

Grassy Mountain Coal Project Joint Review Panel

January 24, 2020

By email only

Mr. Drew Yewchuk
Staff Lawyer, Public Interest Law Clinic Department
Faculty of Law, Murray Fraser Hall

Subject: December 20, 2019 letter to the Joint Review Panel: The Inclusion of Planned Coal Mines in the Cumulative Effects Assessment

Dear Mr. Yewchuk,

The Joint Review Panel (the Panel) acknowledges receipt of the Canadian Parks and Wilderness Society (CPAWS) Southern Alberta's December 20, 2019 letter, regarding the inclusion of the Elan South Coal Project in the cumulative effects assessment for the Grassy Mountain Coal Project.

In Addendum 8 (Table 2-1 of Appendix A-1) of the Environmental Impact Assessment (EIA), Benga Mining Ltd. (Benga) indicated that Atrum Coal Limited's Elan South Coal Project was excluded from the cumulative effects assessment, with the rationale that it had not been defined or officially announced by Atrum as of August 17, 2018.

The Impact Assessment Agency of Canada's (the Agency's) Operational Policy Statement (OPS) on Assessing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act, 2012*¹ (CEAA 2012) states that a cumulative environmental effects assessment of a designated project must include future physical activities that are certain and should generally include physical activities that are reasonably foreseeable. The OPS defines "certain" as: the physical activity will proceed or there is a high probability that the physical activity will proceed, e.g. the proponent has received the necessary authorizations or is in the process of obtaining those authorizations. The OPS defines "reasonably foreseeable" as: the physical activity is expected to proceed, e.g. the proponent has publicly disclosed its intention to seek the necessary environmental assessment [EA] or other authorizations to proceed.

¹ Available online: Operational Policy Statement on Assessing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act, 2012*. <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/assessing-cumulative-environmental-effects-under-canadian-environmental-assessment-act-2012.html>

Section 1.4 “Examining Physical Activities that have been and will be carried out” of the Technical Guidance for Assessing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act, 2012*², further states the following:

- [...] future physical activities [...] are to be included in the cumulative effects assessment if they are certain and should generally be included if they are reasonably foreseeable. Some doubt about whether the physical activity will proceed is acceptable. The level of certainty may not be as high as for the project itself; and
- A future physical activity could be considered reasonably foreseeable and should generally be included in the cumulative effects assessment if one or more of the following criteria are met:
 - i. The intent to proceed is officially announced by a proponent. This information could be found in news media, the proponent’s website or via an announcement from the proponent directly to regulatory agencies. [...]
 - ii. The submission for regulatory review is imminent. This could be known if the collection of data has already commenced, regulatory authorities have been contacted about information requirements, or through an announcement from the proponent. [...]
 - iii. The physical activity is identified in a publically available development plan that is approved or for which approval is anticipated (e.g., a wastewater treatment plant in a city’s long term development plan).

The Panel has had regard for these considerations in determining whether or not to request that Benga scope Atrum’s Elan South Coal Project into the cumulative effects assessment for the proposed Grassy Mountain Coal Project.

At this time, the Panel is not aware of Atrum having publicly disclosed its intention to apply for necessary environmental assessment or impact assessment permits and authorizations for the Elan South Coal Project and the scope of any planned future project has not been defined. The Elan South Coal Project is not included in Alberta’s listing of all environmental assessment information for current projects³. The most recent regulatory development is the issuance of Deep Drilling Permit No C 2019-5 on October 15, 2019, which authorizes coal exploration drilling for exploratory purposes. This permit expires two years after issuance.

² Available online: Technical Guidance for Assessing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act, 2012*. <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/assessing-cumulative-environmental-effects-ceaa2012.html>

³ Available online: <https://www.alberta.ca/environmental-impact-assessments-current-projects.aspx>

Therefore, at present, the Panel does not consider the Elan South Coal Project to be “reasonably foreseeable”, as defined in the Agency’s Operational Policy Statement (OPS) on Assessing Cumulative Environmental Effects under the *Canadian Environmental Assessment Act, 2012*. The Panel notes, however, that Benga is required to include activities related to the exploratory phase from Atrum’s Elan South Coal Project in the cumulative effects assessment for the proposed Grassy Mountain Coal Project.

If you have any questions regarding this letter, you are encouraged to contact Tracy Utting, Acting Panel Manager at IAAC.GrassyMountain.AEIC@canada.ca.

Yours truly,

<Original signed by>

Alex Bolton
Chair, Joint Review Panel

cc. Ms. Katie Morrison, Conservation Director, CPAWS Southern Alberta
Mike Bartlett, Senior Project Manager, Millenium EMS Solutions Ltd.
Martin Ignasiak, Partner, Osler, Hoskin & Harcourt LLP