

Grassy Mountain Coal Project Joint Review Panel

June 29, 2020

By email only

C. Thomas Hoggarth
Regional Director, Ecosystems Management
Fisheries and Oceans Canada

Subject: Participation of Fisheries and Oceans Canada in the Public Hearing for the Grassy Mountain Coal Project

Dear Mr. Hoggarth:

On June 29, 2020 the Joint Review Panel (the Panel), established to review the proposed Grassy Mountain Coal Project (the Project), issued the attached Notice of Hearing (CIAR #365). The Panel currently anticipates commencing the hearing in October and plans to hold a portion of the public hearing sessions in proximity to the Project. Details regarding hearing dates, format, locations, and logistics will be provided at a later date.

As a federal authority with expertise on matters relevant to the Project, the Panel requires that Fisheries and Oceans Canada participate in the public hearing in accordance with section 6.1 of the Joint Review Panel Agreement and section 20 of the *Canadian Environmental Assessment Act, 2012*. The Panel expects that Fisheries and Oceans Canada will provide a technical written submission, make an oral presentation and actively participate in the public hearing.

The Panel requests that Fisheries and Oceans Canada provide a technical written submission on the potential environmental effects of the Project including recommendations as they relate to Fisheries and Oceans Canada's expertise. In particular, the Panel requests that the following topics be discussed in their submission: effects on fish and fish habitat, and on aquatic species at risk (including Westslope Cutthroat Trout). The submission should also include information regarding: the likelihood that the Project would cause significant adverse environmental effects, the predicted effectiveness of proposed offsetting and mitigation measures, and the appropriateness of proposed monitoring and follow-up programs. The Panel requests that Fisheries and Oceans Canada provide their submission by September 14, 2020, as per the schedule set out in the Notice of Hearing.

The Panel acknowledges and appreciates Fisheries and Oceans Canada's participation during the review to date and looks forward to the ongoing participation of the department at the public hearing.

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

Yours truly,

<Original signed by>

Alex Bolton
Chair, Joint Review Panel

cc: Brandi Mogge, Team Leader, Fisheries and Oceans Canada
Laura Phalen, Fisheries Protection Biologist, Fisheries and Oceans Canada
Robert Drummond, Senior Counsel, Department of Justice Canada
Martin Ignasiak, Osler, Hoskin & Harcourt LLP
Mike Bartlett, Senior Project Manager, Millennium EMS Solutions Ltd.

Attachment: Notice of hearing

Grassy Mountain Coal Project – Notice of Hearing

June 29, 2020 — The Joint Review Panel (the Panel) established to review the proposed [Grassy Mountain Coal Project](#) (the Project) and conduct an assessment of the environmental effects of the Project has determined that it has sufficient information to proceed to a public hearing. In addition, the environmental impact assessment and associated twelve addenda submitted by the proponent, Benga Mining Limited (Benga), have been deemed complete pursuant to section 53 of the *Environmental Protection and Enhancement Act*. This notice explains how to request to participate in the hearing, and sets out a schedule for the hearing.

The Panel currently anticipates starting the hearing in October 2020 and plans to hold a portion of the public hearing sessions in proximity to the Project. However, in light of the COVID-19 pandemic, the Panel will follow the recommendations of public health authorities and will prioritize the safety of all hearing participants. The Panel is currently considering all reasonable options to ensure that the hearing is accessible to all participants, including the potential for electronic hearing sessions using digital communication tools. The Panel will consider input from participants and Benga regarding the dates, locations, and the format of the hearing. These details will be announced at a later date.

How can I participate?

The hearing will provide Indigenous groups, interested parties, government authorities, and Benga with an opportunity to participate in the Panel's proceeding.

The Panel has determined that the following parties have demonstrated they may be directly and adversely affected by the Project, or have relevant information or expertise about the Project and may fully participate in the hearing:

- Káínai Nation (Blood Tribe);
- Ktunaxa Nation;
- Métis Nation of Alberta – Region 3;
- Piikani Nation;
- Samson Cree Nation;
- Siksika Nation;
- Stoney Nakoda Nation;
- Tsuut'ina Nation;
- Canadian Parks and Wilderness Society - Southern Alberta Chapter;
- Coalition of Alberta Wilderness Association and Grassy Mountain Group;
- Livingstone Landowners Group; and
- Municipality of Crowsnest Pass.

The Panel is prepared to grant these parties full participation at the public hearing, so long as they provide the following information in writing **no later than July 20, 2020**:

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- confirmation of their intent to participate and contact information;
- a description of the nature and scope of their intended participation; and
- views on preferred dates, locations, and the format of the hearing (i.e. in-person or electronic hearing sessions).

The Panel invites groups and individuals not listed above who have an interest in the Project to submit a request to participate and to make submissions about preferred dates, locations and the format of the hearing. Should you wish to file a submission, submit evidence, make a statement, or participate at the hearing, you must submit a written request to participate **no later than July 20, 2020**.

Your request to participate should include the following:

1. a concise statement providing:
 - a. a description of how you would be affected by the carrying out of the Project, or
 - b. any relevant information or expertise you possess in relation to the Project, including:
 - i. the nature of your expertise or knowledge;
 - ii. how your participation would assist the Panel; and
 - iii. how you will not repeat or duplicate evidence presented by other parties;
2. the nature and scope of your intended participation;
3. your contact information; and
4. if you are acting on behalf of a group or association of people, the nature of your membership in the group or association.

Your request to participate should be sent to IAAC.GrassyMountain.AEIC@canada.ca. Please file your submission as a PDF document with bookmarks, and page numbers (with the first page in the document being numbered page one). Documents submitted or generated as part of the environmental assessment will be considered public, and will be made available on the Canadian Impact Assessment Registry for the Project.

The Panel will review all requests to participate and will notify all parties who submitted a request regarding their eligibility to participate in the public hearing.

Benga Mining Limited, Environment and Climate Change Canada, Fisheries and Oceans Canada, Health Canada, Indigenous Services Canada, Impact Assessment Agency of Canada, and Natural Resources Canada are required to participate in the hearing and will receive written instructions from the Panel.

The involvement of the Aboriginal Consultation Office of Alberta Indigenous Relations is provided for by ministerial order.

Where can I find more information about the Project, the Environmental Impact Assessment, and the hearing?

To assist anyone who may wish to participate in the hearing, information sessions will be held online to provide information about the hearing process. The specifics of the Project or its merits will not be discussed and the Panel will not attend these sessions.

To attend an information session or for information on the hearing procedures, please contact Elaine Arruda at Hearing.Services@aer.ca.

All documents are available on the [Canadian Impact Assessment Registry](#) (Registry reference number [80101](#)). The Joint Review Panel Agreement (Document [#80](#)) describes the Joint Review Panel's process and mandate.

Is this a public process?

Yes. Section 49 of the *Alberta Energy Regulator Rules of Practice* requires that all documents and information filed for a proceeding be placed on the public record. If you file a submission, you must not include any personal information that you do not want to appear on or are not authorized to put on the public record. Section 49(2) of the *Rules of Practice* states how to apply to keep information confidential.

If my request to participate is approved, can I apply to be reimbursed for hearing-related costs?

If you are participating in a hearing, you may be eligible to have some of your costs paid. [AER Directive 031: REDA Energy Cost Claims](#) explains how and when to apply.

How do I raise a question of constitutional law under the *Administrative Procedures and Jurisdiction Act*?

To raise a question of constitutional law as defined in the *Administrative Procedures and Jurisdiction Act*, you must give notice according to section 12 of the *Administrative Procedures and Jurisdiction Act* and schedule 2 of the *Designation of Constitutional Decision Makers Regulation*. In addition, you must include the following information:

1. the constitutional question you intend to raise;
2. the legal argument you intend to make; and
3. the evidence you intend to rely on in support of your legal argument.

Hearing Schedule

Information sessions	July 8, 7:00 PM MDT and August 19, 7:00 PM MDT
Requests to participate Confirmations of participation Submissions on hearing dates, locations and format	July 20
Benga's response to requests to participate	July 27
Submission filing deadline - Benga	August 24
Submission filing deadline - all other parties	September 14
Response filing deadline - Benga	September 28
Deadline for motions	TBD (10 days prior to start of hearing)
Start of hearing	TBD in October

In establishing the hearing schedule, the Panel has attempted to balance the need for an efficient and timely hearing process with the need for a fair process which provides for participants to have adequate time to prepare and effectively participate in the hearing.

All updates regarding the hearing schedule will be made available on the [Canadian Impact Assessment Registry](#) (Registry reference number [80101](#)) and communicated to the distribution list for the Project.

About the Project

The Project includes the construction, operation, and reclamation of an open-pit metallurgical coal mine near the Crowsnest Pass, approximately seven kilometres north of the community of Blairmore, in southwest Alberta. The production capacity of the Project would be a maximum of 4.5 million tonnes of metallurgical coal per year, over a mine-life of approximately 24 years. It would include surface coal mine pits and waste rock disposal areas, a coal handling and processing plant with associated infrastructure, water management structures, an overland conveyor system, a rail load-out facility, and other facilities. The surface mine area of the Project is approximately 2800 hectares.

Details of the applications before the AER

Application Type	Number	Description
<i>Environmental Protection and Enhancement Act</i>	001-00403427	Application for an approval to construct, operate and reclaim the Project.
<i>Water Act</i>	001-00403428	Application to transfer CNRL surface water licence on Crowsnest River.
<i>Water Act</i>	001-00403429	Application to transfer Municipality of Crowsnest Pass surface water licence on York River.

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Application Type	Number	Description
<i>Water Act</i>	001-00403430	Application for a licence to divert surface water for use in the Project.
<i>Water Act</i>	001-00403431	Application for an approval to capture, collect, treat, and manage surface runoff and groundwater as part of the water management program, including development of an end pit lake.
<i>Coal Conservation Act</i>	1844520	Application for mine licences to construct, operate, and reclaim the associated open mine pit, a north rock disposal area, a central rock disposal area, and a south rock disposal area.
<i>Coal Conservation Act</i>	1902073	Application for an approval to construct and operate a new coal processing plant.
<i>Public Lands Act</i>	MSL160757	Grassy Mountain Coal Mine
<i>Public Lands Act</i>	MSL160758	Corridor (access, conveyor, powerline)
<i>Public Lands Act</i>	LOC160841	Railway loop and access
<i>Public Lands Act</i>	LOC160842	Railway loop