

**FORM 10**  
[RULE 3.25]

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COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

BLACK EAGLE MINING CORPORATION

DEFENDANT

HIS MAJESTY THE KING IN RIGHT OF ALBERTA and HIS MAJESTY THE KING IN RIGHT OF ALBERTA as represented by the MINISTER OF ENERGY

DOCUMENT

**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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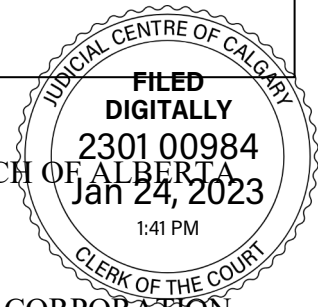
Fax No.: (403) 265-7219

Client File No.: 094634.00001

**NOTICE TO DEFENDANT:**

You are being sued. You are a defendant.

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



**Statement of facts relied on:**

**Overview**

1. Black Eagle Mining Corporation ("**BEM**") brings this claim for damages against His Majesty the King in right of Alberta ("**Alberta**") to recover damages arising from the constructive taking of BEM's coal leases (the "**BEM Coal Leases**"). BEM also brings claims for damages in private nuisance and unjust enrichment.
2. BEM acquired the coal lease applications that eventually became the BEM Coal Leases (the "**Coal Lease Applications**") in or around 2011 for the purpose of developing a metallurgical (steel-making) coal project, the Blackstone Coking Coal Project (the "**Blackstone Project**").
3. But for the constructive taking by Alberta, the value of the Blackstone Project would have exceeded \$1.75 billion. In addition, to date, BEM has incurred approximately \$20 million in costs to explore and develop the BEM Leases and the Blackstone Project.
4. At the time BEM acquired the Coal Lease Applications, Alberta's existing policy on coal exploration and development (the "**1976 Coal Policy**") did not prohibit coal exploration and development where the BEM Coal Leases are located. Further, established regulatory guidance, land-use planning, and representatives of Alberta's government all allowed and in fact encouraged exploration in support of coal development in the lands underlying the BEM Coal Leases.
5. In 2020, Alberta rescinded the 1976 Coal Policy, and clarified that development on lands that include the BEM Coal Leases would be subject to normal regulatory processes.
6. In February 2021, Alberta reversed course and reinstated the 1976 Coal Policy.
7. In March 2022, Alberta imposed a new, indefinite moratorium on coal exploration and development on lands including those which are the subject of the BEM Coal Leases (the "**Indefinite Moratorium**").

8. As a result of the Indefinite Moratorium BEM cannot proceed with the Blackstone Project. More fundamentally, Alberta has eliminated all reasonable uses of the BEM Coal Leases for purposes of further developing a metallurgical coal project and otherwise.
9. The effect of Alberta's actions has been, among other things, to:
  - (a) deprive BEM of the value of the BEM Coal Leases and Blackstone Project, and all reasonable uses of the BEM Coal Leases; and
  - (b) deprive BEM of the benefit of all costs and expenses incurred to date in relation to the exploration and development of the BEM Coal Leases.
10. Notwithstanding Alberta's immediate, indefinite, and complete ban on coal exploration and development, Alberta has neither compensated nor offered to compensate BEM.
11. As a result, BEM seeks damages against Alberta for constructive taking in the amount of approximately \$1.75 billion or, further or in the alternative, damages caused by Alberta's private nuisance and to recover the extent of Alberta's unjust enrichment.

### **Black Eagle Mining Corporation**

12. BEM is a privately held exploration and development company with interests in metallurgical coal, an essential component of the steel-making process. BEM is registered under the British Columbia *Business Corporations Act* with registered offices in Vancouver.

### **Background**

#### *The BEM Coal Leases*

13. In or around 2011, BEM acquired the Coal Lease Applications from Alberta. The 16 contiguous leases subject of the Coal Lease Applications cover approximately 16,000 hectares of Crown lands in west central Alberta in Clearwater County and are located

approximately 50 km west of Caroline.<sup>1</sup> A map outlining the locations of the Coal Lease Applications is attached hereto as Appendix "A".

14. Other industrial activities take place on and around the lands that are the subject of the BEM Coal Leases, including oil and gas operations and commercial timber operations.
15. In 2020, following Alberta's rescission of the 1976 Coal Policy, Alberta converted 9 of the Coal Lease Applications into the BEM Coal Leases.<sup>2</sup>
16. The BEM Coal Leases are for a term of 15 years and grant BEM the exclusive right to win, work, and recover coal, and the right to remove any coal recovered, in exchange for, among other things, annual rental payments in the current amount of \$62,376.

#### *The Blackstone Project*

17. The Blackstone Project consists of the Coal Lease Applications and BEM Coal Leases.
18. The Blackstone Project has an estimated 175 million tonnes of metallurgical coal, with an exploration target of 330 to 580 million tonnes. Developing the Blackstone Project would have created around 500 direct and 3,500 indirect jobs and provided over approximately US\$130 million in royalties per year for at least 25 years.
19. The Blackstone Project has a mine life of at least 25 years and possibly of over 50 years.

#### *The 1976 Coal Policy*

20. The BEM Coal Leases are located entirely on lands known as the "**Eastern Slopes**" (a map of which is attached hereto as Appendix "B"). The Eastern Slopes are an area in western Alberta described in the Alberta Ministry of Energy's 1976 policy document "[a] Coal Development Policy for Alberta" (the "1976 Coal Policy", defined above), which became effective on June 15, 1976. Alberta adopted the 1976 Coal Policy to encourage and describe Alberta's then policy on coal exploration and development. However, the 1976 Coal Policy

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<sup>1</sup> Specifically, Lease Application Nos. A13 060410701, A13 060410702, A13 060410703, A13 060410704, A13 060410705, A13 060410706, A13 060410707, A13 120071301, A13 120071302, A13 120071303, A13 120071304, A13 120071305, A13 120071306, A13 120071307, A13 120256001, A13 120282501.

<sup>2</sup> Specifically, BEM holds Coal Lease Nos. 1320100007, 1320100008, 1320100009, 1320100010, 1320100011, 1320100012, 1320100013, 1320100014, and 1320100015.

was not enacted as a legislative tool and did not have the force of law or create legally binding restrictions.

21. Among other things, the 1976 Coal Policy classified lands in Alberta into categories 1 through 4 (the "**Land Categories**"), with a distinct level of restriction on coal exploration and development applying to each category as a matter of then government policy.
22. Pursuant to the 1976 Coal Policy, the BEM Coal Leases fall entirely within category 2, which is defined in Article 3.13 of the 1976 Coal Policy as lands in the Rocky Mountains and Foothills "in which limited exploration is desirable and may be permitted under strict control but in which commercial development by surface mining will not normally be considered at the present time". Regarding new dispositions on category 2 lands, the 1976 Coal Policy provides that applications for leases will be accepted where exploration is approved, and leases will be issued where development is approved. Accordingly, as a matter of policy, the 1976 Coal Policy permitted exploration and development on category 2 lands (as at 1976).
23. The 1976 Coal Policy also describes government policy with respect to purchasing rights affected by the Land Categories, stating that, among other things, holders of Crown leases affected by the restrictions imposed by category 2 may sell them back to Alberta for a sum commensurate with expenditures made by the leaseholder, adjusted to a current dollar basis plus interest. Alternatively, leaseholders could continue their leases with option to renew.

*Alberta Represented that Development was Available on Category 2 Lands*

24. Notwithstanding the policy-based limitations on commercial development of category 2 lands in the 1976 Coal Policy, Alberta, its representatives and statutory decision-makers have represented since at least 1983 that each application for the right to explore, lease, or develop coal on category 2 lands will be considered on its own merits.
25. Further, since at least May 2016, Alberta, its representatives, and statutory decision-makers have represented that exploration and commercial development on category 2 lands was available and any application for coal exploration and development on category 2 lands would follow the normal regulatory assessment processes.

26. Moreover, since at least May 2016, Alberta and its representatives have actively encouraged coal mining companies to invest, explore, and develop in Alberta's metallurgical coal resources, much of which are on category 2 lands.
27. In particular, since late 2019, BEM's parent company, Valory Resources Inc. ("**Valory**"), on behalf on BEM, has met with Alberta, its representatives, and statutory decision-makers who encouraged Valory, through BEM, to invest in the Blackstone Project, provided guidance on policy matters, and processed various applications related to exploration. At no point during these discussions did anyone indicate to Valory that Alberta changed its view on developing metallurgical (steel-making) coal resources on category 2 lands.
28. Based on the understanding that metallurgical coal development was permitted on category 2 lands, BEM took steps and incurred significant costs to acquire the BEM Coal Leases and advance the Blackstone Project.

*Alberta Rescinded the 1976 Coal Policy*

29. On May 15, 2020, Alberta advised the public that it had rescinded the 1976 Coal Policy, which rescission took effect on June 1, 2020.
30. By way of explanation, Alberta advised that the Land Categories were the only remaining mechanisms from the 1976 Coal Policy and were no longer required to effectively manage Crown coal leases or the location of exploration and development activities. Alberta cited decades of improved policy, planning, and regulatory processes which made the 1976 Coal Policy unnecessary.
31. The rescission of the 1976 Coal Policy removed all policy-based limitations on coal exploration and development on category 2 lands.
32. Following its decision to rescind the 1976 Coal Policy, Alberta offered a right of first refusal to all existing coal lease applicants to acquire leases on category 2 lands for which they had outstanding applications. BEM exercised this right and was awarded the BEM Coal Leases.

*BEM Explored and Developed the BEM Coal Leases*

33. Based on Alberta's representations that exploration and development was available on category 2 lands, BEM took steps and incurred costs to develop the BEM Coal Leases and the Blackstone Project.
34. From 2011 to 2019, BEM applied for multiple Coal Exploration Permits and Licences ("CEPs") for the purposes of exploring the BEM Coal Leases. The CEPs granted by Alberta Environment and Sustainable Resource Development, and later by the Alberta Energy Regulator (the "AER") allowed BEM to conduct exploration work on public lands, including building temporary access roads and drilling at designated locations. The CEPs granted include:
  - (a) CEP120005, approved August 2, 2012;
  - (b) CEP130006, approved August 12, 2013
  - (c) Exploration Licence No. 6336, approved September 15, 2014;
  - (d) CEP190023, approved October 3, 2019; and
  - (e) Deep Drilling Permit No. C 2020-1, approved February 26, 2020.
35. Prior to and following the issuance of the CEPs, BEM engaged in and expended approximately \$20 million on exploration programs, fieldwork, studies, and other development activities for the purpose of developing the BEM Coal Leases and Blackstone Project.
36. Through the above exploration programs, studies, and development work, BEM determined that commercial development of the BEM Coal Leases was viable.

*Alberta Changed its Position by Reinstating the 1976 Coal Policy*

37. On February 8, 2021, 8 months after it rescinded the 1976 Coal Policy, Alberta changed its position and reinstated the 1976 Coal Policy in its entirety, including the Land Categories.

38. In conjunction with the reinstatement of the 1976 Coal Policy, the Minister of Energy issued Ministerial Order 054/2021, a "Coal Policy Direction" that required the AER to, among other things: (i) consider the Land Categories when assessing an application for an approval in respect of coal exploration or development; (ii) confirm that any proposed exploration for, or development of, coal on category 2 lands does not involve mountain top removal; and, (iii) not issue any new approvals for coal exploration on category 2 lands.
39. On the same date, Alberta advised the public that: (i) it had made a mistake in rescinding the 1976 Coal Policy; (ii) all future coal development and coal lease sales on category 2 lands would be halted indefinitely pending consultations on a new modern coal policy; and, (iii) it did not intend to remove approvals already granted by the AER.
40. Further, Alberta advised the public that the 1976 Coal Policy did not preclude coal lease exploration on category 2 lands and that, as of February 8, 2021, six projects were being considered for potential development and exploration, four of which began before the 1976 Coal Policy was rescinded. Accordingly, reinstating the 1976 Coal Policy would not necessarily end exploration.

*Alberta Established the Coal Policy Committee*

41. On February 23, 2021, the Minister of Energy announced forthcoming public consultations with Albertans on a modern coal policy.
42. Terms of Reference for a Coal Policy Committee were introduced six weeks later, on March 29, 2021. The Coal Policy Committee's mandate was to conduct public engagement and prepare a report for the Minister that addressed the management of coal resources and provided recommendations to clarify the nature, scope, and intent of the restrictions under the 1976 Coal Policy.

*Alberta Issued the Coal Exploration Direction*

43. On April 23, 2021, while public engagement remained ongoing, the Minister of Energy issued Ministerial Order 093/2021, making the "Coal Exploration Direction" directing the



AER to suspend or pause all approvals for coal exploration on category 2 lands until December 31, 2021, or such other date as the Minister may specify in writing to the AER.

44. On the same date, the Minister announced that all coal exploration projects on category 2 lands were halted effective immediately with the suspension to stay in place at minimum until public engagement is completed, at which point the results of public engagement will supposedly dictate the next steps.
45. The effect of the Minister's issuance of Ministerial Order 093/2021 and announcement was that all CEPs issued to BEM and all associated permits, authorizations, licenses, and approvals (together the "**Approvals**") were suspended, effective immediately, until December 31, 2021.

*Alberta Continued its Indefinite Suspension of Exploration and Development*

46. On November 10, 2021, the Minister of Energy further directed the AER to continue to suspend all approvals for coal exploration on category 2 lands until further notice.

*Alberta Imposed an Indefinite Moratorium*

47. On December 29, 2021, the Minister of Energy announced that Alberta had received the Coal Policy Committee's reports. Initially, the reports were not released publicly.
48. On March 2, 2022, the Minister of Energy issued Ministerial Order 002/2022, making the "**Coal Development Direction**" directing the AER to continue to suspend all approvals for coal exploration on category 2 lands in the Eastern Slopes and to refuse new applications for coal exploration until further notice by the Minister of Energy and/or Minister of Environment and Parks.
49. On March 4, 2022, Alberta announced that:
  - (a) effective immediately, it was extending restrictions on coal exploration and development by suspending all coal-related exploration and development activity in the Eastern Slopes (including category 2 lands);

- (b) the Coal Development Direction (and the reinstated 1976 Coal Policy) would remain legally enforceable and in place until direction on coal activity and the Land Categories are embedded into updated land use plans; and,
- (c) coal-related exploration and development in the Eastern Slopes would remain prohibited unless Alberta's updated land use plans said otherwise.

50. Accordingly, the Coal Development Direction imposed a legally enforceable, Indefinite Moratorium on coal exploration and development on category 2 lands in the Eastern Slopes, including the BEM Coal Leases.

*Alberta Confirmed the Indefinite Moratorium*

51. On March 8, 2022, Alberta provided policy guidance on coal tenure, advising that: (i) Alberta will not accept any new coal lease applications in category 2 lands; and, (ii) existing coal leases will remain in place and lessees are required to continue paying annual rentals, regardless of the new ban on coal exploration and development in category 2 lands.

*The Reinstatement of the 1976 Coal Policy and Indefinite Moratorium Halted Development*

52. BEM suspended all on-site exploration and development activities on the BEM Coal Leases following the reinstatement of the 1976 Coal Policy. Later, when Alberta imposed the Indefinite Moratorium, suspending all coal-related exploration and development activity on category 2 lands, BEM stopped all work on the BEM Coal Leases and the Blackstone Project, apart from site care and maintenance.

**Alberta is Liable to BEM for Damages**

53. By imposing the Indefinite Moratorium on all coal exploration and development activity on the BEM Coal Leases and thereby precluding the commercial development of the Blackstone Project or any reasonable use of the BEM Coal Leases, Alberta is liable to compensate BEM for its constructive taking of the BEM Leases. Alberta is also liable to BEM for unjust enrichment and private nuisance.

*Constructive Taking*

54. Through the issuance of the Coal Policy Direction, the Coal Exploration Direction, and the Coal Development Direction (the "**Ministerial Directions**"), and the imposition of the Indefinite Moratorium, Alberta has: (i) acquired a beneficial interest in or flowing from the BEM Coal Leases; and, (ii) removed all reasonable uses of the BEM Coal Leases by denying BEM the opportunity to continue the development of the Blackstone Project and realize on those property rights.
55. Alberta has not compensated or offered to compensate BEM for such constructive taking despite having confirmed its commitment to repurchase leases in the reinstated 1976 Coal Policy.
56. BEM is entitled to compensation for the loss of value of the BEM Coal Leases as a result of Alberta's constructive taking or such other amount of damages or compensation as the Court deems just and appropriate in the circumstances.
57. If not for the Indefinite Moratorium, BEM estimates the value of the Blackstone Project would be \$1.75 billion.
58. Further or in the alternative, BEM is entitled to compensation for the costs that it incurred to explore and develop the BEM Coal Leases up to the suspension of all on-site exploration and development activities pursuant to the reinstatement of the 1976 Coal Policy.

*Unjust Enrichment*

59. In the alternative, Alberta has been unjustly enriched by receiving the benefit of, among other things, lease rental payments and environmental monitoring and maintenance activities on the BEM Coal Leases.
60. The benefits Alberta received were premised on BEM's continued ability to develop the BEM Coal Leases. The Ministerial Directions and Indefinite Moratorium removed that ability. Consequently, BEM, as payor and proponent of the Blackstone Project, has suffered a corresponding deprivation.

61. There is no juristic reason for Alberta's prior or continued enrichment in retaining these benefits.

*Private Nuisance*

62. Further, or in the alternative, Alberta's Ministerial Directions and the Indefinite Moratorium constitute a substantial and unreasonable interference with BEM's use, enjoyment of, access to, and exercise of their proprietary rights by preventing it from exploring, and developing the BEM Coal Leases and developing the Blackstone Project.
63. This interference is non-trivial as it completely renders BEM incapable of using or exercising its proprietary rights under the BEM Coal Leases.
64. Alberta's substantial and unreasonable interference with BEM's proprietary rights under the BEM Coal Leases has caused BEM to suffer and continue to suffer significant harm for which Alberta is liable to compensate it.

**Damages Suffered by the Plaintiff**

65. As a result of Alberta's conduct, BEM has suffered, and continues to suffer, losses and damages, including:
  - (a) the loss of post-tax net present value of the BEM Coal Leases and Blackstone Project;
  - (b) the costs incurred to explore and develop the BEM Coal Leases, plus the value of future and contingent remediation costs;
  - (c) the costs of lease rental payments made to Alberta subsequent to the removal of BEM's ability to develop the BEM Coal Leases;
  - (d) the costs of environmental monitoring and maintenance activities subsequent to the removal of BEM's ability to develop the BEM Coal Leases; and
  - (e) losses due to the delay in BEM's ability to develop the BEM Coal Leases and the Blackstone Project.

**Remedy sought:**

66. BEM seeks against Alberta:
- (a) damages in the amount of \$1.75 billion to BEM for the constructive taking the BEM Coal Leases, or such other amount to be proved at trial;
  - (b) in the alternative, restitution in the amount of approximately \$3.7 million plus future and contingent remediation costs to be proved at trial;
  - (c) in the further alternative, damages to Valory and BEM for delaying their ability to develop the BEM Coal Leases and the Blackstone Project;
  - (d) interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1, as amended;
  - (e) the costs of this action; and
  - (f) such further and other relief as this Honourable Court deems just.

**NOTICE TO THE DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

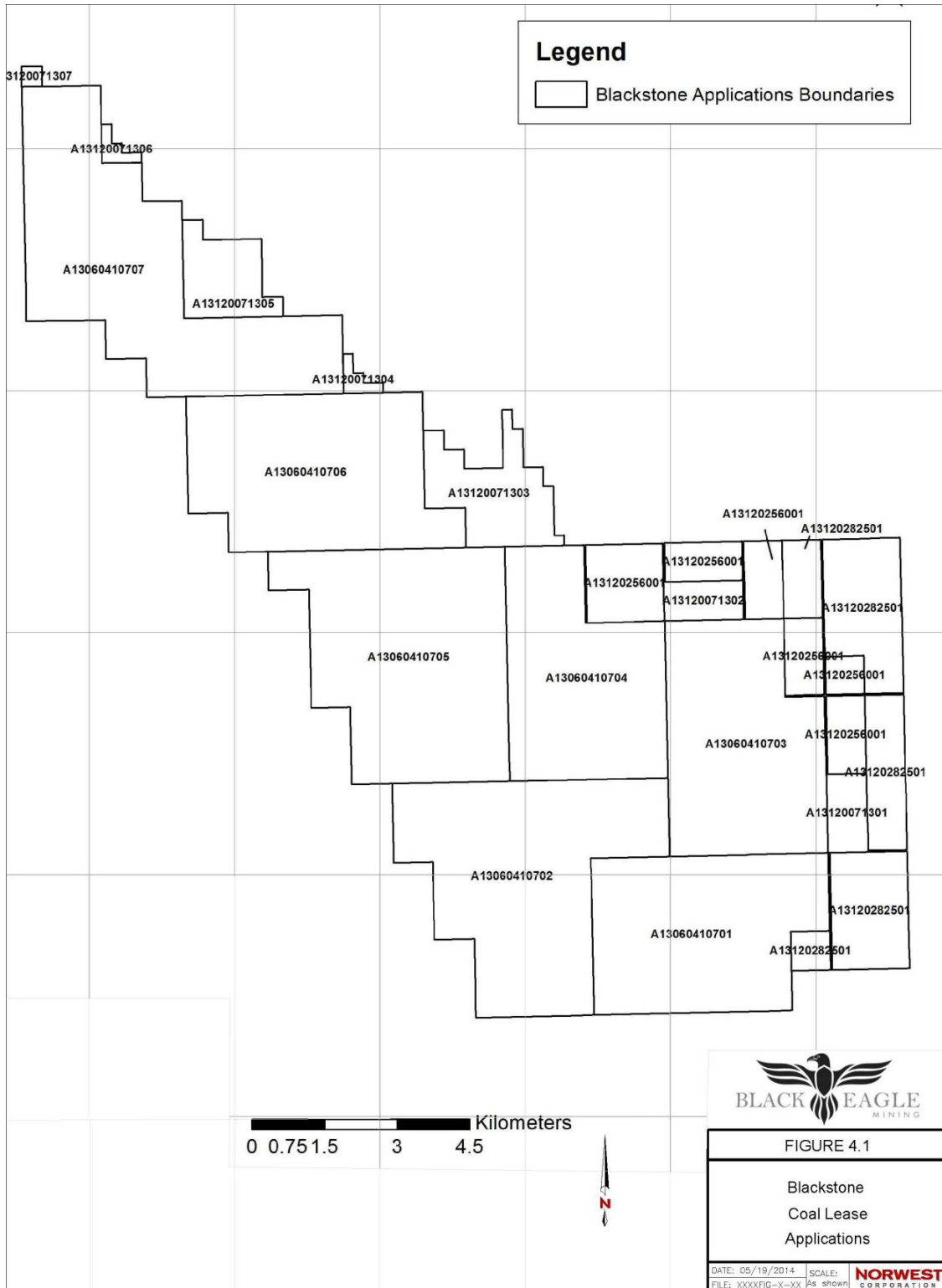
2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

**APPENDIX "A"**



# APPENDIX "B"

