

November 20, 2019

SUBMITTED ELECTRONICALLY

Grassy Mountain Coal Project Joint Review Panel
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Place Bell Canada
Ottawa, ON K1A 0H3

Attention: Tracy Utting, Acting Review Panel Manager

**Re: Benga Mining Limited (“Benga”), CEEA Reference 80101, Grassy Mountain Coal Project
Reply to Benga’s Submissions regarding Procedural Questions**

The Canadian Parks and Wilderness Society Southern Alberta Chapter (CPAWS) makes these submissions in response to Benga’s submission of November 14, 2019 regarding procedural issues in relation to the public hearing process.

Benga’s response to our procedural questions misconstrued CPAWS’s submission, but Benga’s reply does seem to indicate that a reasonable set of compromises can be reached.

- 1) CPAWS did not request a redrafted and reorganized complete EIA be generated after each Information Request. That would be an inefficient manner to proceed.

CPAWS’s request is for the Joint Review Panel to require Benga to provide a complete version of the Environment Impact Assessment organized in a logical subject-by-subject manner, including the material from the original Environmental Impact Assessment that is still being relied on, and the supplemental information and appendixes provided in response to information requests, before advancing to hearing. An organized version of the Environmental Assessment for use at the hearing would benefit the Panel, the other participants, and efficiency at the hearing. Benga would only be asked to re-organize their Environmental Impact Assessment material once.

The current version of the EIA is organized largely by the order that Information Requests were submitted to Benga, as a normal result of the information request process. The problem with this manner of organization is that the information on individual subjects is scattered throughout

several sections of documents in the August 2016 Environmental Impact Assessment and nine addenda, and that the current EIA now includes out-of date material Benga has already replaced with new information in the addendums.

- 2) CPAWS has not asked the Panel to interfere with Benga's final right of reply to participant submissions. CPAWS asked the Joint Review Panel to provide for a more reasonable advance notice period than the 45 day minimum described in paragraph 21 of the Agreement to Establish a Joint Review Panel, which starts when the hearing is called, which is when the information supplied by the proponent for the Environmental Assessment is essentially complete.

Useful expert reports cannot be completed until the information request process is brought to a close, because the information relied on in the experts reports could be completely changed or replaced by the new information added during the information request process. An expert report prepared too early is unhelpful to the panel. That is why CPAWS requested at least 45 days notice between the end of the information request process and the deadline for participant's submissions. CPAWS also requested at least 90 days notice between when the hearing is called and when it begins to ease the difficulty participants have securing experts who are able to arrange to appear at the hearing on short notice. Participants are not as well-resourced as project proponents, and often rely on university professors or other experts who have schedules less flexible than full time consultants. One purpose of the joint review panel is to make public participation in the hearing as accessible as reasonably possible. This would be impaired by tight timelines. Benga's desire for a rapid process must be balanced against the needs for public participation and thorough scientific review.

- 3) CPAWS considers Benga's proposal that participants use the process described in sections 12 to 14 of the *Alberta Energy Regulator Rules of Practice*, Alta Reg 99/2013 to obtain data and other relevant information from Benga relevant to the Environmental Impact Assessment to be suitable. CPAWS will adopt that process and send requests for information directly to Benga and apply to the JRP for direction should Benga and CPAWS disagree whether information is relevant and probative.
- 4) CPAWS understands that the Joint Review Panel is master of its own procedure. It has discretion over cross-examination procedure and the power to determine at which points witness panels are procedurally appropriate, and when single witnesses or small group panels will better serve fair and effective evidence gathering. That is why CPAWS asked the Joint Review Panel to establish general rules for cross-examination at the hearing.

Cross-examination makes up a large portion of the hearing, and the Joint Review Panel's procedures are to be set in a manner that facilitates the fulfillment of their mandate.

The witness-panel cross-examination in Joint Review Panel hearings may be an established practice, but it is not an effective vehicle to test the proponent's evidence. It creates a situation

where scientific experts are bundled with management of the proponent corporation. The existing witness-panel approach results in situations where questions asked of a scientific expert in hydrology about their expert hydrology report, are responded to by the proponent's project manager, who has no hydrology expertise and did not write the hydrology report. This erodes the distinction between professionals whose role at hearing is to provide an expert opinion on matters within their competence, and individuals who describe the proponent's intent, actions and corporate values. This method of handling cross-examination is neither efficient nor effective.

CPAWS asks that the Joint Review Panel issue rules and directions for cross-examination that include:

- A) The questioner is able to select a particular expert to question, and that expert must respond to the question.
- B) If a member of the witness-panel is unable to answer a question because it is outside their expertise or knowledge, the expert should state on the record that they are unable to answer, with the option of referring the questioner to another member of the witness-panel.
- C) CPAWS would further ask that there be a presumption that any discussion between witness-panel members that takes place during cross-examination in response to questions be recorded and included in the transcripts, unless the Joint Review Panel gives them explicit permission to have an off the record discussion during cross-examination.

Sincerely,

<Original signed by>

Drew Yewchuk
Staff Lawyer