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June 26, 2020

SENT VIA EMAIL – [CEAA.GrassyMountain.ACEE@canada.ca](mailto:CEAA.GrassyMountain.ACEE@canada.ca)

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

Attention: Tracy Utting, Acting Panel Manager

Dear Madam:

**Re: Benga Mining Limited/Riversdale Resources - Grassy Mountain Coal Project  
Application Nos. 1844520 and 1902073**

Please be advised we represent the Livingstone Landowners Group (“LLG”), a participant in the environmental assessment by the Joint Review Panel (“Panel”) of Benga Mining Limited’s (“Benga”) proposed Grassy Mountain Coal Project (“Project”).

As the Panel knows, the LLG has filed a number of letters or submissions with respect to the Project to date, including CEAR #s 160, 288 and 343. In addition, members of the LLG (Allan Garbutt and Jillian Lynn Lawson) have also filed submissions with respect to the Project (see CEAR #s 282, 290 and 339). On June 25, 2020 the LLG received an email update to participants advising that the Panel has determined that the information on the public registry is now sufficient to proceed to the public hearing stage of the Panel’s process. The update goes on to state that the Panel “will issue the notice of hearing in the coming days.”

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We write to provide the views of the LLG with respect to certain aspects of the conduct of the public hearing stage of the environmental assessment. We intentionally write now, before the Panel issues the Notice of Hearing.

The Agreement to Establish a Joint Review Panel for the Grassy Mountain Coal Project (CEAR #80) provides, in Appendix 1 Terms of Reference (“TOR”), that the Panel’s announcement of the hearing must provide a minimum of 45 days’ notice prior to the commencement of the hearing. The TOR also state that the Panel shall conduct the hearing in accordance with the AER’s Rules of Practice (“Rules”). The Rules provide, in section 8(3), that:

A notice of hearing may contain a schedule showing the time limits for filing and serving requests to participate, requests for advance of funds, submissions, responses and replies, information requests, documentary evidence and written argument.

The LLG submits that the notice of hearing in this case should provide, at a minimum, for the filing and serving of requests to participate, requests for advance funding and the other procedural steps identified in section 8(3) of the Rules.

The LLG also notes that section 15 of the Rules provide for the Panel to hold a prehearing meeting:

15 The Regulator may, on its own initiative or at the request of a party, direct that a pre-hearing meeting be held with the parties for one or more of the following purposes:

- (a) to determine the issues in question and the position of the parties, including matters relating to costs;
- (b) to recommend the procedures to be adopted with respect to the hearing;
- (c) to determine whether the parties may benefit from alternative dispute resolution or a technical meeting;
- (d) if an oral hearing or electronic hearing is to be held, to set the date, time and place for the oral hearing or electronic hearing and to fix the time to be allotted to each party to present evidence and argument;
- (e) to decide any other matter that may aid in the simplification or the fair and most expeditious disposition of the proceeding.

The LLG hereby requests that the Panel direct that a pre-hearing meeting be held to address the matters identified in section 15 of the Rules. The LLG submits a pre-hearing meeting is appropriate in this case having regard to:

- the scale of the project;
- the significance of the environmental effects that will be caused by open-pit coal mining;
- the complexity of the existing record (an EIA with 11 addenda); and
- the serious public interest issues raised by the proposal to construct and operate a new open-pit coal mine in Alberta's Eastern Slopes, including potential health impacts on local residents.

In addition, the LLG submits that a pre-hearing meeting is required owing to the ongoing uncertainty created by Covid-19 with respect to public gatherings. It is clear that notwithstanding the phased re-opening of the provincial and national economy, physical distancing and other public health measures will continue to be needed for the foreseeable future. A pre-hearing meeting will allow participants to provide their views to the Panel on how best to hold a public hearing in the current circumstances. For example, will the hearing be fully or only partially "in person"? Will all or only some witnesses have to give evidence by video? If the latter, how will the Panel determine who testifies in person and who by video?

For the foregoing reasons, the LLG submits that the Panel's Notice of Hearing should, in addition to providing for the procedural steps identified in section 8(3) of the Rules, provide for the holding of a pre-hearing meeting.

Finally, the LLG notes that in a letter dated April 4, 2019 (CEAR #202), following the submission of Addenda 9 and 10, the Panel made the following request to Benga:

"In some cases, components of the requested information may be documented throughout several section of documents in the August 2016 Environmental Impact Assessment and nine addenda. It would be helpful to the Panel and the other participants, for Benga to present the information in a single, comprehensive, easily read response that compiles both the information presented to date and any newly requested information."

By our count, the original EIA and subsequent addenda total over 17,000 pages of documents. The sheer volume of the EIA makes it extremely difficult to work with, even for consultants and experts. Notwithstanding the Panel's request for the creation of a "single, comprehensive, easily read response", Benga has not provided one. The LLG submits that the Panel must order Benga to comply with the previous direction to prepare and submit a consolidated EIA.

Thank you.

Yours truly,

<Original signed by>

GAVIN S. FITCH, Q.C.

GSF/rs

cc: Livingstone Landowners Group  
Attn: John Lawson and Bill Trafford

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