



Department of Justice
Canada

Ministère de la Justice
Canada

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Our File/Notre dossier: 10238566
Your file/Votre dossier: 80101

April 5, 2019

VIA ELECTRONIC MAIL: CEAA.GrassyMountain.ACEE@canada.ca

Joint Review Panel for the Grassy Mountain Coal Project
c/o Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor, Place Bell Canada
Ottawa, Ontario K1A 0H3

Attention: Alex Bolton, Chair

Dear Sir:

Re: Grassy Mountain Coal Project - Reference Number: 80101

I write in respect of the panel's March 21, 2019 letter to Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO) requesting a coordinated response with respect to:

- ECCC's views on the sufficiency and technical merits of information available on the Registry for migratory birds, and identified listed species at risk in consideration of its mandate;
- DFO's views on the sufficiency and technical merits of information on the Registry for westslope cutthroat trout at two identified locations; and
- DFO's views on the sufficiency and technical merit of information in relation to the potential for an amended list of waterbodies identified as critical habitat within the life of the Grassy Mountain Coal Project.

For context, ECCC and DFO administer the *Species at Risk Act* (SARA). There are different ministers responsible for species listed under SARA depending on the type of species and its location. The Minister of Fisheries and Oceans is responsible for aquatic species at risk other than individuals in or on federal lands administered by the Parks Canada Agency. The Minister of the Environment as the Minister responsible for Parks Canada Agency is responsible for individuals of species at risk found in national parks, national historic sites or other protected heritage areas. The Minister of Environment is responsible for all other species at risk.

Letters from each of DFO and ECCC in response to the panel's request are attached. Please contact me if you require anything further.

Yours truly,

<Original signed by>

Robert Drummond
Counsel
Prairie Region
Department of Justice Canada

Encls.

Canada



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Pêches et Océans
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Your file *Votre référence*
80101

Our file *Notre référence*
14-HCAA-00788

Joint Review Panel for the Grassy Mountain Coal Project
Attention: Alex Bolton
c/o Canadian Environmental Assessment Agency
22nd Floor, 160 Elgin St. Ottawa ON K1A 0H3
CEAA.GrassyMountain.ACEE@ceaa.gc.ca

Dear Alex Bolton:

Subject: Response to the Joint Review Panel's Information Request Regarding Benga Mining Ltd.'s Proposed Grassy Mountain Coal Project

Fisheries and Oceans Canada (DFO) received the Joint Review Panel's information request regarding the proposed Grassy Mountain Coal Project (the Project). As per the Panels March 21, 2019 request, DFO understands that you expect us to:

1. Provide the Department's views on the sufficiency and technical merit of information available on the Registry for westslope cutthroat trout (*Oncorhynchus clarkii lewisi*) critical habitat located on the Grassy Mountain mine surface lease at the following locations:
 - a. Gold Creek and tributaries from 49°36'27.797"N -114°23'34.32"W, to an upstream location on Gold Creek, 49°42'27.914"N, -114°23'49.456"W. Morin and Caudron creeks have identified critical habitat at 49°39'00.586" -114°23'41.120" and 49°41'15.680" 114°22'17.373" respectively.
 - b. Unnamed tributary to Blairmore Creek from 49°41'01.926"N, -114°27'09.614"W, to an upstream location on the same unnamed tributary to Blairmore Creek, 49°41'10.112"N, 114°27'07.788"W.
2. Provide the Department's views on the sufficiency and technical merit of information in relation to the potential for an amended list of waterbodies identified as critical habitat within the life of the Grassy Mountain Project.

General

Recovery planning and implementation for westslope cutthroat trout, Alberta populations has been conducted jointly with the Alberta Ministry of Environment and Parks. A federal Recovery Strategy, which adopted the Alberta Westslope Cutthroat Trout Recovery Plan 2012-2017, identified critical habitat for this species and was included on the public registry in March 2014.

Population and Distribution Objectives

The population and distribution objectives for westslope cutthroat trout, Alberta Populations in Canada in the 2014 Recovery Strategy is to "Protect and maintain the existing ≥ 0.99 genetically pure populations (currently believed that the number of such populations to be approximately 51

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within Alberta) at self-sustaining levels, and re-establish additional pure populations to self-sustaining levels, within the species' original distribution in Alberta (p.4)." A population is defined as a group of individuals capable of breeding.

Critical Habitat

Critical habitat is defined in s. 2(1) of the *Species at Risk Act* (SARA) as "...the habitat that is necessary for the survival or recovery of a listed wildlife species and that is identified as the species' critical habitat in the recovery strategy action plan". Habitat for aquatic species is also defined as the "... spawning grounds and nursery, rearing, food supply, migration and any other areas on which aquatic species depend directly or indirectly in order to carry out their life processes, or areas where aquatic species formerly occurred and have the potential to be reintroduced" [s. 2(1)].

For the Alberta populations of westslope cutthroat trout, critical habitat is identified to the extent possible using the best available information, and provides the geospatial area and the biophysical features and attributes necessary to support the species' life-cycle processes, and the survival and recovery of this species.

Given the low numbers of pure-strain populations of westslope cutthroat trout, low numbers of individuals in many of those populations and the limited distribution of westslope cutthroat trout in Alberta, it is recognized that the areas identified as critical habitat will be insufficient to achieve the desired population and distribution objectives outlined in the recovery strategy. As such, critical habitat is only partially identified at this point in time and additional critical habitat will be identified in a revised recovery strategy action plan.

DFO is satisfied that critical habitat has been identified as available on the Registry for westslope cutthroat trout critical habitat located on the Grassy Mountain mine surface lease at the following locations:

1. Gold Creek and tributaries from 49°36'27.797"N -114°23'34.32"W, to an upstream location on Gold Creek, 49°42'27.914"N, - 114°23'49.456"W. Morin and Caudron creeks have identified critical habitat at 49°39'00.586" -114°23'41.120" and 49°41'15.680" 114°22'17.373" respectively.
2. Unnamed tributary to Blairmore Creek from 49°41'01.926"N, -114°27'09.614"W, to an upstream location on the same unnamed tributary to Blairmore Creek, 49°41'10.112"N, 114°27'07.788"W.

As of February 2019, in collaboration with the Province of Alberta, scientific information with respect to the genetic status of westslope cutthroat trout has been attained and is the basis for a potential expansion of the proposed additional aquatic critical habitat in Gold Creek and its tributaries. In addition, it has been recognized there is a need to develop benchmarks of terrestrial habitat components that effectively protect key biophysical features that influence the aquatic environment. DFO has been working actively and cooperatively with Alberta to identify additional critical habitat, including a primary riparian zone around water bodies. This information is not available for public release at this point in time.

Detailed Fisheries Offsetting Plan and Information Request

The proponent has proposed using an equivalency approach to determine the amount and nature of offsets to achieve a fair exchange between project effects and gains associated with offsetting activities. Equivalencies are used to describe the project residual effects and the benefits from offsetting activities, and ultimately determine the amount of offsetting required to counterbalance the project impacts.

The Detailed Fisheries Offsetting Plan does not demonstrate how the proposed offsetting using loss-creation scenarios based on the equivalency approach will (a) meet the above population and distribution objectives for westslope cutthroat trout, and (b) not jeopardize the survival and recovery of this species.

Information requests:

Using the precautionary principle, and the equivalency approach, demonstrate how the proposed offsetting:

- a) meets the population and distribution objectives for westslope cutthroat trout (*Oncorhynchus clarkii lewisi*), Alberta Populations in Canada; and,
- b) ensures the predicted impacts of the project will not jeopardize the survival and recovery of this species.

In closure, if you require additional information or clarification, please contact Jason Shpeley at: <email address removed> or by phone at: <contact information removed>

Yours sincerely,

<Original signed by>

Marek Janowicz
Regional Manager, Regulatory Review
Mining, Oil and Gas South
Ecosystems Management
Central and Arctic Region
Fisheries and Oceans Canada

cc: C. Thomas Hoggarth– Fisheries and Oceans, Fisheries Protection Program
Becky Cudmore – Fisheries and Oceans, Species at Risk Program
Martyn Curtis – Fisheries and Oceans, Species at Risk Program
Melissa Pinto – Environment and Climate Change Canada
Chelsea Fedrau – Canadian Environmental Assessment Agency



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April 5, 2019

ECCC File: 494-10-3/6188
CEAA File: 80101

Alex Bolton
Chair, Joint Review Panel
c/o Canadian Environmental Assessment Agency
160 Elgin Street, 22nd floor
Ottawa, ON K1A 0H3

Dear Alex Bolton:

**RE: Environment and Climate Change Canada's Review of Benga Mining Ltd.'s
Environmental Impact Assessment and Addenda for the Grassy Mountain Coal
Project**

Thank you for your letter dated March 21, 2019, where the Joint Review Panel (the Panel) reviewing the Grassy Mountain Coal Project requested Environment and Climate Change Canada (ECCC) provide its views on the sufficiency and technical merit of information available on the Registry for migratory birds, and identified listed species at risk, in consideration of ECCC's mandate noted in the January 28 acknowledgement letter.

ECCC has participated in the review of the Grassy Mountain Coal Project and provided Information Requests (IRs) in the conformity review phase, and the technical review phase. ECCC has reviewed Benga Mining Limited's (the Proponent) project environmental impact statement, responses to IRs, and addendums.

From an ecotoxicological perspective, concerns remain with respect to the exposure of migratory birds and *Species at Risk Act* (SARA)-listed species, including Little Brown Myotis, to project-related contaminants of concern (COCs), including selenium. These concerns remain in part because of outstanding information gaps pertaining to the Proponent's water quality and water management plans, as noted in ECCC's January 21, 2019 submission to the Panel (IR package #167). Except for the outstanding concern with exposure to COCs, ECCC is of the opinion that the information provided to date on migratory birds is sufficient to assess the environmental impacts.

With regards to species at risk, ECCC submitted IRs with regards to Limber Pine and Whitebark Pine. Supplementary information provided by the Proponent has addressed concerns raised by ECCC. ECCC is of the view that there is sufficient information to assess the environmental impacts to these tree species.



ECCC also submitted IRs (IR packages #36, 48, 51 & 74) to the Proponent regarding Little Brown Myotis hibernacula. The Proponent's responses to ECCC IRs were fulsome, and concluded that the likelihood of Little Brown Myotis hibernacula being present on the mine site was low, and that any potential swarming was in small numbers. However, despite their field surveys the Proponent was not able to conclusively determine the presence of hibernacula within the project area. The Proponent committed to undertake further surveys for hibernacula prior to construction and has committed to communicating the results and working with the Province of Alberta and ECCC. Although there is still some uncertainty regarding the presence of hibernacula, ECCC believes there is sufficient information to assess the environmental impacts and to develop recommendations.

Grizzly Bear, Wolverine, Western Toad and Short-eared Owl are also listed under the SARA, but are managed by the Province of Alberta. ECCC does not have expertise on these species and, as noted in the January 28 acknowledgement letter, recommends that the Panel seek information on these species from the Province of Alberta.

We trust that the information provided herein addresses the Panel's request, as it relates to species at risk and migratory birds. ECCC notes that the IRs submitted to the Panel on January 21 are still outstanding. ECCC will continue to review any additional information submitted by the Proponent as it relates to ECCC's mandate. Please contact Melissa Pinto at <contact information removed> or <email address removed> if you have any questions or concerns regarding this letter. ECCC requests that the Panel copy Robert Drummond, counsel with Justice Canada, at <email address removed> on any correspondence.

Sincerely,

<Original signed by>

Margaret Fairbairn
Acting Regional Director
Prairie and Northern Region
Environmental Protection Operations

cc: Melissa Pinto, Senior Environmental Assessment Coordinator, EPOD, ECCC
Georgina Williston, Acting Manager, EA and Marine Programs, EPOD, ECCC
Vanessa Charlwood, Director, CWS, ECCC
Jason Shpeley, Acting Senior Fisheries Protection Biologist, DFO
Chelsea Fedrau, Environmental Assessment Officer, CEAA
Robert Drummond, Counsel, Justice Canada