has contaminated Window Mountain Lake, once considered a pristine backcountry area.</p>	<p>Refer to the response to Attached Letter, Page 6, Paragraphs 2 through 5.</p>	<p>N/A</p>



Page and Paragraph	Concern	Response	References
	<p><a href="https://calgary.ctvnews.ca/pristine-alpine-lake-contaminated-by-dust-from-mountaintop-coal-mines-study-shows-1.6137066">https://calgary.ctvnews.ca/pristine-alpine-lake-contaminated-by-dust-from-mountaintop-coal-mines-study-shows-1.6137066</a></p>		
<p>Pages 7 &amp; 8, Attached Letter, Paragraphs 3 through 9, leading to Paragraph 1</p>	<p>Wildlife Habitat and Connectivity are major concern for Crowsnest Conservation Society. There is a single valley only 20 km wide connecting protected habitat in the south (Waterton and Castle Wildland Park) to habitat in the north (Kananaskis Country.) The noise and traffic of industrial exploration 24 hours per day will drive away wildlife already pressured by narrow east- west valley to maintain feeding and breeding patterns.</p> <p>The 2021 Joint Committee Report on the AER website says this about the impact of a coal mine of wildlife and rare vegetation:</p> <p><i>“The collective loss of species and plant communities (ecosite types), rare plants, old-growth forest, rough fescue grasslands, whitebark pine, and organic wetlands in the reclaimed landscape would result in the loss of vegetation species and community biodiversity in the local study area for 100 years or longer. We consider this effect to be significant and likely”.</i></p> <p><i>“We find that uncertainty associated with the effectiveness of Benga’s proposed mitigation measures, particularly</i></p>	<p>Refer to the response to Attached Letter, Page 6, Paragraphs 2 through 5.</p> <p>Exploration activities by other proponents are not within the care and control of Northback. Application Nos. #1948547 and #00497386-001 are strictly related to exploratory drilling deeper than 150 m and temporary water diversion, respectively. The activities of other operators are not applicable to AER's consideration of these applications (REDA 2023).</p> <p>The photo of another site where exploration occurred is not relevant - the Applications do not contemplate extensive clear-cutting of timber as appears to be the case in the photo provided.</p>	<p>REDA-Alberta Energy Regulator Rules of Practice. Alberta Regulation 99/2013. Edmonton, AB: Alberta King's Printer. Current as of February 28, 2023.</p>

Page and Paragraph	Concern	Response	References
	<p><i>progressive reclamation, means that certain wildlife species—such as those dependent on old-growth forests—may not return to the project area for decades after project operations end, if they come back at all.”</i></p> <p><i>“We find that the residual effects of the project, in combination with other projects and activities that have been and will be carried out, are likely to contribute to existing significant adverse cumulative effects on little brown bats and grizzly bears.”</i></p> <p><i>‘The project would adversely affect a number of wildlife species, including some listed under SARA and identified as sensitive under the General Status of Alberta Wild Species. The project would cause changes in wildlife habitat availability, habitat connectivity, movement, mortality risk, and abundance.’</i></p> <p>These are the AER’s reasons for denying the Grassy Mountain Coal Mine. To reiterate: Since nothing has changed in the sensitivity or vulnerability of the environment, the ruling denying the Benga Mine should be maintained. Consequently, exploration, a process that has large impacts on habitat and water quality, should not be allowed either. Below is a picture of the damage done to habitat recently by other exploration.</p>		

Page and Paragraph	Concern	Response	References
	[NTD: Refer to SOC 32296 for provided photo of exploration activities conducted outside of Northback's privately held lands and coal leases]		