

ALBERTA ENERGY AND UTILITIES BOARD
CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY
Calgary Alberta

PREHEARING MEETING
CARDINAL RIVER COALS LTD.

Memorandum of Decision 1999-09-23
Applications No. 960313 and 960314

1 INTRODUCTION

Following a public hearing in 1997, the Federal Department of Fisheries and Oceans (DFO) issued an authorization in respect of the Cheviot Coal Mine Project (the Project). Subsequently, Justice Campbell of the Federal Court Trial Division (the Court) found that the Joint Review Panel (the Panel), which had presided over the hearing, had failed to adequately address a number of issues in its review of the Project and on 8 April 1999 quashed the DFO authorization.

In a letter dated 22 June 1999 the Canadian Environmental Assessment Agency (CEAA) requested that the Panel reconvene in order to complete its work with respect to the issues identified by Justice Campbell. Additionally the EUB, under Section 42 of the Energy Resources Conservation Act, decided to review the applications and the decision made in respect of these applications.

A prehearing meeting, the subject of this report, was held to discuss the issues to be addressed at the reconvened hearing. Also discussed was the availability of information needed by the applicant, Cardinal River Coals Ltd. (CRC), to prepare any further submission, the likely date of any further submission by CRC, and the schedule and process for the review of that submission.

The prehearing meeting was also used to discuss the role of interveners, the establishment of a public registry, and other relevant procedural matters associated with reconvening the hearing.

The prehearing meeting was held in Hinton, Alberta, on 9 September 1999. The attached table lists the meeting participants.

2 SCOPE OF THE HEARING

CRC noted that the Federal Court had considered the issues associated with its application and found only four deficiencies in the environmental assessment. CRC expressed the opinion that, in order to complete the assessment and bring it into compliance with the Canadian Environmental Assessment Act, it was only necessary for the Panel to deal with these four matters. It requested the Panel to stay within the guidelines identified by the Court.

Several interveners expressed the need to expand the scope of the hearing.

The Alpine Club Coalition noted that since the original Panel hearing there had been an escalation of recreational activity in the area and suggested that CRC and the Panel re-examine the cumulative effects related to this increased recreational activity.

The AWA Coalition suggested there was a need to expand the scope of the hearing to include oil and gas development and recreational activities, particularly motorized recreation. It also suggested that a social cost-benefit assessment, including a coal market analysis, should be included.

The Mountain Cree Camp advised the Panel that it had determined that there were additional historical resources in the area of the Project that had not been addressed during the previous hearing.

In considering the scope of the hearing, the Panel agrees with the view expressed by CRC that it must take its primary direction from the four items deemed to be deficient in Justice Campbell's 8 April 1999 decision and from the 22 June 1999 letter from CEAA. In that regard, the Panel finds the issues as set out by Justice Campbell to be clear and therefore is prepared to consider submissions on the following matters:

- 1) information about likely forestry activity in the vicinity of the Project and the cumulative effects of such activity;
- 2) information about likely mining in the vicinity of the Project and the cumulative effects of such activity;
- 3) information regarding a comparative analysis between open pit mining and underground mining at the Project site, including the comparative technical and economical feasibility and comparative environmental effects of each; and
- 4) two documents previously submitted by the Canadian Nature Federation.

In reaching this conclusion, the Panel does not believe that it is in any way fettered in its ability to address other issues that it finds to be relevant and germane to its review during the course of the public hearing. The Panel notes that cumulative effects include "the sum total of disturbances similar to those related to the proposed activity regardless of their source" and "interactions among dissimilar sources of disturbance" (Draft CEA IL). Oil and gas development, motorized recreation, and other sources of disturbance may need to be considered, along with environmental resources not previously considered, to the extent that they also interact with the Project.

3 INFORMATION NEEDS FOR THE REVIEW

The Panel has advised CRC of the information that the Panel considers necessary to complete its review (see 4 August 1999 letter from Panel chair to CRC's legal counsel). CRC indicated during the prehearing meeting that work was proceeding and that it would be able to supply the requested information.

The Panel notes that CRC has selected nine valued environmental components (VECs) that it will use for the cumulative effects assessment of forestry and mining activities. In order to ensure that this list is acceptable, the Panel has requested the relevant federal and provincial government departments to comment on the appropriateness and adequacy of the selected VECs. These comments will be forwarded to CRC and other participants in the hearing as soon as possible.

CRC noted some uncertainty regarding the accurate identification of the preliminary disclosures (PDs) for future coal projects in the Project's cumulative effects area and requested that the Panel direct EUB staff to provide comment on the completeness of CRC's list of PDs. The Panel notes that there continues to remain some issues with regards to the confidentiality of these documents. The Panel will review the available options and ensure that this information is placed on the record in a timely fashion.

The Panel notes that several parties have suggested that the Panel retain independent consultants to advise it in the areas of mining, forestry, and cumulative effects. The Panel accepts that it potentially may have a significant role in obtaining sufficient technical information to carry out the additional review prescribed by Justice Campbell. As a result, the Panel will be retaining experts in these areas to review information supplied by CRC and others and advise the Panel as to the acceptability of the information. Once that has been accomplished, the role of the independent experts in the hearing process will be confirmed.

The Panel also intends to further review the need for additional work in areas beyond the scope set out by the Court and will advise participants in the hearing as these decisions are made. To some extent, the Panel anticipates that the extent to which other issues will need to be independently addressed will be a function of the amount and type of information provided by the applicant and by government experts.

The Panel also believes that the use of historical satellite imagery, air photos, and similar tools may be of value in understanding the impact of other sources of development on the regional landscape. The Panel will direct Secretariat staff to investigate this further.

4 LOCATION AND TIMING OF THE HEARING

4.1 Location

CRC, the United Mine Workers of America, and the Town of Hinton took the position that the hearing should continue to be held in Hinton, as Hinton is the community most affected by the Panel's decisions. Several interveners suggested that there was also a need, however, for the hearing to be held in other locations as well, e.g., Edmonton and Jasper. In particular, some argued that the Hinton location would prevent others from participating in the hearing and that the project's impacts affected other communities and environments, such as Jasper National Park. It was also suggested by the AWA Coalition that the Panel should alter its procedures in some manner, particularly if it were to move the hearing to other locations.

The Panel has carefully considered the various views with respect to location of the hearing as expressed at the prehearing meeting and in correspondence to the Panel. The Panel is of the opinion that the reconvened hearing should continue to be held primarily in Hinton, as was the original hearing. While the Hinton location is clearly not convenient for some members of the public (see below), the Panel does not believe that this concern outweighs the importance of ensuring that the process is open to those most affected.

With regard to ensuring public accessibility, the Panel is prepared to consider holding portions of the hearings on Saturdays or in the evenings if convinced that this is necessary to ensure effective participation by other public members.

While the Panel is of the view that the majority of the hearing should continue to be held in Hinton, the Panel also accepts that other communities (human and ecological) clearly may be affected by its decisions on the Project. In particular, the Panel accepts that Jasper Park, including its human residents, may be affected. Therefore, the Panel is prepared to also carry out a portion of the hearing within the Town of Jasper and the Panel Secretariat will be asked to explore the availability of a suitable site. Those participants that would prefer to submit their evidence in Jasper should advise the Secretariat when making their submissions. The Panel will attempt to meet those requests provided that most of the hearing continues to be held in Hinton.

It should also be noted that while the Panel is prepared to set a portion of the hearing in an alternative location, it does not intend to vary the Rules of Practice established in the earlier portion of the Hearing.

4.2 Timing

CRC submitted a proposed schedule for the submission of information and the resumption of the hearing (prehearing meeting Exhibit 6). That schedule suggested submissions could be filed by all parties no later than mid-November and that the hearing could be scheduled to commence on 10 January 2000.

Other participants, including the federal and provincial government representatives, the ANPC, Trout Unlimited, and the AWA Coalition, spoke against simultaneous filing by all participants.

The federal government stated that its major contribution to the proceedings would be analysis and interpretation of CRC's additional information. It stated it would need four to six weeks to respond to CRC's information. The provincial government also suggested a six-week period for its response to the applicant's information.

Nongovernmental participants sought time to respond to the information provided by CRC and the technical analyses of CRC's information by government departments. An alternative schedule proposed by the AWA Coalition in a letter to then-Minister of Environment Christine Stewart (prehearing meeting Exhibit 7) and restated at the prehearing meeting also included time to develop and review terms of reference for the hearing. The AWA Coalition provided a flowchart schedule at the prehearing meeting to illustrate its proposal.

In order to be both effective and fair, the Panel believes that the hearing process should proceed expeditiously. The Panel believes that the proposed time line, as set out below, will provide all participants, based on their comments at the prehearing meeting, with adequate time to review new information provided by CRC and other participants.

It is the Panel's view that there is no need to allot time to a review of terms of reference, as proposed by the AWA Coalition. The Panel's views on this matter are outlined in a letter to the applicant dated 4 August 1999 (prehearing meeting Exhibit 2) and reiterated above (see Scope of the Hearing).

The Panel agrees that a period of several weeks is needed to allow participants to respond to the information being brought forward by CRC. The Panel also makes a distinction in this case between government and nongovernment participants. Accordingly, the deadline for submission of written materials by government participants will be, as requested, 30 working days (approximately six weeks) from the receipt of the applicant's final submissions (excluding the last two weeks of December).

The Panel anticipates that the submissions of both the government departments and the Panel's independent consultants will include reviews of CRC's submissions and additional information that might assist the Panel to deal with the issues before it. Therefore any additional information commissioned from independent consultants by the Panel will also be due on the same submission deadline for government departments.

Written submissions from other participants will be due 20 working days (approximately four weeks) later in order to allow time to digest and respond to the added information. This schedule of submission deadlines will provide nongovernment participants ten weeks to review CRC's information and four weeks to review the technical submissions from government departments and independent consultants. All parties, including CRC, are encouraged, however, to submit any information they may have as soon as it becomes finalized in order to maximize the review period.

The Panel believes this schedule will allow all participants a fair opportunity to review the information to be considered at the hearing. The hearing will be scheduled to begin two weeks after the deadline for nongovernment written submissions.

In response to questions from the Panel, CRC indicated that it believed it could provide all of its additional information with the exception of the cumulative effects assessment by mid-October and the remainder by mid-November. Based on the foregoing schedule of submission deadlines, a mid-November filing of CRC's final submissions would result in submission deadlines of approximately 10 January and 7 February 2000 respectively for government and nongovernment participants. The hearing would likely commence on or about 21 February 2000. This schedule of events is illustrated in Figure 1.

It should be understood that this schedule can be achieved only if the information provided by CRC is adequate for the needs of the Panel.

5 PUBLIC REGISTRY

The Panel has established a public registry of materials related to the Project review. The registry is housed at the Hinton Municipal Library, 803 Switzer Drive, and is available to the public Monday through Thursday, 10 a.m. to 8 p.m.; Friday, 10 a.m. to 5 p.m.; and Saturdays and Sunday from noon to 4 p.m.

At the prehearing meeting some participants requested an additional registry in Edmonton. Other participants expressed a concern that if materials were held in two locations, the contents might not be identical.

The Panel believes that providing a second registry in Edmonton will benefit a number of participants in the review and has therefore directed the Panel Secretariat to establish a duplicate registry. To ensure that the contents of the two registries are the same, the Secretariat will prepare a list of contents and undertake a weekly check to verify that new entries are identical. The additional registry will be established at the offices of the Natural Resources Conservation Board, 4th Floor, Pacific Plaza, 9940 - 106th Street, Edmonton. These offices are open from 8:15 a.m. to 4:30 p.m. weekdays by appointment. Users can call (780) 422-1977 to make an appointment to view materials.

6 PARTICIPANT FUNDING

CEAA announced on 12 August 1999 that the federal government will provide up to \$30,000 to help the public take part in the reconvened Cheviot Coal Mine joint panel review. CEAA administers the federal Participant Funding Program in accordance with the Canadian Environmental Assessment Act and makes decisions related to the federal funding program independently from the Panel. Accordingly, the Panel is not in a position to amend or alter the level of funding provided by the federal government or the process used in determining the allocation of funds.

At the prehearing meeting, questions were raised by some participants regarding whether additional funding would also be available from the Alberta Energy and Utilities Board (EUB). The Panel notes that it is prepared to accept requests for funding from participants, but until it has had the opportunity to review these, it cannot make any commitments with regard to availability of funds. The Panel notes that any such application should outline the rationale for the request, the purpose of the funding, and any other sources of funding that the party has received. Interveners should also consider, in determining their needs, the Panel's intention to retain independent experts to address the various technical issues.

7 EUB APPROVALS

In August 1997 the EUB issued its approvals with respect to CRC's proposed mine and coal preparation plant. In view of the need to reconvene the joint federal/provincial hearing, the EUB determined that it would also be appropriate to consider the evidence expected to be adduced at the new hearing and to review its earlier decisions in respect of these approvals under Section 42 of the Energy Resources Conservation Act.

CRC advised that, although it considered that the EUB approvals were still valid, it had no intention of developing the Project until all provincial and federal approvals were in place. CRC noted that while no construction was under way, the conditions of these approvals were being met and that it was in fact in the public interest to maintain these approvals, as they required the submission and reporting of useful information.

The AWA Coalition and the Environmental Resource Centre took the position that the EUB approvals should be rescinded or revoked, in order to ensure the perception of impartiality by the Panel.

The Panel notes that the EUB's legislation does not require approvals arising from a decision being reviewed to be rescinded while the review is under way. However, it clearly would make sense to do so if irreversible effects would otherwise occur during the review process. In this case, however, the Panel notes that CRC has, on one hand, committed to continue to meet the information requirements of the approvals while, on the other, committed to not undertake any interim construction activities. Therefore, the Panel does not believe that it is necessary to rescind the permit to avoid irreversible damage. Nor does the Panel believe that the existence of these approvals in any way fetters its discretion to vary or rescind its previous decisions.

DATED at Calgary, Alberta, on 23 September 1999.

**ALBERTA ENERGY AND UTILITIES BOARD
CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY**

[Original signed by]

B. F. Bietz
Panel Chairman

[Original signed by]

G. J. Miller
Member

[Original signed by]

Tom Beck
Member

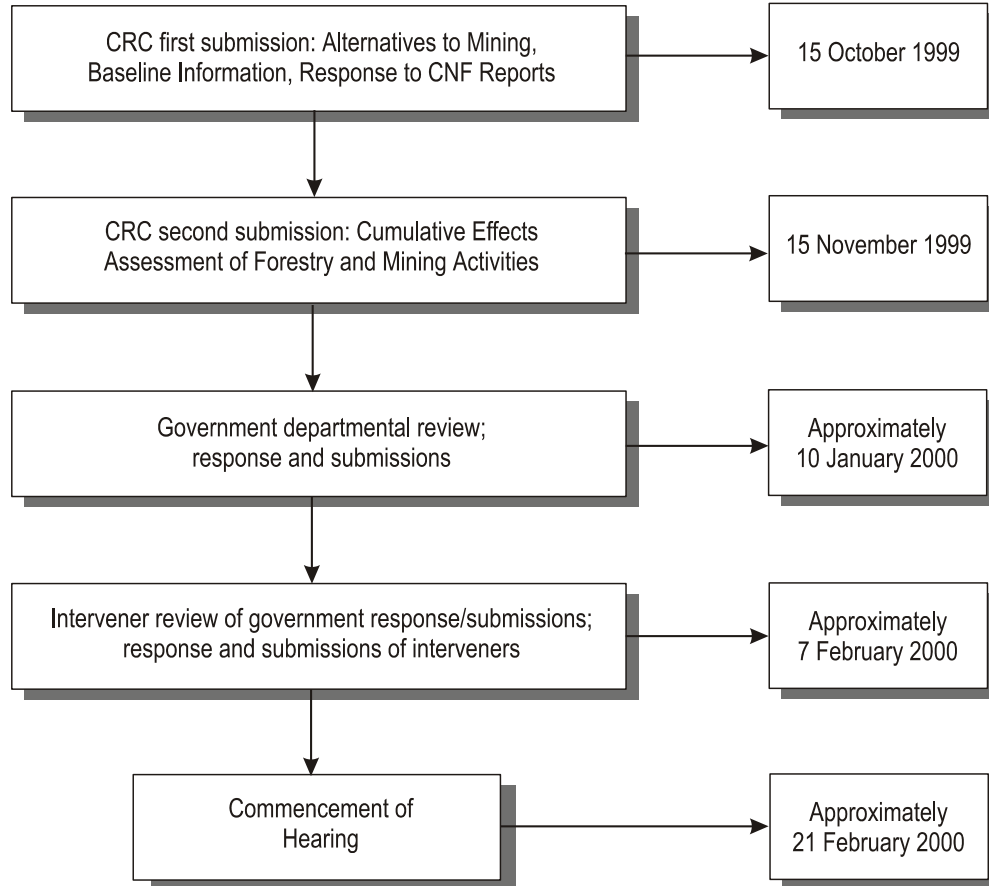


Figure 1.

THOSE WHO APPEARED AT THE HEARING

Principals and Representatives (Abbreviations Used in Report)	Principals and Representatives (Abbreviations Used in Report)
Cardinal River Coals Limited (CRC) D. R. Thomas, Q.C. L. LaFleur	Alberta Wilderness Association, Canadian Parks and Wilderness Association, Jasper Environmental Society, Pembina Institute for Responsible Development, Ben Gadd and the Canadian Nature Federation (the AWA Coalition) D. Pachal S. Gunsch
TransAlta Utilities Corporation Limited (TransAlta) C. J. Meagher	Alberta Fish and Game Association Q. Bochar
Weldwood of Canada (Weldwood) R. Udell	Western Canada Wilderness Committee G. Jones
Hinton & District Chamber of Commerce C. Mork	Mountain Cree Camp B. Parry M. Nadeau
United Mine Workers of American, Local 1656 (UMWA) R. Campbell	J. D. Clark Government of Canada M. King
Ivan Strang, MLA for West Yellowhead	Alberta Environment and Alberta Health R. Bodnarek H. L. Veale W. S. Macdonald
Alexis First Nation (AFN) K. Buss	L. Godby
Cadomin Environmental Protection Association (CEPA) R. M. Kruhlak	M. Bracko
Alpine Club of Canada/Alberta Native Plant Council (Alpine Club Coalition) Dr. A. Dinwoodie	Environmental Resource Centre B. Staszewski
Alpine Club of Canada/Alberta Native Plant Council (Alpine Club Coalition) Dr. A. Dinwoodie	Athabasca Bioregional Society C. Bresnahan

THOSE WHO APPEARED AT THE HEARING (cont'd)

Principals and Representatives (Abbreviations Used in Report)	Principals and Representatives (Abbreviations Used in Report)
<p>Mountain Park Environmental Protection and Heritage Association (Mountain Park Association) M. Salzsauler</p> <p>Treaty 8 First Nations of Alberta (Treaty 8) J. Cardinal</p> <p>Trout Unlimited K. Brewin</p> <p>Rocky Notnes</p>	<p>Town of Hinton B. Kreiner</p> <p>J. Mitchell</p> <p>G. Eadie</p> <p>Panel Secretariat W. Kennedy, Counsel D.I.R. Henderson, P.Eng. J. Baker, P.Biol. R. Powell, P.Biol. J. P. Thompson D. Morris</p>