
Grassy Mountain Coal Project Joint Review Panel

January 14, 2021

By e-mail only

Mr. Mick Elliott
Elk Valley Métis

Subject: Participation in the Grassy Mountain Coal Project – Elk Valley Métis

Dear Mr. Elliott:

The Joint Review Panel (the Panel) received your e-mail correspondence dated January 10, 2021 (CIAR #1571) requesting engagement of the Elk Valley Métis with respect to the Grassy Mountain Coal Project (the Project).

The Environmental Impact Assessment (CIAR #42), applications made to the Alberta Energy Regulator (AER applications) regarding the Project (CIAR #42), twelve Addenda for the Project, as well as all other information on the record for the Project are available on the Canadian Impact Assessment Registry (the Registry) at <https://iaac-aeic.gc.ca/>, reference number 80101. Further information with respect to the Panel's mandate can be found on the Registry (CIAR #80).

The Panel notes that review of the Grassy Mountain Coal Project has been ongoing since 2015. The Panel was appointed on August 16, 2018, and has sought feedback from the public and Indigenous groups numerous times over the last two years. The Panel invited requests to participate in the hearing in July 2020, held a public hearing from October 27 – December 2, 2020, and closed the evidentiary portion of the hearing on December 2, 2020. Closing arguments were submitted on/are due December 11, 2020 (proponent), January 8, 2021 (participants) and January 15, 2021 (proponent reply). The Panel intends to close the record for the project on Friday January 15, 2021 at 4 pm MST, so that the Panel can have time to complete its report in the remaining time available. No additional comments or information will be accepted by the Panel following the close of the record.

The Panel report will be submitted to the Federal Minister of Environment and Climate Change (the federal Minister) no later than June 18, 2021. The report will contain the Panel's recommendations to the federal Minister and the Panel's written decision, with reasons, for Benga Mining Limited's AER applications. The report will be publicly available on the Canadian Impact Assessment Registry and the Alberta Energy Regulator website at <https://www.aer.ca/regulating-development/project-application/decisions>.

Given this timeline, the communication from the Elk Valley Métis has come too late for the Panel to consider its merit in the Panel's work in determining effects to Indigenous people with respect

to any change caused to the environment, under the *Canadian Environmental Assessment Act, 2012*, section 5(1) c.

The information has also come too late to be considered by the Panel in relation to the AER applications. The Panel, in its capacity as an AER panel, has no ability to assess the Crown's consultation with Indigenous peoples, including Elk Valley Métis, pursuant to section 21 of the *Responsible Energy Development Act*. Matters related to the Government of Alberta's consultation with Indigenous peoples are managed and directed by the Government of Alberta's Aboriginal Consultation Office.

The Panel's Terms of Reference provide that the Joint Review Panel shall not make any determinations as to the scope of the Crown's duty to consult an Indigenous group or whether the Crown has met its respective duties to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. The Panel notes the mandate and role of the federal government with respect to Crown consultation. The Impact Assessment Agency of Canada stated the following in its hearing submission:

“recognizing that the JRP has a mandate to make recommendations related to the manner in which the proposed Project may adversely impact Aboriginal or Treaty rights, the Government of Canada intends to utilize the report conducted by the JRP to further inform ongoing consultations with Indigenous groups.” (CIAR #542, beginning at pdf 530).

The federal Crown Consultation Coordinator for the Project is Mr. Charles Gauthier, with the Impact Assessment Agency of Canada. Mr. Gauthier can be reached at <Email address removed> .

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

Yours truly,
<Original signed by>

Alex Bolton
Chair, Joint Review Panel

cc: Martin Ignasiak, Partner, Osler, Hoskin & Harcourt LLP
Mike Bartlett, Senior Project Manager, Millennium EMS Solutions Ltd.
Sarah Nossiter, Counsel, Benga Mining Limited
Charles Gauthier, Crown Consultation Coordinator, Impact Assessment Agency of Canada
Angela Lowry, Consultation Advisor, Aboriginal Consultation Office