

Alberta Energy Regulator finds Athabasca River Basin is not a ‘person’



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Key Takeaways

- On October 22, 2025, the AER dismissed a request for appeal regarding the Athabasca River Basin’s eligibility as a “directly and adversely affected person” under the REDA.
- The AER found it lacks the authority to declare natural features, like rivers, to be legal persons, unlike in the Magpie River case in Québec.
- The AER further held that only the Crown would be able to represent the Athabasca River Basin if personhood were recognized.

On October 22, 2025, the Alberta Energy Regulator (AER) released its decision (RA decision) dismissing a regulatory appeal filed by Ecojustice on behalf of the Athabasca River Basin. The RA decision found that the Athabasca River Basin does not meet the definition of an “eligible person” . . . directly and adversely affected by a decision” under sections 36(b)(ii) and 38 of the *Responsible Energy Development Act* (REDA).

In its RA decision, the AER clarifies the scope of its authority when determining eligibility to bring a regulatory appeal and its test for determining who is “directly affected” by its decisions, including comments on who can properly claim to speak for water bodies in Alberta.

Background

In February 2024, Canadian Natural Upgrading Limited (CNUL) applied to renew approvals (approval renewals) under the *Environmental Protection and Enhancement Act* (EPEA) and *Water Act* for the Jackpine Mine Project (project) bitumen recovery operations (renewal application). The Alberta Wilderness Association and Keepers of the Water filed a Statement of Concern (SOC) on behalf of the Athabasca River Basin. The SOC requested that the AER recognize the Athabasca River Basin as a “directly and adversely affected person” under the REDA. The AER subsequently approved the renewal application in March 2025 (renewal decision) without a hearing and declined to decide whether the Athabasca River Basin was a “directly and adversely affected person”, having already considered the SOC’s content and determined no hearing was required.

Ecojustice requested a regulatory appeal of the renewal decision in April 2025, claiming that

the AER incorrectly rejected concerns listed in the SOC and submitting that the AER should deem Athabasca River Basin an eligible person for the purposes of requesting a regulatory appeal under section 38 of REDA. Ecojustice argued that recognizing the Athabasca River Basin as an eligible person is required to support the inherent purposes of EPEA and the *Water Act*. CNUL responded that there is no Canadian precedent which supports a natural feature being considered a person and that recognizing a natural feature as a person is beyond the authority of the AER. In its response, Ecojustice pointed to the Regional Municipality of Comté de Minganie's (the RM of Minganie) declaration of personhood for the Magpie River in Québec.

Secondarily, CNUL argued that the Athabasca River Basin is not eligible under the "directly and adversely affected" test since Ecojustice submitted that the river is harmed by the project, but not the approval renewals. Ecojustice responded that the project cannot be distinguished from the approval renewals since they are required to continue the project.

The RA decision

In dismissing Ecojustice's request for regulatory appeal, the AER found that, unlike the RM of Minganie in the Magpie River case, the AER does not have the statutory power to declare a river to be a legal person. In the Magpie River case, the RM of Minganie's council passed a resolution recognizing legal personhood of the Magpie River. The AER does not have similar powers and must rely on the definition of a "person" that has already been recognized by law in Alberta. The AER found that a river is not a natural or legal person as those terms are defined in the province. The AER further held that it did not need to recognize the personhood of natural features to fulfill the purposes of EPEA and the *Water Act*.

Interestingly, the RA decision also comments on who would be entitled to represent and speak for the Athabasca River Basin, if it were deemed to be a person. The AER concludes that the proper representative of the Athabasca River Basin would be the Crown, since water, groundwater, bed and shore of the Athabasca River belong to the Crown under provincial statute. The AER states that "Ecojustice's claim to speak for the Athabasca River Basin is usurping the Crown's ownership and fiduciary role to manage public resources on behalf of the citizens of Alberta," and that these Crown responsibilities can only be delegated by statute.

Lastly, the AER found in its decision that, regardless of whether the Athabasca River Basin can be considered an "eligible person", it still would not have been "directly and adversely affected" by the renewal decision. Meeting the test requires establishing a direct causal connection between the decision and the harm claimed. The AER found Ecojustice's arguments on this point were vague and did not establish a clear link between harm to the Athabasca River Basin and the renewal decision itself. The AER found that the asserted impacts to the Athabasca River Basin arise from the project as a whole, not the renewal decision, and confirmed that a full review of a project's potential effects is beyond the scope of a renewal application.

Implications

The RA decision provides several insights with respect to standing before the AER and authority to represent and speak for natural features of the environment in Alberta.

First, the RA decision emphasizes the limited nature of the AER's authority under REDA. Absent a declaration by a court or legislative body, the AER will not recognize novel claims to personhood.

Second, the RA decision confirms that those requesting regulatory appeals at the AER must be able to demonstrate a clear link between the decision at issue and the asserted harm. That harm cannot be speculative, and harms related to projects as a whole will not be sufficient.

Lastly, the AER's finding that the Crown is the only entity that would have authority to speak for the Athabasca River Basin if granted personhood, indicates that the AER will be unlikely to entertain similar claims in the future filed by environmental advocate organizations acting independent of the Crown.