

**ATTACHMENT:**  
**Federal Authority Advice Record: Reconsideration for designation**  
**Response due by August 13, 2021**  
Proposed Vista Coal Mine expansion physical activities

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

Specify as appropriate.

Please reference ECCC's September 20, 2019, Designation Request Letter, ECCC's June 8, 2020, Designation Request Letter and FAAR Response and ECCC's May 28, 2021, FAAR Response.

In addition, our interest is based on ECCC's mandate in the context of the *Species at Risk Act* (SARA), the *Migratory Birds Convention Act 1994* (MBCA), pollution prevention provisions of the *Fisheries Act*, and the *Canadian Environmental Protection Act 1999* (CEPA).

ECCC also now notes that it has an interest in the Project for the following additional reasons:

- ECCC is currently developing Coal Mining Effluent Regulations (CMER) under the *Fisheries Act* that would apply to coal mining in Canada, including this proposed Project. These proposed Regulations are expected to be published in the Canada Gazette, Part I in the summer of 2022, and should be final in 2023. (see Question 6 for more information).

ECCC has not exercised a power or performed a duty or function under any Act of Parliament in relation to the Vista Coal Mine Expansion (the Project), nor has ECCC taken any course of action that would allow the Project to proceed in whole or in part.

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 physical activities to enable it to proceed?

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

Please reference ECCC's May 28, 2021, FAAR Response for information on *Species at Risk* permits.

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 physical activities, will it involve public and Indigenous consultation?

Specify as appropriate.

Please reference ECCC's June 8, 2020, FAAR Response.

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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 physical activities?

Provide an overview of the information or advice exchanged.

Based on information readily available, ECCC has not had any involvement with the proponent or other parties that would be relevant to the assessment of this project. ECCC has previously provided advice to the Agency with respect to the designation of the proposed Project in FAAR Responses the department submitted in September 2019 and June 2020. ECCC also provided advice to the Agency in May 2021 related to the assessment of the Project under the *Impact Assessment Act*, including comments on the initial project description and list of issues.

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5. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects within federal jurisdiction caused by the physical activities or adverse direct or incidental effects stemming from the physical activities?

Specify as appropriate.

Please reference ECCC's September 20, 2019, Designation Request Letter, ECCC's June 8, 2020, Designation Request Letter and FAAR Response and ECCC's May 28, 2021, FAAR Response.

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6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the physical activities have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

Specify as appropriate.

In addition to the information provided below please reference ECCC's September 20, 2019, Designation Request Letter, ECCC's June 8, 2020, Designation Request Letter and FAAR Response and ECCC's May 28, 2021, FAAR Response.

### **Thermal Coal**

On June 11, 2021, the Government of Canada released a [Policy Statement on future thermal coal mining projects and project expansions](#), which states that the Government considers that new thermal coal mining or expansion projects are likely to cause unacceptable environmental effects within federal jurisdiction, and are not aligned with Canada's domestic and international climate change commitments. The Policy Statement indicates that this position will inform federal decision making on thermal coal mining projects. In light of this latest announcement, the Strategic Assessment of Thermal Coal Mining, which was previously announced by the Minister in 2019, is no longer needed and has been cancelled.

### **Water Quality and Quantity**

The *Fisheries Act* provides pollution prevention and habitat protection provisions. The administration and enforcement of section 36 is the responsibility of ECCC. Subsection 36(3) of the *Fisheries Act* prohibits the deposit of deleterious substances into water frequented by fish, or to any place, under any conditions, where it may enter water frequented by fish. The definition of fish under the *Fisheries Act* includes all stages of the life cycle of fish (e.g. from egg to adult) and includes a range of other aquatic organisms, and is not limited to fish that are aquatic species at risk.

In considering the potential for the deposit of a deleterious substance, it is important to take into account the fact that neither water nor fish are stationary. Therefore, if there is the potential for fish to

be present in waters at any time, or in connected waters, such as tributaries, for the purposes of administering section 36 of the *Fisheries Act*, the waters are considered to be 'frequented by fish'. Subsection 36(3) does not apply if there are regulations in place made under subsection 36(5). ECCC is developing the proposed Coal Mining Effluent Regulations (CMER) which will include national baseline effluent quality standards for all coal mines and environmental effect monitoring provisions. However, until such time as the Regulations are in force, the general prohibition against the deposit of a deleterious substance would apply.

In addition to the Regulations, the proposed approach will also ensure that when new or expanded coal mining projects are subject to a federal environmental or impact assessment, the assessment will include consideration of the site-specific receiving environment in order to consider the environmental impacts that might be associated with the proposed mine assuming it adheres to the proposed selenium effluent quality standard.

Runoff from coal mining operations typically contain contaminants (including selenium) which may enter the McPherson Creek watershed and the McLeod River. ECCC notes that selenium concentrations in the McLeod River have already been elevated above water quality guidelines, due to cumulative contributions from coal mines in the headwaters. There is also the potential for calcite deposition from mine site runoff to affect the aquatic ecosystem.

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John Olyslager

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Name of departmental / agency responder

(Acting) Regional Director, Prairie and Northern Region

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Title of responder

August 13, 2021

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Date