

**NOTICE OF INTENT TO SUBMIT
A CLAIM TO ARBITRATION
UNDER SECTION B OF CHAPTER 9 OF
THE COMPRENEHNSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC
PARTNERSHIP**

**HANCOCK PROSPECTING PTY LTD
AND
RIVERSDALE RESOURCES PTY LTD**

Investors

V.

THE GOVERNMENT OF CANADA

Respondent

Pursuant to Articles 9.19.1(a), 9.19.1(b), and 9.19.3 of the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (the "**Treaty**"), Hancock Prospecting Pty Ltd and Riversdale Resources Pty Ltd (the "**Investors**"), hereby serve this Notice of Intent to Submit a Claim to Arbitration ("**Notice of Intent**") for breach of Canada's obligations under the Treaty, on their own behalf and on behalf of their enterprise, Northback Holdings Corporation (the "**Enterprise**").

I. NAMES AND ADDRESSES OF THE PARTIES

1. The Investors are:

(a) Hancock Prospecting Pty Ltd ("**Hancock**")

Level 3 HPPL House
28-42 Ventnor Avenue
West Perth, WA 6005
Australia

(b) Riversdale Resources Pty Ltd ("**Riversdale**")

Level 3 HPPL House
28-42 Ventnor Avenue
West Perth, WA 6005
Australia

2. The Enterprise of the Investors is:

(c) Northback Holdings Corporation ("**Northback**")

1133 Melville Street
Suite 3500, The Stack
Vancouver, BC V6E 4E5
Canada

3. Northback is a British Columbia corporation that is extra-provincially registered in Alberta. Northback was previously called Benga Mining Limited ("**Benga**"). On July 1, 2023, Benga changed its name to Northback. For the sake of simplicity, Benga and Northback shall hereinafter be referred to as "Northback" throughout this Notice of Intent.

4. The Respondent is the Government of Canada ("**Canada**"), represented through:

Office of the Deputy Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario K1A 0H8
Canada

Office of the Assistant Deputy Attorney General of Canada
50 O'Connor Street, 5th Floor
Ottawa, Ontario K1A 0H8
Canada

II. PROVISIONS OF TREATY BREACHED BY CANADA

5. Canada has breached its obligations under Section A of Chapter 9 of the Treaty, including the following provisions:

- i) Article 9.6 (Minimum Standard of Treatment);
- ii) Article 9.8 (Expropriation and Compensation);
- iii) Articles 9.4.1 and 9.4.2 (National Treatment Standard); and
- iv) Articles 9.5.1 and 9.5.2 (Most-Favored-Nation Treatment).

III. LEGAL AND FACTUAL BASIS FOR THE CLAIMS

The Investors and the Enterprise

6. Hancock is a privately owned and diversified Australian company headquartered in Perth, Western Australia, with interests in *inter alia* iron ore, coal, petroleum, beef, and dairy, as well as mineral exploration and development around the world. Hancock is one of Australia's largest producers of iron ore and is Australia's second largest producer of beef.

7. Riversdale is an Australian mining company focused on developing metallurgical coal projects capable of supplying metallurgical coal to steel manufacturers around the world. Riversdale is a wholly-owned subsidiary of Hancock.
8. Northback is a corporation incorporated under the laws of British Columbia and extra-provincially registered in the Province of Alberta, with offices in Crowsnest Pass and Calgary, Alberta. Northback is a wholly-owned subsidiary of Riversdale.

Northback's Acquisition of Mineral Rights in Southwestern Alberta

9. The Crowsnest Pass region in the southwest of Alberta ("**Crowsnest Pass**") and the eastern slopes of the Rocky Mountains ("**Eastern Slopes**"), have a long history of coal mining, dating back to the early 1900s.
10. In or around 2013, Northback acquired mineral rights in Crowsnest Pass and the Eastern Slopes area of Alberta, with the intention of developing long-term metallurgical coal mining operations in the region. In particular, on or about August 29, 2013, Northback acquired assets:
 - (a) in or around the community of Frank, Alberta ("**Bellevue**");
 - (b) south and east of the town of Blairmore, Alberta ("**Adanac**");
 - (c) south and west of the town of Blairmore, Alberta ("**Lynx Creek**"); and
 - (d) seven kilometers north of the town of Blairmore, Alberta ("**Blairmore**");(collectively, the "**Northback Properties**").
11. As part of the transaction, Northback acquired freehold mineral rights in fee simple, freehold leased mineral rights, and Crown leased mineral rights for the Northback Properties (collectively, the "**Freehold Mineral Rights and Crown Leases**")

Northback's Plan for the Grassy Mountain Project

12. Northback acquired the foregoing rights with the intent of constructing and operating an open-pit metallurgical coal mine on the Blairmore property (the "**Grassy Mountain Project**" or the "**Project**").
13. Metallurgical coal is an essential input material for the steelmaking process. Currently, no commercially or economically viable substitute exists for metallurgical coal in steelmaking, nor is there likely to be one in the foreseeable future. Metallurgical coal is, therefore, a vital commodity, both domestically and internationally.
14. The Grassy Mountain Project would have been partially located on previously disturbed lands that were subject to surface mining activities and were not reclaimed. It was to be located on Treaty 7 lands and on what are commonly referred to as "Category 4" lands under Alberta's 1976 *Coal Development Policy for Alberta* (the "**1976 Coal Policy**").

Category 4 lands may be subject to exploration and commercial development under standard approval procedures for surface, in-situ, and underground mining.

15. Northback entered into confidential impact benefit or relationship agreements with all potentially affected Indigenous groups. Moreover, it obtained letters of support or non-objection from all of the Treaty 7 First Nations and Métis Nation of Alberta.
16. The Grassy Mountain Project would have produced an estimated 4.5 million tonnes of metallurgical coal per year for approximately 23 years. Developing the Grassy Mountain Project would have created approximately 195 employment positions during the construction phase and approximately 385 permanent skilled workers' positions during the approximately 23-year long operations phase in an area of Alberta that has experienced substantial job loss and a declining population over several decades.
17. It was initially estimated that the Grassy Mountain Project would have generated approximately \$1.7 billion in royalties and taxes payable to municipal, provincial, and federal governments over its 23-year life. It is now estimated that the Grassy Mountain Project would have resulted in royalties and taxes far in excess of \$1.7 billion, given the strong global demand for metallurgical coal.

Other Planned and Related Projects

18. In addition to the Grassy Mountain Project, when acquiring the Northback Properties, Northback also intended to explore and develop its Freehold Mineral Rights and Crown Leases in the Adanac, Lynx Creek, and Bellevue properties.
19. Had Northback been permitted to proceed, its development of each of these properties would have benefitted from centralized administration and planning and shared infrastructure. These properties would have benefited from sharing common processing, maintenance, and logistics infrastructure, all managed out of a central planning and administration office shared with Northback's other mineral assets in the region.

Legal Regime in Place at the Time of Benga's Acquisitions

20. At the time Northback acquired the Northback Properties and the Freehold Mineral Rights and Crown Leases, government representatives and the established regulatory and land-use systems in place permitted and, in fact, encouraged coal resource exploration and development on lands that included the Northback Properties and its Freehold Mineral Rights and Crown Leases. However, as described below, Northback's efforts to progress with these projects were frustrated by a succession of measures attributable to Canada.

Measures Undertaken by or Attributable to Canada that Frustrated the Development of the Northback Properties in Breach of the Treaty

21. There are three sets of measures undertaken by Canada, its central, regional, or local governments, its authorities, or entities exercising governmental authority delegated to them, that frustrated the development of certain of Northback's planned projects and breached the Treaty. These are set out in greater detail below.

1. Establishment of Castle Provincial Park and the Subsequent Cancellation of Crown Leases
22. The first set of measures undertaken by or attributable to Canada that frustrated the development of Northback's planned projects and breached the Treaty was in connection with the establishment of Castle Provincial Park and the subsequent cancellation of Crown Leases associated with it.
23. On January 20, 2017, the Government of Alberta's Ministry of Environment and Parks announced that Alberta was creating a new provincial park in Southwest Alberta called Castle Provincial Park ("**Castle Provincial Park**" or the "**Park**"). It was established via Order in Council No. 22/2017 (the "**OIC**") pursuant to the *Provincial Parks Act* and made effective on February 16, 2017.
24. As a result of the OIC and the corresponding establishment of Castle Provincial Park, several of Northback's Freehold Mineral Rights and Crown Leases became located within or directly adjacent to the new Castle Provincial Park. In particular, the establishment of the new Park affected two of the Northback Properties: (i) Lynx Creek, and (ii) Adanac. Northback's Lynx Creek properties consisted of a total area of approximately 15.6 km², of which 15.0 km² was located entirely within the new Castle Provincial Park boundaries and approximately 0.6 km² was located adjacent to the new Castle Provincial Park boundaries. Northback's Adanac properties consisted of a total area of approximately 45.3 km², of which 22.9 km² was located entirely within the new Castle Provincial Park boundaries and 22.4 km² was located adjacent to the new Castle Provincial Park boundaries.
25. On January 23, 2017, the Government of Alberta's Ministry of Energy and Minerals notified Northback that it would be cancelling all of the Crown leases held by Northback within the Castle Provincial Park boundaries (the "**Cancelled Leases**").
26. As such, the establishment of the new Park effectively made it impossible for Northback to economically develop its Lynx Creek and Adanac assets. To fully develop a large-scale mining operation, a developer must have mineral rights over a large contiguous area. Further, coal mining success is dependent on economies of scale. The purpose of Northback's acquisition of assets in Crowsnest Pass was to develop a large-scale coal mining operation via several projects. Therefore, the Cancelled Leases significantly frustrated Northback's plan and ability to develop the Northback Properties.
27. Indeed, a consequence of the establishment of the new Castle Provincial Park with the OIC and the Cancelled Leases is that much of Northback's remaining mineral rights in the Adanac and Lynx Creek properties are now surrounded by lands which were previously planned by Northback to be developed, but are now sterilized and incapable of further exploration and development. These assets are critical to the orderly, economic, and efficient development of the Adanac and Lynx Creek properties, which can no longer be economically developed as a result of the OIC and the Cancelled Leases. The creation of the Park was, at a minimum, a disguised restriction on development.

28. Well before Northback made its investment, Alberta had considered what should occur in these circumstances, and provided a remedy. Section 3.15 of the 1976 Coal Policy, which was in effect at the time of the OIC, provides that “[w]here freehold rights to coal and leases of such rights are affected by the restrictions on exploration and development imposed by [the establishment of a Provincial Park], the Government is prepared to purchase the lessor rights at fair value determined by agreement or arbitration, and to acquire any lessee rights on the same basis as for lessees of Crown rights.” Alberta did not purchase or acquire or—or seek to purchase or acquire—Northback's freehold mineral interests affected by the establishment of the Castle Provincial Park, nor did it propose an agreement or arbitration to determine the fair value of Northback's freehold mineral rights (“**Alberta Failure to Purchase**”). As a result, Alberta failed to provide Northback with the legal processes and compensation promised by Alberta's own 1976 Coal Policy.
29. On January 18, 2019, Northback and Riversdale commenced an action before the Alberta Court of King’s Bench against the Province of Alberta, Alberta’s Ministry of Environment and Parks, and Alberta’s Ministry of Energy and Minerals, seeking damages equivalent to the fair value of the Northback Properties affected by the establishment of Castle Provincial Park. In the alternative, Northback and Riversdale sought a declaration pursuant to Section 3.15 of the *1976 Coal Policy* that Alberta was required to purchase Northback's freehold rights for fair value (the “**Castle Park Action**”). That action remains pending before the Alberta Courts.
30. The OIC, the Cancelled Leases, and the Alberta Failure to Purchase are all measures attributable to Canada that breach various provisions of the Treaty, as set out in greater detail below.

2. Wrongful Denial of Permits for the Grassy Mountain Project

31. The second set of measures undertaken by or attributable to Canada that frustrated the development of Northback's planned projects in Crowsnest Pass and the Eastern Slopes and that breached the Treaty was the wrongful denial of its application for regulatory approvals for the Grassy Mountain Project by both the governments of Alberta and Canada, and the courts’ wrongful refusal to set aside those denials. These measures are set out in greater detail below.

(a) *The Provincial Assessment Process*

32. In order to proceed with the Grassy Mountain Project, Northback required a provincial environmental impact assessment (“**EIA**”) under Alberta's *Environmental Protection and Enhancement Act* (“**EPEA**”). The Alberta Energy Regulator (“**AER**”) oversaw the provincial EIA process to determine whether the Grassy Mountain Project was in the public interest and should be approved.
33. In 2014, Northback submitted an initial project proposal to the AER, initiating the process for provincial approval of the Grassy Mountain Project in Alberta. On March 19, 2015, the AER issued final terms of reference identifying the necessary information that Northback needed to include in the Grassy Mountain Project’s EIA report under the *EPEA*.

(b) *The Federal Assessment Process*

34. In addition, in order to proceed with the Grassy Mountain Project, Northback required a federal environmental assessment under the *Canadian Environmental Assessment Act 2012* ("**CEAA**").
35. In 2015, Northback submitted a project description to the Canadian Environmental Agency ("**Agency**") initiating the federal regulatory approval process for the Project. In July 2015, the Minister of Environment and Climate Change ("**Minister**") referred the environmental assessment for the Project to a review panel pursuant to s. 38(1) of the *CEAA*.
36. Under the *CEAA*, a review panel does not have any decision-making responsibilities. Rather, a review panel conducts the environmental assessment of a project, holds a public hearing, prepares a report with its rationale, conclusions, and recommendations, and submits it to the Minister. The Minister must then decide whether, taking into account any mitigation measures the Minister considers appropriate, the project is likely to cause significant adverse environmental effects. If so, the Minister must refer the project to the Governor in Council ("**Cabinet**") to decide whether those effects are justified in the circumstances. If yes, the project may proceed; if no, the project may not proceed. After Cabinet has made its decision, the Minister must issue a decision statement to the proponent informing it of the Minister's and Cabinet's respective decisions.

(c) *The Joint Review Panel and Process*

37. On November 10, 2015, Northback submitted an EIA report, and on August 12, 2016, an updated version of the EIA Report, to the AER and the Agency. The EIA Report contained a description of the Grassy Mountain Project, information about its geology, the method used for environmental assessment, an environmental assessment, a conservation and reclamation plan, and public participation and Aboriginal consultation. During this pre-panel stage, the AER sent two sets of information requests to Northback and the Agency sent five additional sets of information requests. Northback responded to each set of information requests.
38. On July 9, 2018, the Minister and the AER established a Joint Review Panel ("**JRP**") under the *Responsible Energy Development Act* and the *CEAA* to jointly assess the Project on behalf of both the provincial and federal governments. On August 16, 2018, the Minister and AER entered into an *Agreement to Establish a Joint Review Panel for the Grassy Mountain Coal Project*, which tasked the JRP with performing both the provincial functions of the AER and the federal functions of a review panel under the *CEAA*.
39. The JRP process involved: (i) a review of the EIA and any supplemental information submitted by Northback; (ii) a public hearing; (iii) preparation of an assessment report by the JRP; (iv) issuing a decision in the JRP's provincial capacity as the AER; and (v) providing recommendations to the Minister in its federal capacity under the *CEAA*.
40. Between 2018 and 2020, the JRP, the Agency, and the AER requested significant additional information from Northback in relation to the Grassy Mountain Project, in response to

which Northback submitted 12 addenda to its EIA and 34 original or updated technical studies and assessments. All told, its application EIA materials exceeded 26,000 pages.

41. On June 25, 2020, the JRP informed Northback that after reviewing the EIA and the addenda, it determined that: (i) the information submitted by Northback was sufficient to proceed to a public hearing; and (ii) the information provided by Northback met the information requirements outlined in the federal *Guidelines for the Preparation of an Environmental Impact Statement*.
42. Thereafter, between October 27, 2020 and December 2, 2020, the JRP held a public hearing over 29 sitting days via an online platform given the COVID-19 pandemic at the time. During the online hearing, Northback and other participants presented evidence, cross-examined witnesses, and presented argument. The participation at the hearing of potentially impacted Indigenous groups was limited, as many had already communicated their support or non-objection to the Project by letter.

(d) The Provincial Government's Denial of the Project

43. On June 17, 2021, the JRP issued its assessment report ("**JRP Report**"). In its provincial capacity as the AER, the JRP unreasonably, arbitrarily, and capriciously declined to approve the Project because, in its view, the Project would cause significant adverse environmental effects that would purportedly outweigh what it considered to be low to moderate positive economic impacts. As a result, the JRP concluded the Project was not in the public interest and declined to approve it (the "**Provincial Decision**").
44. However, the JRP report was materially flawed in several respects. For instance, and among other things, the JRP Report: (i) noted that Northback's evidence was incomplete or insufficient, despite previously deeming the information provided to be complete and not requesting any additional data from Northback; (ii) failed to consider and discuss the totality of Northback's evidence; and (iii) considered and relied on evidence from hearing participants who lacked proper expertise or independence, while ignoring or disregarding the positions of impacted Indigenous groups.
45. Further, the JRP, the AER, and Alberta's officers and representatives acted outside the constraints of their governing statutes and applicable policies. Northback has come to learn that they improperly interfered with the established process, withheld material information, and denied issuing regulatory permits for the Project with the wrongful purpose of responding to political pressures, contrary to their general practices and a fair and reasonable interpretation of the applicable legislation.

(e) The Federal Government's Denial of the Project

46. Despite the Provincial Decision, the federal government was still required to complete its assessment of the Project under the *CEAA*. This required the Minister to consider the JRP Report and decide whether the Grassy Mountain Project was likely to cause significant adverse environmental effects and, if so, to refer the matter of whether those effects were justified in the circumstances to the Cabinet. The Minister had until November 14, 2021, to do so.

47. On June 17, 2021, the Agency issued a news release advising that the Minister had received the JRP Report and would be conducting further consultations with Indigenous groups and the public before making a decision on the Project. In fact, however, the Agency did not conduct any consultation with Indigenous groups or the public following the release of the JRP Report.
48. On June 26, 2021, Northback's legal counsel informed the Minister that Northback was considering appealing the Provincial Decision in Alberta and requested that the Minister hold the process under the *CEAA* in abeyance ("**Abeyance Request**"). On July 6, 2021, Northback wrote the Agency again to reiterate its Abeyance Request. In a memorandum dated July 7, 2021, the Agency advised the Minister of the Abeyance Request. Yet, neither the Ministry nor the Agency responded to or acknowledged Northback's Abeyance Request.
49. Further, on or around September 29, 2021, Northback, the Piikani Nation ("**Piikani**"), and the Stoney Nakoda Nations ("**Stoney Nakoda**"), applied to the Court of Appeal of Alberta for permission for leave to appeal the Provincial Decision to the Court.
50. Nevertheless, notwithstanding the fact that the Minister had until November 14, 2021, to issue a decision statement regarding the outcome of the federal review process, notwithstanding the Agency's promise to consult with Indigenous groups and the public following the issuance of the JRP Report, notwithstanding the legal challenges to the Provincial Decision by Northback, Piikani, and Stoney Nakoda, and notwithstanding Northback's Abeyance Request, the Minister rushed to issue a decision statement on August 6, 2021, just before a federal election was called on August 15, 2021.
51. In the decision statement, the Minister unreasonably, arbitrarily, and capriciously found that the Project was likely to cause significant adverse environmental effects and referred the matter of whether those significant adverse effects were justified in the circumstances to Cabinet ("**Referral Decision**"). On the same day, Cabinet decided that the significant adverse effects were not justified in the circumstances, thereby denying federal approval for the Project ("**Cabinet Decision**").
- (f) *Court Proceedings Arising from the Provincial Decision, Referral Decision, and Cabinet Decision*
52. As noted above, on or around September 29, 2021, Northback, Piikani, and Stoney Nakoda applied to the Alberta Court of Appeal for permission to appeal the Provincial Decision. On January 28, 2022, the Alberta Court of Appeal wrongfully denied Northback, Piikani, and Stoney Nakoda permission to appeal the Provincial Decision. Northback, Piikani, and Stoney Nakoda subsequently applied to the Supreme Court of Canada for leave to appeal the Alberta Court of Appeal's decision, but the Supreme Court of Canada denied leave on September 29, 2022 (collectively, these decisions of the Alberta Court of Appeal and the Supreme Court of Canada shall hereinafter be referred to as the "**Alberta Court Decisions**").
53. On or around August 13, 2021, Northback, Piikani, and Stoney Nakoda applied to the Federal Court of Canada for judicial review of the federal Referral Decision and the

Cabinet Decision. On February 12, 2024, the Federal Court wrongfully denied Northback's application for judicial review but granted the applications of Piikani and Stoney Nakoda to set aside the Referral Decision and the Cabinet Decision, and remitted the matter to the Minister and Cabinet for redetermination in accordance with the Federal Court's reasons (the "**Federal Court Decision**").

54. As a result of the JRP Report, Provincial Decision, Alberta Court Decisions, Referral Decision, Cabinet Decision, and Federal Court Decision, Northback cannot construct or operate the Grassy Mountain Project.

3. Imposition of an Indefinite Moratorium on Coal Development in Alberta in 2022

55. The third measure undertaken by or attributable to Canada that frustrated Northback from undertaking the planned development of Northback's projects in Crowsnest Pass and the Eastern Slopes was the Alberta government's imposition of an indefinite moratorium on coal exploration and development on the lands on which the Northback Properties are situated in March 2022.
56. To begin, at the time that Northback acquired the Northback Properties, the 1976 Coal Policy was in effect. The 1976 Coal Policy classified lands in Alberta into Categories 1 through 4 ("**Land Categories**"), with different levels of restriction on coal exploration and development applying to each category. When Northback acquired the Northback Properties, most of them were located on "Category 4" lands under the 1976 Coal Policy, which did not impose any restrictions on the commercial development of Category 4 lands and confirmed that applications for the right to explore, lease, or develop coal on Category 4 lands were to be considered under normal approval procedures respecting protection of the environment and reclamation of disturbed lands.
57. On May 15, 2020, Alberta publicly announced that it had rescinded the 1976 Coal Policy effective on June 1, 2020. On February 8, 2021, Alberta changed its position, and reinstated the 1976 Coal Policy. In conjunction with this, the Minister of Energy and Minerals ("**Minister of Energy**"), issued Ministerial Order 054/2021 which included a "Coal Policy Direction". The Minister of Energy directed the AER to consider Land Categories set out in the 1976 Coal Policy when considering an application for approval for the exploration for, or development of, coal under energy resources enactments. It also imposed an immediate ban on mountain-top mining on Category 2 lands, and placed a moratorium on any new development on Category 2 lands.
58. Between February 23, 2021 and December 29, 2021, the Minister of Energy consulted with the public in preparation of a new coal policy. On March 2, 2022, the Minister of Energy issued Ministerial Order 002/2022, which included a new "Coal Development Direction". The Coal Development Direction directed the AER to continue the pause on coal exploration and development activities on Category 2 lands, and expanded this pause to coal exploration and development activities on Category 3 and 4 lands. Additionally, pursuant to the Coal Development Direction, Alberta would no longer accept any new coal lease applications for Category 2, 3, and 4 lands, and lease applications for Category 1 lands would be denied. In other words, on March 2, 2022, Alberta announced a new,

indefinite moratorium on essentially all coal exploration and development on lands such as those on which the Northback Properties are located ("**Indefinite Moratorium**").

59. On March 4, 2022, Alberta announced and confirmed the Indefinite Moratorium and stated that, 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.
60. The effect of the Indefinite Moratorium is that Northback is prevented from advancing any coal exploration or development at the Northback Properties and cannot exploit its Freehold Mineral Rights and Crown Leases.

Canada's Breaches of the Treaty

61. As a result of, among other measures, the OIC, the Cancelled Leases, Alberta's Failure to Purchase, the JRP Report, the Provincial Decision, the Referral Decision, the Cabinet Decision, the Alberta Court Decisions, the Federal Court Decision, and the Indefinite Moratorium (the "**Measures**"), Northback has been prevented from advancing any coal exploration or development at the Northback Properties and cannot exploit any of the Freehold Mineral Rights and Crown Leases it acquired, causing Hancock, Riversdale, and Northback to incur significant damages. Both individually and collectively, these Measures were not only contrary to Canadian law, but they also breached the Treaty.
 1. Hancock and Riversdale are Protected Investors and Northback is a Protected Enterprise Under the Treaty
62. The Treaty applies to the instant case. The Treaty provides protections to Australian investors with investments in Canada, and to Canadian enterprises owned and controlled, either directly or indirectly, by Australian investors.
63. In the instant case, Hancock and Riversdale are protected "investors" with an "investment" in Canada that existed as of the date of entry into force of the Treaty. Australia is a party to the Treaty, having ratified it on October 31, 2018. Hancock (an Australian company), wholly owns Riversdale (an Australian company), which wholly owns Northback (a Canadian company). Thus, both Hancock and Riversdale qualify as protected "investors" who have made an "investment" in an "enterprise" in Canada. Further, Hancock, Riversdale, and/or Northback have also made substantial investments in the Northback Properties, the Freehold Mineral Rights and Crown Leases, and to advance their projects in Crowsnest Pass and the Eastern Slopes.
64. Article 9.19.1 of the Treaty allows Hancock and/or Riversdale to bring claims against Canada (a) on behalf of themselves for the losses and damages they have incurred as a result of the breach of the Treaty, and/or (b) on behalf of Northback for the losses and damages it has incurred as a result of the breach of the Treaty. In the instant case, the claim is based on both Article 9.19.1(a) and (b).

2. The Measures Breach the Treaty

65. The Measures set out above breach numerous provisions of the Treaty, including but not limited to all of those set out below.
66. First, they breached the Minimum Standard of Treatment in Article 9.6 of the Treaty, which provides, in summary, that "*[e]ach Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security*". Among other things, these breaches include, but are not limited to, arbitrary treatment, unfair, unjust, and idiosyncratic treatment, discriminatory treatment, lack of transparency and candor, denial of justice, denial of due process, and denial of procedural fairness.
67. Second, the Measures breached the Expropriation and Compensation provision in Article 9.8 of the Treaty, which provides, in summary, that "*[n]o Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except: (a) for a public purpose, (b) in a non-discriminatory manner, (c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and (d) in accordance with due process of law*".
68. Third, the Measures breach the National Treatment standard in Article 9.4.1 and 9.4.2 of the Treaty, which provides, in summary, that "*[e]ach Party shall accord to investors of another Party [and covered investments] treatment no less favourable than that it accords in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory*".
69. Fourth, the Measures breach the Most-Favored-Nation Treatment standard in Articles 9.5.1 and 9.5.2 of the Treaty, which provides, in summary, that "*[e]ach Party shall accord to investors of another Party [and covered investments] treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory*".
70. Fifth, in the event that the Alberta Court of King's Bench fails to award damages equivalent to the fair market value of the Northback Properties affected by the establishment of Castle Provincial Park or does not declare that Alberta is required to purchase Northback's freehold rights for fair value in the Castle Park Action, this will also constitute a breach of Articles 9.6, 9.8, 9.4.1, 9.4.2, 9.5.1, and 9.5.2 of the Treaty.
71. Sixth, in the event that the Minister and Cabinet do not reconsider and approve the Grassy Mountain Project pursuant to the Federal Court Decision, this will also constitute a breach of Articles 9.6, 9.8, 9.4.1, 9.4.2, 9.5.1, and 9.5.2 of the Treaty.
72. Finally, all of the Measures are attributable to Canada pursuant to Article 9.2.2(a) of the Treaty, which provides that Canada's obligations under Chapter 9 of the Treaty apply to: (a) the central, regional or local governments or authorities of Canada, and (b) any person,

including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of Canada. In the instant case, all of the Measures were adopted or maintained by an entity that meets this definition, including among others, the provincial government of Alberta, the federal government of Canada, the JRP, and the courts.

Damages Incurred by Hancock, Riversdale, and/or Northback As a Result of Canada's Breaches of the Treaty

73. As a result of the Measures, Northback has been prevented from advancing any coal exploration or development at the Northback Properties and cannot exploit any Freehold Mineral Rights and Crown Leases it acquired, causing Hancock, Riversdale, and Northback to incur significant losses and damages. It is currently estimated that these losses and damages are in excess of \$7 billion, which includes, among other things, (a) the net present value of the Northback Properties and the Freehold Mineral Rights and Crown Leases prior to the adoption of the Measures; (b) the costs to acquire, explore, and develop the Northback Properties and the Freehold Mineral Rights and Crown Leases; (c) the cost of lease rental payments made to Alberta subsequent to the removal of Northback's ability to explore and develop the Northback Properties and the Freehold Mineral Rights and Crown Leases; and (d) losses due to the delay in Northback's ability to develop the Northback Properties and the Freehold Mineral Rights and Crown Leases.

IV. ISSUES RAISED

74. Has Canada taken measures inconsistent with its obligations under the Treaty, including under Articles 9.4, 9.5, 9.6, and 9.8 of Chapter 9?
75. If the answer to the above questions is yes, what is the quantum of compensation that should be paid to the Investors and/or the Enterprise as a result Canada's failure to comply with its obligations under the Treaty?

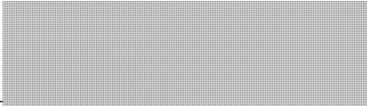
V. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

76. The Investors respectfully claim the following:
- i) Damages of not less than \$7,000,000,000.00 as compensation for the loss, harm, injury, and substantial damages caused by, or arising out of, the Measures which breached Canada's obligations contained within Part A of Chapter 9 of the Treaty;
 - ii) All costs associated with the arbitral proceedings, including but not limited to all professional fees, attorney's fees, and disbursements;
 - iii) Fees and expenses incurred to oppose and overturn the infringing Measures, including but not limited to all professional fees, attorney's fees, and disbursements;
 - iv) Pre-award and post-award interest at a rate to be fixed by the Tribunal;

- v) Payment of a sum of compensation equal to any tax consequences of the award, in order to maintain the award's integrity; and
- vi) Such further relief as counsel may advise and that this Tribunal may deem appropriate.

DATE OF ISSUE: 17 September 2024

s.19(1)



Vasilis F.L. Pappas
Sabrina A. Bandali
Martin Ignasiak, KC
Counsel to the Investors

Bennett Jones LLP



Alberta, Canada

*Counsel to Hancock Prospecting Pty, Riversdale
Resources Pty Ltd, and Northback Holdings
Corporation*

SERVED TO:

Office of the Assistant Deputy Attorney General of Canada
50 O'Connor Street, 5th Floor
Ottawa, Ontario K1A 0H8
Canada

Before the
INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

RIVERSDALE RESOURCES PTY LTD AND HANCOCK PROSPECTING PTY LTD

Claimants

v.

THE GOVERNMENT OF CANADA

Respondent

REQUEST FOR ARBITRATION

Counsel for the Claimants

BENNETT JONES LLP
666 Burrard Street
Suite 2500
Vancouver, British Columbia
V6C 2X8 Canada

BENNETT JONES LLP
4500 Bankers Hall East
855 2nd Street SW
Calgary, Alberta
T2P 4K7 Canada

BENNETT JONES LLP
100 King Street West
Suite 3400
Toronto, Ontario
M5X 1A4 Canada

Dated: December 16, 2024

Table of Contents

I.	REQUEST FOR ARBITRATION.....	1
II.	INTRODUCTION.....	1
III.	THE PARTIES TO THE DISPUTE	5
	A. The Claimants	5
	B. The Respondent	5
IV.	SUMMARY OF THE RELEVANT FACTS.....	8
	A. The Acquisition of Mineral Rights in Southwestern Alberta	8
	B. The Plan for the Grassy Mountain Project.....	10
	C. Other Planned and Related Projects.....	11
	D. Legal Regime in Place at the Time of Northback's Acquisitions	11
	E. Hancock's Acquisition of Riversdale	11
	F. Measures Attributable to Canada that Violated the CPTPP	12
	1. The Wrongful Denial of Permits for the Grassy Mountain Project.....	12
	2. Alberta's Wrongful Imposition of an Indefinite Moratorium on Coal Development in Alberta in 2022.....	18
V.	CANADA'S BREACHES OF THE CPTPP	19
	A. Canada Violated the CPTPP's Minimum Standard of Treatment.....	21
	B. Canada Unlawfully Expropriated the Claimants' Investment.....	22
	C. Canada Violated the CPTPP's National Treatment Standard	24
	D. Canada Violated the CPTPP's Most-Favoured-Nation Treatment Standard	25
VI.	THE CLAIMANTS HAVE SUFFERED DAMAGES AS A RESULT OF CANADA'S VIOLATIONS OF CHAPTER 9 OF THE CPTPP	26
VII.	THE CONDITIONS FOR JURISDICTION HAVE BEEN MET	27
	A. The CPTPP's Jurisdictional Requirements Have Been Met	27
	1. The Claimants are Protected "Investors" Under the CPTPP	27
	2. The Claimants Have Made Protected "Investments" Under the CPTPP	28
	3. The Claimants and Canada Have Consented to Arbitration of this Dispute... ..	29
	4. All Conditions to the Consent of Canada to Arbitration Under the CPTPP Have Been Satisfied.....	30
	B. ICSID's Jurisdictional Requirements Have Been Met.....	32
	1. There is a Legal Dispute Arising Directly Out of the Claimants' Investment	33
	2. The Legal Dispute Involves a Contracting State and a National of Another Contracting State.....	33
	3. The Claimants and Canada Consented to the Submission of this Dispute to ICSID	34
VIII.	OTHER INFORMATION	35
	A. This Request for Arbitration Relates to an Arbitration Proceeding.....	35

B.	Authorization of the Request for Arbitration.....	35
C.	Appointment of Counsel.....	36
D.	Lodging Fee.....	36
E.	Constitution of the Tribunal.....	36
F.	Language of the Arbitration.....	37
G.	Supporting Documentation.....	37
IX.	REQUEST FOR RELIEF.....	37
X.	REQUEST FOR REGISTRATION.....	38

I. REQUEST FOR ARBITRATION

1. Pursuant to Article 36 of the *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States* (the "**Convention**" or the "**ICSID Convention**"), Rules 1 to 4 of the *Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings* (the "**ICSID Institution Rules**"), and Article 9.19 of the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (the "**CPTPP**" or the "**Treaty**"),¹ the Claimants, Riversdale Resources Pty Ltd ("**Riversdale**") and Hancock Prospecting Pty Ltd ("**Hancock**") (collectively, the "**Claimants**" and each a "**Claimant**"), hereby request arbitration with the Respondent, the Government of Canada ("**Canada**" or the "**Respondent**"), in connection with the claims stated herein, and request that the Secretary-General of the International Centre for the Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") register this arbitration against the Respondent.

II. INTRODUCTION

2. Metallurgical coal is an essential component in the steelmaking process. Currently, no commercially or economically viable substitute exists for metallurgical coal in steelmaking, nor is there likely to be one in the foreseeable future. Metallurgical coal is, therefore, a vital and very valuable commodity, both domestically and internationally.

3. The Crowsnest Pass region in the southwest of Alberta, Canada, and the eastern slopes of the Rocky Mountains in Alberta, Canada, have a long history of coal mining, dating back to the early 1900s, and have an abundance of metallurgical coal.

4. The Claimant, Riversdale, is an Australian mining company focused on developing metallurgical coal projects capable of supplying metallurgical coal to steel manufacturers around the world. In or around 2012, it planned to acquire mineral interests in Crowsnest Pass and the Eastern Slopes with the intention of developing metallurgical coal mining operations in the region. At the time it was contemplating this investment, government representatives and the established regulatory and land-use systems in place permitted and, in fact, encouraged coal resource exploration and developments in the region.

¹ Comprehensive and Progressive Agreement for Trans-Pacific Partnership, dated December 30, 2018 (Excerpts) [**Exhibit C-1**] ; Government of Canada website confirming the CPTPP entered into force in Canada on December 30, 2018 [**Exhibit C-30**]; Government of Australia website confirming the CPTPP entered into force in Australia on December 30, 2018 [**Exhibit C-31**].

5. As a result, in 2012, Riversdale incorporated a company in Canada called Northback (defined below) for the purpose of acquiring mineral interests in the Crowsnest Pass and Eastern Slopes regions, and with the intention of developing long-term metallurgical coal mining operations in the area. Shortly thereafter, Northback acquired significant mineral rights and assets in the region at significant expense in a transaction that was concluded in August 2013, which acquisition was financed by Riversdale.

6. Among the Projects that Riversdale planned to pursue with these mineral rights and assets was the Grassy Mountain Project. The Grassy Mountain Project would have produced an estimated 4.5 million tonnes of metallurgical coal per year for approximately 23 years. Developing the Grassy Mountain Project would have created approximately 195 employment positions during the construction phase and approximately 385 permanent skilled workers' positions during the approximately 23-year long operations phase in an area of Alberta that has experienced substantial job loss and a declining population over several decades.

7. It was initially estimated that the Grassy Mountain Project would have generated approximately \$1.7 billion in royalties and taxes payable to municipal, provincial, and federal governments over its 23-year life. It is now estimated that the Grassy Mountain Project would have resulted in royalties and taxes far in excess of \$1.7 billion, given the strong global demand for metallurgical coal.

8. Between 2013 and 2018, extensive efforts were undertaken to progress and develop the Grassy Mountain Project, and to progress and develop other planned and related projects. Indeed, during this timeframe, hundreds of millions of dollars were expended by Riversdale to acquire mineral rights and assets in the region and to progress and develop these projects.

9. Among these efforts was Northback's applications to obtain federal and provincial environmental approvals to proceed with the Grassy Mountain Project. These were submitted to the provincial government of Alberta in 2014, and the federal government of Canada in 2015. Thereafter, enormous efforts were undertaken to provide information and support for the applications, including the submission some 26,000 pages of materials at great cost and expense. At all times, Riversdale reasonably expected that its applications would be evaluated in good

faith, in accordance with general and established practices, and in accordance with the laws in place at the time its applications were submitted.

10. While the environmental permit process was underway, the Claimant, Hancock, became aware of the Grassy Mountain Project. Hancock, is an Australian company with interests in, among other things, iron ore, coal, and mineral exploration and development around the world. For a number of years, Hancock was looking to diversify into the metallurgical coal market, which it viewed as having a robust industry structure resulting from a concentration of supply and strong fundamentals. Eventually, it became aware of the Grassy Mountain Project and the tremendous potential for metallurgical coal that it promised. As a result, in 2018 and 2019, Hancock acquired all of the shares of Riversdale. In so doing, Hancock effectively came to own and control Riversdale and Northback, which it continues to do to this day.

11. Hancock spent hundreds of millions of dollars to acquire its interest in Riversdale, and hundreds of millions of additional dollars after it acquired that interest in order to progress and develop the Grassy Mountain Project and other planned and related projects. As with Riversdale before it, it expended these funds and exerted these efforts with the reasonable expectation that the applications for environmental approvals would be evaluated in good faith, in accordance with general and established practices, and in accordance with the laws in place at the time.

12. Nevertheless, as a result of actions attributable to Canada that were unreasonable, arbitrary, capricious, and unfair, the value of Hancock and Riversdale's shareholding in Northback was destroyed. In particular, through conduct attributable to Canada, the execution of the Grassy Mountain Project was frustrated by the wrongful denial of the application for environmental approvals for the Project by the provincial government of Alberta, including based on a flawed report issued by a Joint Review Panel that exercised delegated functions of the government of Alberta, and the courts' wrongful refusal to set aside that denial. What is more, the Claimants have since discovered that officers and representatives of various government bodies improperly interfered with the established process, withheld material information, and denied issuing regulatory permits for the Project for wrongful purposes, contrary to general and established practices and a fair and reasonable interpretation of the applicable legislation. This was in violation of the fair and equitable treatment standard in the CPTPP as it arbitrarily,

unfairly, unjustly, and capriciously rejected regulatory approvals that should have rightly been granted. What is more, the Claimants were not afforded due process, procedural fairness, transparency, or candor, further violating the fair and equitable treatment standard.

13. Moreover, the development of the Grassy Mountain Project and other planned and related projects in Crowsnest Pass and the Eastern Slopes was also frustrated by the Alberta government's imposition in March 2022 of an indefinite moratorium on coal exploration and development on the lands on which the applicable mineral rights and interests are situated. This effectively prohibits the advancement of any coal exploration or development in that area, violating the fair and equitable treatment standard in the CPTPP by arbitrarily, unfairly, unjustly, and capriciously amending the policy in Alberta in relation to coal exploration and development that had been in effect for more than four decades on which the Claimants relied when making their investments in Canada. Further, prior to implementing this indefinite moratorium, the Claimants were not were afforded due process, procedural fairness, transparency or candour.

14. In addition, as a result of Canada's conduct, the Claimants' direct investment in Northback, and their indirect investment in the Grassy Mountain Project and other planned and related projects have been subjected to measures having an effect equivalent to expropriation, in violation of the CPTPP. Further, numerous mining and other projects in Alberta and elsewhere in Canada that are in "like circumstances" with the projects at issue and that are owned by either Canadian investors or third-country investors, have been permitted to proceed. Thus, Canada provided treatment less favourable to the Claimants and to their investments, violating the national treatment and most-favoured-nation standards set out in CPTPP.

15. The ultimate effect of Canada's measures is the destruction of the value of the Claimants' entire investment in Northback. The Claimants, therefore, should be compensated at the full reparation standard, including the full value of their direct and indirect shareholding interest in Northback that was destroyed as a result of the measures attributable to Canada, all the costs the Claimants incurred to finance the acquisition, exploration, and development of the mineral rights and assets at issue in this arbitration, and the lost future profits that would have been available for distribution from Northback to the Claimants but for the measures.

III. THE PARTIES TO THE DISPUTE

A. The Claimants

16. The Claimant, Riversdale, is a proprietary corporation incorporated under the laws of the state of Victoria, Australia.² It was incorporated on August 15, 2011, was converted to a public company on April 20, 2012, and was converted to a proprietary company on November 8, 2019.³ Its registered place of business is at "HPPL House", Level 3, 28-42 Ventnor Avenue, West Perth, Western Australia 6005, Australia.⁴ Riversdale is, therefore, a corporation incorporated or duly constituted in accordance with the applicable laws of Australia.

17. The Claimant, Hancock, is proprietary company incorporated under the laws of the state of Western Australia, Australia.⁵ It was incorporated on November 25, 1955, and converted to a proprietary company on June 8, 1977.⁶ Its principal registered place of business is at Level 3 HPPL House, 28-42 Ventnor Avenue, West Perth, Western Australia 6005, Australia.⁷ Hancock is, therefore, a corporation incorporated or duly constituted in accordance with the applicable laws of Australia.

18. Riversdale is a mining company focused on developing metallurgical coal projects capable of supplying metallurgical coal to steel manufacturers around the world. Hancock, is a privately owned and diversified Australian company with interests in, among other things, iron ore, coal, petroleum, beef, and dairy, as well as mineral exploration and development around the world. Hancock is one of Australia's largest producers of iron ore and is Australia's second largest producer of beef.

B. The Respondent

19. The Respondent, Canada, is a sovereign State which is a party to the CPTPP (a "**Party**") and a Contracting State to the ICSID Convention.

² Certificate of Registration of Riversdale Resources Pty Ltd [Exhibit C-3].

³ Certificate of Registration of Riversdale Resources Pty Ltd [Exhibit C-3].

⁴ Australian Securities & Investments Commission Company Details for Riversdale Resources Pty Ltd [Exhibit C-4].

⁵ Certificate of Incorporation on Conversion to a Proprietary Company for Hancock Prospecting Pty Ltd [Exhibit C-2].

⁶ Certificate of Incorporation on Conversion to a Proprietary Company for Hancock Prospecting Pty Ltd [Exhibit C-2].

⁷ Australia Securities & Investments Commission Company Details for Hancock Prospecting Pty Ltd [Exhibit C-5].

20. Article 9.30 of the CPTPP provides that "*[d]elivery of notice and other documents to a Party shall be made to the place named for that Party in Annex 9-D (Service of Documents on a Party Under Section B)*". Annex 9-D provides that "*[n]otices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Canada by delivery to*" the following address:

Office of the Deputy Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8
Canada

21. No electronic mail address or telephone number for service of documents to Canada is provided in Article 9.30 or Annex 9-D of the CPTPP.

22. On June 12, 2024, the Claimants' representatives emailed the Canadian Designated Office – CPTPP at Global Affairs Canada⁸ (the "**Canadian Designated Office**") to confirm that notices to Canada under the CPTPP should be sent to the address listed in Annex 9-D of the CPTPP.⁹ On June 13, 2024, the Canadian Designated Office replied that "*[t]he proper address for the service of documents on Canada is as follows:*"¹⁰

Office of the Deputy Minister and Deputy Attorney General
East Memorial Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8
Canada

23. On June 14, 2024, the Claimants attempted to serve a Request for Consultations (defined below) pursuant to Article 9.18 of the CPTPP on Canada at both the addresses set out in Annex 9-D of the CPTPP and at the address identified by the Canadian Designated Office on June 13, 2024. However, the Claimants' representatives were unable to serve their Request for

⁸ Global Affairs Canada is the department of the federal government of Canada responsible for its foreign affairs.

⁹ Email from Vasilis F.L. Pappas, Bennett Jones LLP to the Canadian Designated Office – CPTPP dated June 12, 2024 [Exhibit C-6].

¹⁰ Email from the Canadian Designated Office – CPTPP to Vasilis F.L. Pappas, Bennett Jones LLP dated June 13, 2024 [Exhibit C-7].

Consultations to either of those addresses,¹¹ and served their Request for Consultations by hand, fax, and email to the Regional Office of the Canadian Department of Justice for the National Capital Region,¹² by fax and email to the Regional Office of the Department of Justice in Alberta,¹³ by email to the Canadian Designated Office,¹⁴ and by email on the Director-General, General Counsel, and Director of the Trade Law Bureau at Global Affairs Canada,¹⁵ who represent Canada in investor-state arbitrations. On the same date, Canada confirmed receipt.¹⁶

24. In an email dated September 12, 2024,¹⁷ Canada advised the Claimants' representatives that "*going forward, the location for delivery of notice and other documents in this matter pursuant to Article 9.30 (Service of Documents) of Chapter 9 of CPTPP will be*" the following:

Office of the Assistant Deputy Attorney General of Canada
50 O'Connor Street, 5th Floor
Ottawa, Ontario K1A 0H8
Telephone: 613-670-6214

25. This was reiterated by Canada in a letter dated September 20, 2024, in which Canada advised the Claimants that "*pursuant to CPTPP Article 9.30 formal service of documents in this dispute must be made to the*" same address noted in its email of September 12, 2024.¹⁸

26. Further, in its email of September 12, 2024, Canada advised that "*[i]f you wish to send documents electronically, please ensure to include Julien-Faubert-Leger@international.gc.ca*

¹¹ With respect to the address noted in Annex 9-D of the CPTPP, the Claimants' process server was unable to access that address, and was advised that only Parliamentary personnel were permitted entry and there was no receptionist or reception area at that address. With regard to the address provided by the Canadian Designated Office – CPTPP, the Claimants' process server was advised by a Sergeant at that address that service of the Request for Consultations could not be made at that address.

¹² Email from Vasilis F.L. Pappas, Bennett Jones LLP to the Regional Offices of the Canadian Department of Justice for the National Capital Region and Alberta dated June 14, 2024 [Exhibit C-8]. The Canadian Department of Justice's website for "Service on the Crown" provides that "[i]f you initiate service on the Crown, the Attorney General of Canada or any other Minister of the Crown, the public or their legal representative can now serve the appropriate Justice Canada regional office by email or fax", to which the Request for Consultations was issued.

¹³ Email from Vasilis F.L. Pappas, Bennett Jones LLP to the Regional Offices of the Canadian Department of Justice for the National Capital Region and Alberta dated June 14, 2024 [Exhibit C-8].

¹⁴ Email from Vasilis F.L. Pappas, Bennett Jones LLP to the Canadian Designated Office – CPTPP dated June 14, 2024 [Exhibit C-9].

¹⁵ Email from Vasilis F.L. Pappas, Bennett Jones LLP to Mark Luz, Shane Spelliscy, and Scott Little dated June 14, 2024 [Exhibit C-10].

¹⁶ Email from Attorney General of Canada—Electronic Document Service to Vasilis F.L. Pappas, Bennett Jones LLP, dated June 14, 2024 [Exhibit C-11]; Email from Scott Little, Director and General Counsel, Trade Law Bureau, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP, dated June 14, 2024 [Exhibit C-12]. See also, Email from Attorney General of Canada—Electronic Document Services to Vasilis F.L. Pappas, Bennett Jones LLP, dated June 17, 2024 [Exhibit C-13].

¹⁷ Email from Julien Faubert-Léger, Senior Trade Policy Officer, Investment and Government Procurement Division, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP on September 12, 2024 [Exhibit C-14].

¹⁸ Letter from Isabelle J. Ranger, Executive Director, Investment Trade Policy and Government Procurement Division, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP dated September 20, 2024 (emphasis in original) [Exhibit C-15].

Susanna.Kam@internaitonal.gc.ca and *Alexandra.Dosman@international.gc.ca*."¹⁹ In its correspondence of September 20, 2024, Canada clarified that "*while courtesy electronic copies of documents should be sent to the email addresses provided [on September 12, 2024], pursuant to CPTPP Article 9.30 formal service of documents in this dispute must be made to the [] address*" set out in its email of September 12, 2024.²⁰

27. As a result, it is the Claimants' understanding that in accordance with Rule 5(b) of the ICSID Institution Rules, the Secretary-General of ICSID should formally transmit this Request for Arbitration (the "**Request**") to Canada to the following physical and email addresses:

Office of the Assistant Deputy Attorney General of Canada
50 O'Connor Street, 5th Floor
Ottawa, Ontario K1A 0H8
Telephone Number: 613-670-6214

Email address: Julien-Faubert-Leger@international.gc.ca

Email address: Susanna.Kam@internaitonal.gc.ca

Email address: Alexandra.Dosman@international.gc.ca

28. While the Claimants understand that the Secretary-General of ICSID will formally transmit this Request to Canada in accordance with Rule 5(b) of the ICSID Institution Rules, concurrent with the submission of this Request to the Secretary-General of ICSID, the Claimants will deliver a courtesy copy of this Request to Canada to the physical and email addresses provided by Canada in its correspondence of September 12 and 20, 2024.

IV. SUMMARY OF THE RELEVANT FACTS

A. The Acquisition of Mineral Rights in Southwestern Alberta

29. The Crowsnest Pass region in the southwest of Alberta, Canada ("**Crowsnest Pass**") and the eastern slopes of the Rocky Mountains in Alberta, Canada ("**Eastern Slopes**"), have a long history of coal mining, dating back to the early 1900s.

¹⁹ Email from Julien Faubert-Léger, Senior Trade Policy Officer, Investment and Government Procurement Division, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP on September 12, 2024 [**Exhibit C-14**].

²⁰ Letter from Isabelle J. Ranger, Executive Director, Investment Trade Policy and Government Procurement Division, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP dated September 20, 2024 (emphasis added) [**Exhibit C-15**].

30. On or around November 14, 2012, Riversdale incorporated Benga Mining Limited ("**Benga**") in Canada as a wholly-owned subsidiary of Riversdale in order to acquire mineral rights in Crowsnest Pass and the Eastern Slopes and for the purpose of developing long-term metallurgical coal mining operations in the region.²¹ On July 1, 2023, Benga changed its name to Northback Holdings Corporation ("**Northback**").²² For the sake of simplicity, and unless stated otherwise, Benga and Northback shall hereinafter be referred to as "Northback". Northback is a British Columbia corporation that is extra-provincially registered in Alberta.²³ Northback remains a wholly-owned subsidiary of Riversdale.

31. On or around December 20, 2012, Northback entered into an Asset Purchase Agreement with Devon Energy and Consol Energy to acquire mineral rights in Crowsnest Pass and the Eastern Slopes area of Alberta, with the intention of developing them into long-term mining operations in the region. The transaction was concluded on or around August 29, 2013, at which point in time Northback acquired assets:

- (a) in or around the community of Frank, Alberta ("**Bellevue**");
 - (b) south and east of the town of Blairmore, Alberta ("**Adanac**");
 - (c) south and west of the town of Blairmore, Alberta ("**Lynx Creek**"); and
 - (d) seven kilometers north of the town of Blairmore, Alberta ("**Blairmore**");
- (collectively, the "**Properties**").

32. As part of the transaction, Northback acquired freehold mineral rights in fee simple, freehold leased mineral rights, and Crown leased mineral rights for the Properties (collectively, the "**Freehold Mineral Rights and Crown Leases**").

33. The acquisition of the Properties and the Freehold Mineral Rights and Crown Leases from Devon Energy and Consol Energy was financed by Riversdale.

²¹ Certificate of Incorporation of Benga Mining Limited dated November 14, 2012 [Exhibit C-16].

²² Certificate of Change of Name from Benga Mining Limited to Northback Holdings Corporation dated July 1, 2023 [Exhibit C-17].

²³ Notice of Articles for Northback Holdings Corporation dated July 1, 2023 [Exhibit C-18].

B. The Plan for the Grassy Mountain Project

34. Northback acquired the Properties and the Freehold Mineral Rights and Crown Leases with the intent of constructing and operating an open-pit metallurgical coal mine on the Blairmore property (the "**Grassy Mountain Project**" or the "**Project**"), and undertook extensive efforts and expended significant funds to progress and develop that Project.

35. Metallurgical coal is an essential input material for the steelmaking process. Currently, no commercially or economically viable substitute exists for metallurgical coal in steelmaking, nor is there likely to be one in the foreseeable future. Metallurgical coal is, therefore, a vital commodity, both domestically and internationally.

36. The Grassy Mountain Project would have been partially located on previously disturbed lands that were subject to surface mining activities and were not reclaimed. It was to be located on what are commonly referred to as "Category 4" lands under Alberta's *1976 Coal Development Policy for Alberta* (the "**1976 Coal Policy**"). Category 4 lands were subject to exploration and commercial development under standard approval procedures for surface, in-situ, and underground mining.

37. The Grassy Mountain Project was also to be located on "Treaty 7" lands, which refers to lands in southern Alberta over which a number of Indigenous groups have an interest. In connection with the Grassy Mountain Project, Northback entered into confidential impact benefit or relationship agreements with all potentially affected Indigenous groups. Moreover, it obtained letters of support or non-objection from all Treaty 7 First Nations and Métis Nation of Alberta.

38. The Grassy Mountain Project would have produced an estimated 4.5 million tonnes of metallurgical coal per year for approximately 23 years. Developing the Grassy Mountain Project would have created approximately 195 employment positions during the construction phase and approximately 385 permanent skilled workers' positions during the approximately 23-year long operations phase in an area of Alberta that has experienced substantial job loss and a declining population over several decades.

39. It was initially estimated that the Grassy Mountain Project would have generated approximately \$1.7 billion in royalties and taxes payable to municipal, provincial, and federal

governments over its 23-year life. It is now estimated that the Grassy Mountain Project would have resulted in royalties and taxes far in excess of \$1.7 billion, given the strong global demand for metallurgical coal.

C. Other Planned and Related Projects

40. In addition to the Grassy Mountain Project, when acquiring the Properties, Riversdale also intended to explore and develop its Freehold Mineral Rights and Crown Leases in the Adanac, Lynx Creek, and Bellevue properties.

41. Had it been permitted to proceed, its development of each of these Properties would have benefitted from centralized administration and planning and shared infrastructure. These properties would have benefited from sharing common processing, maintenance, and logistics infrastructure, all managed out of a central planning and administration office shared with other mineral assets in the region.

D. Legal Regime in Place at the Time of Northback's Acquisitions

42. At the time the Properties and the Freehold Mineral Rights and Crown Leases were acquired, government representatives and the established regulatory and land-use systems in place permitted and, in fact, encouraged coal resource exploration and development on lands that included the Properties and its Freehold Mineral Rights and Crown Leases. However, as described below, the efforts to progress with these projects were frustrated by a succession of measures attributable to Canada.

E. Hancock's Acquisition of Riversdale

43. For a number of years, Hancock was looking to diversify into the metallurgical coal market, which it viewed as having a robust industry structure resulting from a concentration of supply and strong fundamentals. Eventually, it became aware of the Grassy Mountain Project and the other planned and related projects.

44. In or around August 2018, Hancock acquired a 19.99% interest in Riversdale through its wholly-owned subsidiary, Hancock Corporation Pty Ltd, an Australian company.²⁴ In or around

²⁴ Certificate of Registration of Hancock Corporation Pty Ltd dated November 9, 2016 [Exhibit C-19]. See also, Australian Securities & Investments Commission Company Details for Hancock Corporation Pty Ltd dated December 12, 2024 [Exhibit C-20].

April 2019, Hancock purchased additional shares in Riversdale and increased its interest in Riversdale to 36.7%. In or around May 2019, Hancock purchased yet additional shares in Riversdale and increased its interest in the company to 99.94%. And by August 2019, Hancock acquired all remaining shares in Riversdale, obtaining a 100% interest in Riversdale. In so doing, Hancock effectively came to own and control Riversdale and Northback, which it continues to do to this day.

45. As noted above, extensive efforts were undertaken and significant funds expended to acquire the Properties, to progress and develop the Grassy Mountain Project, and to progress and develop other planned and related projects. Prior to Hancock's acquisition of Riversdale, those activities were financed by Riversdale. Following Hancock's acquisition of Riversdale, those activities were financed by Hancock.

F. Measures Attributable to Canada that Violated the CPTPP

46. There are two sets of measures²⁵ undertaken by Canada, its central, regional, or local governments, its authorities, or entities exercising governmental authority delegated to them, that frustrated the development of certain of the planned projects and violated the CPTPP. These are set out in greater detail below.

1. The Wrongful Denial of Permits for the Grassy Mountain Project

47. The first set of measures undertaken by or attributable to Canada that frustrated the development of the planned projects in Crowsnest Pass and the Eastern Slopes and that breached the CPTPP was the wrongful denial of the application for regulatory approvals for the Grassy Mountain Project by the provincial government of Alberta, and the courts' wrongful refusal to set aside that denial. These measures are set out in greater detail below.

²⁵ In the Claimants' Request for Consultations and Notice of Intent, they identified four sets of measures undertaken by or attributable to Canada that violated the CPTPP, including (a) the establishment of Castle Provincial Park and the subsequent cancellation of Crown Leases that prevented Northback from developing the Lynx Creek and Adanac assets; (b) the wrongful denial of permits for the Grassy Mountain Project by the provincial government of Alberta; (c) the wrongful denial of permits for the Grassy Mountain Project by the federal government of Canada; and (d) the imposition of an indefinite moratorium on coal exploration and development by the provincial government of Alberta. In this Request, the Claimants have elected not to advance claims relating to the measures identified in (a) and (c) for the time being. The Claimants respectfully reserve the right to add claims relating to those measures to the instant arbitration or to commence a separate arbitration in connection with those measures and seek consolidation or coordination with the instant arbitration at a future date.

(a) *The Provincial Assessment Process*

48. In order to proceed with the Grassy Mountain Project, a provincial environmental impact assessment ("**EIA**") under Alberta's *Environmental Protection and Enhancement Act* ("**EPEA**") was required. The Alberta Energy Regulator ("**AER**") oversaw the provincial EIA process to determine whether the Grassy Mountain Project was in the public interest and should be approved.

49. In 2014, Northback submitted an initial project proposal to the AER, initiating the process for provincial approval of the Grassy Mountain Project in Alberta. On March 19, 2015, the AER issued final terms of reference identifying the necessary information that needed to be included in the Grassy Mountain Project's EIA report under the *EPEA*.

(b) *The Federal Assessment Process*

50. In addition, in order to proceed with the Grassy Mountain Project, a federal environmental assessment under the Canadian Environmental Assessment Act 2012 ("**CEAA**") was required.

51. In 2015, Northback submitted a project description to the Canadian Environmental Agency ("**Agency**") initiating the federal regulatory approval process for the Project. In July 2015, the Canadian Minister of Environment and Climate Change ("**Minister**") referred the environmental assessment for the Project to a review panel pursuant to s. 38(1) of the CEAA.

52. Under the CEAA, a review panel does not have any decision-making responsibilities. Rather, a review panel conducts the environmental assessment of a project, holds a public hearing, prepares a report with its rationale, conclusions, and recommendations, and submits it to the Minister. The Minister must then decide whether, taking into account any mitigation measures the Minister considers appropriate, the project is likely to cause significant adverse environmental effects. If so, the Minister must refer the project to the Governor in Council ("**Cabinet**") to decide whether those effects are justified in the circumstances. If yes, the project may proceed; if no, the project may not proceed. After Cabinet has made its decision, the Minister must issue a decision statement to the proponent informing it of the Minister's and Cabinet's respective decisions.

(c) *The Joint Review Panel and Process*

53. On November 10, 2015, Northback submitted an EIA report, and on August 12, 2016, an updated version of the EIA Report, to the AER and the Agency. The EIA Report contained a description of the Grassy Mountain Project, information about its geology, the method used for environmental assessment, an environmental assessment, a conservation and reclamation plan, and public participation and Aboriginal consultation. During this pre-panel stage, the AER sent two sets of information requests to Northback and the Agency sent five additional sets of information requests. Northback responded to each set of information requests.

54. On July 9, 2018, the Minister and the AER established a Joint Review Panel ("**JRP**") under the *Responsible Energy Development Act* and the CEAA to jointly assess the Project on behalf of both the provincial and federal governments. On August 16, 2018, the Minister and AER entered into an *Agreement to Establish a Joint Review Panel for the Grassy Mountain Coal Project*, which tasked the JRP with performing both the provincial functions of the AER and the federal functions of a review panel under the CEAA.

55. The JRP process involved: (i) a review of the EIA and any supplemental information submitted by Northback; (ii) a public hearing; (iii) preparation of an assessment report by the JRP; (iv) issuing a decision in the JRP's provincial capacity as the AER; and (v) providing recommendations to the Minister in its federal capacity under the CEAA.

56. Between 2018 and 2020, the JRP, the Agency, and the AER requested significant additional information in relation to the Grassy Mountain Project, in response to which Northback submitted 12 addenda to its EIA and 34 original or updated technical studies and assessments. All told, its application materials exceeded 26,000 pages, and significant time and resources were expended for the production of these materials.

57. On June 25, 2020, the JRP informed Northback that after reviewing the EIA and the addenda, it determined that: (i) the information submitted by Northback was sufficient to proceed to a public hearing; and (ii) the information provided by Northback met the information requirements outlined in the federal *Guidelines for the Preparation of an Environmental Impact Statement*.

58. Thereafter, between October 27, 2020 and December 2, 2020, the JRP held a public hearing over 29 sitting days via an online platform given the COVID-19 pandemic at the time. During the online hearing, Northback and other participants presented evidence, cross-examined witnesses, and presented arguments. The participation at the hearing of potentially impacted Indigenous groups was limited, as they had already communicated their support or non-objection to the Project by letter.

(d) The Provincial Government's Wrongful Denial of the Project

59. On June 17, 2021, the JRP issued its assessment report ("**JRP Report**"). In its provincial capacity as the AER, the JRP unreasonably, arbitrarily, and capriciously declined to approve the Project because, according to the JRP Report, the Project would cause significant adverse environmental effects that would purportedly outweigh what it considered to be low to moderate positive economic impacts. As a result, the JRP concluded the Project was not in the public interest and declined to approve it (the "**Provincial Decision**").

60. However, the JRP report was materially flawed in many respects. For instance, and among other things, the JRP Report: (i) noted that Northback's evidence was incomplete or insufficient, despite previously deeming the information provided by Northback to be complete and not requesting any additional information or data from Northback; (ii) failed to consider and discuss the totality of Northback's evidence; (iii) considered and relied on evidence from hearing participants who lacked proper expertise or independence; and (iv) found that there would be negative impacts on Indigenous groups, while ignoring or disregarding the support the Project enjoyed from the same Indigenous groups.

61. Further, in issuing the JRP Report and the Provincial Decision, the JRP, the AER, and Alberta's officers and representatives acted outside the constraints of their governing statutes and applicable policies. They improperly influenced and interfered with the established process, withheld material information, and denied issuing regulatory permits for wrongful purposes, contrary to general practices and a fair and reasonable interpretation of the applicable legislation.

(e) *The Federal Government's Wrongful Denial of the Project*

62. Despite the Provincial Decision, the federal government was still required to complete its assessment of the Project under the CEAA. As noted, this required the Minister to consider the JRP Report and decide whether the Grassy Mountain Project was likely to cause significant adverse environmental effects and, if so, to refer the matter of whether those effects were justified in the circumstances to the Cabinet. The Minister had until November 14, 2021 to do so.

63. On June 17, 2021, the Agency issued a news release indicating the Minister had received the JRP Report and would be conducting further consultations with Indigenous groups and the public before making a decision on the Project. In fact, however, the Agency did not conduct any consultation with Indigenous groups or the public following the release of the JRP Report.

64. On June 26, 2021, Northback's legal counsel informed the Minister that Northback was considering appealing the Provincial Decision in Alberta and requested that the Minister hold the process under the CEAA in abeyance ("**Abeyance Request**"). On July 6, 2021, Northback wrote the Agency again to reiterate its Abeyance Request. In a memorandum dated July 7, 2021, the Agency advised the Minister of the Abeyance Request. Yet, neither the Minister nor the Agency responded to or acknowledged Northback's Abeyance Request.

65. Further, on or around September 29, 2021, Northback, the Piikani Nation ("**Piikani**"), and the Stoney Nakoda Nations ("**Stoney Nakoda**"), applied to the Court of Appeal of Alberta for permission for leave to appeal the Provincial Decision to the Court.

66. Nevertheless, notwithstanding the fact that the Minister had until November 14, 2021 to issue a decision statement regarding the outcome of the federal review process, notwithstanding the Agency's promise to consult with Indigenous groups following the issuance of the JRP Report, notwithstanding the Agency's promise to consult with the public following the issuance of the JRP Report, notwithstanding the stated intent to legally challenge the Provincial Decision by Northback, Piikani, and Stoney Nakoda, and notwithstanding Northback's Abeyance Request, the Minister rushed to issue a decision statement on August 6, 2021, just days before a federal election was called on August 15, 2021.

67. In the decision statement, the Minister unreasonably, arbitrarily, and capriciously found that the Project was likely to cause significant adverse environmental effects and referred the matter of whether those significant adverse effects were justified in the circumstances to Cabinet ("**Referral Decision**"). On the same day, Cabinet decided that the significant adverse effects were not justified in the circumstances, thereby wrongfully denying federal approval for the Project ("**Cabinet Decision**").

68. In so doing, both the Minister and the Cabinet overlooked the fundamental deficiencies in the JRP Report highlighted above, ignored clear statutory requirements, failed to consult with Indigenous groups, failed to consult with the public, and denied Northback due process and procedural fairness, in order to improperly and hastily rush their decisions shortly before calling an election. Further, Northback received treatment different from that accorded to other projects in like circumstances.

(f) Court Proceedings Arising from the Provincial Decision, Referral Decision, and Cabinet Decision

69. As noted above, on or around September 29, 2021, Northback, Piikani, and Stoney Nakoda applied to the Alberta Court of Appeal for permission to appeal the Provincial Decision. On January 28, 2022, the Alberta Court of Appeal wrongfully denied leave to appeal the Provincial Decision. Northback, Piikani, and Stoney Nakoda subsequently applied to the Supreme Court of Canada for leave to appeal the Alberta Court of Appeal's decision, but the Supreme Court of Canada wrongfully denied leave on September 29, 2022 (collectively, these decisions of the Alberta Court of Appeal and the Supreme Court of Canada shall hereinafter be referred to as the "**Alberta Court Decisions**").

70. On or around August 13, 2021, Northback, Piikani, and Stoney Nakoda applied to the Federal Court of Canada for judicial review of the federal Referral Decision and the federal Cabinet Decision. On February 12, 2024, the Federal Court granted the applications of Piikani and Stoney Nakoda to set aside the Referral Decision and the Cabinet Decision, and remitted the matter back to the Minister and Cabinet for redetermination in accordance with the Federal Court's reasons (the "**Federal Court Decision**").

71. As a result of the JRP Report, Provincial Decision, and Alberta Court Decisions, Northback cannot currently construct or operate the Grassy Mountain Project.

2. **Alberta's Wrongful Imposition of an Indefinite Moratorium on Coal Development in Alberta in 2022**

72. The second measure attributable to Canada that frustrated the planned development of the projects in Crowsnest Pass and the Eastern Slopes was the Alberta government's imposition of an indefinite moratorium on coal exploration and development on the lands on which the Properties are situated in March 2022.

73. To begin, as noted above, at the time that Northback acquired the Properties, the 1976 Coal Policy was in effect. The 1976 Coal Policy classified lands in Alberta into Categories 1 through 4 ("**Land Categories**"), with different levels of restriction on coal exploration and development applying to each category. When Northback acquired the Properties, most of them were located on "Category 4" lands under the 1976 Coal Policy, which did not impose any restrictions on the commercial development of Category 4 lands and confirmed that applications for the right to explore, lease, or develop coal on Category 4 lands were to be considered under normal approval procedures respecting protection of the environment and reclamation of disturbed lands.

74. On May 15, 2020, Alberta publicly announced that it had rescinded the 1976 Coal Policy effective on June 1, 2020. Alberta specified that development on lands including the Properties would be subject to normal regulatory processes.

75. On February 8, 2021, Alberta changed its position and reinstated the 1976 Coal Policy. In conjunction with this, the Minister of Energy and Minerals ("**Minister of Energy**"), issued Ministerial Order 054/2021 which included a "Coal Policy Direction". The Minister of Energy directed the AER to consider Land Categories set out in the 1976 Coal Policy when considering an application for approval for the exploration for, or development of, coal under energy resources enactments. It also imposed an immediate ban on mountain-top mining on Category 2 lands and placed a moratorium on any new development on Category 2 lands.

76. On February 23, 2021, the Minister of Energy announced public consultations with Albertans on a modern coal policy would take place. On March 29, 2021, Terms of Reference for the Coal Policy Committee were introduced. Its mandate was to conduct public engagement and prepare a report for the Minister of Energy that addressed the management of coal resources and provided recommendations to clarify the nature, scope, and intent of the 1976 Coal Policy.

77. On December 29, 2021, the Minister of Energy announced that Alberta had received the Coal Policy Committee's report. At the time, however, the report was not publicly released.

78. On March 2, 2022, the Minister of Energy issued Ministerial Order 002/2022, which included a new "Coal Development Direction". The Coal Development Direction directed the AER to continue the pause on coal exploration and development activities on Category 2 lands and expanded this pause to coal exploration and development activities on Category 3 and 4 lands. Additionally, pursuant to the Coal Development Direction, Alberta would no longer accept any new coal lease applications for Category 2, 3, and 4 lands, and lease applications for Category 1 lands would be denied. In other words, on March 2, 2022, Alberta effectively announced a new, indefinite moratorium on essentially all coal exploration and development on lands such as those on which the Properties are located ("**Indefinite Moratorium**").

79. On March 4, 2022, Alberta announced and confirmed the Indefinite Moratorium and stated that, 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 Crowsnest Pass and the Eastern Slopes.

80. The effect of the Indefinite Moratorium is that Northback is prevented from advancing any coal exploration or development at the Properties and can no longer exploit its Freehold Mineral Rights and Crown Leases.

V. CANADA'S BREACHES OF THE CPTPP

81. As a result of the JRP Report, the Provincial Decision, the Alberta Court Decisions, and the Indefinite Moratorium (the "**Measures**"), Northback has been prevented from advancing any coal exploration or development at the Properties and can no longer exploit any of the Freehold Mineral Rights and Crown Leases it acquired, causing Hancock and Riversdale to incur

significant damages. Both individually and collectively, these Measures were not only contrary to Canadian law, but they also breached the CPTPP.

82. Under the CPTPP, all of the Measures are attributable to Canada. In particular, Article 9.2.2 of the CPTPP states as follows:

A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

(a) the central, regional or local governments or authorities of that Party;
and

(b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.

83. With respect to the JRP Report and the Provincial Decision, the provincial government of Alberta delegated its authority to decide whether the Grassy Mountain Project should be approved to the JRP. As a result, the JRP Report and the Provincial Decision rendered by the JRP are "measures adopted or maintained by ... any other body [that] exercises any governmental authority delegated to it by central, regional or local governments or authorities" of Canada. With regard to the Indefinite Moratorium, that too is attributable to the Respondent, as it is a "measure[] adopted or maintained by ... the central, regional or local governments or authorities" of Canada.

84. The Referral Decision and the Cabinet Decision are also measures that were contrary to Canadian law, breached the CPTPP, and are attributable to Canada. However, as those were set aside and remitted back to the federal Minister and federal Cabinet for redetermination in the Federal Court Decision, the Claimants are not advancing claims relating to the Referral Decision and the Cabinet Decision in the instant Request at this time. However, depending on the nature and outcome of that redetermination, the Claimants expressly reserve the right to add claims arising from such redetermination to the instant arbitration or to commence a separate arbitration in connection with such redetermination at a future date. In the latter case, the Claimants also expressly reserve the right to seek the consolidation or coordination of such separate arbitration with this arbitration in accordance with the processes and procedures set forth in the ICSID Arbitration Rules and the CPTPP.

B. Canada Violated the CPTPP's Minimum Standard of Treatment

85. Article 9.6 of the CPTPP provides, in relevant part, as follows:

Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

86. Investor-state arbitration tribunals have found that the fair and equitable treatment standard prohibits measures that are, among other things, arbitrary, unfair, unjust, idiosyncratic, discriminatory, that involve a lack of due process, that involve a lack of transparency and candor, that amount to a denial of justice, and that amount to a denial of procedural fairness. Other tribunals have found that the fair and equitable treatment standard prohibits a host State from frustrating the legitimate expectations of protected foreign investors.

87. In the instant case, the JRP Report and the Provincial Decision violate the fair and equitable treatment standard by arbitrarily, unfairly, unjustly, and capriciously denying approval for the Grassy Mountain Project. Among other things, the JRP wrongly found that the Project would cause significant adverse environmental effects that would purportedly outweigh positive economic impacts and that the Project was not in the public interest.

88. Moreover, the JRP Report and the Provincial Decision violated due process, procedural fairness, transparency, and candor by, among other things: (i) finding that Northback's evidence was incomplete or insufficient, despite previously advising Northback that the information it provided was complete and not requesting any additional evidence or information from Northback; (ii) failing to consider the totality of Northback's evidence; (iii) relying on evidence from hearing participants who lacked proper expertise or independence; and (iv) finding that the Project would have negative impacts on local Indigenous groups, while ignoring or disregarding the support of the same Indigenous groups.

89. The JRP Report and the Provincial Decision also violated the fair and equitable treatment standard through the improper influence and interference of Alberta's officers and representatives in the JRP process. Alberta's officers and representatives improperly influenced and interfered with the JRP process, withheld material information, and caused the JRP to deny approval for the Grassy Mountain Project for wrongful and improper purposes, contrary to general and

established practices and a fair and reasonable interpretation of the applicable legislation. This was arbitrary, unfair, unjust, idiosyncratic, discriminatory, involved a lack of due process, involved a lack of transparency and candor, denied procedural fairness, and frustrated the Claimants' legitimate expectations.

90. The Alberta Court Decisions also violated the fair and equitable treatment standard through a denial of justice, as a result of the failure of the Court of Appeal of Alberta and the Supreme Court of Canada to grant Northback permission to appeal the Provincial Decision. In this regard, Article 9.6 of the CPTPP provides that "'fair and equitable treatment' includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world". By failing to grant Northback permission to appeal the Provincial Decision, the Alberta Court of Appeal and Supreme Court of Canada denied justice in accordance with the principle of due process embodied in principal legal systems of the world.

91. Finally, the Indefinite Moratorium also violated the fair and equitable treatment standard by arbitrarily, unfairly, unjustly, and capriciously amending the policy in Alberta in relation to coal exploration and development that had been in effect for more than four decades on which the Claimants relied when making their investments, thereby frustrating their legitimate expectations. Moreover, Alberta instituted a moratorium on the exploration and development of coal mining on Category 4 Lands—which included the Properties—without providing Northback with due process and procedural fairness, and did so in a manner without transparency or candor. Finally, Alberta introduced the moratorium on coal exploration and development without offering anything in the way of compensation. As such, the Indefinite Moratorium, too, violated the fair and equitable treatment standard in Article 9.6 of the CPTPP.

C. Canada Unlawfully Expropriated the Claimants' Investment

92. Article 9.8 of the CPTPP provides, in relevant part, as follows:

No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:

(a) for a public purpose;

- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and
- (d) in accordance with due process of law.

93. Numerous arbitral tribunals have held that a measure having an effect equivalent to expropriation can be said to have occurred where a State undertakes incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of the property, even if not to the benefit of the State. Arbitral tribunals have held that this can be said to have occurred where a government undertakes a measure that is (a) substantial, (b) deprives the investor of all or most of the benefits of the investment, and (c) is permanent or for a substantial time. In the instant case, the Measures have an effect equivalent to expropriation in Article 9.8 of the CPTPP.

94. To begin, the Measures are clearly "substantial" in that they prevent the development, construction, and operation of the Grassy Mountain Project, prevent the advancement of any coal exploration or development at the Properties, and prevent the exploitation of the Freehold Mineral Rights and Crown Leases altogether.

95. Further, the Measures deprive the Claimants of all or most of the benefits of their direct investment in Northback, and their indirect investments in the Grassy Mountain Project, the Properties, and in the Freehold Mineral Rights and Crown Leases.

96. And finally, the Measures are likewise "permanent or for a substantial time". In the case of the JRP Report and the Provincial Decision, they appear to permanently foreclose the Grassy Mountain Project, the advancement of any coal exploration or development at the Properties, and the exploitation of the Freehold Mineral Rights and Crown Leases. In the case of the Indefinite Moratorium, it appears to do the same permanently, if not for at least a substantial period of time. Indeed, more than two years have elapsed since the Indefinite Moratorium was introduced.

97. Thus, as a result of the Measures, the Claimants' direct investment in Northback, and their indirect investments in the Grassy Mountain Project, the Properties, and the Freehold Mineral Rights and Crown Leases, have been subjected to measures having an effect equivalent

to expropriation under Article 9.8 of the CPTPP. Moreover, they lack a public purpose insofar as they wrongfully denied approval for the Grassy Mountain Project, wrongfully prevent the advancement of any coal exploration or development at the Properties, and wrongfully prevent the exploitation of the Freehold Mineral Rights and Crown Leases in a manner that was inconsistent with and in violation of all general and established practices and a fair and reasonable interpretation of the applicable legislation. Moreover, the measures were not undertaken in accordance with due process of law. And, finally, prompt, adequate and effective compensation was never paid to the Claimants for this expropriation. As a result, the Measures violate Article 9.8 of the CPTPP.

D. Canada Violated the CPTPP's National Treatment Standard

98. Article 9.4.1 of the CPTPP provides the following:

Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

99. Article 9.4.2 further provides the following:

Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to its investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

100. This is sometimes referred to as the "national treatment standard".

101. Arbitral tribunals have held that to establish a breach of the national treatment standard, a claimant would need to establish: (i) there are investors or investments from the respondent state that are in "like circumstances" to the claimant or its investment; (ii) the treatment accorded to the claimant or its investment was less favourable than the treatment accorded to investors or investments of the respondent state; and (iii) if differential treatment is made out under (i) and (ii), then the respondent state carries the burden of putting forth a non-discriminatory reason for the measures that led to the differential treatment.

102. In the instant case, there are multiple mining and other projects in Alberta and elsewhere in Canada that are in "like circumstances" with Northback and that are owned by Canadian investors. Moreover, unlike Northback, each of these mining and other projects were permitted to proceed, while Northback was not permitted to proceed as a result of the Measures. In so doing, Canada—or entities for which Canada is responsible under the CPTPP—provided treatment less favourable to the Claimants and to their investment than that which they provided to Canadian investors and their investments.

103. As a result, Canada—or entities for which Canada is responsible under the CPTPP—has failed to accord to the Claimants and their investments treatment no less favourable than that it has accorded, in like circumstances, to Canadian investors and Canadian investments in violation of Article 9.4 of the CPTPP.

E. Canada Violated the CPTPP's Most-Favoured-Nation Treatment Standard

104. Article 9.5.1 of the CPTPP provides as follows:

Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

105. Article 9.4.2 of the CPTPP further provides as follows:

Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

106. This is sometimes referred to as the "most-favoured-nation treatment standard".

107. Arbitral tribunals have held that to establish a breach of the most-favoured-nation treatment standard, a claimant would need to establish: (i) there are investors or investments from a third-state that are in "like circumstances" to the claimant or its investment; (ii) that the treatment accorded to the claimant or its investment was less favourable than the treatment accorded to investors or investments of a third-state; and (iii) if differential treatment is made out

under (i) and (ii), then the respondent state carries the burden of putting forth a non-discriminatory reason for the measures that led to the differential treatment.

108. In the instant case, there are multiple mining and other projects in Alberta and elsewhere in Canada that are in "like circumstances" with Northback and that are owned by investors from third-states. Moreover, unlike Northback, each of these mining and other projects were permitted to proceed, while Northback was not permitted to proceed as a result of the Measures. In so doing, Canada—or the entities for which Canada is responsible under the CPTPP—provided treatment less favourable to the Claimants and to their investments than that which they provided to investors from third-states and their investments.

109. As a result, Canada—or entities for which Canada is responsible under the CPTPP—has failed to accord to the Claimants and their investments treatment no less favourable than that it has accorded, in like circumstances, to investors from third-states and their investments in violation of Article 9.5 of the CPTPP.

VI. THE CLAIMANTS HAVE SUFFERED DAMAGES AS A RESULT OF CANADA'S VIOLATIONS OF CHAPTER 9 OF THE CPTPP

110. As a result of the Measures, the Claimants have suffered and will continue to suffer loss or damage in respect of their investments, and the Claimants are entitled to compensation for the full value of their losses on a full reparation basis. In this arbitration, the Claimants will present an analysis and valuation of all of the Claimants' losses prepared by an expert firm experienced in the assessment and quantification of damages in international arbitration proceedings.

111. While analysis is ongoing with respect to the Claimants' losses caused by the Measures, it is presently anticipated that the damages the Claimants will claim in this arbitration will include, among other things: the full value of the Claimants' direct and indirect shareholding interest in Northback prior to the introduction of the Measures that was destroyed as a result of the Measures; the costs the Claimants incurred to acquire their direct and indirect interest in Northback; the costs the Claimants incurred to finance the acquisition, exploration, and development of the Properties and the Freehold Mineral Rights and Crown Leases; the lost future profits that would have been available for distribution from Northback to the Claimants but for the Measures; and the costs the Claimants incurred to finance the payment of lease rental

payments to Alberta subsequent to its removal of Northback's ability to explore and develop the Properties and the Freehold Mineral Rights and Crown Leases. Subject to further analysis and quantification that will be presented over the course of the arbitration, it is currently estimated that the value of these losses will exceed **CAD \$2 billion**.

112. As a result, in the course of the arbitration, the Claimants will request full reparation for these and other losses inflicted on their investment, in an amount to be quantified over the course of this arbitration.

VII. THE CONDITIONS FOR JURISDICTION HAVE BEEN MET

113. As demonstrated below, the Claimants have met all the conditions to submit this dispute to arbitration under the CPTPP and the ICSID Convention.

A. The CPTPP's Jurisdictional Requirements Have Been Met

114. The jurisdictional requirements under the CPTPP have been met. First, the Claimants are "investors" of a Party to the CPTPP, as defined in the CPTPP. Second, the Claimants made an "investment" in Canada, as defined in the CPTPP. Third, both the Claimants and Canada have consented to submit this dispute to arbitration. Fourth, all of the conditions to Canada's consent to arbitration under the CPTPP have been satisfied. Each of these requirements will be examined in more detail below.

1. The Claimants are Protected "Investors" Under the CPTPP

115. Article 9.19 of the CPTPP states that a "claimant, on its own behalf, may submit to arbitration under this Section a claim ...that the respondent has breached ... an obligation under Section A" of the CPTPP. Article 9.1 of the CPTPP defines a "claimant" as "an investor of a Party that is a party to an investment dispute with another Party" and a "respondent" as "the Party that is a party to an investment dispute".

116. Article 9.1 of the CPTPP defines an "investor of a Party" as "a national or an enterprise of a Party that attempts to make, is making, or has made an investment in the territory of another Party". And "enterprise" is defined in Article 1.3 of the CPTPP as "any entity constituted or organised under applicable law ... including any corporation"

117. In the instant case, both of the Claimants are corporations incorporated in Australia, a Party to the CPTPP, that have made investments in the territory of Canada, another Party to the CPTPP. Therefore, the Claimants are protected "investors of a Party" under the CPTPP, entitled to submit to arbitration claims that Canada has breached an obligation under Section A of Chapter 9 to the CPTPP.

2. The Claimants Have Made Protected "Investments" Under the CPTPP

118. As noted above, Article 9.1 of the CPTPP defines an "investor of a Party" as "a national or an enterprise of a Party that attempts to make, is making, or has made an investment in the territory of another Party".

119. Article 9.1 of the CPTPP defines "investment" as follows:

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments and loans;
- (d) futures, options and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorisations, permits and similar rights conferred pursuant to the Party's law; and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases mortgages, liens and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action.

120. In the instant case, the Claimants have made an "investment" in Canada within the meaning of the CPTPP. Among other things, they own and control, directly or indirectly, a Canadian enterprise and shares in a Canadian enterprise. In particular, Riversdale owns 100% of the shares of Northback (a Canadian corporation), and Hancock owns 100% of the shares of Riversdale through its wholly-owned subsidiary, Hancock Corporation Pty Ltd. As a result, they own and control, directly and indirectly, a Canadian enterprise (Northback) and shares in a Canadian enterprise (Northback).

121. As a result, both of the Claimants qualify as protected "investors" with protected "investments" in Canada under the CPTPP.

3. The Claimants and Canada Have Consented to Arbitration of this Dispute

(a) The Claimants' Consent to Arbitration

122. Article 9.21.2 of the CPTPP provides that "[n]o claim shall be submitted to arbitration under this Section unless ... the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement". Each of the Claimants have consented to the submission of this dispute to arbitration under the CPTPP and the jurisdiction of the Centre by authorizing the filing of this Request, as evidenced by their respective Authorizations and Powers of Attorney²⁶ and their respective Consents and Waivers.²⁷

(b) The Respondent's Consent to Arbitration

123. The Respondent's consent is provided in the CPTPP. Article 9.20.1 provides that "[e]ach Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement". Article 9.19.1 of the CPTPP provides that a "claimant, on its own behalf, may submit to arbitration under this Section a claim ... that the respondent has breached ... an obligation under Section A" of Chapter 9 of the CPTPP. As noted above, "claimant" is defined as an "investor of a Party that is a party to an investment dispute with another Party", and "investor of a Party" is defined as "an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party". Thus, pursuant to Article 9.20.1,

²⁶ Authorization and Power of Attorney for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-21]; Authorization and Power of Attorney for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-22].

²⁷ Consent and Waiver for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-23]; Consent and Waiver for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-24].

Canada has consented to arbitrate any claims that it has breached an obligation under Section A of Chapter 9 of the CPTPP that have been brought by an enterprise of a Party to the CPTPP that has made an investment in the territory of Canada.

124. In the instant case, as noted above, the Claimants are "investors" of Australia (a Party to the CPTPP) who have made "investments" in Canada (another Party to the CPTPP). Moreover, in this Request, the Claimants have claimed a number of breaches of Section A of Chapter 9 of the CPTPP, including breaches of Articles 9.4, 9.5, 9.6, and 9.8. Thus, further to Article 9.20.1, Canada has consented to arbitration with the Claimants.

125. Moreover, Article 9.20.2 of the CPTPP states that "[t]he consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of ... Chapter II of the ICSID Convention (Jurisdiction of the Centre) ... for written consent of the parties to the dispute".

4. All Conditions to the Consent of Canada to Arbitration Under the CPTPP Have Been Satisfied

126. The CPTPP also provides a number of conditions to the consent of Canada to arbitration under Chapter 9 of the CPTPP, all of which have been satisfied, as set out below.

(a) More Than Six Months Have Elapsed Since the Claimants Submitted a Request for Consultations to Canada

127. Article 9.19 provides that "[i]f an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation) [a "**Request for Consultations**"] ... the claimant, on its own behalf, may submit to arbitration under this Section a claim ... that the respondent has breached ... an obligation under Section A" of Chapter 9 of the CPTPP.

128. In the instant case, the Claimants submitted a Request for Consultations pursuant to Article 9.18.2 of the CPTPP on June 14, 2024 in connection with the disputes described herein.²⁸

²⁸ Request for Consultations dated June 14, 2024 [Exhibit C-25].

More than six months have elapsed since the Claimants filed their Request for Consultations.²⁹ Thus, this condition to Canada's consent to arbitration has been satisfied.

(b) More than 90 Days Have Elapsed Since the Claimants Submitted a Notice of Intent to Canada

129. Article 9.19.3 of the CPTPP provides that "[a]t least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent)" (a "**Notice of Intent**"). The Claimants Submitted a Notice of Intent on September 17, 2024, pursuant to Article 9.19.3 of the CPTPP.³⁰ More than 90 days have passed since the Notice of Intent was submitted. Thus, this condition to Canada's consent to arbitration has been satisfied.

(c) No More than Three Years and Six Months Have Elapsed from the Date on Which the Claimants First Acquired Knowledge of the Breaches Alleged in this Request for Arbitration

130. Article 9.21.1 of the CPTPP provides the following:

No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 (Submission of a Claim to Arbitration) and knowledge that the claimant ... has incurred loss or damage.

131. In the instant case, as set out in Section IV (Summary of the Relevant Facts), no more than three years and six months have elapsed since the Measures that breached the CPTPP. In particular, the JRP Report was issued and Provincial Decision was made on June 17, 2021, the Alberta Court Decisions were rendered on January 28, 2022 and September 29, 2022, and the Indefinite Moratorium was announced on March 2, 2022. All of these are within three years and six months of the date of this Request for Arbitration. As a result, this condition on Canada's consent to arbitration under the CPTPP has been satisfied.

²⁹ Pursuant to the Request for Consultations, and in accordance with Article 9.18 of the CPTPP, the Parties undertook consultations and negotiations on September 24, 2024, which did not result in a resolution of the Parties' disputes. See, Email from Julien Faubert-Léger, Senior Trade Policy Officer, Investment and Government Procurement Division, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP dated September 20, 2024 [Exhibit C-26].

³⁰ Notice of Intent dated September 17, 2024 [Exhibit C-27].

(d) *The Claimants Have Submitted Written Waivers*

132. Article 9.21.2(b) of the CPTPP provides as follows:

No claim shall be submitted to arbitration under this Section unless:

[...]

(b) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver

[...]

of any right to initiate or continue before any court or administrative tribunal under the law of a [Contracting] Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration).

133. The Claimants have waived their right to initiate or continue any other proceedings in relation to the Measures that are alleged to be in breach of the CPTPP before any court or administrative tribunal in a Party or any other dispute settlement procedure, as evidenced by the enclosed Consent and Waiver for each of the Claimants.³¹ As a result, this condition to Canada's consent to arbitration is also satisfied.

B. ICSID's Jurisdictional Requirements Have Been Met

134. In addition to the CPTPP's jurisdictional requirements, ICSID's jurisdictional requirements have also been met. These are set out in Article 25(1) of the ICSID Convention, which states the following:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

³¹ Consent and Waiver for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-23]; Consent and Waiver for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-24].

135. Each of the requirements for jurisdiction set out in Article 25(1) have been satisfied, as set out in greater detail below.

1. There is a Legal Dispute Arising Directly Out of the Claimants' Investment

136. As noted above, Article 25(1) provides that in order for ICSID to exercise jurisdiction, there must be a "legal dispute arising directly out of an investment".

137. In terms of an "investment", the ICSID Convention does not provide a definition of what constitutes an "investment". However, a shareholding interest in a local enterprise has been recognized in ICSID jurisprudence to constitute an "investment" under Article 25(1) of the ICSID Convention. Moreover, as noted above, the Claimants' direct and indirect shareholding in Northback constitutes an "investment" under the CPTPP. Thus, there can be little doubt that there has been an "investment" within the meaning of Article 25(1) of the ICSID Convention.

138. In terms of whether there exists a "legal dispute", the Claimants contend that the measures described herein amount to violations of several of the Canada's obligations under the CPTPP, which have caused and continue to cause loss or damages to the Claimants. In the high-level discussions that followed the Request for Consultations and Notice of Intent on September 24, 2024, Canada did not agree with the Claimant's views, as expressed in its Request for Consultations and Notice of Intent, thereby giving rise to a legal dispute arising directly out of the Claimants' investment in Northback.

139. Based on the foregoing, a legal dispute arising directly out of an investment between the Claimants and Canada within the meaning of Article 25 of the ICSID Convention has clearly arisen.

2. The Legal Dispute Involves a Contracting State and a National of Another Contracting State

140. As noted above, Article 25(1) of the ICSID Convention further provides that in order for ICSID to exercise jurisdiction over a dispute, it must be a legal dispute "between a Contracting State ... and a national of another Contracting State". Article 25(2) of the ICSID Convention provides a "national of another Contracting State" means:

any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

141. Both Canada and Australia are Contracting States to the ICSID Convention. Canada deposited its instrument of ratification on November 1, 2013, and the ICSID Convention entered into force for it on December 1, 2013. Australia deposited its instrument of ratification on May 2, 1991, and the ICSID Convention entered into force for it on June 1, 1991.

142. The Claimants are juridical persons incorporated in Australia, and therefore have the nationality of Australia, a Contracting State other than the Contracting State party to this arbitration: namely, Canada. Therefore, this condition for the exercise of jurisdiction by ICSID is also satisfied.

3. The Claimants and Canada Consented to the Submission of this Dispute to ICSID

143. As noted above, Article 25(1) of the ICSID Convention further provides that in order for ICSID to exercise jurisdiction over a dispute, the parties to the dispute must "consent in writing" to submit it to ICSID. On December 16, 2024, each of the Claimants consented to the submission of this dispute to arbitration by authorizing the filing of this Request, as evidenced by their respective Authorizations and Powers of Attorney³² and their respective Consents and Waivers.³³ Canada's consent to arbitrate was made under Article 9.20.1 of the CPTPP on December 30, 2018 (*i.e.*, the date on which the CPTPP entered into force).

144. The Claimants and Canada have also consented to submit the dispute to ICSID. In the case of the Claimants, their consent to submit the dispute to ICSID is manifested through the submission of this Request for Arbitration, their respective Authorizations and Powers of

³² Authorization and Power of Attorney for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-21]; Authorization and Power of Attorney for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-22].

³³ Consent and Waiver for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-23]; Consent and Waiver for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-24].

Attorney,³⁴ and their respective Consents and Waivers.³⁵ In the case of Canada, its consent is recorded in Article 9.19.4(a) of the CPTPP, which provides that a claimant may submit a claim to arbitration under "the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings* [the "**ICSID Arbitration Rules**"], provided that both the respondent and the Party of the claimant are parties to the ICSID Convention".

145. In the instant case, the Claimants have elected to submit the disputes described herein to arbitration under the ICSID Convention and the ICSID Arbitration Rules. As noted above, both Canada and Australia are Contracting States to the ICSID Convention. Thus, the Claimants and Canada have consented to their disputes set out in this Request for Arbitration to ICSID.

146. Finally, Article 9.20.2 of the CPTPP states that "[t]he consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of ... Chapter II of the ICSID Convention (Jurisdiction of the Centre) ... for written consent of the parties to the dispute". Thus, there can be no doubt that both parties have consented to arbitrate the disputes set out herein before ICSID.

VIII. OTHER INFORMATION

A. This Request for Arbitration Relates to an Arbitration Proceeding

147. Rule 1(a) of the ICSID Institution Rules provides that the Request must "state whether it relates to an arbitration or conciliation proceeding". The Claimants confirm this Request for Arbitration relates to an arbitration proceeding.

B. Authorization of the Request for Arbitration

148. Rule 2(1)(f) of the ICSID Institution Rules provide that "if the requesting party is a juridical person, state that it has obtained all necessary internal authorizations to file the Request and attach the authorizations". In accordance with this Rule, the Claimants have taken all necessary internal actions to authorize this Request for Arbitration. Acting under their respective authority, Jay Eliot Newby, Hancock's Executive Director, and Garry Korte, Riversdale's

³⁴ Authorization and Power of Attorney for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-21]; Authorization and Power of Attorney for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-22].

³⁵ Consent and Waiver for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-23]; Consent and Waiver for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-24].

Director, have considered the matter and authorized this Request, as evidenced by Hancock's and Riversdale's respective Authorizations and Powers of Attorney.³⁶ In addition, the Claimants have appointed the undersigned as attorneys in this matter, provided the appropriate notification to the ICSID Secretariat pursuant to Rule 2(2) of the ICSID Arbitration Rules, and specifically authorized the undersigned to file this Request.³⁷ This Request has been authorized in accordance with the law and applicable corporate instruments.

C. Appointment of Counsel

149. As evidenced by the enclosed Authorization and Power of Attorney, the Claimants have appointed Bennett Jones LLP as its legal counsel in this matter.³⁸

150. All correspondence in this matter should be directed to:

Vasilis F.L. Pappas
Bennett Jones LLP

[REDACTED]
[REDACTED] British Columbia [REDACTED]
Email: [REDACTED]@bennettjones.com
Tel: + [REDACTED]
Fax: +1 604.891.5100

Sabrina A. Bandali
Bennett Jones LLP

[REDACTED]
[REDACTED] Ontario [REDACTED]
Email: [REDACTED]@bennettjones.com
Tel: + [REDACTED]
Fax: +1 416.777.863.1716

s.19(1)

D. Lodging Fee

151. Pursuant to Rule 1(1) of the ICSID Institution Rules, the Claimants have paid the fee for lodging this Request, a confirmation of which is enclosed.³⁹

E. Constitution of the Tribunal

152. Having regard to Article 9.22.1 of the CPTPP, Article 37 of the ICSID Convention, Rule 3(a)(i) of the ICSID Institution Rules, and Rules 15 and 16 of the ICSID Arbitration Rules, the

³⁶ Authorization and Power of Attorney for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-21]; Authorization and Power of Attorney for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-22].

³⁷ Authorization and Power of Attorney for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-21]; Authorization and Power of Attorney for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-22].

³⁸ Authorization and Power of Attorney for Hancock Prospecting Pty Ltd dated December 16, 2024 [Exhibit C-21]; Authorization and Power of Attorney for Riversdale Resources Pty Ltd dated December 16, 2024 [Exhibit C-22].

³⁹ Wire Details – Lodging Fee for Hancock Prospecting Pty Ltd and Riversdale Resources Pty Ltd [Exhibit C-28]; Email from ICSID Finance Team confirming receipt of Lodging Fee dated December 16, 2024 [Exhibit C-29].

Claimants request the constitution of a tribunal consisting of three arbitrators, one appointed by each Party, and the President of the tribunal appointed by agreement of the Parties or, failing such agreement by the Secretary-General of ICSID.

153. In accordance with Rule 9.19.7(a) of the CPTPP, the Claimants hereby appoint James Hosking as their party-appointed arbitrator. His contact information is as follows:

James Hosking
Chaffetz Lindsey LLP

[REDACTED]

s.19(1)

[REDACTED] NY [REDACTED]

Email: [REDACTED]@chaffetzlindsey.com

Telephone: [REDACTED]

F. Language of the Arbitration

154. Having regard to Rule 3(a)(ii) of the ICSID Institution Rules, the Claimants propose that the language of the arbitration be English.

G. Supporting Documentation

155. This Request is accompanied by Exhibits C-1 to C-31, listed in the attached List of Exhibits.

IX. REQUEST FOR RELIEF

156. The Claimants request that the Arbitral Tribunal constituted in accordance with Article 37 of the ICSID Convention and Article 9.22.1 of the CPTPP:

- (a) Award damages to the Claimants pursuant to Article 9.29 for breach of Articles 9.4, 9.5, 9.6 and 9.8 of the CPTPP in an amount to be fully quantified, but which is currently estimated to be not less than CAD \$2 billion;
- (b) Grant pre- and post-Award compound interest on the amount of damages awarded;
- (c) Compensate the Claimants for all costs of the arbitration, as well as for its costs of legal representation and other related costs; and

- (d) Grant such further and other relief as the Claimants may request and the Arbitral Tribunal may deem just.


157. The Claimants reserve their right to amend, modify, or supplement the above requests for relief.

X. REQUEST FOR REGISTRATION

158. On the basis of the above, the Claimants respectfully request that the Secretary-General of ICSID: (a) acknowledge receipt of the Request; and (b) proceed to register the Request as soon as possible and notify the Parties of the registration, in accordance with Rules 6(1) and 6(2) of the ICSID Institution Rules.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of December, 2024.

s.19(1)


Vasilis F.L. Pappas

Bennett Jones LLP

Counsel for the Claimants



Sabrina A. Bandali

Bennett Jones LLP

Counsel for the Claimants

LIST OF EXHIBITS

Exhibit	Description	Date
C-1	Comprehensive and Progressive Agreement for Trans-Pacific Partnership (Excerpts)	30 December 2018
C-2	Certificate of Incorporation on Conversion to a Proprietary Company for Hancock Prospecting Pty Ltd	8 June 1977
C-3	Certificate of Registration of Riversdale Resources Pty Ltd	29 August 2023
C-4	Australian Securities & Investments Commission Company Details for Riversdale Resources Pty Ltd	12 December 2024
C-5	Australia Securities & Investments Commission Company Details for Hancock Prospecting Pty Ltd	12 December 2024
C-6	Email from Vasilis F.L. Pappas, Bennett Jones LLP to the Canadian Designated Office – CPTPP at Global Affairs Canada	12 June 2024
C-7	Email from the Canadian Designated Office – CPTPP to Vasilis F.L. Pappas, Bennett Jones LLP	13 June 2024
C-8	Email from Vasilis F.L. Pappas, Bennett Jones LLP to the Regional Offices of the Canadian Department of Justice for the National Capital Region and Alberta	14 June 2024
C-9	Email from Vasilis F.L. Pappas, Bennett Jones LLP to the Canadian Designated Office – CPTPP	14 June 2024
C-10	Email from Vasilis F.L. Pappas, Bennett Jones LLP to Mark Luz, Shane Spelliscy, and Scott Little	14 June 2024
C-11	Email from Attorney General of Canada—Electronic Document Service to Vasilis F.L. Pappas, Bennett Jones LLP	14 June 2024
C-12	Email from Scott Little, Director and General Counsel, Trade Law Bureau, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP	14 June 2024
C-13	Email from Attorney General of Canada—Electronic Document Services to Vasilis F.L. Pappas, Bennett Jones LLP	17 June 2024

C-14	Email from Julien Faubert-Léger, Senior Trade Policy Officer, Investment and Government Procurement Division, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP	12 September 2024
C-15	Letter from Isabelle J. Ranger, Executive Director, Investment Trade Policy and Government Procurement Division, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP	20 September 2024
C-16	Certificate of Incorporation of Benga Mining Limited	14 November 2012
C-17	Certificate of Change of Name from Benga Mining Limited to Northback Holdings Corporation	1 July 2023
C-18	Notice of Articles for Northback Holdings Corporation	1 July 2023
C-19	Certificate of Registration of Hancock Corporation Pty Ltd	9 November 2016
C-20	Australian Securities & Investments Commission Company Details for Hancock Corporation Pty Ltd	12 December 2024
C-21	Authorization and Power of Attorney for Hancock Prospecting Pty Ltd	16 December 2024
C-22	Authorization and Power of Attorney for Riversdale Resources Pty Ltd	16 December 2024
C-23	Consent and Waiver for Hancock Prospecting Pty Ltd	16 December 2024
C-24	Consent and Waiver for Riversdale Resources Pty Ltd	16 December 2024
C-25	Request for Consultations	14 June 2024
C-26	Email from Julien Faubert-Léger, Senior Trade Policy Officer, Investment and Government Procurement Division, Global Affairs Canada to Vasilis F.L. Pappas, Bennett Jones LLP	20 September 2024
C-27	Notice of Intent	17 September 2024
C-28	Wire Details – Lodging Fee for Hancock Prospecting Pty Ltd and Riversdale Resources Pty Ltd	12 December 2024
C-29	Email from ICSID Finance Team confirming receipt of Lodging Fee	16 December 2024

C-30	Government of Canada website confirming the CPTPP entered into force in Canada on December 30, 2018	16 December 2024
C-31	Government of Australia website confirming the CPTPP entered into force in Australia on December 30, 2018	16 December 2024