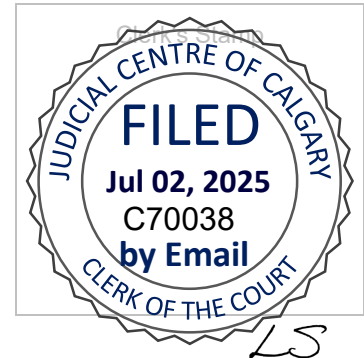


COURT FILE NUMBER	2501-10374
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	SIKSIKA NATION
RESPONDENT	HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ALBERTA as represented by THE MINISTER OF ENERGY AND MINERALS
DOCUMENT	<b>ORIGINATING APPLICATION FOR JUDICIAL REVIEW</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>JFK LAW LLP</b> Barristers & Solicitors 200-260 Granville Street Vancouver BC V6C 1S4 Tel: 604-687-0549 Fax: 604-687-2696  Jeff Langlois ( <a href="mailto:ilanglois@jfklaw.ca">ilanglois@jfklaw.ca</a> ) Soudeh Alikhani ( <a href="mailto:salikhani@jfklaw.ca">salikhani@jfklaw.ca</a> ) Milica Pavlovic ( <a href="mailto:mpavlovic@jfklaw.ca">mpavlovic@jfklaw.ca</a> )



**NOTICE TO THE RESPONDENT:**

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This Application is made against you. You are a respondent.

You have the right to state your side of this matter the before the Court.

To do so, you must be in court when the Application is heard as shown below:

**Date:** To be determined

**Time:** 10:00 am

**Where:** Calgary Law Courts, 601 5th Street SW, Calgary, AB, T2P 5P7

**Before Whom:** Presiding Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

## **BASIS FOR THIS CLAIM:**

### **Overview**

1. Siksika Nation (“**Siksika**”) is a party to the Blackfoot Treaty of 1877, also known as Treaty 7 (“**Blackfoot Treaty**” or the “**Treaty**”), with traditional and treaty territories located in what is now known as southern Alberta. Siksika seeks judicial review of Ministerial Order 003/2025 issued by Alberta’s Minister of Energy and Minerals (the “**Minister**”) on January 15, 2025 (the “**Order**”), which effectively lifts the prior ban on certain coal mining on lands known as the eastern slopes of the Rocky Mountains in western Alberta (the “**Eastern Slopes**”), located at the heart of Siksika’s traditional and Treaty territories.
2. The Order is the latest in a series of high-level planning changes that affect coal exploration and development in the Eastern Slopes—from Alberta’s initial rescission of “A Coal Development Policy for Alberta (1976)” (the “**1976 Coal Policy**”) in May 2020, to its reinstatement of the 1976 Coal Policy in February 2021 following public outcry and litigation commenced by Siksika and Kainai Nation (Blood Tribe) (“**Kainai**”), to its subsequent initiation of a public engagement process to inform a modernized coal policy in 2021 and 2022.
3. The Order rescinds three previous Ministerial Orders and directs the Alberta Energy Regulator (the “**AER**”) to:
  - (a) lift suspensions of all approvals for coal mining projects that were suspended under those previous three orders;
  - (b) extend the expiry dates of such approvals to account for the period of suspension; and,
  - (c) apply the 1976 Coal Policy with consideration of the (still incomplete) Coal Industry Modernization Initiative announced December 20, 2024 (the “**CIMI**”).

4. As a result, the Order creates an internally inconsistent policy framework which, despite the reinstatement of the 1976 Coal Policy, permits certain coal mining projects in the Eastern Slopes to resume. This sudden policy shift goes against clear and unequivocal recommendations of Alberta's independent Coal Policy Committee which was mandated to lead public engagement on a modernized coal policy from March to December 2021. These recommendations were formed in part from extensive submissions by First Nations, including Siksika. Yet, the Order was issued without any consultation with Siksika and, in its effect, dismisses concerns that Siksika has consistently communicated to Alberta. For years, Siksika has informed Alberta that the Eastern Slopes are among the last lands where Siksika can meaningfully exercise its Treaty rights and access critical resources that support its livelihood, and must be protected against further mining development.
5. The Order is unlawful because:
  - (a) It was made in breach of the duty to act honourably and consult owed to Siksika, particularly in light of the cumulative effects of development throughout the Eastern Slopes;
  - (b) it is *ultra vires* the Minister's statutory authority which cannot be interpreted to breach the Crown's duty to consult;
  - (c) it was issued in breach of the Minister's duty of procedural fairness; and,
  - (d) the Respondent has otherwise failed to demonstrate a justified, transparent, and intelligible rationale for making the Order.
6. As such, the Order must be set aside and the declaratory relief sought herein granted.

## **Facts**

### **Siksika and its Territory**

7. The Applicant, Siksika, is a member of the Blackfoot Confederacy and possesses rights under the Blackfoot Treaty. Siksika is a "band" within the meaning of the *Indian Act*, RSC 1985, c I-15, and its members are an Aboriginal people within the

meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982 (UK)*, 1982, c 11. Siksika is based in what is now southern Alberta. Siksika's reserves, and much of its traditional territories, lie within the tract of land subject to the Blackfoot Treaty. Siksika's reserve lands cover 71,087 hectares east of Calgary on the Bow River.

8. Blackfoot traditional territory, including Siksika's, extends from the Rocky Mountains in the west to the Sand Hills in the east, and from the North Saskatchewan River in the north to the Yellowstone River in the south (present day Montana). Historically, the western boundary of Blackfoot Territory—the Rocky Mountains—was an overlapping area of trade, war, and peace-making between the Blackfoot tribes and their neighbors, the Ktunaxa and Flathead peoples. As such, Siksika's traditional territory extends west into the Rocky Mountains. The Eastern Slopes fall within the southwestern part of Siksika's territory.
9. Siksika has used, and continues to use, the lands, waters, and resources within its traditional territory for a variety of traditional purposes, including hunting, fishing, trapping, gathering, traveling, and cultural practices, as acknowledged in the Blackfoot Treaty. It is essential to Siksika's survival that it be able to use its traditional lands for a range of practices and to access traditional resources, as the lands and resources underpin their culture, tradition, collective identity, well-being, spirituality, and rights. The traditional practices conducted on these lands and waters are integral to Siksika's physical and cultural survival.
10. Siksika has historically used, and continues to extensively use, the Eastern Slopes for travel, trade, harvesting, and ceremonial purposes. The Eastern Slopes continue to be indispensable to Siksika's exercise of its Treaty rights and related cultural practices. The headwaters of major river systems, which provide source water vital for maintaining the health of fish and wildlife habitats in the region and are increasingly vulnerable to climate change and industrial activities, are located in the Eastern Slopes.
11. For generations, Blackfoot territory has been subject to extensive development authorized by the Crown, including agricultural expansion, municipal development,

land transfers to private land holders, the establishment of conservation areas, tourism and recreation projects, and mining and industrial activities. Each of these developments has eroded the lands and resources critical to Siksika's practice of its Treaty rights and culture, leaving fewer and fewer areas that can sustain Siksika's Treaty-protected way of life.

### **The 1976 Coal Policy**

12. In June 1976, Alberta issued the 1976 Coal Policy to regulate coal development in and around the Eastern Slopes. The 1976 Coal Policy established environmental protections, labour requirements, a royalty regime, and a land use classification system.

13. While other regulatory requirements have since superseded many of the provisions of the 1976 Coal Policy, the land use classification system remains in effect. It classifies coal-bearing lands throughout the Eastern Slopes into the following categories:

- (a) **Category 1:** includes highly environmentally sensitive areas and areas with alternative land uses that are not compatible with coal development, such as national parks and wilderness areas. No exploration or development is allowed on these lands.
- (b) **Category 2:** includes moderately environmentally sensitive lands in the Rocky Mountains and foothills, where the "preferred" land use remains to be determined and infrastructure is lacking, as well as "local areas of high environmental sensitivity" in which neither exploration or development activities are permitted. Limited exploration and restricted development is allowed: open-pit mines are not allowed and underground operations are only allowed in certain situations where surface effects of the operation are considered to be environmentally acceptable.
- (c) **Category 3:** includes non-environmentally sensitive lands such as plains and forested areas with potential land use conflicts (particularly with agricultural

lands). Following an approvals process, exploration is permitted but development remains restricted.

- (d) **Category 4:** included all areas not captured by the other three categories. Exploration and development were both permitted under an approvals process.

14. The map attached as Schedule “A” delineates the location of these Categories under the 1976 Coal Policy.

### **The South Saskatchewan Regional Plan (the “SSRP”)**

15. The SSRP is the regional plan that covers southern Alberta, including the Eastern Slopes. It was enacted in 2014 under the *Alberta Land Stewardship Act*, SA 2009, c A-26.8 [**ALSA**] and amended in 2018.
16. The purpose of the SSRP is to provide direction for future development of the region and to manage cumulative effects. Under the SSRP, with respect to First Nations, Alberta committed as follows:

Within the SSRP area, Alberta recognizes that those First Nations that hold constitutionally protected rights are uniquely positioned to inform land-use planning. Consulting aboriginal communities on regional planning, particularly those aspects that have the potential to adversely impact their constitutionally protected rights and reconciling interests are essential to achieving the regional vision. Consideration of First Nations’ input is a thread through all three pillars of regional planning; environmental, social and economic.

17. The SSRP provides clear direction on the relationship between the SSRP and the 1976 Coal Policy, including how revisions to the 1976 Coal Policy are to be made:

As part of reviewing and incorporating the Integrated Resource Plans, the government will integrate a review of the coal categories, established by the 1976 A Coal Development Policy for Alberta to confirm whether these land classifications specific to coal exploration and development should remain in place or be adjusted. The review of the coal categories will only be for the South Saskatchewan planning region. The intent is for the SSRP and implementation strategies of the regional plan or future associated subregional or issue-specific plans within the region to supersede the coal categories for the purposes of land use decisions about where coal exploration and development can and cannot occur in the planning region.

18. The existing SSRP does not include any equivalent zoning for ecologically sensitive areas, nor does it delineate where mining can or cannot occur, or what type of mining can occur in what areas. No sub-regional or issue-specific plan has been developed that delineates where mining can or cannot occur.

### **Livingstone Porcupine Hills Land Footprint Management Plan (the “LPH Plan”)**

19. The LPH Plan is a sub-regional plan under the SSRP, enacted in 2018 under the *ALSA*. In it, Alberta acknowledged and committed as follows:

The Eastern Slopes include hunting and gathering, and ceremonial places that lie within traditional territories of multiple First Nation. The Livingstone and Porcupine Hills areas provided sustenance, materials, medicines, and sacred places for First Nations since time immemorial and is expected to continue to do so for generations yet to come. Indigenous communities are intimately connected to the land and are therefore their ancestral, traditional, and continued uses of public lands are at risk from the impacts of climate change, industrial development, and unmanaged recreational use. [...] Implementation of this Plan is expected to be consistent with First Nations ability to continually exercise their Treaty rights and to acknowledge and maintain the relationship that Indigenous Peoples have with the land and the importance of their activities on that land.

20. The LPH Plan also specifically refers to the 1976 Coal Policy and states:

As part of reviewing and incorporating the Integrated Resource Plans, the Government of Alberta will integrate a review of the coal categories for the South Saskatchewan region (SSRP p. 61). New direction, consistent with footprint planning outcomes, will supersede the coal categories and may extend to all large-scale industrial surface disturbances, including coal. This new direction should be consistent with an integrated approach. It will specify where surface exploration and development can and cannot occur based on the best and most recent biodiversity sensitivity data.

21. To date, Alberta has not undertaken a review of the coal categories as per the SSRP or the LPH Plan. It has not issued any new directions consistent with footprint planning outcomes or First Nations’ rights. Accordingly, as is explained in detail below, the coal categories set out in the 1976 Coal Policy remain in place.

### **Changes to Alberta’s Coal Policies**

22. Since May 2020, Alberta has made several changes to coal exploration and development, as follows:

***May 15, 2020 – February 2021: Alberta rescinded the 1976 Coal Policy, which lifted bans on certain coal projects***

23. On May 15, 2020, Alberta issued Information Letter 2020-23 and Bulletin 2020-02 rescinding the 1976 Coal Policy effective June 1, 2020. It did so without any consultation with Siksika, including about the effect of the rescission on Siksika's Treaty rights and lands.
24. The rescission of the 1976 Coal Policy removed all limitations on coal exploration and development on Category 2 lands.
25. With the removal of the coal Categories, Alberta initially offered a right of first refusal to all existing coal lease applicants, before subsequently allowing new coal lease applications, including in Category 2 lands. In this period, several coal mining projects in the Eastern Slopes proceeded to various stages of review, including, *inter alia*, mining projects by Montem Resources Alberta Operations Ltd.'s ("**Montem**"), Elan Coal Ltd. ("**Elan**"), Black Eagle Mining Corporation ("**Black Eagle**"), and the Cabin Ridge Coal Project Ltd. ("**Cabin Ridge**").
26. Siksika has consistently put Alberta on notice about Siksika's concerns regarding coal exploration and development in the Eastern Slopes. Following Alberta's rescission of the 1976 Coal Policy, Siksika wrote to Alberta expressing its growing concern over Alberta's lack of consultation about this change to Alberta's coal policy permitting coal mining in the Eastern Slopes and its potential adverse impact on Siksika's Treaty rights and lands.
27. On November 25, 2020, Siksika and Kainai brought an application for judicial review of the rescission decision.<sup>1</sup> This application was discontinued in May 2021, following the reinstatement of the 1976 Coal Policy in February 2021, as set out below.
28. In January 2021, Alberta cancelled certain leases on Category 2 lands related to a December 2020 offering and subsequently suspended plans for additional lease sales within Category 2 lands. However, this cancellation and suspension affected

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<sup>1</sup> Court of King's Bench of Alberta File No. 2001-14878.



only a small portion of the applications on Category 2 lands that had already been leased since May 2020.

***February 8, 2021: Alberta reinstated the 1976 Coal Policy***

29. On February 8, 2021, following widespread public outcry and the above noted litigation, the Minister reinstated the 1976 Coal Policy through Ministerial Order 054/2021. In this order, the Minister directed the AER to *inter alia*:

- (i) consider the coal categories and requirements set out in the 1976 Coal Policy;
- (ii) confirm that any proposed exploration or development of coal on Category 2 lands does not involve mountain top removal; and,
- (iii) not issue any new approvals for exploration for coal on Category 2 lands.

30. This Ministerial Order effectively placed a moratorium on all new coal exploration in Category 2 lands, suspending existing approvals and prohibiting the AER from issuing new approvals, except for so-called “advanced projects”.

***March 2021 – March 2022: Alberta appointed Committee to inform modern coal policy***

31. On March 29, 2021, Alberta appointed an independent Coal Policy Committee (the “**Committee**”) to lead comprehensive public engagement to inform the development of a modern coal policy in Alberta. Pursuant to its Terms of Reference, the purpose of the Committee was to engage with Albertans to prepare a report and recommendations to the Minister about Alberta’s management of coal resources.

32. Between April through September 2021, Siksika wrote to Alberta and the Committee several times, providing its input that the 1976 Coal Policy should not be amended without proper consideration of the impact of such amendments on Siksika’s Treaty rights. Siksika also provided Alberta with information and reports showing that Siksika has been heavily impacted by the cumulative effects of other activities on its traditional territory, such that development on remaining territory in the Eastern

Slopes poses a significant risk of further diminishing Siksika's ability to exercise its Treaty rights.

33. On April 23, 2021, in response to the Committee's recommendation, the Minister suspended all coal exploration in Category 2 lands, effective immediately and pending completion of the public engagement process. The Minister also issued Ministerial Order 093/2021 directing the AER to suspend or pause all approvals for coal exploration on Category 1 lands until December 31, 2021 or such other date as the Minister specifies.
34. On November 10, 2021, the Minister reaffirmed Ministerial Order 093/2021, further directing the AER to continue its suspensions of all approvals for coal exploration on Category 2 lands until further notice.
35. In December 2021, the Committee provided the Minister with two reports from its public engagement: (i) an engagement report, outlining the Committee's public engagement process and the resulting input, including from Indigenous communities (the "**Engagement Report**"); and (ii) a final report, outlining the Committee's recommendations, observations, and action items following its public engagement (the "**Final Report**").
36. The Engagement Report outlined that the engagement process included 67 meetings with Indigenous communities and other stakeholders, 176 detailed written submissions from interested parties, and almost 4,400 emails and letters from Albertans. Siksika participated in this process. Overall, this process revealed that many communities in Alberta, including Siksika, had significant concerns about further coal development and expected transparent consultation about policy changes thereto.
37. In particular, in September 2021, Siksika provided written submissions to the Committee which outlined the importance of the Eastern Slopes to its Treaty rights and cultural practices, particularly given the cumulative impacts of other development on Siksika's other lands. Siksika asked the Committee to recommend to the Minister that no changes to the 1976 Coal Policy be made until a

comprehensive study of the quantity and quality of the lands required for Siksika to meaningfully exercise its rights is undertaken to inform of any such changes.

38. The Final Report made eight recommendations in line with the public engagement and Siksika's input, including *inter alia*:

- (a) In recommendation #1, the Committee recommended modernizing Alberta's coal policy. To that end, it recommended that regional and subregional plans for the Eastern Slopes be completed before considering any major coal project approvals or lifting bans on coal activity and exploration on Category 2 lands.
- (b) In recommendation #2, the Committee recommended meaningfully involving Alberta's Indigenous communities in those land use planning processes.
- (c) In recommendation #3, the Committee recommended articulating land use guidance for coal exploration and development through planning to provide certainty and bind the Crown.
- (d) In recommendation #6, the Committee recommended assessing proposed new coal projects with rigorous net benefit tests that include extensive consultation.

39. The public engagement process concluded in March 2022. On March 2, 2022, the Minister issued Ministerial Order 002/2022, the "Coal Development Direction", directing the AER to *inter alia* continue to suspend all approvals for coal exploration on Category 2 lands and prohibit new applications until further notice by the Minister of Energy and/or the Minister of Environment and Parks.

40. On March 4, 2022, Alberta announced that:

- (a) Effective immediately, all new coal development activities in the Eastern Slopes are restricted pursuant to Ministerial Order 002/2022, which will remain in place until direction on coal activities is formalized in new or updated land-use plans;

- (b) The expanded restrictions and enhanced land-use planning measures are a direct response to recommendations made in the Committee’s Final Report and Engagement Report; and,
- (c) Alberta accepts the findings of the Committee and will look to address its other recommendations by updating, strengthening, or reinforcing existing regulations and legislation in the future, as informed by input received through Indigenous engagement.

***December 2024—January 2025: Alberta begins to erode recommendations in the Final Report through the Coal Industry Modernization Initiative (“CIMI”) and the Order***

41. In December 2024, Alberta announced the CIMI to address the Committee’s recommendations to build a long-term legislative and regulatory framework to guide coal development in Alberta.

42. The CIMI has not yet been formalized through land use planning, which has not yet been completed for the Eastern Slopes. The CIMI’s “stakeholder engagement” process also remains pending. Nonetheless, the CIMI currently provides that:

- (a) Mountaintop removal coal mining will be specifically prohibited;
- (b) No new open pit mines will be approved for the Eastern Slopes; and,
- (c) No new coal mining proposals will be approved without the use of best water practices.

43. Alberta has not met with Siksika regarding the CIMI.

44. On January 15, 2025, shortly after announcing the CIMI, the Minister issued the Order pursuant to section 67 of the *Responsible Energy Development Act*, SA 2012, c R-17.3 [**REDA**], effective immediately. The Order rescinds previous Ministerial Orders 054/2021, 093/2021, and 002/2022 and makes a new Coal Policy Direction, which shall expire on January 15, 2035, unless rescinded by a subsequent Ministerial Order.

45. The new Coal Policy Direction under the Order confirms that the restrictions in the 1976 Coal Policy continue, that Alberta has considered the Committee's recommendations, and that the Minister is satisfied that sufficient land use clarity is being provided through ongoing regional planning, including the SSRP and the CIMI. Pursuant to section 67 of *REDA*, it then directs the AER to:

- (a) Lift the suspensions of all approvals that were suspended under Ministerial Orders 054/2021, 093/2021, and 002/2022,
- (b) Extend the expiry dates of approvals suspended under Ministerial Orders 054/2021, 093/2021, and 002/2022 to account for the period of suspension,
- (c) Continue to apply the restrictions in place in respect of the exploration for and development of coal within the categories of lands described in the 1976 Coal Policy when evaluating coal applications, with consideration of the CIMI, and
- (d) Comply with directions under this Order by January 31, 2025.

46. By rescinding Ministerial Order 002/2022, the Order ends the moratorium on certain coal development in the Eastern Slopes. It directs the AER to resume processing coal exploration applications that were already filed with the AER, and accepting and processing new applications for coal exploration or development. Pursuant to the Order, the AER has since allowed coal exploration approval processes to proceed and, in January 2025, issued Coal Exploration Permits and Deep Drill Permits in favour of Montem, Elan, Cabin Ridge, and Black Eagle, respectively for the Chinook Project, the Isolation South Project, the Cabin Ridge Project and the Blackstone Project. The Blackstone Project has since been acquired by Valory Resources Inc.

47. Further, in May 2025, the AER issued a decision approving a Coal Exploration Program of Northback Holdings Corporation, including a Deep Drill Permit and a Temporary Diversion Licence, for the Grassy Mountain Project.

**Siksika was not consulted about the Order, which adversely impacts its Treaty rights and lands**

48. The Order permits certain previously suspended coal mining projects in the Eastern Slopes to continue.

49. Alberta is aware of Siksika's concerns that the lands and resources Siksika relies on for the practice of its rights have been significantly diminished by the Crown's authorization of uses of land that impact the exercise of these rights. In April 2024, Siksika brought an action against Alberta and Canada for the cumulative impacts of the defendants' authorizations of development on Siksika's traditional lands, seeking declarations including that the defendants have taken up Siksika's traditional lands in a way that has significantly diminished Siksika's meaningful exercise of its Treaty rights, and that the defendants must act diligently to consult and negotiate enforceable mechanisms to manage these cumulative effects to prevent further infringing Siksika's Treaty rights.<sup>2</sup>
50. For the past 20 years, Siksika has provided Alberta with significant information and evidence about the adverse impacts of coal mining and other kinds of development in the Eastern Slopes on its Treaty rights and lands, including with respect to the cumulative impacts of other activities on their other lands. Siksika has continuously provided such notice to Alberta for many years, including through its participation in review processes for specific projects, its consultation on the C5 Forest Management Plan, SSRP and LPH Plan, its feedback and judicial review application following the May 2020 rescission of the 1976 Coal Policy, and, most recently, its participation in the Committee's public engagement process.
51. The key recommendation from the Final Report is that coal development activity should not be permitted until the 1976 Coal Policy is replaced with legally binding regional or subregional plans under the *ALSA*.
52. Neither the CIMI, SSRP, nor the LPH Plan provide clarity about ongoing regional planning regarding coal mining in the Eastern Slopes, including where coal mining can and cannot occur.
53. Alberta has not consulted Siksika about the changes to coal mining activity authorized in the Order, including with respect to Siksika's longstanding concerns

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<sup>2</sup> Court of King's Bench of Alberta File No. 2401 05671.

about certain coal mining projects in the Eastern Slopes that have the potential to adversely and severely affect Siksika's Treaty rights and lands.

### **Legal Basis**

54. The Order is incorrect and unreasonable because:

- (a) It was made in breach of the duty to act honourably and consult owed to Siksika, particularly in light of the cumulative effects of development throughout the Eastern Slopes;
- (b) It is *ultra vires* the Minister's power under section 67 of the *REDA* because the Minister's authority cannot be interpreted to allow the Minister to breach the Crown's duty to consult;
- (c) It was issued in breach of the duty of procedural fairness; and,
- (d) The Respondent has otherwise failed to demonstrate a justified, transparent, and intelligible basis for the Order.

### **The Order is made in breach of the Crown's duty to consult with Siksika**

55. The honour of the Crown is always at stake in its dealings with Indigenous peoples.

Among other things, the honour of the Crown requires that the Crown consult with Indigenous peoples before making decisions that risk affecting their rights and interests. Alberta has acknowledged that coal mining in the Eastern Slopes poses such a risk to Siksika, including in the SSRP and LPH Plan. Accordingly, the Order triggered the Crown's duty to consult with Siksika and to do so in light of the historical context and cumulative effects of other ongoing development in the region to inform the scope of the duty to consult.

56. As a strategic, higher-level decision impacting future coal exploration and development in the Eastern Slopes, there is a high risk that the Order will adversely impact Siksika's exercise of its Treaty rights and interests, particularly as it puts an end to the moratorium on coal mining projects in the Eastern Slopes, which has been identified as an area of critical importance to Siksika's meaningful exercise of its Treaty rights.

57. Siksika has repeatedly put Alberta on notice about the increasingly critical importance of the Eastern Slopes to support its Treaty rights. For many years, Siksika has continuously provided Alberta with information and evidence to Alberta that any changes to protections provided in the 1976 Coal Policy must be informed by comprehensive studies to assess ecological conditions, cumulative impacts, and the regulatory regime with respect to protecting Siksika's Treaty rights.
58. Given the nature of the rights and interests engaged by the Order, and the risk of non-compensable damage to Siksika's Treaty rights and interests, Alberta owed Siksika a duty to consult that falls on the deep end of the spectrum. Such a duty includes, at a minimum, engaging meaningfully with all issues material to the potential adverse effects of the Order on Siksika's Treaty rights and interests, and accommodating Siksika as needed to mitigate and prevent any such adverse effects.
59. To date, Alberta has not engaged in any consultation with Siksika with respect to the Order, including the resumption of certain coal mining projects on Siksika's traditional lands in the Eastern Slopes. While the Order is said to have been issued pursuant to recommendations in the Final Report, the Order subverts those recommendations.
60. In the alternative, if Alberta has engaged in consultation, it nonetheless failed to discharge the duty to consult by failing to adequately consult and accommodate Siksika before issuing the Order.

#### **The Order is otherwise unreasonable**

61. The Minister is required to make Ministerial Orders that are reasonable and *intra vires* their authority under the *REDA* and Alberta's broader regulatory framework for natural resource management, including the *ALSA*. Accordingly, Ministerial Orders made pursuant to the *REDA* must be consistent with the purpose of statutes like *REDA*, *ALSA*, and Alberta's broader regulatory framework for coal mining.
62. The purposes of the *ALSA* include recognizing the need to meet reasonably foreseeable needs of Indigenous peoples and creating policy that enables



sustainable development by taking account of and responding to the cumulative effects of human activity and other events.

63. A central recommendation of the Final Report is that legally binding regional or subregional plans under the *ALSA* must be finalized to guide Alberta's coal development activity. Both the SSRP and the LPH Plan state that Alberta recognizes that First Nations holding constitutionally protected rights must be consulted with respect to land-use planning, including coal mining activity, and particularly those aspects that have the potential to adversely impact their rights.
64. The Minister issued the Order without any consultation with Siksika. The effect of the Order is to permit certain previously suspended mining projects in the Eastern Slopes to proceed. Such direction is contrary to the results and recommendations of the Committee's Engagement Report and Final Report. It is also contrary to extensive input from Siksika informing Alberta that its Treaty rights would be adversely impacted by such projects.
65. Section 67 of the *REDA* cannot be interpreted as providing the Minister authority to forgo Alberta's duty to consult and accommodate Siksika about coal mining activity that Alberta knows has the potential to severely impact Siksika's Treaty rights and lands. It also cannot be interpreted to contradict the broader purposes of Alberta's regulatory framework for natural resource management and land use planning, including the *ALSA*, SSRP, and LPH plan, which reaffirms Alberta's commitment to consult with First Nations on such development and its cumulative effects. Accordingly, the Order is *ultra vires* the authority of the Minister and is unreasonable.
66. The Minister also breached their duty of procedural fairness in issuing the Order. The *ALSA*, SSRP, LPH Plan, and the recommendations of the Committee's Final Report (accepted by Alberta) each set out consultation requirements with respect to changes to Alberta's coal mining activities. The Minister did not undertake any such consultation when issuing the Order, despite creating the legitimate expectation that it would and despite alternative decision making procedures that ought to have been employed in the circumstances. Accordingly, the Order was issued in breach of the duty of procedural fairness and is unreasonable.

67. Alberta has otherwise failed to demonstrate a justified, transparent, and intelligible basis for the Order. It contains internally conflicting direction to the AER and generally, including because:

- (a) The Order directs the AER to lift the suspension of certain coal mining projects in the Eastern Slopes, which were approved when Alberta had briefly rescinded the 1976 Coal Policy which otherwise prohibits such activity. This is internally inconsistent with the Order's express direction to the AER to apply the 1976 Coal Policy in its decision-making;
- (b) Relatedly, the Order directs the AER to make decisions with consideration of both the 1976 Coal Policy and the CIMI. But the CIMI applies restrictions only to new mining projects and remains unfinalized. Accordingly, the CIMI could permit certain previously suspended coal mining projects to proceed, notwithstanding that such direction could contradict the 1976 Coal Policy; and,
- (c) The Minister states that the Order considers the recommendations in the Final Report, notwithstanding that the Order effectively contradicts those recommendations—including recommendations for Alberta to suspend coal mining activities until regional land use planning is completed and meaningfully involve affected Indigenous communities in such planning. To date, no such planning has been completed, nor has Siksika been consulted about any planning changes that could give effect to the Order. The Order states that the Minister "is satisfied that sufficient land use clarity is being provided", implicitly acknowledging the current status of land use planning as being incomplete.

68. Accordingly, the Order does not provide intelligible direction to the AER about how to reconcile these ambiguities and internal conflicts. The Order is unreasonable and must be set aside.

#### **REMEDIES SOUGHT:**

69. Siksika makes an application for:

- (a) a declaration that the Order was issued in breach of the Crown's duty to consult and accommodate owed to Siksika;
- (b) a declaration that the Order is *ultra vires* the Minister's authority per section 67 of the *REDA*;
- (c) an order in the nature of *certiorari*, quashing the Order and remitting it to the Minister for reconsideration after consultation with Siksika;
- (d) an order requiring the Minister to engage in deep consultations with Siksika with respect to any future changes to Alberta's coal mining policy and its various implementation measures in keeping with the honour of the Crown;
- (e) an order providing Siksika leave to seek further directions from the Court in respect of the reconsideration of the Order;
- (f) an order for costs of and incidental to this application; and,
- (g) such further and other relief as this Honourable Court may deem appropriate and just.

**AFFIDAVITS OR OTHER EVIDENCE TO BE USED IN SUPPORT OF THIS APPLICATION:**

- 1. The certified record of proceedings;
- 2. An affidavit from a representative of Siksika Nation, to be sworn; and,
- 3. Such further and other materials as counsel may advise and this Honourable Court may permit.

**APPLICABLE ACTS AND REGULATIONS:**

- 4. *Alberta Rules of Court*, Alta Reg 124/2010;
- 5. *Responsible Energy Development Act*, SA 2012, c R-17.3;
- 6. *Alberta Land Stewardship Act*, SA 2009, c A-26.8;
- 7. South Saskatchewan Regional Plan;

8. Livingstone Porcupine Hills Land Footprint Management Plan;
9. Ministerial Orders 054/2021, 093/2021, 002/2022, and 003/2025; and,
10. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

# SCHEDULE "A"

