

October 24, 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: Review Panel Manager

Re: Proposed Information Requests for Grassy Mountain Coal Project (80101) following the 9th and 10th addendums, and Questions Regarding Hearing Procedure

Please find attached a document of Proposed Information Requests relating to the sufficiency of the EIA submissions for the Grassy Mountain Coal Project.

The Canadian Parks and Wilderness Society Southern Alberta Chapter (CPAWS) further asks the panel to consider and make decisions regarding several procedural issues about the public hearing process at this time.

- 1) CPAWS notes that the Joint Review Panel has previously requested a single, comprehensive, easily read response that compiles all the information generated for the Environmental Impact Assessment. (JRP letter of April 4, 2019, CEAR #202) Whether Benga has provided a direct answer to this request was not clear. (Recent changes to the public registry have made document searches difficult).

CPAWS considers a comprehensive and logically organized Environment Impact Assessment essential for effective public participation at the hearing, and asks the panel not to advance to a hearing until Benga has produced such a submission. Attempting to advance using the current format of Benga's Environmental Impact Assessment will slow the hearing and lead to questions about out of date material and questions seeking information that has already been provided, but is buried in the addendums and appendixes.

- 2) CPAWS asks the Joint Review Panel to provide for longer advance notice periods than the 45 day minimum described in paragraph 21 of the Agreement to Establish a Joint Review Panel.
 - a. CPAWS suggests at least 45 days notice between Benga's final submission deadline and participant's submission deadlines, as participants cannot finalize their submissions or properly select the most useful subject-matter experts until they have the proponent's final submissions. Although participants have had notice of the project since the panel process

was started, useful submissions cannot be prepared until the proponent finalizes their Environmental Impact Assessment.

- b. CPAWS suggests at least 90 days notice between when the hearing is called and when it begins. Shorter periods of notice make it difficult to find experts willing and able to write an informed expert report in advance, and to make themselves available to attend the hearing in person if necessary.

In CPAWS view, the 45 day minimum would be insufficient given the complexity of the issues and the difficulties short notice periods create for participants. Short periods of notice impair the effective participation of hearing participants to the detriment of meaningful participation by the public in the environmental assessment.

- 3) CPAWS asks the panel to establish a procedure for participants to make formal requests to Benga for raw data that Benga and their contractors gathered in order to write the Environmental Impact Assessment, or to request copies or access to documents relied upon by Benga in the Environmental Impact Assessment. Hearing participants are unable to challenge Benga's submissions and evidence when Benga relies on proprietary documents or research that is not available to participants. This would be separate from the information request process, as new information could not be requested, only access to existing material.
- 4) CPAWS asks the panel to establish general rules for cross-examination at the hearing in advance. Specifically, CPAWS requests that experts be cross-examined individually as they would be in standard adjudicative processes.

The 'panel-style' cross examination employed in some previous Joint Review Panel hearings, where questions can only be put to all proponent representatives and experts collectively and replies are given by all Benga representatives and experts as a group after quiet and off-record internal consultation is an obstacle to effective and useful cross-examination. It deprives the hearing participants of the ability to test Benga's submissions through a genuine and effective cross-examination, and undercuts the usefulness of cross-examination.

The panel should also consider releasing a document describing the rules and purpose of cross-examination so that individuals or groups who are not represented by legal counsel are able to participate in an effective and time-efficient manner.

Sincerely,

Drew Yewchuk

<Original signed by>

Katie Morrison

<Original signed by>

Staff Lawyer, Public Interest Law Clinic

Conservation Director, CPAWS Southern Alberta

Proposed Information Requests on the Sufficiency and Technical Merit of the Environmental Assessment

Participant: Katie Morrison

Organization: The Canadian Parks and Wilderness Society – Southern Alberta chapter (CPAWS SAB)

Proposed Information Requests on the Sufficiency and Technical Merit of the Environmental Assessment

	Information Source <i>(section or page# of EIS, Addenda, Responses to Requests for Information, etc.)</i>	Rationale	Proposed Information Request
1	Agreement to Establish a Joint Review Panel for the Grassy Mountain Coal Project, para 19	<p>Benga has been omitting the names of the experts involved in preparing their submissions. Which experts conducted which studies, performed which analysis, and authored which documents is important to understanding the reliability of the Benga’s submissions.</p> <p>If Benga does not disclose the names of the experts who prepared their reports, it circumvents the Joint Review Panel’s power to require any expert who submitted a report to appear at the hearing to address their report.</p>	Please attach author, researcher, and contributor names to each portion of Benga’s Environmental Impact Assessment.
2	Addendum 10, Packages 2 and 5, General EIA	<p>The proximity between the mine infrastructure and the valued ecosystem components are key to quickly appreciating the reality of project risks to valued ecosystem component.</p> <p>High quality and resolution maps clearly showing the distances between the waste rock piles, haul roads, the Raw Water Pond, the sediment ponds, the surge ponds, the mine pit itself, the metal treatment plant, the surrounding streams, and the environmental features fish overwintering ponds (among other things) would be useful at the hearing.</p>	Please provide a set of maps showing mine infrastructure and the environmental components in the local study area in high resolution and detail for use at the hearing.

Proposed Information Requests on the Sufficiency and Technical Merit of the Environmental Assessment

	Information Source <i>(section or page# of EIS, Addenda, Responses to Requests for Information, etc.)</i>	Rationale	Proposed Information Request
3	First Addendum to the Environmental Impact Assessment, Appendix A1, 'Fisheries and Aquatics Baseline'	Information on the Westslope Cutthroat Trout (WSCT) populations was provided from 2014-2016 surveys of Blairmore Creek and Gold Creek and Benga has indicated surveying has continued. The existing information does not include population trends, which are key to determining if the WSCT populations are stable. Information provided about recruitment rates indicate the populations may not be stable.	Please provide data from 2017-2019 on the WSCT population numbers and estimates of the population trends of the WSCT in Blairmore Creek and Gold Creek.
4	Tenth Addendum, Package 5, Information Requests 5.20 and 5.21 Tenth Addendum, Package 2, Grassy Mountain Coal Project Conservation and Reclamation Plan (v2), "F.5.2.3 Potential future changes in temperature" Fourth Addendum, Attachment 2, Table 25-5 and Table 25-6	Climate change impacts on water temperature and flow volume and project impacts on water temperature and flow volume have been calculated separately from project impacts – since both will take place simultaneously, the environmental assessment ought to consider those impacts cumulatively.	Please provide estimates of the expected climate change impacts on the water temperatures in Blairmore Creek and Gold Creek, and the cumulative impacts of the Project and Climate change.

Proposed Information Requests on the Sufficiency and Technical Merit of the Environmental Assessment

	Information Source <i>(section or page# of EIS, Addenda, Responses to Requests for Information, etc.)</i>	Rationale	Proposed Information Request
5	Addendum 10, package 5, response to IR 5.18 Addendum 6, Appendix A-1 (Bat Hibernacula Report)	In the Bat Hibernacula Report, Benga seemed confident they had identified the existing mine shafts and chambers the Little Brown Myotis (Little Brown Bat) may be using as hibernacula within the mine permit boundary. In, in response to a hydrogeology question, Benga stated that they were unable to locate historical mine tunnels and chambers with accuracy.	Clarify how many expected abandoned mine tunnels and chambers Benga is unable to identify, and if there may be significant potential hibernacula within the mine permit boundary Benga has been unable to locate.
6	Tenth Addendum, attachment 2, F.5.2.1, Table F.5.2-1 Fourth Addendum, attachment 2, response to Request #25	In predicting the interaction of forest fire risks and climate change, Benga relied on <i>Boulanger 2014*</i> for the position that fires will decrease frequency in south-western Canada from 2011-2040. Benga should reconsider this reliance given the actual forest fire record from 2011-2019, which have not aligned with Boulanger's predictions. *Boulanger, Y., S. Gauthier, and P.J. Burton. 2014. A refinement of models projecting future Canadian fire regimes using homogenous fire regime zones. Can. J. For. Res. 44:365-376.	Please reconsider and redo their predictions for the likelihood and impacts of wildfires on the project area with reliance on more recent research than <i>Boulanger, 2014</i>, or justify their reliance on <i>Boulanger, 2014</i>.
7	Tenth Addendum, Package 2, Grassy Mountain Coal Project Conservation and Reclamation Plan (v2), F.7 Financial Security	Benga has chosen to rely on the AER's Mine clean up security regulations. The Joint Review Panel has an independent role to consider the environment impacts of the project and the financial security necessary for remediation. The AER's Mine Security Financial Program (MSFP) requires the company to post security for reclamation when the company's cash flow becomes inadequate. Since a company lacks the financial resources to post security when it has inadequate cash flow, in the event of unexpected financial problems, the MFSP systematically fails to collect sufficient security to cover reclamation costs.	Please submit an explanation of how compliance with Alberta's mine security program would cover the cost of mine reclamation in the event of an unexpected insolvency situation.

Proposed Information Requests on the Sufficiency and Technical Merit of the Environmental Assessment

	Information Source <i>(section or page# of EIS, Addenda, Responses to Requests for Information, etc.)</i>	Rationale	Proposed Information Request
8	Tenth Addendum, Package 2, Grassy Mountain Coal Project Conservation and Reclamation Plan (v2), see “F.3.6.4 Lake Development”	Benga intends to leave an end-pit lake in the project area with a 15 year fill time.	How will hydrology and flow levels in Gold Creek and Blairmore Creek be impacted during the 15 year filling time for the end-pit lake?
9	Tenth Addendum, Package 2, Grassy Mountain Coal Project Conservation and Reclamation Plan (v2), see “F.4.5.7 End Pit Lake”	At the end of the project, Benga intends to leave an end-pit lake that is planned to have no habitat value – it is not stated why this option was chosen. It is unclear from the materials if selenium may make the end-pit lake inhospitable to aquatic species.	Please explain why Benga has chosen to make the end pit lake aesthetic with no fisheries component?
10	Tenth Addendum, Package 2, Grassy Mountain Coal Project Conservation and Reclamation Plan (v2), see “F.3.10 Adaptive Management”	Adaptive Management has been described by Environmental Impact Assessment scholars as being “oversold and under-delivered”. It is a ubiquitous part of project proposals, but usually lacks specific triggers, and has no impact on the ultimate management of a project post-approval. The JRP should ask Benga to show they have previously successfully employed Adaptive Management.	Please provide several examples of Benga’s past successful application of Adaptive Management to control environmental damage not anticipated during project construction.