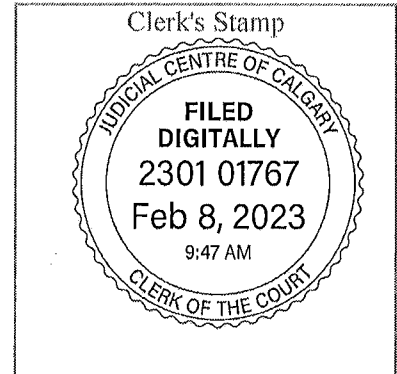


FORM 10
[RULE 3.25]

COURT FILE NO. 2301-
COURT COURT OF KING'S BENCH OF
ALBERTA
JUDICIAL CENTRE CALGARY



PLAINTIFF MONTEM RESOURCES ALBERTA OPERATIONS LTD.
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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Client File No.: 092514.00003

NOTICE TO DEFENDANT(S):

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. Montem Resources Alberta Operations Ltd. ("**Montem**") brings this claim for damages against His Majesty the King in right of Alberta ("**Alberta**") to recover damages arising from the constructive taking of Montem's freehold mineral rights (the "Freehold Mineral Rights", defined below) and coal leases (collectively, the "**Montem Properties**"). Montem also brings claims for damages in private nuisance and unjust enrichment.
2. In 2016, Montem acquired the Montem Properties for the purpose of developing several metallurgical (steel-making) coal projects. The most significant project encompasses approximately 10,000 hectares, includes three historical underground coal mines and two historical open-cut coal mines, and is located in an area of longstanding and widespread coal development (the "**Chinook Project**").
3. In addition to the Chinook Project, Montem holds the coal rights to three yet-to-be-developed properties, the 4-Stack Project, the Oldman Project, and the Isola Project (the "**Greenfield Projects**", collectively with the Chinook Project, the "**Montem Projects**").
4. But for the constructive taking by Alberta described herein, the pre-tax net present value of the Montem Projects would have exceeded \$1.76 billion. In addition, to date, Montem has incurred approximately \$15 million to invest in and take steps to explore and develop the Montem Properties and the Montem Projects.
5. At the time Montem acquired the Montem Properties, Alberta's existing policy on coal exploration and development (the "**1976 Coal Policy**") did not prohibit coal exploration and development where the Montem Properties 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 on lands that include the Montem Properties.

6. On June 1, 2020, Alberta rescinded the 1976 Coal Policy, and clarified that development on lands that include the Montem Properties would be subject to normal regulatory processes.
7. Following its decision to rescind the 1976 Coal Policy, Alberta invited applications for coal leases on lands where the 1976 Coal Policy had restricted the issuance of coal leases. Up to the rescission of the 1976 Coal Policy, Alberta had been holding any coal lease applications on those lands in the applications stage. As a result of Alberta's invitation, Montem submitted 13 coal lease applications for lands located in both formerly restricted areas (Category 2 lands, defined below) and areas on which coal development had not been restricted (Category 4 lands, defined below), all adjoining to the existing Chinook and Greenfield Projects. In December 2020, Montem was granted 10 new coal leases (the "**2020 Leases**").
8. On January 18, 2021, the Alberta cancelled the 2020 Leases, citing concerns raised by stakeholders.
9. On February 8, 2021, Alberta reversed course and reinstated the 1976 Coal Policy. As the majority of the Chinook Project is on lands where no restrictions are imposed by the 1976 Coal Policy, the reinstatement had a minimal impact on Montem's continuing development of it.
10. At the same time, Alberta announced an immediate ban on mountain top mining on lands including the Montem Properties (the "**Prohibition**"). However, Alberta did not, and has not, defined "mountain top mining", or which activities, operations, or mines are subject to the Prohibition. Due to the lack of a definition, it is unclear whether the Prohibition would preclude metallurgical coal development of the Montem Properties.
11. On March 4, 2022, Alberta imposed a new, indefinite moratorium on coal exploration and development on lands including the Montem Properties (the "**Indefinite Moratorium**"). The Indefinite Moratorium clearly prohibited any further exploration or development of the Montem Projects, including the Chinook Project.

12. As a result of the Indefinite Moratorium—and, possibly, as a result of the Prohibition—Montem cannot proceed with the Montem Projects. More fundamentally, Alberta has eliminated all reasonable uses of the Montem Properties for purposes of further developing a metallurgical coal project and otherwise. Furthermore, Alberta has prevented Montem from accessing a significant amount of its Freehold Mineral Rights.
13. The effect of Alberta's actions has been, among other things, to:
 - (a) deprive Montem of the value of the Montem Properties and Montem Projects, and all reasonable uses of the Montem Properties
 - (b) deprive Montem of access to its Freehold Mineral Rights; and
 - (c) deprive Montem of the benefit of all costs and expenses incurred to date in relation to the exploration and development of the Montem Properties.
14. Notwithstanding Alberta's immediate, indefinite, and complete ban on coal exploration and development, Alberta has neither compensated nor offered to compensate Montem.
15. As a result, Montem seeks damages against Alberta for constructive taking in the amount of approximately \$1.76 billion or, further or in the alternative, damages caused by Alberta's private nuisance and to recover the extent of Alberta's unjust enrichment.

Montem Resources Alberta Operations Ltd.

16. Montem is an exploration and development company with interests in metallurgical coal, an essential component of the steel-making process. Montem is registered under the Alberta *Business Corporations Act* with registered offices in Edmonton.

Background

The Montem Properties

17. Montem holds rights to the following assets comprising the Montem Properties:

- (a) a 100% fee simple interest in all mines and minerals (including coal) and the right to work the same, covering approximately 3,421 hectares (the "**Freehold Mineral Rights**");
- (b) 80 coal leases covering approximately 14,150 hectares of Crown lands in the Crowsnest Pass region of Alberta (the "**Coal Leases**"). The oldest of the Coal Leases was granted over 100 years ago, and all were in existence prior to the 1976 Coal Policy coming into effect. Each of the Coal Leases was granted on the basis of renewable 15 year terms and granted Montem 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 \$49,524.54. Fourteen of the Coal Leases have reached the end of their current 15 year terms. Alberta has accepted the renewal payments for these 14 Coal Leases and also continues to accept the annual rental payments for them; and
- (c) Montem formerly held the rights to the 2020 Leases.

A map outlining the locations of the Montem Properties is attached hereto as Appendix "A".

The 1976 Coal Policy

- 18. The 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 was not enacted as a legislative tool and did not have the force of law or create legally binding restrictions.
- 19. 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.

20. Category 4 lands are defined in Article 3.13 of the 1976 Coal Policy as lands in the Province not included in the other three categories "in which exploration may be permitted under appropriate control and in which surface or underground mining or in-situ operations may be considered subject to proper assurances respecting protection of the environment and reclamation of disturbed lands". Regarding new dispositions on Category 4 lands, the 1976 Coal Policy did not impose any new restrictions on exploration and development. Accordingly, as a matter of policy, the 1976 Coal Policy permitted exploration and development on Category 4 lands (as at 1976). As described below, the Chinook Project is primarily located on Category 4 lands.
21. Category 2 lands are 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). As described below, the Greenfield Projects are wholly located on Category 2 lands.
22. The 1976 Coal Policy also describes government policy with respect to purchasing rights affected by the Land Categories, stating that, among other things:
 - (a) 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; and
 - (b) where freehold rights to coal and leases of such rights are affected by the restrictions imposed by Category 2, Alberta is prepared to acquire any lessee rights on the same basis as for lessees of Crown rights.

(the "**Fair Value Commitment**").

The Montem Projects

23. The Montem Projects are made up of four distinct projects: Chinook, 4-Stack, Oldman, and Isola (the latter three being the Greenfield Projects, defined above).
24. The Chinook Project covers an area of approximately 9,770 hectares, is comprised of roughly 3,421 hectares of freehold and 6,349 hectares of leasehold mineral rights, and is located almost entirely on Category 4 lands, with small portions surrounding the township of Coleman located on Category 1 and Category 2 lands. A scoping study has been completed at the Chinook Project, results of which indicate an economically and technically viable project with upside.
25. The Greenfield Projects are comprised of leasehold interests covering an area of approximately 7,801 hectares, and are located wholly on Category 2 lands. These projects all have the potential to host significant steelmaking coal resources, but have not yet been developed.
26. The Chinook Project has an estimated 172 million tonnes of metallurgical coal resources, with an additional exploration target of 125 to 450 million tonnes. The Greenfield Projects collectively have an additional exploration target estimate of 340 to 1,025 million tonnes. The Chinook Project has an estimated mine life of 35 years. Developing the Montem Projects would have created approximately 450 permanent skilled positions for more than 20 years and generated taxes and royalties payable to local municipalities and to Alberta.

Alberta Represented that Development was Available on Category 2 and 4 Lands

27. The 1976 Coal Policy imposed no restrictions on commercial development of Category 4 lands and confirms that applications for the right to explore, lease, or develop coal on Category 4 are to be considered under normal approval procedures.
28. 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 will be considered on its own merits.

29. 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.
30. 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 and 4 lands.
31. Based on the understanding that metallurgical coal development was permitted on Category 2 and 4 lands, Montem took steps and incurred significant costs to acquire the Montem Properties and advance the Montem Projects. In particular, when Montem purchased the Chinook Project, the majority of which is located on Category 4 lands, there were no policy-based limitations on its development.

Alberta Rescinded the 1976 Coal Policy

32. On May 15, 2020, Alberta advised the public that it had rescinded the 1976 Coal Policy, which rescission took effect on June 1, 2020.
33. 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.
34. The rescission of the 1976 Coal Policy removed all policy-based limitations on coal exploration and development on Category 2 lands.

Montem Explored and Developed the Montem Properties

35. Based on Alberta's representations that exploration and development was available on Category 2 and would continue to be available on Category 4 lands, Montem took steps and incurred costs to develop the Montem Properties and the Montem Projects.

36. Since acquiring the Montem Properties, Montem applied for a Coal Exploration Program, a Deep Drilling Permit, two Licences to Temporarily Divert Water, and a Temporary Field Authorization (collectively, the "**Permits**") for the purposes of exploring the Chinook Property. The Permits granted by the Alberta Energy Regulator (the "**AER**") allowed Montem to conduct coal exploration work on the Chinook Project. The Permits granted are:
- (a) Coal Exploration Program 190006 (the "**CEP**");
 - (b) Deep Drilling Permit C 2020-3;
 - (c) Licenses to Temporarily Divert Water 00467081 and 00475308; and
 - (d) Temporary Field Authorization 203364.
37. In 2020, based on Alberta's statements that applications for coal leases in Category 2 lands will no longer be held at the applications stage, Montem reviewed the availability of leases surrounding and within the Montem properties and applied for the and received the 2020 Coal Leases. The 2020 Coal Leases adjoin or are located within the existing Chinook and Greenfield Projects, with five located on Category 2 lands, four located on Category 4 lands, and one located on both Category 2 land and Category 4 lands.
38. Prior to and following the issuance of the Permits, Montem engaged in and expended approximately \$15 million on exploration programs, fieldwork, studies, and other development activities for the purpose of developing the Montem Properties and the Montem Projects.
39. Through the above exploration programs, studies, and development work, Montem determined that commercial development of the Montem Properties was viable and highly attractive.

Alberta Cancelled the December 2020 Leases and Paused All Further Coal Lease Sales in Category 2 Lands

40. On January 18, 2021, the Minister of Energy announced Alberta's decision to cancel 11 leases from the December 2020 auction (10 of which were Montem's 2020 Leases, and four of which were entirely located on Category 4 lands) and pause all future coal lease sales in former Category 2 lands. As a result of Alberta's decision, the 2020 Leases were cancelled.
41. In the January 28, 2021 statement, the Minister of Energy reiterated Alberta's position that coal development remains an important part of the Western Canadian economy, that Alberta was committed to demonstrating that coal will only be developed responsibly under Alberta's modern regulatory standards and processes, and that the decision would have no impact on existing coal projects under regulatory review.

Alberta Changed its Position by Reinstating the 1976 Coal Policy and Imposing the Prohibition

42. 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 and the Fair Value Commitment. Additionally, Alberta imposed the Prohibition as a new, legally-binding ban on development on Category 2 lands. The Prohibition was not part of the 1976 Coal Policy.
43. 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.
44. 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.

45. 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.
46. Alberta also announced an immediate ban on "mountain top mining" and stated that "mountain top mining" will never be allowed in Alberta (the "Prohibition", defined above). In announcing the Prohibition, Alberta did not define "mountain top mining". However, several interpretations of the term would preclude metallurgical coal development of the Montem Properties.

Alberta Established the Coal Policy Committee

47. On February 23, 2021, the Minister of Energy announced forthcoming public consultations with Albertans on a modern coal policy.
48. 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

49. 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.
50. 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.

Alberta Continued its Indefinite Suspension of Exploration and Development

51. 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

52. 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.
53. 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.
54. Further, Ministerial Order 002/2022 directed the AER to suspended all approvals for coal exploration and development on Category 4 lands and to refuse new applications for coal exploration until further notice by the Minister of Energy and/or Minister of Environment and Parks, with the exception of lands subject to an advanced coal project or an active approval for a coal mine. While the Prohibition may have prohibited some development at the Chinook Project, the Indefinite Moratorium clearly prohibited any further exploration or development of the Montem Projects, including the Chinook Project and deprive Montem of its ability to access its Freehold Mineral Rights.
55. As a result of Ministerial Order 002/2022, the CEP was suspended. For the first time in the history of what is now the Chinook Project, coal exploration and development activities were prohibited on Category 4 lands.
56. On March 4, 2022, Alberta announced that:

- (a) effective immediately, it was extending, both temporally and spatially, restrictions on coal exploration and development by suspending all coal-related exploration and development activity in the Eastern Slopes;
- (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.

57. Accordingly, the Coal Development Direction imposed a legally enforceable, Indefinite Moratorium on coal exploration and development on Category 2 and 4 lands in the Eastern Slopes, including the Montem Properties.

Alberta Confirmed the Indefinite Moratorium

58. 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 and 4 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 and 4 lands.

The Reinstatement, Prohibition, and Indefinite Moratorium Halted Development

59. When Alberta imposed the Indefinite Moratorium, continuing the suspension of all coal-related exploration and development activity on Category 2 lands and newly imposing the suspension of Category 4 lands, Montem stopped all work on the impacted Montem Properties and the Montem Projects (the Chinook Project), apart from site care and maintenance.

Alberta is Liable to Montem for Damages

60. By imposing the Prohibition and Indefinite Moratorium on all coal exploration and development activity on the Montem Properties and thereby precluding the commercial

development of the Montem Projects or any reasonable use of the Montem Properties, as well as preventing Montem from accessing its Freehold Mineral Rights, Alberta is liable to compensate Montem for its constructive taking of the Montem Properties. Alberta is also liable to Montem for unjust enrichment and private nuisance.

Constructive Taking

61. 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 Prohibition and the Indefinite Moratorium, Alberta has: (i) acquired a beneficial interest in or flowing from the Montem Properties; and, (ii) removed all reasonable uses of the Montem Properties by denying Montem the opportunity to continue the development of the Montem Projects and realize on those property rights.
62. Alberta has not compensated or offered to compensate Montem for such constructive taking despite having confirmed its commitment to repurchase leases in the reinstated 1976 Coal Policy.
63. Montem is entitled to compensation for the loss of value of the Montem Properties 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.
64. If not for the Prohibition and Indefinite Moratorium, Montem estimates the pre-tax net present value of the Montem Projects would be at least \$1.76 billion.
65. Further or in the alternative, Montem is entitled to compensation for the costs that it incurred to explore and develop the Montem Properties up to the suspension of all on-site exploration and development activities pursuant to the Indefinite Moratorium.

Unjust Enrichment

66. 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 Montem Properties.

67. The benefits Alberta received were premised on Montem's continued ability to develop the Montem Properties. The Ministerial Directions, Prohibition and Indefinite Moratorium removed that ability. Consequently, Montem, as payor and proponent of the Montem Projects, has suffered a corresponding deprivation.
68. There is no juristic reason for Alberta's prior or continued enrichment in retaining these benefits.

Private Nuisance

69. Further, or in the alternative, Alberta's Ministerial Directions, the Prohibition and the Indefinite Moratorium constitute a substantial and unreasonable interference with Montem's use, enjoyment of, access to, and exercise of their proprietary rights by preventing it from exploring, and developing the Montem Properties and developing the Montem Projects.
70. This interference is non-trivial as it completely renders Montem incapable of using or exercising its proprietary rights under the Montem Properties.
71. Alberta's substantial and unreasonable interference with Montem's proprietary rights under the Montem Properties has caused Montem to suffer and continue to suffer significant harm for which Alberta is liable to compensate it.

Damages Suffered by the Plaintiff

72. As a result of Alberta's conduct, Montem has suffered, and continues to suffer, losses and damages, including:
 - (a) the loss of post-tax net present value of the Montem Properties and the Montem Projects;
 - (b) the costs incurred to explore and develop the Montem Properties, plus the value of future and contingent remediation costs;
 - (c) the costs of lease rental payments made to Alberta subsequent to the removal of Montem's ability to develop the Montem Properties;

- (d) the costs of environmental monitoring and maintenance activities subsequent to the removal of Montem's ability to develop the Montem Properties; and
- (e) losses due to the delay in Montem's ability to develop the Montem Properties and the Montem Projects.

Remedy sought:

73. Montem seeks against Alberta:

- (a) damages in the amount of \$1.76 billion to Montem for the constructive taking of the Montem Properties, or such other amount to be proved at trial;
- (b) in the alternative, restitution in the amount of approximately \$15 million plus future and contingent remediation costs to be proved at trial;
- (c) in the further alternative, damages to Montem for delaying their ability to develop the Montem Properties and the Montem Projects, in an amount to be proven at trial;
- (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

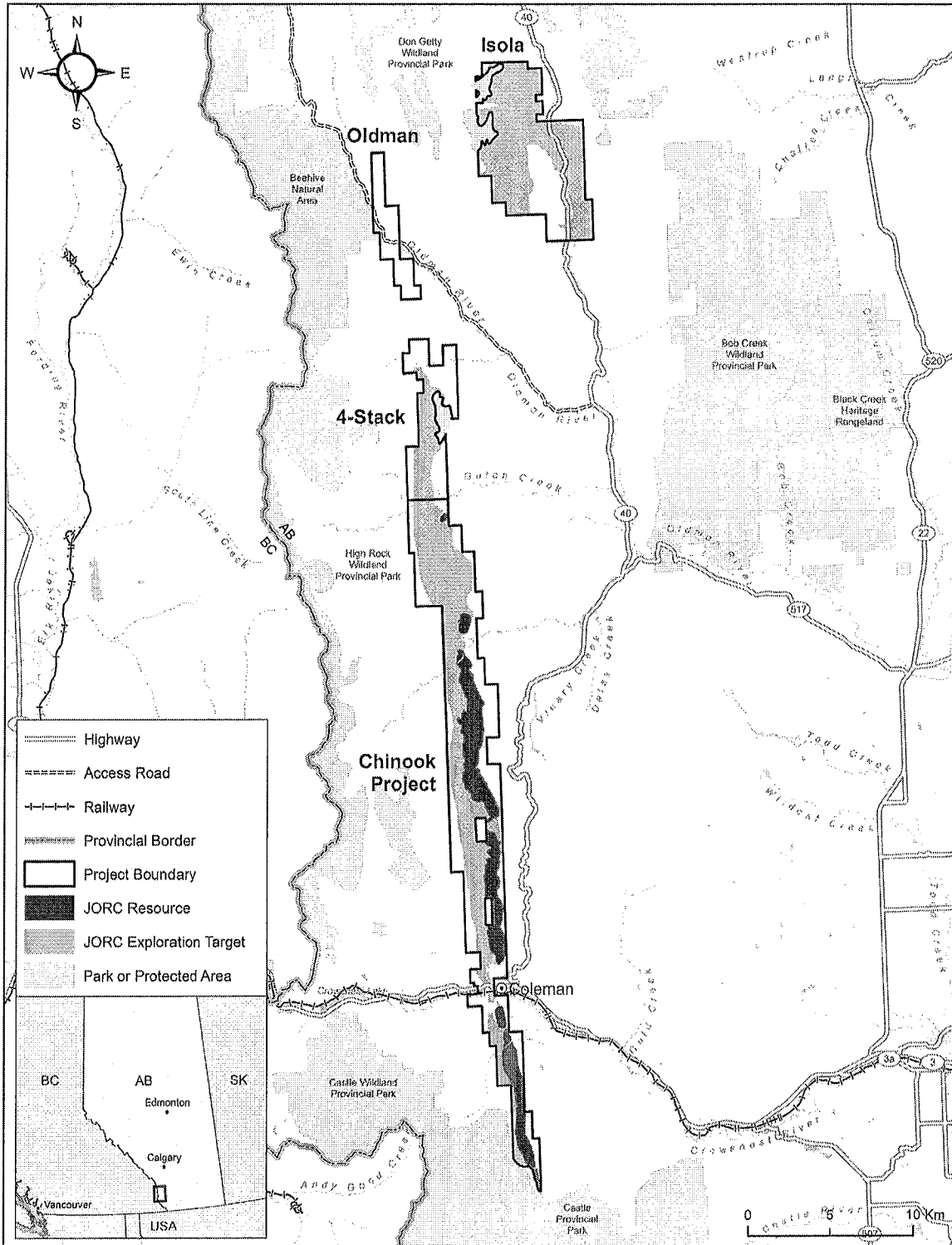
2 months if you are served outside Canada.

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"

