

NORTHWATCH

October 25, 2020

Cindy Parker
Panel Manager, Review Panels Division
Marathon Palladium Project
Impact Assessment Agency of Canada
160 Elgin St, 22nd Floor, Ottawa, Ontario

Sent by email: iaac.marathonminereview-examenminemarathon.aeic@canada.ca

Ms. Parker:

Re. Resumption of Review for Marathon Palladium Project Comments on draft Amended Joint Review Panel Agreement and Terms of Reference

On October 9, 2020 the Impact Assessment Agency of Canada (the Agency) gave notice that they were allowing the public and Indigenous groups 15 days to review and provide comments on draft Amended Joint Review Panel Agreement and Terms of Reference for the review of a proposed “open pit palladium mine” near Marathon, Ontario.¹

This notice was issued on the same day as the Impact Assessment Agency of Canada (the Agency) and the Government of Ontario issued notice that they are resuming the environmental assessment for the proposed Marathon Palladium Project, located near the town of Marathon, Ontario, nearly seven years after the review process was suspended at the request of then-proponent Stillwater Mining Inc.

The project was subject to an environmental assessment by a Joint Review Panel from 2011 to 2014. In January 2014, the environmental assessment of the proposed project was put on hold at the request of the project's initial proponent, Stillwater Canada Inc. The Joint Review Panel that was established to assess the project was also disbanded. In July 2020, the new proponent for the project, Generation PGM Inc., informed the Agency that it wished to resume the environmental assessment and the Agency subsequently determined that a new Joint Review Panel will be appointed in consultation with the Government of Ontario to conduct and continue the environmental assessment under the Canadian Environmental Assessment Act, 2012.

According to the summary notice posted by the Impact Assessment Agency, Generation PGM Inc. is proposing to construct, operate and decommission an open pit palladium mine approximately 10 km from Marathon, Ontario. The proposed project would include three to four open pits, an ore processing plant, tailings and mine rock storage facilities, site access roads, a transmission line, explosives factory and magazines, water management facilities, ancillary mine infrastructure and associated activities. The rate of production would be approximately 22,000 tonnes per day with a proposed operating mine life of approximately 14 years.²



Northwatch is a public interest organization concerned with environmental protection and social development in northeastern. Northwatch's interest in the 2011-2014 environmental assessment of the Marathon Platinum Group Metals and Copper Mine Project relates to two fundamental commitments: to support public participation in environmentally related decision-making, and to promote the principles of clean production and the precautionary principle by encouraging a responsible approach to mining activities in the region. Northwatch was an active intervenor in the review from 2011 through to 2014.

General Comments

Northwatch has a significant concern that the approach being adopted by the Agency to the restart of this review is one of shortcuts, which will shortchange the review process. The Agency appears to have already taken two decisions which signal this approach:

- Allowing the not-yet-appointed Joint Review Panel a significantly shorter review period than the previous Joint Review Panel, despite the review being of a project which can be reasonably expected of at least equivalent complexity and potential for environmental harm
- Accepting an "addendum" to the "original EIS" rather than requiring the proponent to submit a revised EIS and a revised set of supporting documents.

The areas of concern will be discussed later in our comments on the draft documents but are noted here as to significant decisions that appear to have been already made, and which – if not reversed – may prove fatal to the integrity and effectiveness of this review, and of the review's ability to gain public confidence in either its conduct or outcomes.

In addition to the two above noted concerns, we offer the following general comments:

- A fifteen day comment period on the draft Amended Joint Review Panel Agreement and Terms of Reference for the Environmental Assessment and the associated Terms of Reference for the Joint Review Panel is inadequate; this is particularly the case for this review, has been re-started after a near-seven year hiatus
- As was also the case in 2011, the process set out in the draft documents does not have the same degree of rigour as is found in hearing processes conducted under the Ontario Environmental Assessment Act; given that this is to be a Joint Review between Ontario and Canada, the process must provide at least an equivalent level of rigour
- As was also the case in 2011, in a number of areas the process set out in the draft documents lack an appropriate level of transparency, or at least the draft documents fail to provide the level of detailed direction required to ensure that the resulting process will be transparent and open, including and particularly for public participants
- As was also the case in 2011, the timelines are insufficiently defined and / or inadequate and as such are not supportive of a full and fair public review of the Project

Comments on the Draft Amended Agreement to Reestablish a Joint Review Panel for the Marathon Palladium Project (2020)

Northwatch has reviewed the Draft Amended Agreement to Reestablish a Joint Review Panel for the Marathon Palladium Project as posted on the Impact Assessment Registry on October 9th, 2020. We make the following comments, despite the short notice and limited comment period having impaired our ability to do a comprehensive review and provide more detailed comments. Our comments and concerns include but are not limited to the following:

- The documents variously refers to the mine subject to this review as being the “Marathon Palladium Project”,³ the “platinum group metals and copper mine”⁴ whereas the 2011 Terms of Reference referred to the project as “Marathon Platinum Group Metals and Copper Mine Project”⁵; if this is indeed the same project and a resumption of the suspended review, we would strongly recommend the Agency refer to the project by the same name, i.e. the “Marathon Platinum Group Metals and Copper Mine Project”, that reference being not only clearer and more appropriate to the project but also being consistent with the review that commenced in 2011
- Given that this is the second draft agreement and terms of reference for what is in effect a second review for a (presumably but not yet established to be similar) project at the same location, we would strongly recommend that the Agency and the proponent adopt the practice of applying footers to all documents indicating the year in which the document was generated to allow an easy distinction between the review of documents generated for Stillwater’s project review (2011 to 2014) and the review of Generation Inc.’s project (commencing in 2020)
- The proposed revision to the Canada-Ontario agreement with respect to the Joint Review Panel’s establishment reduces the number of days provided to conduct the review from 390 days (2011) to 271 days (proposed, 2020), with no rationale provided for this reduction and no reasonable explanation provided; there will be a new Joint Review Panel which – unless populated by members of the previous panel – will have no more familiarity with the project on the basis of this being a resumption of a review versus the commencement of a review
- Section 2.5 of the draft agreement (2020) is erroneous through its omissions, in that it neglects to include that the proponent only wrote to the JRP on January 30th 2014 in response to a January 29th 2014 letter from the Joint Review Panel⁶ to Stillwater Canada Inc. concerning the letter from the Lake Superior Binational Forum, Environment North, Northwatch and MiningWatch Canada⁷
- In Section 2.8 the Agency presents the proponent’s intention to “resume the environmental assessment for the Project”, and that “it intends to submit an update to its original EIS (EIS Addendum) to the Joint Review Panel in early 2021” as if the Agency has accepted this proposition; Northwatch strongly encourages the Agency to require the proponent to submit a revised Environmental Impact Statement and revised supporting documents, rather than an “addendum” or update; the burden should not be on the Agency, reviewers, the Joint Review Panel and public and Indigenous review participants to determine which parts and aspects of

the earlier EIS remain current and which have been supplanted by whatever the proponent sets out in an “addendum”; in the interests of efficiency, consistency and avoiding duplication of effort the proponent should be required to file a revised EIS and supporting documents as the basis for the re-started review

- Section 7 sets out requirements for the Record of the Joint Review, and while we do not disagree with those items as set out, additional details are required. As per our submission of 2011, we make the following additional comments:
 - all documents should be posted a in pdf format that allows reviewers to copy and paste text from the pdf document into a submission; when this is not the case, the result may be that a review participant having to retype portions of the document in order to provide comment, or result in the comment recipient – often a Review Panel – having to reference the subject document in order to appreciate the comments; both of these instances are inefficiencies and hindrances to effective public participation
 - titles posted in the CEAA registry should consistently identify the document being posted with enough detail to determine whether they are of direct relevance to the participant and their interest in the review
 - the “List All Records” option on the registry home page for the Project review should be more obviously displayed; the “List All Records” button should be displayed parallel to the buttons for “Submit a Comment” and “View Comments”
 - to access a document, a public registry user must “travel” through three layers of documents – the home page, the listing, and then the link to the pdf; some browsers pause at each interface, which means that accessing several documents requires considerable time; other agencies use registry structures which facilitate the downloading of documents in groups or categories, which bypasses this requirement
 - the search function is useful, but – like the “List All Records” function – is not obviously placed and should be made more obvious
 - the list of “Key Documents” should include the notice of the suspension of the hearing in 2014
 - all documents should be posted with a date that indicates the date that they were received by the Joint Review Panel, but the registry/reference numbers should be assigned based on the time of the document being added to the registry, rather than the time of receipt (if these dates differ; in other reviews, they have differed, which made it difficult to understand the sequencing and on occasion resulted in postings being missed, if they were “backdated” for date and/or assigned registry number)
 - the Registry should provide the option of displaying results of the “List All Records” in a table format, similar to the manner in which “Key Documents” are displayed
- In Section 9.2 the Agency states that “Upon the submission of the EIS Addendum by the Proponent, the Joint Review Panel will assess the EIS Addendum and any updated studies according to EIS Guidelines and the amended Terms of Reference”; as per our earlier comments in this submission, Northwatch strongly encourages the Agency to require the proponent to submit a revised Environmental Impact Statement and revised supporting

documents, rather than an “addendum” or update; the burden should not be on the Agency, reviewers, the Joint Review Panel and public and Indigenous review participants to determine which parts and aspects of the earlier EIS remain current and which have been supplanted by whatever the proponent sets out in an “addendum”; in the interests of efficiency, consistency and avoiding duplication of effort the proponent should be required to file a revised EIS and supporting documents as the basis for the re-started review

- Section 10.6 on provincial decision-making requires the following additional detail as important clarification. In particular, this section should be amended to make clear and certain that:
 - the Province will only issue approvals as an outcome of this review on matters that have been fully considered in the course of the review; for example, if the design, operational and environmental evaluation details related to an activity that was to be permitted through a Certificate of Approval were not fully disclosed and considered in the course of the EA review, the normal provincial review process would be required, i.e. an approval could not be issued on the basis of the Joint Panel Review on matters which were not fully examined in the course of the review without going through the normal public consultation process that would occur if there had not been an EA process.
 - further to the above, public participation rights and the opportunity to comment on provincial instruments – such as a Certificate of Approval – should not be limited or reduced on the basis of there having been a joint environmental assessment, unless the full contents of the proposed approval, including draft terms and conditions, were subject to public comment during the review process and the proposed approach remained unchanged

Terms of Reference for the Joint Review Panel

In addition to several of our comments made in earlier sections of this submission relating to the Joint Review Panel and its functioning, we make the following observations and recommendations:

- Section 2.9 should include that any and all exchanges between the Joint Review Panel will be made only in public fora with a record of any such exchanges (such as technical workshops or site visits) will be made and will be posted on the public registry
- Section 2.9 should include that there will be a record of any and all exchanges between the Agency and/or the Secretariat and that these records will be posted on the public registry
- Section 3.2 states that “*The Joint Review Panel will require the Proponent to submit its EIS Addendum in accordance with the requirements of the information request issued by the former Joint Review Panel on January 31, 2014, and in accordance with the requirements of the EIS Guidelines*”; as per our earlier comments in this submission, Northwatch strongly encourages the Agency to require the proponent to submit a revised Environmental Impact

Statement and revised supporting documents, rather than an “addendum” or update; the burden should not be on the Agency, reviewers, the Joint Review Panel and public and Indigenous review participants to determine which parts and aspects of the earlier EIS remain current and which have been supplanted by whatever the proponent sets out in an “addendum”; in the interests of efficiency, consistency and avoiding duplication of effort the proponent should be required to file a revised EIS and supporting documents as the basis for the re-started review

- Section 3.6 states that “The additional information or studies provided by the Proponent will be placed on the Public Registry and made available to the public”; please see our comments on Section 7 of the draft amendments to the agreement for the joint panel agreement (2020) with respect to requirements for the Record of the Joint Review as they pertain to Section 3.6 of the draft Terms of Reference (2020)
- Section 3.8 should be revised to state that there will be minimum of 75 days notice of the start of the public hearing and that calendar of the public hearing (indicated dates and times) will be available a minimum of 45 days in advance of the commencement of the public hearing
- Section 3.8 should be revised to state in addition to taking into consideration the timing of traditional activities in Indigenous communities, the Joint Review Panel will also take into account other holiday seasons of import to both public and Indigenous participants and panel staff, including the Christmas/New Year holiday season and will not schedule hearing sessions within 15 days of the beginning or end of that or other important holiday seasons, including traditional activities identified by participating Indigenous communities
- Section 3.9 addresses panel procedures; given that this is a joint Ontario-Canada review and is to meet the requirements of the Ontario Environmental Assessment Act the terms of reference (2020) should confirm to the Joint Review Panel that they are to incorporate the procedural rights afforded by the Ontario Environmental Assessment Act, including with respect to interrogatories and cross-examination
- Section 3.10 should confirm that hearing sessions, as well as any technical sessions, will be webcast and that archives of these webcasts will remain available through the public registry
- Section 4.1 states that “the Joint Review Panel shall complete its mandate and submit its final report to the federal and provincial Ministers within 271 days from the submission by the Proponent of the EIS Addendum to the Joint Review Panel”; in the interest of clarity, we restate here two earlier comments as they apply to this section:
 - The proposed reduction of the number of days provided to conduct the review from 390 days (2011) to 271 days (proposed, 2020) has no supporting rationale and no reasonable explanation provided; there will be a new Joint Review Panel which – unless populated by members of the previous panel – will have no more familiarity with the project on the basis of this being a resumption of a review versus the commencement of a review; the number of review days should not be reduced from 390

- Northwatch strongly encourages the Agency to require the proponent to submit a revised Environmental Impact Statement and revised supporting documents, rather than an “addendum” or update; the burden should not be on the Agency, reviewers, the Joint Review Panel and public and Indigenous review participants to determine which parts and aspects of the earlier EIS remain current and which have been supplanted by whatever the proponent sets out in an “addendum”; in the interests of efficiency, consistency and avoiding duplication of effort the proponent should be required to file a revised EIS and supporting documents as the basis for the re-started review

Conclusion

In addition to all of the above, we wish to point out two additional significant factors which should be considered by the Agency as they reconsider the draft joint agreement, panel terms of reference, and the review timeline more generally:

- Generation Mining Inc is a junior mining company with no known track record in bringing a project of this size and complexity on line (in fact, a brief review found no evidence of this company having a track record of any kind); comparatively, Stillwater was a large and established mining company, and it was unable to bring this project into production, or even to complete the environmental assessment review process. The Agency should carefully consider whether this project is sufficiently developed to commence the assessment project, or whether the combination of an immature project and an inexperienced proponent will result in another truncated process, which will be at the expense of Agency resources, the time and effort of public and Indigenous participants, and public confidence
- Like Stillwater before it, Generation Mining Inc is seeking to embark upon the project review prior to even having completed a project feasibility study;⁸ As the Agency may recall, in January 2014 Northwatch *et al* wrote⁹ the Joint Review Panel expressing concerns about the timeline for the review, particularly in relationship to the proponents development timeline and the fact that they were simultaneously engaging in the CEEA review and undertaking a feasibility study¹⁰, subsequent to the letter from Northwatch *et al*, the Panel made inquiries of the proponent, whose response was ultimately to request that the review be suspended.

Northwatch respectfully requests that the Agency not appoint the Joint Review Panel, thereby signalling the start of the review and the turning on of the review clock, until such time as Generation Mining Inc has completed the feasibility study and has confirmed to the Agency that the feasibility study has demonstrated that the project is viable. The Agency must not allow a proponent to cause the commencement of a review process for the purpose of increasing investor interest or for any other purpose than a full examination of the project, its purpose, alternatives and alternative means of being carried out, including potential environmental and/or social impacts.

Thank you for your consideration of the above comments and expressed concerns and requests for amendment.

Sincerely,



Brennain Lloyd
Northwatch Project Coordinator

ENDNOTES

¹ <https://iaac-aeic.gc.ca/050/evaluations/document/135980>

² <https://iaac-aeic.gc.ca/050/evaluations/proj/54755?&culture=en-CA>

³ See the title of the Draft Amended Agreement to Reestablish a Joint Review Panel for the Marathon Palladium Project

⁴ See the fourth “whereas” of the Draft Amended Agreement to Reestablish a Joint Review Panel for the Marathon Palladium Project

⁵ See the DRAFT HARMONIZATION AGREEMENT UNDER SECTION 18(2) OF THE CANADA-ONTARIO AGREEMENT ON

ENVIRONMENTAL ASSESSMENT COOPERATION To Establish a Joint Review Panel For the Marathon Platinum Group Metals and Copper Mine Project as posted at <https://iaac-aeic.gc.ca/050/documents/49011/49011E.pdf>

⁶ See letter from JRP at <https://iaac-aeic.gc.ca/050/evaluations/document/98207>

⁷ See letter at <https://iaac-aeic.gc.ca/050/evaluations/proj/54755/contributions/id/27207>

⁸ See Corporate Profile at <https://www.genmining.com/corporate/corporate-profile/>, “*Gen Mining completed a Preliminary Economic Assessment in early 2020 and has begun a feasibility study as well as restarting the permitting process.*”

⁹ See letter at <https://iaac-aeic.gc.ca/050/evaluations/proj/54755/contributions/id/27207>

¹⁰ See Northern Ontario Business, Jan 23, 2014 “Stillwater re-evaluates Marathon PGM mine”