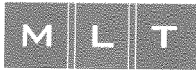


**Attachment 11**  
**Ermineskin Cree First Nation**





MACPHERSON LESLIE  
& TYERMAN LLP  
LAWYERS

CALGARY OFFICE  
1600 - 520 3rd Avenue S.W.  
Calgary Alberta  
Canada T2P 0R3  
T: 403.693.4300  
F: 403.508.4349

Sean E.D. Fairhurst  
Direct Line: (403) 693-4307  
E-mail: SFairhurst@mlt.com

September 28, 2012

*Via Courier & Email: [fares.haddad@ercb.ca](mailto:fares.haddad@ercb.ca)*

Energy Resources Conservation Board  
Suite 1000, 250  
5<sup>th</sup> Street South West  
Calgary, AB  
T2P 0R4

**Attention: Fares Haddad, Application Coordinator**

**Re: Coal Valley Resources Inc., Robb Trend Project  
ERCB Application No. 1725257  
Letter of Objection and Statement of Concern**  
**Our File: 43998.7**

We act for the Ermineskin Cree Nation ("ECN") regarding Coal Valley Resources Inc.'s ("CVRI") Energy Resources Conservation Board ("ERCB") Application no. 1725257 (the "Application"). We are writing to provide ECN's notice of objection regarding CVRI's application for approval of the Robb Trend Project (the "Project").

ECN submits that it has legally recognized interests that may be directly and adversely affected by the Application if approved. In support of ECN's submission, attached are the following materials:

1. Affidavit of Ralph Roasting;
2. Affidavit of Allan Simon Jr.;
3. Affidavit of Brian Lee;
4. Affidavit of Bruce Lee;
5. Affidavit of Chris Rattlesnake; and
6. Affidavit of Jerry Roasting.

These individuals are collectively known as the "ECN Harvesters", and these materials are collectively referred to as the "ECN Affidavits".

## I. STANDING

Subsection 26(2) of *The Energy Resources Conservation Act* ("ERCA") provides that parties must be afforded certain participatory rights in ERCB proceedings "if it appears to the Board that its decision on an application may directly and adversely affect the rights" of that party.

The test for standing under subsection 26(2) of ERCA was articulated as follows by the Alberta Court of Appeal in *Dene Tha' v. (Alberta) Energy & Utilities Board*,<sup>1</sup> ("Dene Tha'"):

The Board correctly stated here that that provision in s. 26(2) has two branches. First is a legal test, and second is a factual one. The legal test asks whether the claim right or interest being asserted by the person is one known to the law. The second branch asks whether the Board has information which shows that the application before the Board may directly and adversely affect those interests or rights. The second test is factual.<sup>2</sup>

## II. ECN MEETS THE LEGAL TEST FOR STANDING

### A. Interests Known to Law

For centuries prior to signing Treaty 6 and predating the creation of Canada and Alberta, ECN had Aboriginal title over its traditional territory. ECN signed Treaty 6 in 1876 and received rights under that Treaty. Treaty 6 provides that ECN members "shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered". ECN's traditional territory includes a large area in central Alberta and includes the areas where CVRI intends to conduct Project activities pursuant to the Applications.

The *Natural Resources Transfer Agreement, 1930* ("NRTA") expanded the scope of Treaty 6 rights to include trapping in addition to hunting and fishing and enlarged the right to hunt, fish, gather and trap under Treaty 6 to all unoccupied Crown lands or lands to which the Indians may have a right of access.<sup>3</sup> ECN's Aboriginal and Treaty rights are constitutionally entrenched and protected pursuant to section 35 of the *Constitution Act, 1982*. It is clear from the Applications that CVRI proposes coal mining development on Crown lands within ECN's traditional territory. It is also clear that ECN's members have Aboriginal and Treaty rights to hunt, fish, gather and trap on those lands.

The Court in *Dene Tha'* held that the existence of Aboriginal or Treaty rights meets the first part of the standing test:

<sup>1</sup> 2005 ABCA 68; leave to appeal refused [2005] S.C.C.A. No. 176; *Cheyne v. Alberta (Utilities Commission)* [2009] A.J. No. 257 (ABCA).

<sup>2</sup> *Ibid.* at para. 10.

<sup>3</sup> NRTA, 1930 para. 12 Schedule 2 (Alberta).

Satisfaction of the first test, some legally-recognized interest, was pretty well conceded on this appeal. That topic forms the great bulk of the material filed by the First Nation. Obviously a constitutional, a legal, or an equitable interest would suffice.<sup>4</sup>

The ECN's constitutionally protected Aboriginal and Treaty rights to hunt, fish, gather and trap satisfy the first branch of the standing test.

## B. Directly and Adversely Affected

The second branch of the standing test requires that the party demonstrate that the application before the ERCB *may* directly and adversely affect its legally recognized rights or interests. The Court explained this branch of the standing test in *Dene Tha'* as follows:

It is not compelled by this legislation to order intervention and a hearing whenever anyone anywhere in Alberta merely asserts a possible aboriginal or treaty right. Some degree of location or connection between the work proposed and the right asserted is reasonable. What degree is a question of fact for the Board.<sup>5</sup>

The Alberta Court of Appeal in *Kelly v. Alberta (Energy Resources Conservation Board)*<sup>6</sup> ("*Kelly*") further clarified this second branch of the standing test. The Court noted that when establishing whether a party's rights may be directly and adversely affected, there is no requirement that the party "establish that they may be affected in a different way or to a greater degree than members of the general public".<sup>7</sup> Further, the Court held that the "fact that events *could* arise which *could* prejudice" the party is sufficient to satisfy this branch of the standing test.<sup>8</sup> [Emphasis in original] The Court also held that once an intervenor references sufficient evidence to demonstrate "that they [are] potentially adversely affected", the onus shifts to the applicant to disprove such potential adverse affects.<sup>9</sup>

ECN submits that the ECN Affidavits and the conclusions in the Environmental Impact Assessment Report ("EIA") for the Project demonstrate some degree of location or connection between the work proposed by CVRI and the Aboriginal, Treaty and NRTA rights of ECN members to hunt, fish, gather and trap in the areas within the footprint and immediately surrounding area of the Project ("Project area") and the Local Study Area ("LSA"), as well as other areas of the ECN traditional territories that may be impacted by the Project.

### (i) ECN Traditional Activities

Wildlife is an important part of the ECN's, culture and traditional economy. In particular, the ECN Harvesters have deposed that they hunt various species including moose,<sup>10</sup> elk,<sup>11</sup> deer,<sup>12</sup> and various bird species in or near to the Project area and LSA. Birds hunted include, but are not

<sup>4</sup> *Dene Tha'* at para. 11.

<sup>5</sup> *Ibid.* at para. 14.

<sup>6</sup> 2009 ABCA 349.

<sup>7</sup> *Ibid.* at para. 32.

<sup>8</sup> *Ibid.* at para. 37.

<sup>9</sup> *Ibid.* at para. 44.

<sup>10</sup> Affidavits of Ralph Roasting, Jerry Roasting, Brian Lee, Bruce Lee and Chris Rattlesnake.

<sup>11</sup> Affidavits of Ralph Roasting, Allan Simon Jr., Brian Lee, Bruce Lee and Chris Rattlesnake.

<sup>12</sup> Affidavits of Ralph Roasting, Allan Simon Jr., Jerry Roasting, Brian Lee, Bruce Lee and Chris Rattlesnake.

limited to grouse,<sup>13</sup> ducks,<sup>14</sup> geese,<sup>15</sup> and prairie chickens.<sup>16</sup> The ECN Harvesters have further deposed that they trap numerous species including rabbits, lynx, beaver, weasel and muskrat.<sup>17</sup>

The ECN Harvesters have deposed that they gather various berries including blueberries,<sup>18</sup> high bush cranberries,<sup>19</sup> low bush cranberries,<sup>20</sup> raspberries,<sup>21</sup> Saskatoon berries,<sup>22</sup> strawberries,<sup>23</sup> gooseberries,<sup>24</sup> huckleberries,<sup>25</sup> and chokecherries<sup>26</sup> in or near to the Project area. The ECN Harvesters have deposed that they gather traditional medicines including roots,<sup>27</sup> muskeg tea,<sup>28</sup> sweet grass,<sup>29</sup> willow,<sup>30</sup> bark,<sup>31</sup> and sweet pine.<sup>32</sup> The ECN Harvesters have deposed that they fish in the areas deposed to for species including whitefish,<sup>33</sup> trout,<sup>34</sup> grayling,<sup>35</sup> jackfish<sup>36</sup> and pickerel.<sup>37</sup>

While ECN's reserve is not situated near the proposed Project area, traditional activities occur beyond the borders of the reserve. The Project location is defined in Figure A.1-1 of the Application. The depositions in the ECN Affidavits demonstrate that the ECN traditional territory and current harvesting areas include the Project area. The ECN traditional territory and current harvesting area also includes the LSA as identified in Figure D.2.3-1 of the Applications.

The maps attached to the Affidavits of the ECN Harvesters delineates the areas in relation to the Project area and the LSA where the ECN Harvesters have and continue to hunt, fish, gather and trap. The ECN Harvesters further depose that the Project will impact wildlife populations beyond existing impacts, and that the Project will further restrict rights of access to lands previously available to them to practice their constitutionally protected rights to hunt, fish, gather and trap. The ECN Harvesters also report that the frequency of the exercise of their harvesting rights is currently being impacted by development. Additional development, such as the Project in the ECN's traditional territory, has the potential to further negatively impact the exercise of these

<sup>13</sup> Affidavits of Ralph Roasting, Jerry Roasting, Bruce Lee and Chris Rattlesnake.

<sup>14</sup> Affidavits of Ralph Roasting, Jerry Roasting and Chris Rattlesnake.

<sup>15</sup> Affidavits of Ralph Roasting, Jerry Roasting and Chris Rattlesnake.

<sup>16</sup> Affidavits of Ralph Roasting, Jerry Roasting, Bruce Lee and Chris Rattlesnake.

<sup>17</sup> Affidavit of Chris Rattlesnake.

<sup>18</sup> Affidavits of Ralph Roasting, Jerry Roasting, Bruce Lee and Chris Rattlesnake.

<sup>19</sup> Affidavits of Ralph Roasting, Bruce Lee and Chris Rattlesnake.

<sup>20</sup> Affidavits of Ralph Roasting and Chris Rattlesnake.

<sup>21</sup> Affidavits of Ralph Roasting, Allan Simon Jr., Brian Lee, Bruce Lee and Chris Rattlesnake.

<sup>22</sup> Affidavit of Chris Rattlesnake.

<sup>23</sup> Affidavits of Ralph Roasting, Bruce Lee and Chris Rattlesnake.

<sup>24</sup> Affidavits of Ralph Roasting, Bruce Lee and Chris Rattlesnake.

<sup>25</sup> Affidavits of Ralph Roasting and Bruce Lee.

<sup>26</sup> Affidavits of Ralph Roasting, Bruce Lee and Chris Rattlesnake.

<sup>27</sup> Affidavits of Ralph Roasting, Bruce Lee and Chris Rattlesnake.

<sup>28</sup> Affidavit of Jerry Roasting.

<sup>29</sup> Affidavits of Ralph Roasting, Bruce Lee and Chris Rattlesnake.

<sup>30</sup> Affidavits of Ralph Roasting, Jerry Roasting, Bruce Lee and Chris Rattlesnake.

<sup>31</sup> Affidavit of Ralph Roasting, Bruce Lee and Chris Rattlesnake.

<sup>32</sup> Affidavits of Brian Lee.

<sup>33</sup> Affidavit of Bruce Lee and Chris Rattlesnake.

<sup>34</sup> Affidavits of Ralph Roasting, Brian Lee, Bruce Lee and Chris Rattlesnake.

<sup>35</sup> Affidavit of Chris Rattlesnake.

<sup>36</sup> Affidavit of Chris Rattlesnake.

<sup>37</sup> Affidavit of Bruce Lee.

traditional activities, and will further erode ECN's constitutionally entrenched and protected Aboriginal and Treaty rights.

**(ii) EIA**

As traditional land and resource users, the ECN is understandably concerned that its members, including the ECN Harvesters, will no longer be able to utilize certain culturally important species due to industrial development.

The EIA identifies several areas of impact to culturally important species harvested in hunting and trapping activities, in particular, grizzly bear, marten, fisher, lynx and wolf. Adverse impacts on these culturally important species will result from the Project due to: (1) habitat alteration, (2) sensory disturbance and effective habitat loss (3) habitat fragmentation, (4) direct mortality, and (5) barriers to movement.<sup>38</sup> The direction of impact is universally negative, and these impacts explained in the EIA itself demonstrate how the Project will further directly and adversely affect the ECN's Aboriginal and Treaty rights.

The ECN Harvesters have deposed that they conduct traditional harvesting activities and exercise associated rights within an area covered by the LSA. The habitat suitability decrease, resulting in lost habitat, from the Project, is material for culturally important species such as grizzly bear, marten, fisher, lynx and wolf. The impacts are material for these culturally important species across all types of habitat including low, moderate low, moderate, and high.

Based on combined high/very high habitat suitability alone, marten, between baseline and T25, lose 82.1% of their high/very high habitat in the LSA,<sup>39</sup> the equivalent of 3959.7 ha of habitat. For fisher, between baseline and T25, 21.1% of high/very high habitat will be lost in the LSA, the equivalent of 121.4 ha of habitat.<sup>40</sup> For lynx 8% of high/very high habitat will be lost in the LSA between baseline and T10, the equivalent of 154.2 ha of habitat<sup>41</sup>. For the wolf, 56% of the high/very high habitat will be lost in the LSA between baseline and T10, the equivalent of 3192.5 ha.<sup>42</sup> The LSA covers 10,090 ha and the Regional Study Area ("RSA") encompasses approximately 358,731 ha.<sup>43</sup> Habitat alteration/loss is a listed project effect. The majority of habitat alteration will come from land clearing, surface mining, road building, as well as other infrastructure developments.<sup>44</sup> The mining activities will change lands in the Project area from closed forest to barren land and herb-dominated vegetation communities.<sup>45</sup>

Since the ECN Harvesters carry out harvesting activities within the LSA and the RSA, this habitat loss will directly and adversely affect these traditional practices within both of the LSA and the RSA. With respect to habitat loss within the RSA for culturally important species, the EIA demonstrates a material impact. This impact may (and likely will) directly and adversely

<sup>38</sup> Application, Section E.7.3, p. 116.

<sup>39</sup> Application, Table E.7-10.

<sup>40</sup> *Ibid.*, Table E.7-11

<sup>41</sup> *Ibid.*, Table E.7-12

<sup>42</sup> Application, Table E.7-13

<sup>43</sup> Application, Section E.7.1, p. 105.

<sup>44</sup> CR # 7, Section 5.1.1, p. 55.

<sup>45</sup> *Ibid.*

affect the ability of ECN's members to exercise their traditional harvesting rights in the Project area and LSA.

The Fisher is an important species to the ECN – although its members do not trap fisher, the Project's effect on the fisher will undeniably affect other ECN culturally important species listed in the ECN Affidavits. The greatest threat to fisher populations are habitat alteration and over-trapping.<sup>46</sup> The Project will effect direct mortality of fisher due to increased motor vehicle collisions and indirect mortality may result from increased coyote densities and related predation on fisher.<sup>47</sup> Fishers avoid areas with considerable human disturbance and may suffer sensory disturbance from the Project due to construction, blasting and hauling of coal. These activities have the greatest potential to impact fisher in the vicinity of maternal den sites during April to June.<sup>48</sup> Fisher movements will be limited on and across the Project for an extended period of time – up to 25 years.<sup>49</sup> The impact the Project may (and likely will) have on the fisher is material. ECN also has a direct interest in the protection of this culturally important species and the associated exercise of ECN's rights which may be adversely impacted by the Project.

The marten is an important species to the ECN – although its members do not trap marten directly, the Project's effect on the marten will undeniably affect other ECN culturally important species listed in the ECN Affidavits. Fur harvest and large scale habitat alteration and fragmentation will result in a decline in the marten population.<sup>50</sup> Marten will avoid their high quality habitat during blasting and coal hauling.<sup>51</sup> Marten movements will be limited for an extended period of time – up to 30 years post-reclamation.<sup>52</sup>

The wolf is a culturally important species to the ECN, and is found throughout the LSA and RSA. The primary source of human caused mortality of wolves in the LSA and RSA are fur trapping, hunting and vehicle mortality.<sup>53</sup> The high quality habitat alteration and loss is significantly high, and this loss' potential impact on the wolf cannot be determined,<sup>54</sup> which is of great concern for the ECN. The wolf's habitat quality will be affected at the sub-regional and regional scale by the Project.<sup>55</sup> Wolves utilize both low and high use roads as travel corridors<sup>56</sup> – as vehicle mortality is listed as a primary source of mortality, the Project threatens to increase the mortality rate of wolves in the LSA and RSA.

The EIA divides the species at risk into three categories: (i) species identified by Alberta Sustainable Resource Development as "at Risk, May be at Risk, and Sensitive"; (ii) species listed in *Canadian Species at Risk* ("COSEWIC"); and (iii) special status species under the *Species at*

<sup>46</sup> Application, Section E.7.4.2, p.127.

<sup>47</sup> Application, Section E.7.3.2, p.118.

<sup>48</sup> Application, Section E.7.3.2, p. 119.

<sup>49</sup> Application, Section E.7.3.2., p. 120.

<sup>50</sup> Application, Section E 7.4.1, p.127.

<sup>51</sup> Application, Section E.7.3.1, p. 117.

<sup>52</sup> Application, Section E.7.3.1, p.118.

<sup>53</sup> Application, Section E.7.3.4, p.123.

<sup>54</sup> *Ibid.* at p.124.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

*Risk Act* (“SARA”).<sup>57</sup> The EIA identified 7 “Species of Concern” species with the LSA, by either provincial or federal authorities, namely, grizzly bear, bobcat, lynx, fisher, long-tailed weasel, wolverine, and badger.<sup>58</sup>

One of these mammals, the Lynx, is another important species to the ECN – while ECN's members do not hunt lynx directly, the Project's impact on the lynx population will undeniably affect other ECN culturally important species listed in the ECN Affidavits. It has been listed as *sensitive* by the Alberta Fish and Wildlife Division (2010), meaning it is a species which requires special attention in an effort to protect it from becoming at risk.<sup>59</sup> The greatest threat to the lynx are over-trapping and broad scale effects on populations of their key prey.<sup>60</sup> As a result of the Project, lynx movement will be limited on the mine site until the requisite shrub or forest cover re-establishes, which will not occur until at least 10-25 years post construction.<sup>61</sup> ECN has a direct interest in the protection of this culturally important species and the associated exercise of ECN's rights which may be adversely affected by the Project.

Another culturally important species to the ECN is the grizzly bear, which is listed as *Special Concern* by COSEWIC (2011), as *At Risk* under the 2010 General Status evaluation, and as *Threatened* under the *Wildlife Act* (AFWD 2010).<sup>62</sup> The grizzly bear is an extremely sacred animal to the ECN. This animal is found throughout the LSA, and is at risk for direct mortality, specifically direct human-caused mortality.<sup>63</sup> Mistaken identity kills, defense for life and property, vehicle collisions and illegal hunting are all potential causes that threaten the grizzly bear. Areas with high density roads can act as a "mortality sink".<sup>64</sup>

The existing Coal Valley Mine has significantly changed landscape structure, composition and food production in the permit area for grizzly bears.<sup>65</sup> It is anticipated the Project will have the same effects. These effects threaten the grizzly bear species.

The grizzly bear will be displaced from the Project mine footprint and permit area during the active mining period.<sup>66</sup> Displacement of the grizzly bear will be a direct result of construction noise and blasting.<sup>67</sup> The mined lands will act as a barrier to grizzly bears, and will act as a serious barrier during active blasting and hauling.<sup>68</sup>

With the Project seriously compromising grizzly bear movement and habitat, it is clear that the Project has a material effect on the grizzly bear. ECN has a direct interest in the protection of

<sup>57</sup> Application, Section E.3.7.1, p.96.

<sup>58</sup> Application, Section E.3.8.2, p.98.

<sup>59</sup> Application, Section E.7.3.3, p.120.

<sup>60</sup> Application, Section E.7.4.3, p.128.

<sup>61</sup> Application, Section E.7.3.3, p. 122.

<sup>62</sup> Application, Section E.7.3.5, p. 124.

<sup>63</sup> *Ibid.*

<sup>64</sup> CR #7, page 75.

<sup>65</sup> Application, Section E, p.125.

<sup>66</sup> Application, Section E.7.3.5, p.125.

<sup>67</sup> *Ibid.*

<sup>68</sup> Application, Section E, p.126.



this culturally important species and the associated exercise of ECN's rights which may be adversely affected by the Project.

The ECN also has concerns with respect to water hydrology and the impacts of the Project on the environment and fish and fish habitat due to increased emissions and other impacts on water bodies in the area used for traditional fishing purposes. Sediment and certain chemical contaminants that have chronic or lethal effects on aquatic biota will enter the aquatic ecosystem during mining.<sup>69</sup> The EIA notes that changes to physical habitat components, flow regime, water quality and access are all factors that affect fish habitat potential.<sup>70</sup> These effects will directly and adversely affect ECN's fishing rights.

It is clear from the ECN affidavits and the EIA that many species in the Project area and LSA are already under stress. The Application fails to explain specifically how CVRI will reduce or mitigate impacts specifically with respect to ECN's constitutionally entrenched and protected Aboriginal and Treaty rights. Absent a proposal to specifically address potential direct and adverse impacts to ECN Aboriginal and Treaty rights, there exists a real risk that, if approved, the Project effects on culturally important species to ECN will be direct and adverse. It necessarily follows that the potential Project effects on the ECN rights associated with these culturally important species may also be both direct and adverse.

### III. CONCLUSION

Based on the foregoing, the ECN submits that it has met the standing test set out in *Dene Tha'*. ECN has a legally and constitutionally recognized rights in the Project area and the LSA under Treaty 6 and the NRTA, and has demonstrated that the Project is within its traditional territory. ECN has further demonstrated that its members hunt, fish, gather and trap in the Project area and the LSA. With respect to the second branch of the test, the ECN has demonstrated some degree of location or connection between the work proposed and the right asserted. ECN has provided and cited evidence of the existence of traditional plants and wildlife populations within the Project area and the LSA, as well as a potential for adverse impacts to these fish, traditional plants and wildlife populations due to the proposed Project that may, in turn, directly and adversely affect the ECN's rights. Accordingly, ECN respectfully submits that it should be granted intervenor status in the Application.

The ECN's submissions are consistent with the recent decisions of the Alberta Utilities Commission (the "AUC") in respect of the Eastern Alberta Transmission Line. In that proceeding, ECN and the Siksika Nation filed applications for intervenor status with the AUC. Each of these applications were supported by affidavit evidence sworn by members of ECN and the Siksika Nation, respectively. The form of affidavit evidence in those proceedings bears a significant resemblance to the ECN Affidavits.

The proponent opposed ECN and Siksika Nation's applications for intervenor status on the basis that such evidence was too general, and that the "broad assertion" in the Siksika submission regarding the potential negative effect of additional development on the exercise of traditional

<sup>69</sup> Application, Section E.2.3.3, p.33.

<sup>70</sup> Application, Section E.2.3, p.25.

activities is not sufficient to meet the second branch of the test for participatory rights under Section 9(2) of the AUCA". The AUC disagreed with the proponent, and made the following comments respecting the veracity of the affidavit evidence:

72. The extent of the alleged direct and adverse impact is stated in general terms. It is implicit in the Nations' argument that their rights may be directly and adversely affected by a decision of the Commission regarding this application because the presence of an industrial development will disturb the lands and reduce their access to the land upon which they exercise their rights and could negatively affect the wildlife and vegetative species that they gather in the project area.

The AUC went on to hold that ECN and the Siksika Nation had met the test for standing in that proceeding, in large part due to the information that was set out within the affidavits. At paragraph 75 of the decision, the AUC held as follows:

The Commission notes that the determination of standing in this case turns on the specific affidavit evidence filed by the Nations of the current practice of specific traditional activities in defined areas some of which are within approximately 800 metres of the edge of the rights-of-way of the preferred route or any alternative route segment for the EATL project.

Similarly, in this case ECN has prepared and filed affidavit evidence in support of this statement of concern to demonstrate, albeit in general terms, the extent to which the Project can potentially impact the ability of its members to exercise their constitutionally protected rights to harvest plants and wildlife in their traditional territories. This is sufficient to meet the test enunciated in *Dene Tha'* and therefore, ECN submits that it should be granted intervenor status in these proceedings.

At this time, the ECN also submits that the Application should be denied. The basis for the denial is that the Project will disturb traditional plants and wildlife populations, including identified species of concern that are in decline and species that are culturally important to the ECN. Thus, the Project will have a direct and adverse impact on ECN's Aboriginal, Treaty and NRTA harvesting rights. The ECN further submits that, at a minimum, an oral hearing is necessary for the ERCB to fully consider and appreciate how the Project may directly and adversely affect the ECN's constitutionally protected Aboriginal and Treaty rights and, if the Project is ultimately approved, for the ERCB to determine what conditions of approval are appropriate given the likelihood of this direct and adverse impact. Furthermore, and in accordance with the recent Supreme Court of Canada decision in *Rio Tinto Alcon Inc. v. Carrier Sekani Tribal Council*,<sup>71</sup> ECN submits that an oral hearing is necessary for the ERCB to consider whether Crown consultation with ECN regarding the Project has been adequate in accordance with the ERCB's public interest mandate and power to consider questions of law.<sup>72</sup>

Moreover, ECN objects to the Project on the basis that the EIA details CVRI's purported consultation activities with "the Mountain Cree Camp (members of ECN) and the Ermineskin

<sup>71</sup> 2010 SCC 43.

<sup>72</sup> *Ibid.* at paras. 69-70.

Cree Nation". To date, CVRI has not taken any steps to engage ECN's elected Chief and Council or consultation staff in any meaningful way. We understand that CVRI has engaged certain members of the ECN who live in or near the Smallboy Camp located south of Cadomin, Alberta. While the Chief and Council holds these members in high esteem, ECN's position is that CVRI cannot discharge its constitutional duty to consult and accommodate ECN without directly meeting with the elected leaders and staff of the ECN. Dialogue that only incorporates the views of individual members, notwithstanding that those particular members have considerable political influence over certain segments of ECN's membership, is clearly inadequate and contrary to the principles unequivocally pronounced by the Alberta Court of Queen's Bench in *Woodrow Soldier v. Her Majesty the Queen in right of Alberta*, wherein the Court agreed with the Government of Alberta which took the position that as Treaty and Aboriginal rights are communally held by a First Nation the duty to consult can only be satisfied by way of consultation with the government of the First Nation and not by way of consultation with the individual members of a First Nation.<sup>73</sup> The Court's decision in this regard is wholly consistent with other cases such as *Soldier v. Canada (Attorney General)*, 2006 MBQB 50, and *Sawridge Band v. Canada*, 1999 CanLII 7491 (FC). Indeed, in the *Sawridge* decision the Federal Court held that an individual member of the Ermineskin Cree Nation, who also happens to reside from time to time at the Mountain Cree Camp, did not have standing as individual member to act in a representative capacity for the Ermineskin Cree Nation on matters involving the collective rights of the Nation. In this regard, the consultation activities depicted in the EIA did not involve the elected leaders of the ECN, and therefore, cannot be invoked by CVRI in support of their application for Project approval.

Please contact the undersigned if you have any questions on the foregoing.

Yours truly,

**MacPherson Leslie & Tyerman LLP**

Per:  <Original signed by>

for **Sean E. D. Fairhurst**

cc.

Encl. ECN Affidavits

<sup>73</sup> (27 July 2007), Calgary 0701-05400, (Alta. Q.B.).



**Please outline the following:** (attach additional sheets if the form does not expand as needed)

2. A summary of your concerns (how you believe this project will impact and/or adversely affect you):

Please see attached letter and enclosures.

In accordance with Section 13 of the *Energy Resources Conservation Board Rules of Practice*, all documents filed in respect of a proceeding must be placed on the public record. However, any party may apply for confidentiality of information under Section 13(2). Any application under Section 13(2) that is to be considered during a public hearing of the application must be copied to the other parties to the proceeding. The Board may grant a request for confidentiality on any terms it considers appropriate, subject to the *Freedom of Information and Protection of Privacy Act*.

**Authorization and proof of submission:** I/ We hereby understand that as part of regular ERCB business practices this objection will be forwarded to the company and other interested parties, and will become part of a public record.

**Name(s):** Sean E.D. Fairhurst

**Date:** September 28, 2012

**Title (if applicable):** Lawyer

**Company:** MacPherson Leslie & Tyerman LLP

**Signature(s):**

<Original signed by>

for Sean E.D. Fairhurst

**Submissions may be sent to the ERCB at:**

**Mailing:** Suite 1000, 250 – 5 Street SW, Calgary, Alberta, Canada, T2P 0R4

**E-mail:** Oil and Gas: [BOB\\_Admin@ercb.ca](mailto:BOB_Admin@ercb.ca) Oil Sands/Coal: [OSB-Admin@ercb.ca](mailto:OSB-Admin@ercb.ca) **Fax:** 403-297-7336

(Note: The ERCB recommends that all e-mail attachments be in a PDF format)

Deponent: Ralph Roasting  
Date Sworn: September 11, 2012

**IN THE MATTER OF** the *Energy Resources Conservation Act*, RSA 2000, c  
E-10

-and-

**IN THE MATTER OF** Coal Valley Resources Inc.'s application for  
authorization to construct and operate the Robb Trend Project

**AFFIDAVIT**

I, Ralph Roasting, of the Ermineskin Cree Nation in the Province of Alberta, MAKE OATH  
AND SAY AS FOLLOWS:

1. I am a member of the Ermineskin Cree Nation (the "**Nation**") and I am a hunter, fisherman, gatherer and trapper within the Nation's traditional territory and as such I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief and where so stated I verily believe the same to be true.
2. Now produced and shown to me and marked as Exhibit "A" to this my Affidavit is a true copy of a map depicting a portion of the Nation's traditional territory, the proposed Coal Valley Resources Inc.'s. ("**Coal Valley**") Robb Trend Project and the areas where I have and continue to hunt, fish, trap and gather.
3. I hunt, fish, trap and gather and have hunted, fished, trapped and gathered on unoccupied Crown lands and lands to which I have or previously had a right of access within the Nation's traditional territory. I have hunted, fished, trapped and gathered in the marked areas, as shown in Exhibit "A" as a child and into my adulthood.
4. In these areas I have hunted the following animals, including, but not limited to:
  - a. Birds, which include, but not limited to grouse, ducks, geese and prairie chickens;
  - b. Moose;
  - c. Elk;
  - d. White Tail Deer; and
  - e. Mule Deer.
5. In the marked area, I have fished the following, including but not limited to:
  - a. Trout.

6. I have gathered the following in the marked area, including but not limited to:
  - a. Blueberries;
  - b. High Bush Cranberries;
  - c. Low Bush Cranberries;
  - d. Huckleberries;
  - e. Raspberries;
  - f. Strawberries;
  - g. Gooseberries; and
  - h. Traditional medicines, which include, but not limited to, roots, willow, sweet grass and bark.
  
7. In the marked area, I have trapped the following, including but not limited to:
  - a. Rabbits; and
  - b. Lynx.
  
8. As a hunter, fisher, trapper and gatherer I am concerned that the activities conducted by Coal Valley for the proposed coal project will further impact the wildlife populations in the area. The activities of Coal Valley and the proposed coal mining project will also occupy lands to which I have previously had a right of access and will further restrict the area in which I can exercise my Treaty rights to hunt, fish, trap and gather.
  
9. I make this Affidavit in support of the position of the Nation in this matter and for no improper purpose.

SWORN BEFORE ME at the Ermineskin )  
 Cree Nation, in the Province of Alberta, this )  
 11<sup>th</sup> day of September, 2012. )

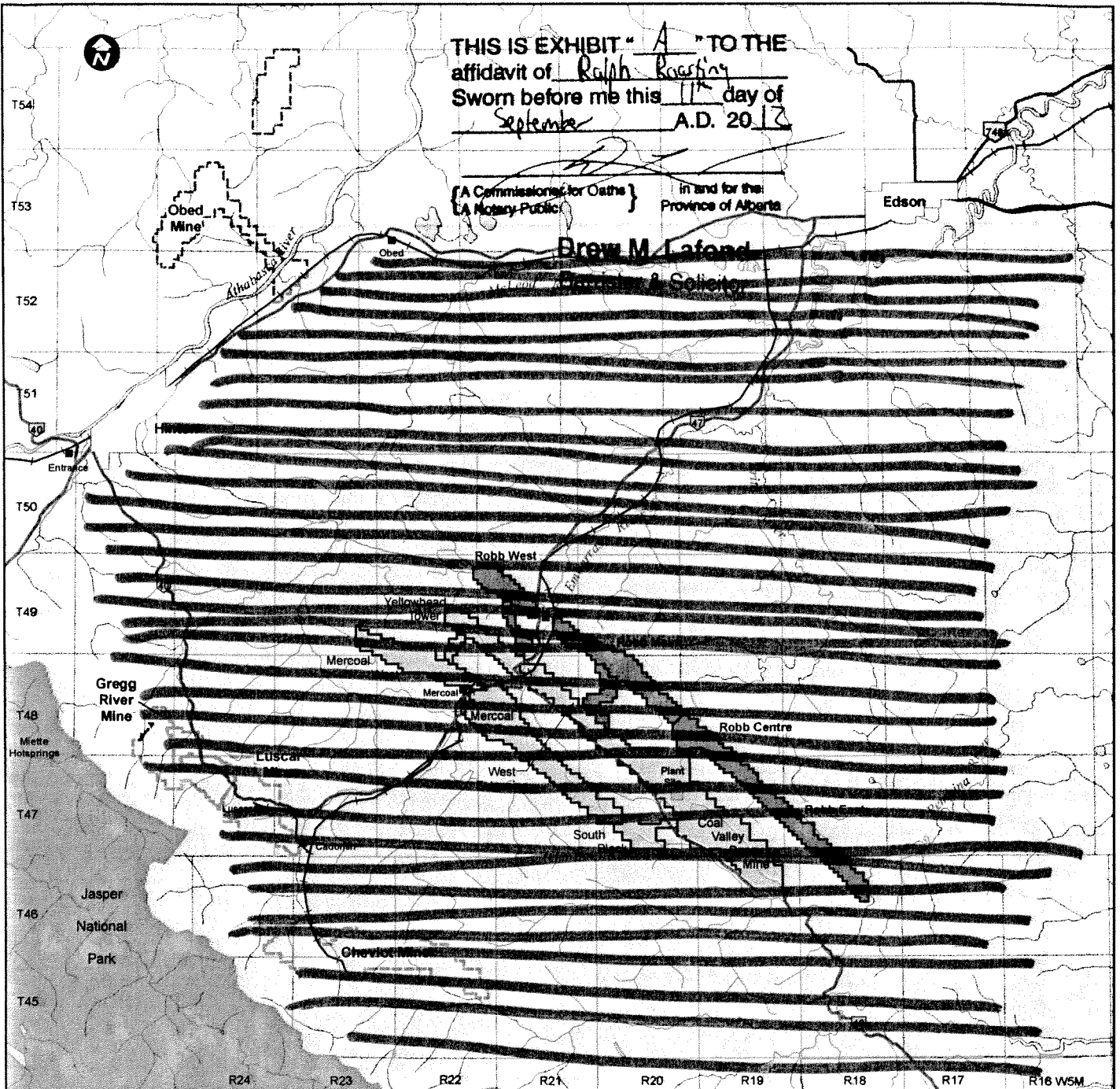
<Original signed by> )

<Original signed by>

\_\_\_\_\_  
 A Commissioner for Oaths in and for the  
 Province of Alberta  
 Being a solicitor

Ralph Roasting 

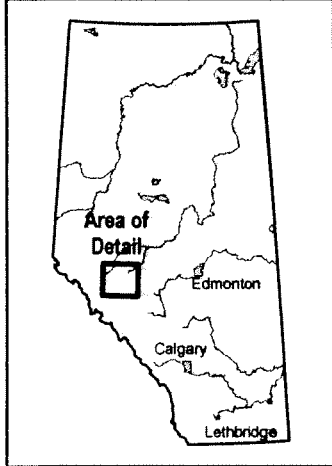
**Drew M. Lafond**  
 Barrister & Solicitor



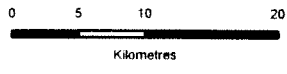
THIS IS EXHIBIT " A " TO THE  
 affidavit of Ralph Bowshay  
 Sworn before me this 11<sup>th</sup> day of  
September A.D. 2012

(A Commissioner for Oaths)  
 A Notary Public in and for the  
 Province of Alberta

Drew M Lafond  
 Barrister & Solicitor



- Legend**
- Proposed Robb Trend Mine Permit Boundary
  - Existing Coal Valley Mine Permit Areas
  - Other Mines



PROJECT: <b>Coal Valley Mine          Robb Trend Project</b>							
TITLE: <b>Project Location</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">DRAWN: PS/JG</td> <td style="width: 50%;">FIGURE:</td> </tr> <tr> <td>CHECKED: KY</td> <td rowspan="3" style="text-align: center; vertical-align: middle;"><b>A.1-1</b></td> </tr> <tr> <td>DATE: Mar 25/12</td> </tr> <tr> <td>PROJECT: 08-041</td> </tr> </table>	DRAWN: PS/JG	FIGURE:	CHECKED: KY	<b>A.1-1</b>	DATE: Mar 25/12	PROJECT: 08-041
DRAWN: PS/JG	FIGURE:						
CHECKED: KY	<b>A.1-1</b>						
DATE: Mar 25/12							
PROJECT: 08-041							



Deponent: Allan Simon Jr.  
Date Sworn: September 11, 2012

**IN THE MATTER OF** the *Energy Resources Conservation Act*, RSA 2000, c  
E-10

-and-

**IN THE MATTER OF** Coal Valley Resources Inc.'s application for  
authorization to construct and operate the Robb Trend Project

**AFFIDAVIT**

I, Allan Simon Jr., of the Ermineskin Cree Nation in the Province of Alberta, MAKE OATH  
AND SAY AS FOLLOWS:

1. I am a member of the Ermineskin Cree Nation (the "**Nation**") and I am a hunter and gatherer within the Nation's traditional territory and as such I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief and where so stated I verily believe the same to be true.
2. Now produced and shown to me and marked as Exhibit "A" to this my Affidavit is a true copy of a map depicting a portion of the Nation's traditional territory, the proposed Coal Valley Resources Inc.'s. ("**Coal Valley**") Robb Trend Project and the areas where I have and continue to hunt and gather.
3. I hunt and gather and have hunted and gathered on unoccupied Crown lands and lands to which I have or previously had a right of access within the Nation's traditional territory. I have hunted and gathered in the marked areas, as shown in Exhibit "A" as a child and into my adulthood.
4. In these areas I have hunted the following animals, including, but not limited to:
  - a. Elk.
5. I have gathered the following in the marked area, including but not limited to:
  - a. Raspberries.
6. As a hunter and gatherer I am concerned that the activities conducted by Coal Valley for the proposed coal project will further impact the wildlife populations in the area. The activities of Coal Valley and the proposed coal mining project will also occupy lands to which I have previously had a right of access and will further restrict the area in which I can exercise my Treaty rights to hunt and gather.

7. I make this Affidavit in support of the position of the Nation in this matter and for no improper purpose.

**SWORN BEFORE ME** at the Ermineskin  
Cree Nation, in the Province of Alberta, this  
11<sup>th</sup> day of September, 2012.

<Original signed by>

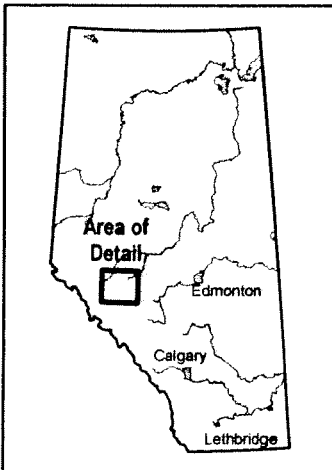
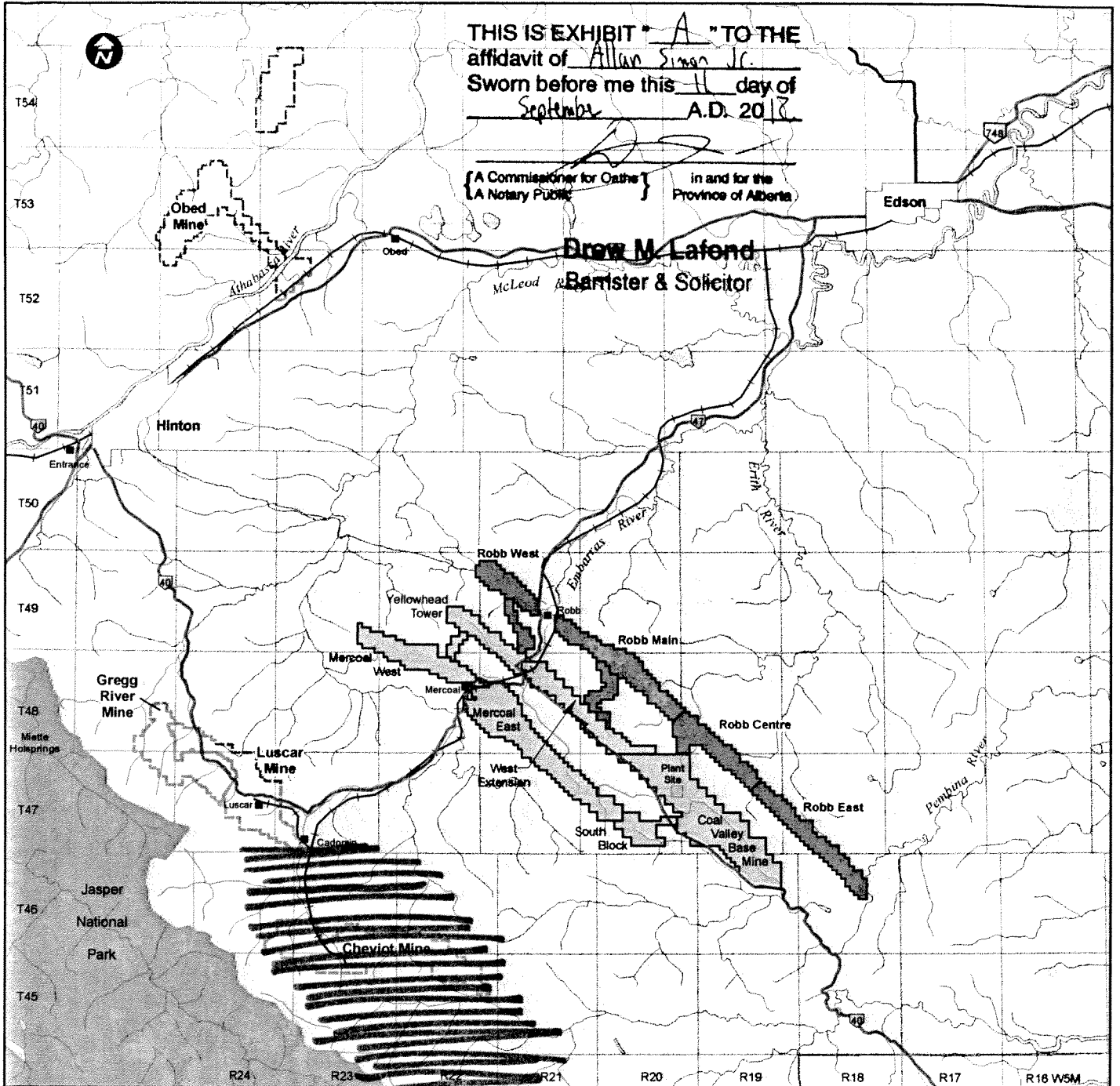
\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province of Alberta  
Being a solicitor

**Drew M. Lafond**  
Barrister & Solicitor

)  
)  
)  
)  
)  
)  
)

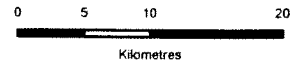
<Original signed by>

\_\_\_\_\_  
Allan Simon Jr.



**Legend**

- Proposed Robb Trend Mine Permit Boundary
- Existing Coal Valley Mine Permit Areas
- Other Mines



PROJECT: <h3 style="text-align: center;">Coal Valley Mine Robb Trend Project</h3>							
TITLE: <h3 style="text-align: center;">Project Location</h3>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">DRAWN: PS/JG</td> <td style="width: 50%; padding: 2px;">FIGURE:</td> </tr> <tr> <td style="padding: 2px;">CHECKED: KY</td> <td rowspan="3" style="text-align: center; vertical-align: middle; padding: 10px;"><b>A.1-1</b></td> </tr> <tr> <td style="padding: 2px;">DATE: Mar 25/12</td> </tr> <tr> <td style="padding: 2px;">PROJECT: 08-041</td> </tr> </table>	DRAWN: PS/JG	FIGURE:	CHECKED: KY	<b>A.1-1</b>	DATE: Mar 25/12	PROJECT: 08-041
DRAWN: PS/JG	FIGURE:						
CHECKED: KY	<b>A.1-1</b>						
DATE: Mar 25/12							
PROJECT: 08-041							

Deponent: Jerry Roasting  
Date Sworn: September 11, 2012

**IN THE MATTER OF** the *Energy Resources Conservation Act*, RSA 2000, c  
E-10

-and-

**IN THE MATTER OF** Coal Valley Resources Inc.'s application for  
authorization to construct and operate the Robb Trend Project

**AFFIDAVIT**

I, Jerry Roasting, of the Ermineskin Cree Nation in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

1. I am a member of the Ermineskin Cree Nation (the “**Nation**”) and I am a hunter and gatherer within the Nation’s traditional territory and as such I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief and where so stated I verily believe the same to be true.
2. Now produced and shown to me and marked as Exhibit “A” to this my Affidavit is a true copy of a map depicting a portion of the Nation’s traditional territory, the proposed Coal Valley Resources Inc.'s. (“**Coal Valley**”) Robb Trend Project and the areas where I have and continue to hunt and gather.
3. I hunt and gather and have hunted and gathered on unoccupied Crown lands and lands to which I have or previously had a right of access within the Nation’s traditional territory. I have hunted and gathered in the marked areas, as shown in Exhibit “A” as a child and into my adulthood.
4. In these areas I have hunted the following animals, including, but not limited to:
  - a. Birds, which include, but not limited to grouse, ducks, geese and prairie chickens;
  - b. Moose; and
  - c. Deer.
5. I have gathered the following in the marked area, including but not limited to:
  - a. Blueberries;
  - b. Traditional medicines, which include, but not limited to, muskeg tea and willow.

6. As a hunter and gatherer I am concerned that the activities conducted by Coal Valley for the proposed coal project will further impact the wildlife populations in the area. The activities of Coal Valley and the proposed coal mining project will also occupy lands to which I have previously had a right of access and will further restrict the area in which I can exercise my Treaty rights to hunt and gather.
  
7. I make this Affidavit in support of the position of the Nation in this matter and for no improper purpose.

SWORN BEFORE ME at the Ermineskin )  
 Cree Nation, in the Province of Alberta, this )  
 11<sup>th</sup> day of September, 2012. )

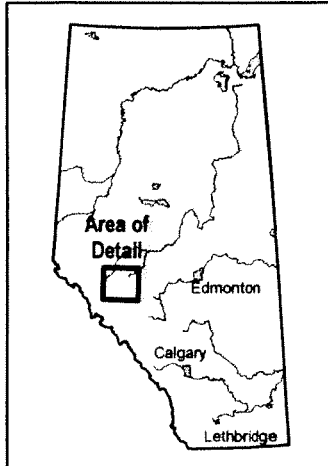
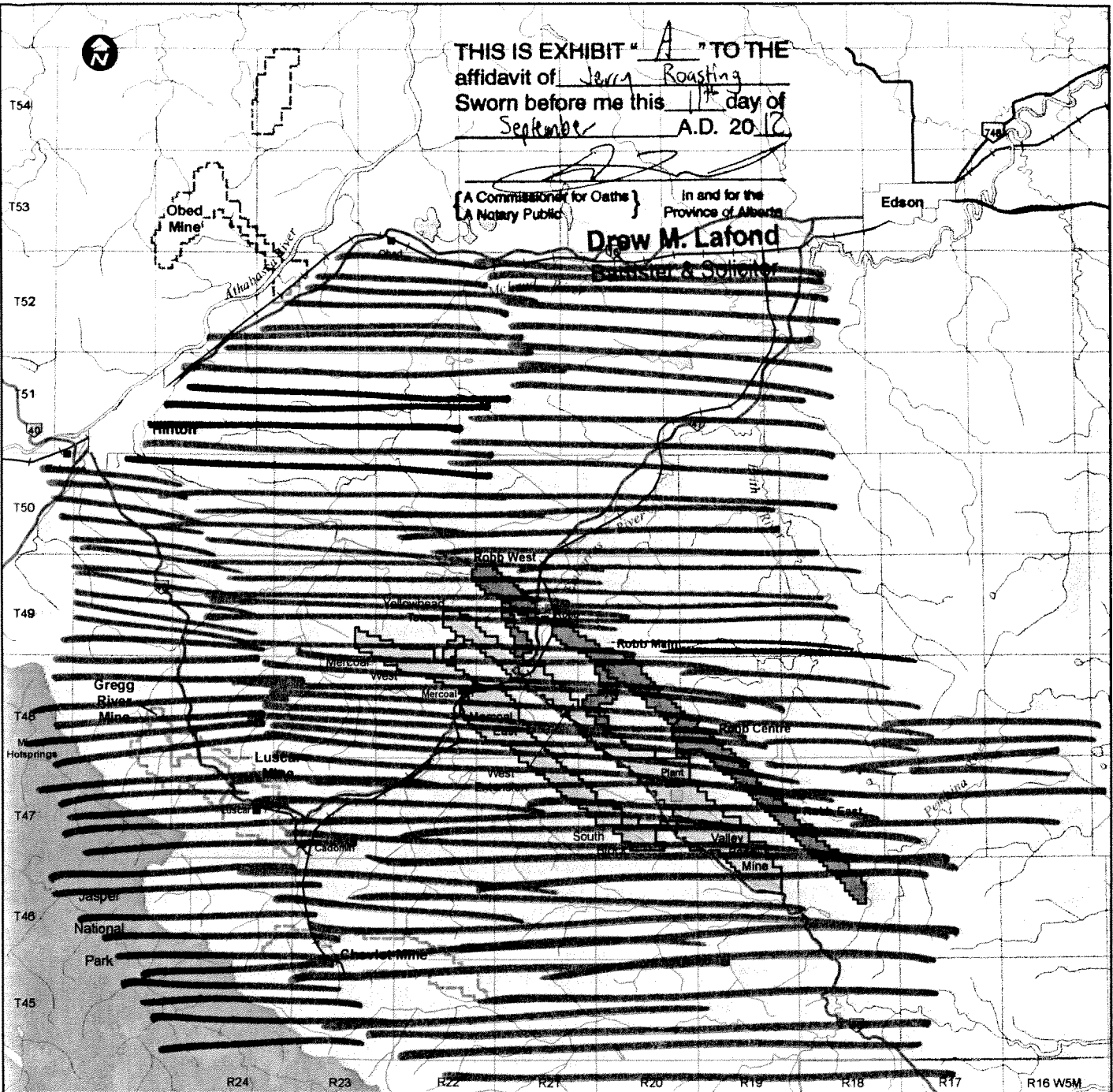
<Original signed by>

<Original signed by>

\_\_\_\_\_  
 A Commissioner for Oaths in and for the  
 Province of Alberta  
 Being a solicitor

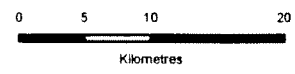
\_\_\_\_\_  
 Jerry Roasting


**Drew M. Lafond**  
 Barrister & Solicitor



**Legend**

-  Proposed Robb Trend Mine Permit Boundary
-  Existing Coal Valley Mine Permit Areas
-  Other Mines



PROJECT: <b>Coal Valley Mine Robb Trend Project</b>		
TITLE: <b>Project Location</b>		
DRAWN: PS/JG	CHECKED: KY	FIGURE:
DATE: Mar 25/12		<b>A.1-1</b>
PROJECT: 08-041		

Deponent: Brian Lee  
Date Sworn: September 11, 2012

**IN THE MATTER OF** the *Energy Resources Conservation Act*, RSA 2000, c  
E-10

-and-

**IN THE MATTER OF** Coal Valley Resources Inc.'s application for  
authorization to construct and operate the Robb Trend Project

**AFFIDAVIT**

I, Brian Lee, of the Ermineskin Cree Nation in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

1. I am a member of the Ermineskin Cree Nation (the "**Nation**") and I am a hunter, fisherman and gatherer within the Nation's traditional territory and as such I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief and where so stated I verily believe the same to be true.
2. Now produced and shown to me and marked as Exhibit "**A**" to this my Affidavit is a true copy of a map depicting a portion of the Nation's traditional territory, the proposed Coal Valley Resources Inc.'s. ("**Coal Valley**") Robb Trend Project and the areas where I have and continue to hunt, fish and gather.
3. I hunt, fish and gather and have hunted, fished and gathered on unoccupied Crown lands and lands to which I have or previously had a right of access within the Nation's traditional territory. I have hunted, fished and gathered in the marked areas, as shown in Exhibit "**A**" as a child and into my adulthood.
4. In these areas I have hunted the following animals, including, but not limited to:
  - a. Moose;
  - b. Elk; and
  - c. White Tail Deer.
5. In the marked area, I have fished the following, including but not limited to:
  - a. Trout.
6. I have gathered the following in the marked area, including but not limited to:
  - a. Raspberries;

b. Traditional medicines, which include, but not limited to, sweet pine.

7. As a hunter, fisher and gatherer I am concerned that the activities conducted by Coal Valley for the proposed coal project will further impact the wildlife populations in the area. The activities of Coal Valley and the proposed coal mining project will also occupy lands to which I have previously had a right of access and will further restrict the area in which I can exercise my Treaty rights to hunt, fish and gather.

8. I make this Affidavit in support of the position of the Nation in this matter and for no improper purpose.

**SWORN BEFORE ME** at the Ermineskin )  
Cree Nation, in the Province of Alberta, this )  
11<sup>th</sup> day of September, 2012. )

)  
) <Original signed by>  
)

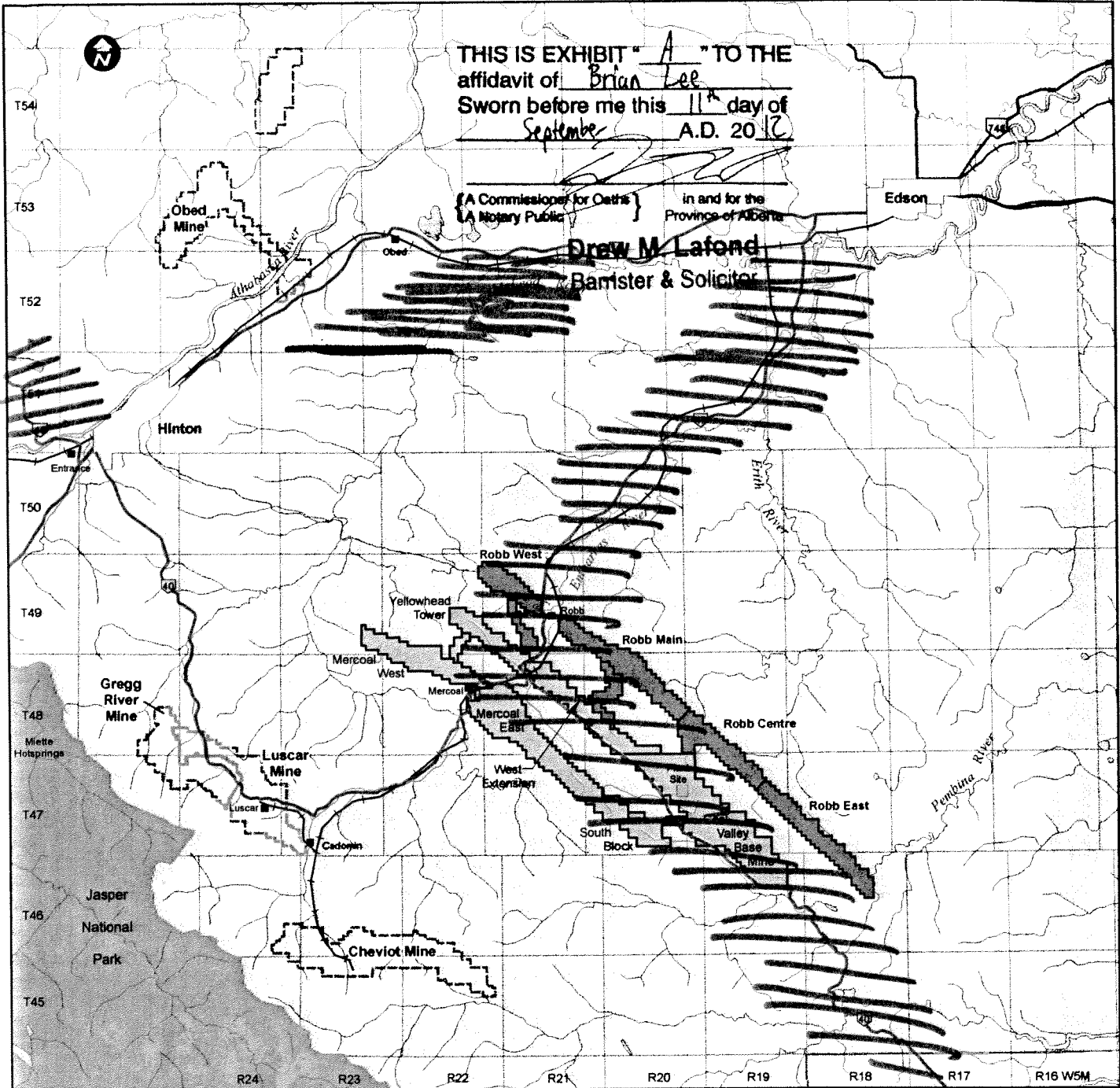
<Original signed by> )

\_\_\_\_\_  
Brian Lee

\_\_\_\_\_  
A Commissioner for Oaths in and for the  
Province of Alberta  
Being a solicitor

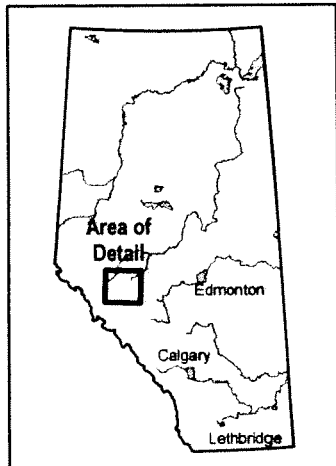
**Drew M. Lafond**  
Barrister & Solicitor








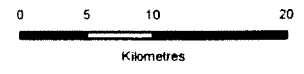
THIS IS EXHIBIT "A" TO THE  
 affidavit of Brian Lee  
 Sworn before me this 11<sup>th</sup> day of  
September A.D. 2012

(A Commissioner for Oaths)  
 (A Notary Public) in and for the  
 Province of Alberta  
**Draw M. Lafond**  
 Barrister & Solicitor



**Legend**

-  Proposed Robb Trend Mine Permit Boundary
-  Existing Coal Valley Mine Permit Areas
-  Other Mines



PROJECT:  
**Coal Valley Mine  
 Robb Trend Project**



TITLE:  
**Project Location**

DRAWN: PS/JG  
 CHECKED: KY  
 DATE: Mar 25/12  
 PROJECT: 08-041

FIGURE:  
**A.1-1**

Deponent: Bruce Lee  
Date Sworn: September 11, 2012

**IN THE MATTER OF** the *Energy Resources Conservation Act*, RSA 2000, c  
E-10

-and-

**IN THE MATTER OF** Coal Valley Resources Inc.'s application for  
authorization to construct and operate the Robb Trend Project

**AFFIDAVIT**

I, Bruce Lee, of the Ermineskin Cree Nation in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

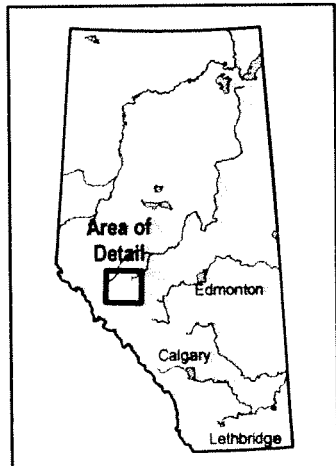
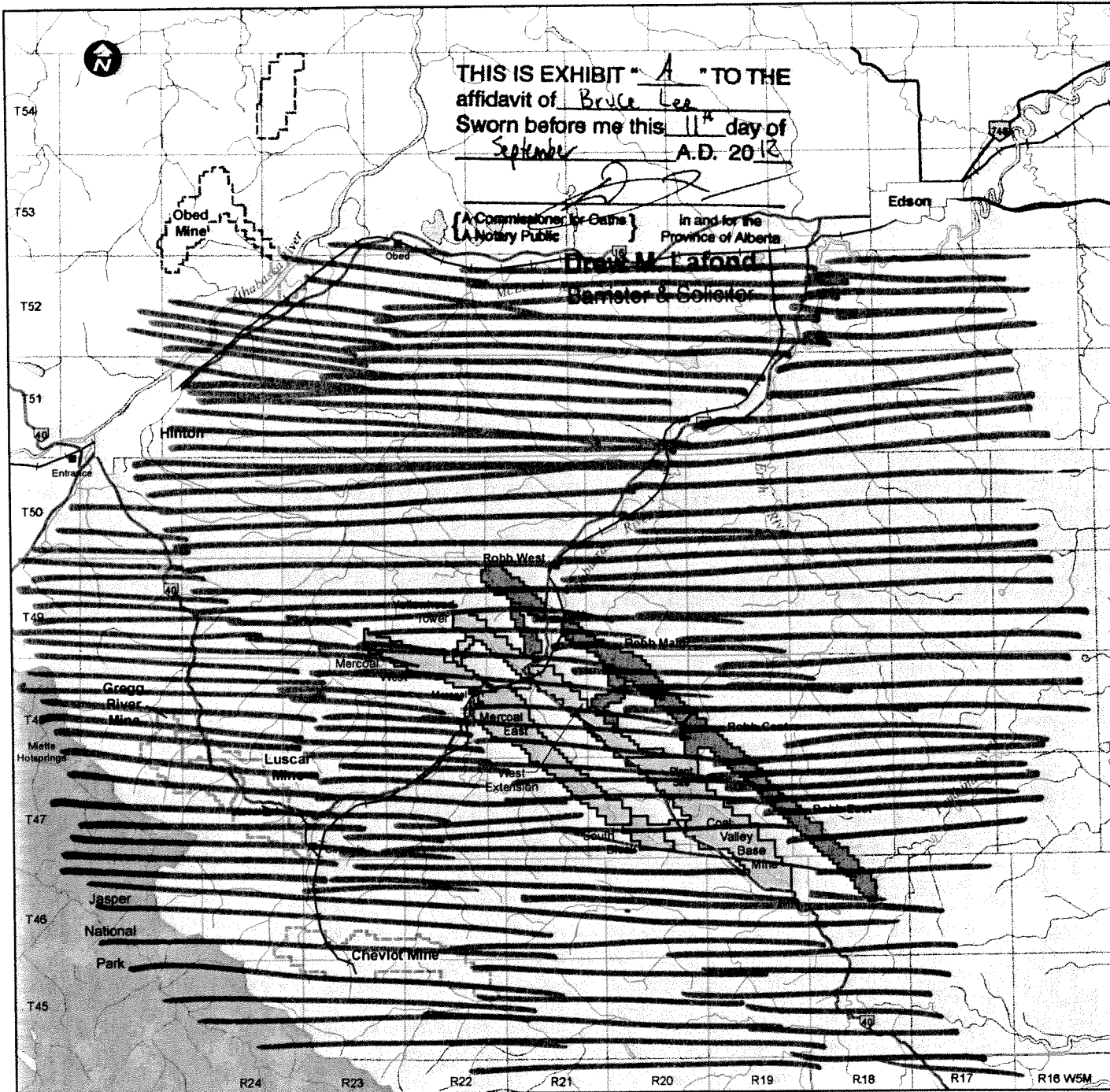
1. I am a member of the Ermineskin Cree Nation (the "**Nation**") and I am a hunter, fisherman, gatherer and trapper within the Nation's traditional territory and as such I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief and where so stated I verily believe the same to be true.
2. Now produced and shown to me and marked as Exhibit "A" to this my Affidavit is a true copy of a map depicting a portion of the Nation's traditional territory, the proposed Coal Valley Resources Inc.'s. ("**Coal Valley**") Robb Trend Project and the areas where I have and continue to hunt, fish, trap and gather.
3. I hunt, fish, trap and gather and have hunted, fished, trapped and gathered on unoccupied Crown lands and lands to which I have or previously had a right of access within the Nation's traditional territory. I have hunted, fished, trapped and gathered in the marked areas, as shown in Exhibit "A" as a child and into my adulthood.
4. In these areas I have hunted the following animals, including, but not limited to:
  - a. Birds, which include, but not limited to grouse and prairie chickens;
  - b. Moose;
  - c. Elk; and
  - d. Deer.
5. In the marked area, I have fished the following, including but not limited to:
  - a. Trout;
  - b. Whitefish; and

- c. Pickerel.
6. I have gathered the following in the marked area, including but not limited to:
- a. Blueberries;
  - b. High Bush Cranberries;
  - c. Huckleberries;
  - d. Raspberries;
  - e. Strawberries;
  - f. Gooseberries;
  - g. Chokecherries; and
  - h. Traditional medicines, which include, but not limited to, roots, willow, sweet grass and bark.
7. In the marked area, I have trapped the following, including but not limited to:
- a. Rabbits.
8. As a hunter, fisher, trapper and gatherer I am concerned that the activities conducted by Coal Valley for the proposed coal project will further impact the wildlife populations in the area. The activities of Coal Valley and the proposed coal mining project will also occupy lands to which I have previously had a right of access and will further restrict the area in which I can exercise my Treaty rights to hunt, fish, trap and gather.
9. I make this Affidavit in support of the position of the Nation in this matter and for no improper purpose.




SWORN BEFORE ME at the Ermineskin )  
 Cree Nation, in the Province of Alberta, this )  
 11<sup>th</sup> day of September, 2012. )

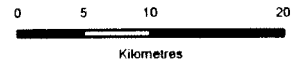
<Original signed by>  
 \_\_\_\_\_  
 A Commissioner for Oaths in and for the  
 Province of Alberta  
 Being a solicitor  
**Drew M. Lafond**  
 Barrister & Solicitor


)  
 )  
 )  
 )  
 ) <Original signed by>  
 \_\_\_\_\_  
 Bruce Lee



**Legend**

-  Proposed Robb Trend Mine Permit Boundary
-  Existing Coal Valley Mine Permit Areas
-  Other Mines



PROJECT: <b>Coal Valley Mine Robb Trend Project</b>	
TITLE: <b>Project Location</b>	
DRAWN: PS/JG CHECKED: KY DATE: Mar 25/12 PROJECT: 08-041	FIGURE: <b>A.1-1</b>

Deponent: Chris Rattlesnake  
Date Sworn: September 11, 2012

**IN THE MATTER OF** the *Energy Resources Conservation Act*, RSA 2000, c  
E-10

-and-

**IN THE MATTER OF** Coal Valley Resources Inc.'s application for  
authorization to construct and operate the Robb Trend Project

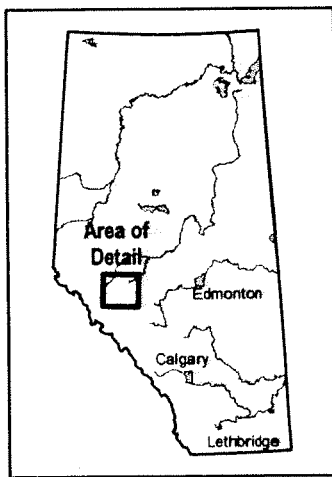
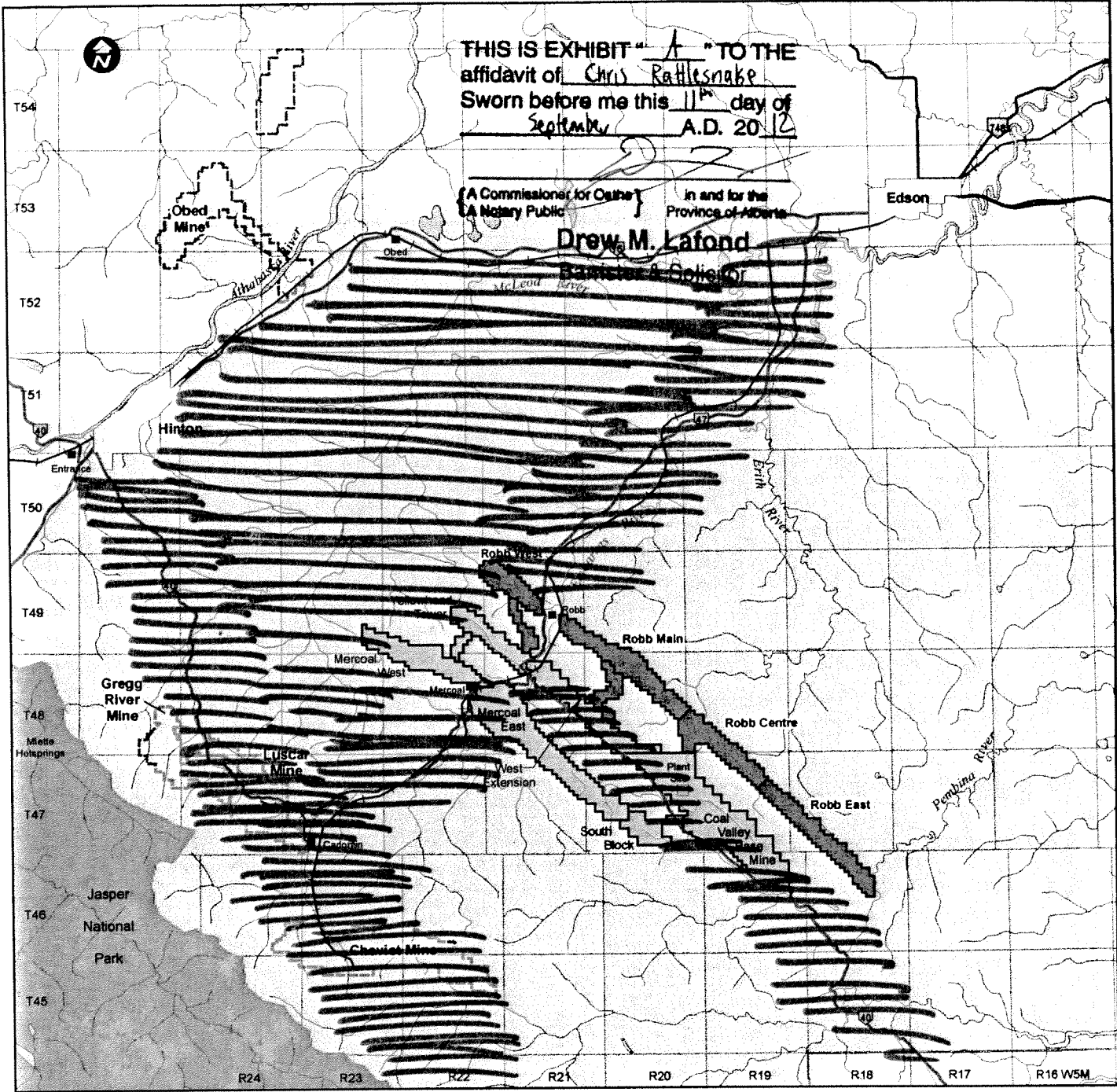
**AFFIDAVIT**

I, Chris Rattlesnake, of the Ermineskin Cree Nation in the Province of Alberta, MAKE OATH  
AND SAY AS FOLLOWS:




1. I am a member of the Ermineskin Cree Nation (the "**Nation**") and I am a hunter, fisherman, gatherer and trapper within the Nation's traditional territory and as such I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based on information and belief and where so stated I verily believe the same to be true.
2. Now produced and shown to me and marked as Exhibit "**A**" to this my Affidavit is a true copy of a map depicting a portion of the Nation's traditional territory, the proposed Coal Valley Resources Inc.'s. ("**Coal Valley**") Robb Trend Project and the areas where I have and continue to hunt, fish, trap and gather.
3. I hunt, fish, trap and gather and have hunted, fished, trapped and gathered on unoccupied Crown lands and lands to which I have or previously had a right of access within the Nation's traditional territory. I have hunted, fished, trapped and gathered in the marked areas, as shown in Exhibit "**A**" as a child and into my adulthood.
4. In these areas I have hunted the following animals, including, but not limited to:
  - a. Birds, which include, but not limited to grouse, ducks, geese and prairie chickens;
  - b. Moose;
  - c. Elk;
  - d. White Tail Deer; and
  - e. Mule Deer.
5. In the marked area, I have fished the following, including but not limited to:
  - a. Whitefish;

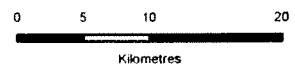
- b. Trout;
  - c. Jackfish; and
  - d. Grayling.
6. I have gathered the following in the marked area, including but not limited to:
- a. Blueberries;
  - b. High Bush Cranberries;
  - c. Low Bush Cranberries;
  - d. Raspberries;
  - e. Saskatoon Berries;
  - f. Strawberries;
  - g. Gooseberries;
  - h. Chokecherries; and
  - i. Traditional medicines, which include, but not limited to, roots, willow, sweet grass, buffalo grass and bark.
7. In the marked area, I have trapped the following, including but not limited to:
- a. Rabbits;
  - b. Ruffed Grouse;
  - c. Beavers;
  - d. Weasels; and
  - e. Muskrats.
8. As a hunter, fisher, trapper and gatherer I am concerned that the activities conducted by Coal Valley for the proposed coal project will further impact the wildlife populations in the area. The activities of Coal Valley and the proposed coal mining project will also occupy lands to which I have previously had a right of access and





**Legend**

-  Proposed Robb Trend Mine Permit Boundary
-  Existing Coal Valley Mine Permit Areas
-  Other Mines



PROJECT:		<b>CVRI</b>	
<b>Coal Valley Mine Robb Trend Project</b>			
TITLE:		DRAWN: PS/JG	FIGURE:
<b>Project Location</b>		CHECKED: KY	<b>A.1-1</b>
		DATE: Mar 25/12	
		PROJECT: 08-041	





**Lifeways OF CANADA LIMITED**  
Archaeological and Heritage Resource Consulting and Contracting

HEAD OFFICE  
105, 809 Manning Road NE 758 Sandstone Terrace  
Calgary, Alberta T2E 7M9 Martensville, Saskatchewan S0K 0A2  
Telephone (403) 730-9461 Telephone (306) 242-0012  
Fax (403) 730-5192 Fax (403) 730-5192

[www.lifewaysofcanada.com](http://www.lifewaysofcanada.com)

Carol Wildcat  
Consultation Coordinator  
Ermineskin Cree Nation  
[REDACTED]

January 8, 2013

Dear Carol,

**Re: Coal Valley Resources Inc., Robb Trend Project**

The SREM Aboriginal Affairs Branch (SAAB) has directed Coal Valley Resources Inc. (CVRI) to continue consultation with the Ermineskin Cree Nation regarding the above project. We have previously supplied your office and Chief and Council with the project description and application documents, but can provide them again if necessary. I have enclosed a CD with responses to Supplementary Information Requests to the project application. Legal counsel for the Ermineskin Cree Nation submitted a Letter of Objection and Statement of Concern against the project, dated September 28, 2012.

Please review the enclosed information and let CVRI know whether this project may adversely impact your Rights and Traditional Uses. CVRI requests a meeting with you and/or Chief and Council as soon as possible to discuss the project and any Ermineskin Cree Nation concerns. Representatives from SAAB and the Canadian Environmental Assessment Agency (CEAA) will likely attend any meetings to support the consultation process. If you believe that there are potential impacts, please be prepared to specify the site-specific concerns your First Nation may have and their location.

If you wish to discuss the project and a meeting further, please respond to this request by February 1, 2013. You can either contact me ([meyer@lifewaysofcanada.com](mailto:meyer@lifewaysofcanada.com), phone 403-730-9461, cell 403-807-7981) or Les LaFleur, the Robb Trend Project manager ([lafleur@coalvalley.ca](mailto:lafleur@coalvalley.ca), phone 780-865-8607, cell 780-817-0792).

Sincerely, 

<Original signed by>

Dan Meyer, Ph.D.

Enclosure

cc w/out enc: Chief Craig Mackinaw; Carcey Hincz, SAAB; Fares Haddad, ERCB;  
Lori Crozier, CEAA



**Lifeways OF CANADA LIMITED**

Archaeological and Heritage Resource Consulting and Contracting

HEAD OFFICE  
105, 809 Manning Road NE  
Calgary, Alberta T2E 7M9  
Telephone (403) 730-9461  
Fax (403) 730-5192

758 Sandstone Terrace  
Martensville, Saskatchewan S0K 0A2  
Telephone (306) 242-0012  
Fax (403) 730-5192

[www.lifewaysofcanada.com](http://www.lifewaysofcanada.com)

Carol Wildcat  
Consultation Coordinator  
Ermineskin Cree Nation



January 22, 2013

Dear Carol,

**Re: Coal Valley Resources Inc., Robb Trend Project**

The SREM Aboriginal Affairs Branch (SAAB) has directed Coal Valley Resources Inc. (CVRI) to continue consultation with the Ermineskin Cree Nation regarding the above project. We have previously supplied your office and Chief and Council with the project description and application documents, and on January 8, 2013 I sent a CD with responses to Supplementary Information Requests to the project application and a formal request to meet with you, Chief and Council, and Government representatives to discuss potential impacts to your Rights and Traditional Uses, including any site-specific concerns your First Nation may have and their location.

If you wish to discuss the project and a meeting further, please respond to this request by February 1, 2013. You can either contact me ([meyer@lifewaysofcanada.com](mailto:meyer@lifewaysofcanada.com), phone 403-730-9461, cell 403-807-7981) or Les LaFleur, the Robb Trend Project manager ([llafleur@coalvalley.ca](mailto:llafleur@coalvalley.ca), phone 780-865-8607, cell 780-817-0792).

Sincerely,

<Original signed by>

Dan Meyer, Ph.D.

cc: Chief Craig Mackinaw; Carcey Hincz, SAAB; Fares Haddad, ERCB;  
Lori Crozier, CEAA

July 3, 2014

Sean Fairhurst  
**MacPherson Leslie & Tyerman LLP**  
1600 520 – 3 Avenue SW  
Calgary AB T2P 0R3  
Email: [SFairhurst@mlt.com](mailto:SFairhurst@mlt.com)

Calgary Head Office  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada

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

Dear Mr. Fairhurst:

**COAL MINING STATEMENT OF CONCERN NO. 29086  
COAL VALLEY RESOURCES INC.  
COAL MINING APPLICATION FOR PROPOSED ROBB TREND  
APPLICATION NO. 1725257  
LOCATIONS: 08-049-21W5M**

The Alberta Energy Regulator (AER) acknowledges receipt of your letter on behalf of Ermineskin Cree Nation dated September 28, 2012, indicating your client's statement of concerns with the subject application. Please be advised that an application was submitted to the AER on April 17, 2012, and was assigned Application No. 1725257. In addition, on June 4, 2014, the AER re-issued notice of this application and re-established a statement of concern filing deadline of July 9, 2014 (available at <http://www.aer.ca/applications-and-notices/notices/application-1725257-2>). Your client is therefore able to file a different or supplemental statement of concern if you wish to do so, provided that it is received by the AER on or before the deadline.

The application is currently under review and the concerns outlined in your letter will be taken into consideration by the AER in its review of the application. The AER expects parties to discuss outstanding concerns whenever possible. By way of copy of this letter to Coal Valley Resources Inc. (Coal Valley), we are requesting Coal Valley contact you to attempt to address your concerns, as provided under AER requirements.

The AER has no jurisdiction over matters of compensation for land usage. The Alberta Surface Rights Board is the regulatory agency that deals with these issues. Further the AER has no jurisdiction with respect to assessing the adequacy of Crown consultation with the rights of aboriginal peoples.

The AER offers and strongly recommends you make use of our Alternative Dispute Resolution (ADR) program which features either staff or third party mediation arranged through an AER mediator. Please contact Krista Waters at 403-755-1422 for more information on this process. Further information about this program is available through *EnerFAQs: All About Alternative Dispute Resolution* and *Manual 004: ADR Alternative Dispute Resolution Program and Guidelines for Energy Industry Disputes* on the AER web site, (<http://www.aer.ca>), under Applications & Notices, Alternative Dispute Resolution (ADR) Process.

Please note that Section 49 of the *Alberta Energy Regulator Rules of Practice* (Rules) requires that all documents filed with the AER be placed on the public record. However, any party may file a request for confidentiality of information under Section 49 prior to filing the information with the AER. Any request under Section 49 must be copied to the other parties to the proceeding. Section 49 of the Rules is available at the AER website at [www.aer.ca](http://www.aer.ca).

Please direct questions regarding your statement of concern to Amanda Black at 780-743-7473 who will manage the application through to completion. If you have any questions regarding AER process please contact the undersigned through our Customer Contact Centre, toll free, at 1-855-297-8311, or collect at 403-297-5749.

**inquiries** 1-855-297-8311  
**24-hour**  
**emergency** 1-800-222-6514

Yours truly,

<Original signed by>

Jennifer Richards  
Review & Coordination Team  
Authorizations Branch

cc: Les Lafleur, Coal Valley Resources Inc., [llafleur@westmoreland.com](mailto:llafleur@westmoreland.com)  
Amanda Black, AER, [Amanda.Black@aer.ca](mailto:Amanda.Black@aer.ca)  
AER Drayton Valley Field Centre, [DraytonValley.FieldCentre@aer.ca](mailto:DraytonValley.FieldCentre@aer.ca)  
Krista Waters, AER Mediator, [Krista.Waters@aer.ca](mailto:Krista.Waters@aer.ca)  
Bruce Gladue, AER Aboriginal Engagement Unit, [Bruce.Gladue@aer.ca](mailto:Bruce.Gladue@aer.ca)  
Gabriel Potter, Aboriginal Consultation Office, [Gabriel.Potter@gov.ab.ca](mailto:Gabriel.Potter@gov.ab.ca)

July 9, 2014

**Meaghan M. Conroy**  
Direct Line: (780) 969-3515  
E-mail: MConroy@mlt.com

Assistant: Aja R McRae  
Direct Line: (780) 969-3532  
E-mail: AMcrae@mlt.com

Authorizations Review & Coordination Team  
Alberta Energy Regulator  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4

**E-mail: ARCTeam@aer.ca**

**Re: Coal Valley Resources Inc. ("Coal Valley") – Robb Trend Project  
AER Application No. 1725257**  
**Our File: 043998-0007, 041205-0048**

We write on behalf of Ermineskin Cree Nation ("ECN") and Whitefish (Goodfish) Lake First Nation ("WLFN") in response to the Notice of Application issued by the AER on June 4, 2014.

Our clients previously filed Statements of Concern on AER Application No. 1725257 and *Environmental Protection and Enhancement Act* ("EPEA") Application No. 028-11066. ECN's Statement of Concern was submitted on September 28, 2012, and WLFN's Statement of Concern was submitted on July 10, 2013. We request that you consider these Statements of Concern and their attachments, as well as this letter, as our clients' Statements of Concern in response to the Notice of Application issued June 4, 2014.

*Supplementary Statement of Concern*

Since the original Statements of Concern were filed, ESRD has issued Enforcement Order No. EO-2014/02/UAR ("EO") against Coal Valley in relation to several of Coal Valley's existing facilities in the eastern slopes (see attached, the EO and its amendments).

The EO issued March 14, 2014, shows that several of Coal Valley's tailings ponds have been leaking since 2012 and that the Director is of the opinion that Coal Valley contravened EPEA and its existing approvals. Toxic substances in the watershed, among other impacts to be determined by Alberta Environment, and the resulting effects on fish, wildlife and vegetation could render the affected areas unsuitable for the exercise of our clients' Treaty rights.



At no time did Coal Valley disclose this information to ECN or WLFN despite having knowledge that community members likely fish for food on waters impacted by these unauthorized releases.

The information revealed by the Order reinforces the concerns expressed in the previously filed Statements of Concern. As well, ECN and WLFN have new concerns regarding Coal Valley's failure to inform the community, and the company's disregard for our clients' health and the environment in general.

ECN and WLFN have a reasonable expectation that Coal Valley will disclose matters that are likely to affect our clients and the exercise of their Treaty rights, such as that tailings ponds are leaking, on an ongoing and continuous basis. Further, our clients request that the AER require Coal Valley to make such ongoing and continuous disclosure as a condition of any approval issued regarding AER Application No. 1725257.

Should the Regulator have any questions or require clarification, please feel free to contact me.

Sincerely,

**MacPherson Leslie & Tyerman LLP**

Per: <Original signed by>

Meaghan M. Conroy

A handwritten signature in black ink, appearing to be 'Meaghan M. Conroy', written over the printed name.

MMC:AKP

cc: Les Lafleur, Coal Valley Resources Inc.

Lori Crozier, CEAA, [lori.crozier@ceaa-acee.gc.ca](mailto:lori.crozier@ceaa-acee.gc.ca)

Clients

**ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT**

**BEING CHAPTER E-12 R.S.A. 2000 (the "Act")**

**ENFORCEMENT ORDER NO. EO-2014/02-UAR**

Coal Valley Resources Inc.  
2900, 10180 - 101 Street  
Edmonton Alberta T5J 3V5

(the "Company")

WHEREAS the Company operates a coal mine (the "Mine") on the lands legally described as Township 49, Range 23, 22, 21; Township 48, Range 22, 21, 20; Township 47, Range 21, 20, 19; and Township 46, Range 19, all West of the 5<sup>th</sup> Meridian, in Yellowhead County, in the Province of Alberta;

WHEREAS the Company owns and operates a coal processing plant (the "Plant") on the lands legally described as the Section 24, Township 47, Range 20, West of the 5<sup>th</sup> Meridian, in Yellowhead County, in the Province of Alberta;

WHEREAS the Company constructed and operates the Mine and the Plant pursuant to Approval No. 11066-02-00, as amended (the "Approval");

WHEREAS pursuant to the Approval, the Company operates "mine wastewater handling facilities" or "settling ponds" which are parts of the Mine that collect, transport, store and treat mine wastewater. Ponds are classified in the Approval as either "major ponds" or "minor ponds" (collectively the "Ponds");

WHEREAS the Approval requires the Company to operate and manage its Ponds for the control of Total Suspended Solids ("TSS") in accordance with strict limits and parameters, as some of these Ponds discharge into the surrounding watershed;

WHEREAS the Approval permits the Company to use flocculants to enhance the settlement of TSS in the Ponds, but flocculants must be used at a controlled rate and in identifiable dosages and quantities as they can have adverse effects on the aquatic environment;

WHEREAS Alberta Environment and Sustainable Resource Development (the "Department") inspected the Mine's wastewater handling facilities on July 25, August 23 and September 17, 2012 after reported non-compliances and observations of turbid water in the Embarras River, which is a fish bearing watercourse that receives discharge from some Ponds;

WHEREAS on October 4, 2012, the Department requested the Company to stop using cationic flocculants in its Ponds because the Company had a series of contraventions in 2011 and 2012 where it released mine wastewater that exceeded the limits in its Approval. Also, the Company could not demonstrate that it could accurately determine flocculant dosage or that it was using

flocculant at a controlled rate as required by its Approval;

WHEREAS on March 14, 2013, the Company committed to installing automatic flocculant dispensing stations at three Ponds, and retrofitting its manual flocculant dispensing stations with metering pumps at other Ponds to control flocculant dosing;

WHEREAS on May 28 and June 27, 2013, the Department inspected the Mine and found that the Company had not followed through on its March 14, 2013 commitments;

WHEREAS clause 4.2.12 and Table 4.2-A of the Approval specify the following limits and parameters:

- the maximum daily concentration of TSS discharge from a major pond must not exceed 350mg/L (the "Daily Discharge Limit");
- the monthly average concentration of TSS discharge from a major pond must not exceed 50 mg/L (the "Monthly Discharge Limit"); and
- there must be 100% survival in 100% mine wastewater from a major pond using the Acute Lethality Test Using Rainbow Trout (the "Acute Lethality Test");

WHEREAS on April 4, 2013, the Company reported to the Department a daily TSS discharge concentration of 1,760mg/L for Yellowhead Tower Pond 3, being in excess of the Daily Discharge Limit;

WHEREAS on May 24, 2013, the Company reported to the Department monthly average TSS discharge concentrations of 141.4 mg/L for Yellowhead Tower Pond 3, 66 mg/L at Pit 29 East Pond, and 55 mg/L at Pit 29 West Pond each being in excess of the Monthly Discharge Limits;

WHEREAS on May 28, 2013, the Department sampled various Ponds and observed that drainage ditches near 28 Haul Road Pond, Erith Pond, and Yellowhead Pond 4 were poorly defined, not vegetated or armoured so they were not preventing channel erosion and adverse impacts on water quality as required by the Approval;

WHEREAS on May 29, 2013, the Company reported to the Department a daily TSS discharge concentration of 660 mg/L for Yellowhead Tower Pond 12, being in excess of the Daily Discharge Limit;

WHEREAS on June 3, 2013, an independent laboratory notified the Department that Yellowhead Tower Pond 12 and Yellowhead Tower Pond 4 each failed the Acute Lethality Test based on samples taken on May 28, 2013;

WHEREAS on June 3, 2013, the Department held a conference call with the Company to advise that a notice of investigation would be issued, and the Company verbally advised the Department that they were unable to stop the discharges from Yellowhead Tower Pond 12 due to concerns relating to that pond's structural integrity;

WHEREAS on June 4, 2013, the Department issued a notice of investigation to the Company regarding contraventions of its Approval, and requested further information regarding the Company's monitoring data and flocculant dosing;

WHEREAS on June 5, 2013, the Company reported to the Department that Yellowhead Tower Pond 12 failed the Acute Lethality Test based on a sample taken on June 1, 2013;



WHEREAS on June 6, 2013, the Company reported to the Department a daily concentration of TSS discharge of 465 mg/L for Yellowhead Tower Pond 12, being in excess of the Daily Discharge Limit;

WHEREAS on June 18, 2013, the Company responded to the Department's notice of investigation by providing further information on how it administers flocculant;

WHEREAS on June 27, 2013, the Department and the Alberta Energy Regulator inspected the Yellowhead Tower portion of the Mine and identified numerous non-compliances with the Approval including settling ponds that were not achieving adequate settling retention time or providing reliable flow measurement, and drainage ditches that were not preventing channel erosion and adverse impacts on water quality as required by the Approval;

WHEREAS on June 30, 2013, the Company reported to the Department monthly average TSS discharge concentrations of 81.0 mg/L for Yellowhead Tower Pond 5, and 236.6 mg/L for Yellowhead Tower Pond 12, each being in excess of the Monthly Discharge Limit;

WHEREAS on July 12, 2013, the Company reported to the Department that 28 Haul Road Pond and Mercoal West Pond 2 each failed the Acute Lethality test based on samples taken on July 8, 2013;

WHEREAS on July 16, 2013, the Company reported to the Department a daily TSS discharge concentration of 1,440 mg/L for Yellowhead Tower Pond 5, in excess of the Daily Discharge Limit;

WHEREAS a Department inspection report dated July 26, 2013 was sent to the Company outlining non-compliances with the Approval;

WHEREAS on August 6, 2013, the Department reviewed the Company's:

- inspection records and found that the Company failed to take a mine wastewater sample from seven major ponds throughout May and June 2013 where the outflow discharge likely appeared abnormally turbid (i.e. was greater than 50 NTU);
  - monitoring records and found that the Company failed to take mine wastewater samples 3 times/week during discharge in June 2013 for 17 major ponds;
  - monthly Mine Wastewater Report and found that the Company has failed to identify the dosage of flocculants used at its Ponds; and
  - Annual Wastewater Report and found that the Company has failed to evaluate sediment accumulation or dredging activities at its Ponds
- each of which was contrary to the terms of the Approval;

WHEREAS by letter dated August 30, 2013, the Company provided a response to the Department's July 26 inspection report;

WHEREAS by letter dated September 24, 2013, the Department indicated the Company's response was deficient and directed the Company to take specific actions to ensure its wastewater management would meet the outcomes required by the Approval;

WHEREAS by letter dated October 9, 2013, the Company committed to implementing some, not all, of the directions provided by the Department, or implementing directions on timelines that are not acceptable to the Department;

WHEREAS on January 28, 2014, the Department met with the Company to discuss their mine wastewater management;

WHEREAS to date, the Department has not been informed that the Company has discovered the root cause of the failed Acute Lethality Tests, or confirmed that this is not related to its flocculant use or dosing;

WHEREAS to date, the Department has not received sufficient information from the Company regarding how it administers flocculant at a controlled rate or how it determines flocculant dosage in accordance with its Approval;

WHEREAS to date, the Department does not believe that the Company can operate and manage its Ponds for the control of TSS as demonstrated by the Company's repeated failures to meet the Approval's limits and parameters;

WHEREAS Faye Hutchings, Acting Compliance Manager, Upper Athabasca Region, has been designated as a Director under the Act for the purposes of issuing an enforcement order under section 210 of the Act (the "Director");

WHEREAS the Director is of the opinion that the Company has contravened section 227(e) of the Act by:

- having Ponds that do not achieve adequate settling retention time or provide reliable flow measurement, contrary to clause 3.1.1(d) and (g) of the Approval;
- having drainage ditches that do not prevent channel erosion and adverse impacts on water quality, contrary to clause 3.1.3 of the Approval;
- failing to use flocculant at a controlled rate or being able to accurately determine flocculant dosage contrary to clauses 4.2.6 and 4.2.27(e) of the Approval;
- permitting the unauthorized discharge of TSS from major ponds at the Mine in excess of the Daily and Monthly Discharge Limits contrary to clause 4.2.12 and Table 4.2-A of the Approval;
- permitting the unauthorized discharge of mine wastewater from major ponds at the Mine that failed the Acute Lethality Test contrary to clause 4.2.12 and Table 4.2-A of the Approval;
- failing to take a mine wastewater sample for major ponds where the outflow discharge likely appeared abnormally turbid (i.e. was greater than 50 NTU) contrary to clause 4.2.15(c) of the Approval;
- failing to take a mine wastewater sample 3 times/week during discharge in May and June 2013 contrary to clause 4.2.14 and Table 4.2B of the Approval;
- failing to identify the dosage of flocculants used at its Ponds in its monthly Mine Wastewater Report contrary to clause 4.2.27(e) of the Approval; and
- failing to evaluate sediment accumulation or dredging activities at its Ponds in its Annual Wastewater Report contrary to clause 4.2.28(c) of the Approval.

THEREFORE, I, Faye Hutchings, Director, pursuant to sections 210 of the 7, DO HEREBY ORDER THAT:

1. The Company shall submit to the Director a written plan for mine wastewater management (the "Plan") by **April 30, 2014**.
2. The Plan shall include, at a minimum, the following:

- (a) The engineering drawings for all Ponds (major and minor ponds) in the Approval.
- (b) A list of all the Ponds that the Company's consultant, Matrix Solutions Inc., identified in its November 18, 2013 report as requiring modification or improvement along with a detailed work plan for how the Company will ensure these Ponds are designed to achieve adequate settling retention time and provide reliable flow measurements as required by the Approval. The Department is supportive of the recommendations made by Matrix Solutions Inc. to correct deficiencies at the Ponds and to improve the Company's overall mine wastewater management approach.
- (c) An assessment of all drainage ditches at the Mine to determine each ditch's compliance with the Approval's construction and maintenance requirements, along with a work plan for how the Company will ensure the drainage ditches are maintained to prevent channel erosion and adverse impacts on water quality as required by the Approval.
- (d) A system to inspect, sample and record **daily** the turbidity for all major ponds and those minor ponds using flocculants. In addition to clause 4.2.15 of the Approval, each daily inspection report shall include, but is not limited to:
  - i. the name of the person conducting the inspection;
  - ii. the name of the person taking the wastewater sample;
  - iii. a record that indicates the flocculant station is functioning properly and is releasing flocculant at a controlled, measurable rate, including the added dosage and quantity of flocculant used;
  - iv. a detailed description of the observed turbidity of the pond's outflow discharge (NTU); and
  - v. a record of daily freeboard.
- (e) The development of a site specific TSS/NTU correlation curve.
- (f) A system to conduct an Acute Lethality Test **monthly** at each major pond that has failed an Acute Lethality Test since January 1, 2012. The sampling regime shall start April 1, 2014 and a sample shall be collected from the pond discharge in the first week of the month during release. If there is no release during the first week of the month, the discharge shall be sampled during the first release that occurs in a subsequent week. Sampling frequency may return to intervals specified in the Approval after a Pond has passed three consecutive tests based on the parameters in Table 4.2-A.
- (g) A plan to retrofit all flocculant dispensing stations to ensure flocculant is administered at a controlled rate and that the Company can identify flocculant dosage and quantity. Retrofitting requires either installing either automated flocculant dosing stations or inflow measurement, turbidity/TSS measurement, and flocculant flow measurement devices used solely in conjunction with the appropriate flocculant dosing procedure developed by the manufacturer. All new flocculant stations shall be equipped with the

proper flocculant controls before a Pond is put into service.

- (h) A schedule to routinely dredge sediment accumulation in Ponds when pond water depth is less than 1 metre to ensure each Pond has sufficient capacity and retention to treat mine wastewater. The Company shall evaluate sediment accumulation in each pond on a **monthly** basis and after the Mine experiences a "storm event" as defined in the Approval.
  - (i) A storm event management plan that outlines how the Company will minimize unnecessary pumping of wastewater to Ponds and which outlines recirculation options. Each Pond affected by the storm event shall be evaluated for its ability to effectively treat wastewater within Approval discharge limits. This plan shall include how maintenance and dredging activities at each Pond will be prioritized and completed within one week of a storm event.
  - (j) A plan to actively pump down Pond levels when water quality meets the Approval's discharge limits in order to maintain a freeboard of 60 centimeters from the height of the water to the discharge outlet.
3. The Plan shall include a schedule of implementation for each requirement set out in paragraph 2 above.
4. The Company shall implement the work set out in the Plan in accordance with the schedule of implementation as approved by the Director.
5. The Company shall submit a written monthly status report (the "Status Report") starting 30 days after the schedule of implementation for the Plan has been approved by the Director, and every 30 days thereafter, until advised otherwise by the Director in writing. Each Status Report shall include at a minimum:
- (a) a detailed summary on the progress of the work undertaken in the previous 30 days including the monitoring data and inspection reports required under paragraph 2 of this Order; and
  - (b) a detailed work plan for the next 30 days.

DATED at the City of Spruce Grove in the Province of Alberta, this 14<sup>th</sup> day of March 2014.

<Original signed by>

  
Faye Hutchings  
Acting Compliance Manager  
Upper Athabasca Region

**Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.**

**Notwithstanding the above requirements, the Party shall obtain all necessary approvals.**



**ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT**

**BEING CHAPTER E-12 R.S.A. 2000 (the "Act")**

**ENFORCEMENT ORDER NO. EO-2014/02-UAR**

Coal Valley Resources Inc.  
2900, 10180 - 101 Street  
Edmonton Alberta T5J 3V5

(the "Company")

WHEREAS Enforcement Order No. EO-2014-02-UAR (the "Enforcement Order") was issued to the Company on March 14, 2014;

WHEREAS the Company requires further time to provide the written plan for mine wastewater management as required by the Enforcement Order;

WHEREAS section 212(1)(a) of the *Act* states that the Director may amend a term or condition of a enforcement order;

THEREFORE, I, Faye Hutchings, Director, pursuant to section 212(1)(a) of the *Act*, DO HEREBY ORDER:

1. Substitute June 30, 2014 for April 30, 2014 in clause 1.

DATED at the City of Edmonton in the Province of Alberta, this 21<sup>st</sup> day of March 2014.

<Original signed by>

Faye Hutchings  
Acting Compliance Manager  
Upper Athabasca Region

Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party shall obtain all necessary approvals.



---

**ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT**

**BEING CHAPTER E-12 R.S.A. 2000 (the "Act")**

**Amendment No. 2**

**ENFORCEMENT ORDER NO. EO-2014/02-UAR**

Coal Valley Resources Inc.  
2900, 10180 - 101 Street  
Edmonton Alberta T5J 3V5  
(the "Company")

WHEREAS the Company was issued Enforcement Order No. EO-2014-02-UAR (the "Enforcement Order") on March 14, 2014;

WHEREAS the Enforcement Order was amended on March 21, 2014 (Amendment No.1);

WHEREAS it was clarified that the date for providing the written plan for mine wastewater management as required by clause 1 of the Enforcement Order should be April 30, 2014;

WHEREAS the Company requires an extension of time relating to the submission of engineering drawings under clause 2(a) of the Enforcement Order;

WHEREAS section 212(1)(a) of the *Act* states that the Director may amend a term or condition of a enforcement order;

THEREFORE, I, Faye Hutchings, Director, pursuant to section 212(1)(a) of the *Act*, DO HEREBY ORDER:

1. Substitute **April 30, 2014** for **June 30, 2014** in clause 1.
2. Add the following after clause 2(a): **to be provided by June 30, 2014.**

DATED at the City of Spruce Grove in the Province of Alberta, this 26<sup>th</sup> day of March 2014.

<Original signed by>

---

Faye Hutchings  
Acting Compliance Manager  
Upper Athabasca Region

**Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.**

**Notwithstanding the above requirements, the Party shall obtain all necessary approvals.**