

ATTACHMENT

Federal Authority Advice Record: Designation Request under IAA

Response due by **June 8, 2020**

Proposed Expansion Activities of the Vista Coal Mine Project

Department/Agency	Fisheries and Oceans Canada
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1. Has your department or agency considered whether it has an interest in the Projects; exercised a power or performed a duty or function under any Act of Parliament in relation to the Projects; or taken any course of action (including provision of financial assistance) that would allow the Projects to proceed in whole or in part?

Specify as appropriate.

Fisheries and Oceans Canada (DFO) has determined that, due to the prohibitions against the harmful alteration, disruption, or destruction of fish habitat or the death of fish under the *Fisheries Act*, the Fish and Fish Habitat Protection Program (the Program) has an interest in:

- Vista Test Underground Mine, particularly relating to the proposed water management plan and potential for associated flow impacts.
- Vista Phase II, including the updates to the water management plans provided on April 1st, 2020.

In October of 2019, a *Species at Risk Act* permit was issued by the Program to allow the capture and handling of Rainbow Trout (Athabasca River Populations) associated with baseline fish sampling that was undertaken to support future regulatory applications and impact assessment for the Coalspur Vista Phase II portion of the project. Currently, the Program is reviewing a *Species at Risk Act* permit application for similar activities that are proposed for August 2020.

The Program has not exercised any power or performed any duty or function under any Act in relation to the Vista Test Underground Mine portion of the project.

2. Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the Projects to enable it to proceed?

If yes, specify that power, duty or function and its legislative source.

Yes; for both aspects of the project it is probable that the proposed water management plan would change stream flow through water withdrawal and discharge, which has the potential to cause the harmful alteration, disruption or destruction of fish habitat, and effects to listed aquatic species at risk which are prohibited under subsection 35(1) of the *Fisheries Act* and sections 32, 33 and subsection 58(1) of the *Species at Risk Act*, respectively, unless authorized.

3. If your department or agency will exercise a power or perform a duty or function under any Act of Parliament in relation to the Projects, will it involve public and Indigenous consultation?

Specify as appropriate.

The Crown has a Constitutional duty to consult, and where appropriate, accommodate Indigenous peoples when regulatory decisions are being made that may adversely impact potential or established Indigenous or Treaty rights. The issuance of an Authorization for harmful alteration, disruption, or destruction of fish habitat or death of fish also acting as a permit under the *Species at Risk Act*, or the issuance of a stand-alone *Species at Risk Act* permit are regulatory decisions that may trigger this duty, and would be cause for initiating Indigenous consultation.

DFO does not undertake public consultation for regulatory decisions of this nature.

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4. Has your department or agency had previous contact or involvement with the proponent or other parties in relation to the Projects?

Provide an overview of the information or advice exchanged.

DFO has not had previous contact or involvement with the proponent in regards to proposed Vista Test Underground Mine.

DFO has had previous involvement with the proponent in relation to Vista Coal Mine Phase II Project:

- In June of 2019, the Program met with proponent representatives to provide information and guidance on the regulatory requirements associated with projects that have the potential to impact fish and fish habitat, including aquatic species at risk.
- In August of 2020, the proponent submitted a "request for review" to the Program. This includes a description of the project and potential impacts to fish and fish habitat. The Program is currently undertaking a review of the information and will provide the proponent with direction on whether a *Fisheries Act* Authorization will be required for the proposed project.
 - The Program has not received updated information relating to the updated water management plan associated with this submission.
- In October of 2019, the Program issued a *Species at Risk Act* Permit Application for baseline sampling.
- The Program is currently undertaking a review of a *Species at Risk Act* Permit Application for additional baseline sampling proposed for August 2020.

The Program would like to take this opportunity to update the Agency that the proposed Recovery Strategy for Rainbow Trout (Athabasca River Populations) has been posted for public comment:

<https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/rainbow-trout.html>

This is an update to the Recovery Potential Assessment mentioned in our September 27th, 2019, letter to the Agency. This document provides detail on areas where critical habitat for this species occurs, including McPherson Creek in the vicinity of both the Vista Test Underground Mine and Vista Phase II proposed project sites. Critical habitat is defined as "the habitat that is necessary for the survival or recovery of a listed wildlife species..." In light of this update, we would like to reiterate our previous communication that "...significant uncertainty remains as to whether an offsetting plan could adequately balance the project impacts without jeopardizing the survival and recovery of the species, which is a required consideration to be met under section 73 of the *Species at Risk Act*."

Finally, the Program would like to share with the Agency that impacts associated with both Vista Phase II and the Vista Test Underground Mine will be considered in a single review under the *Fisheries Act* and *Species at Risk Act*.

Brandi Mogge

Name of departmental / agency responder

Team Leader – Mining, Oil & Gas - South

Title of responder

June 8, 2020

Date