

Reasons for Decision of the Chief Executive Assessment Officer

AMENDMENT TO THE WOLVERINE COAL MINE PROJECT ENVIRONMENTAL ASSESSMENT CERTIFICATE #M04-01: WOLVERINE-HERMANN AMENDMENT

On February 12, 2021, pursuant to Section 17(3)(c) of the Environmental Assessment Act (2002), I, the Chief Executive Assessment Officer issued an amendment to the Environmental Assessment Certificate for the Wolverine Mine Project. This document sets out the reasons for this decision.

1.0 CONTEXT

The Wolverine Mine Project (Wolverine Mine) received Environmental Assessment Certificate (EAC) #M04-01 in 2005 under the *Environmental Assessment Act* (2002) (the former Act) to operate an open pit coal mine located approximately 25 kilometers (km) west of Tumbler Ridge, B.C. The Wolverine Mine EAC currently authorizes the construction, operation, closure and reclamation of two open pits:

- Perry Creek Pit, which is currently in operation and approaching the end of its useful life; and
- East Bullmoose Pit, which remains undeveloped.

On October 29, 2018, Conuma Coal Resources Ltd. (Conuma) requested an amendment under Section 19 of the former Act to amend EAC #M04-01 to add a third pit (the Hermann Pit) and ancillary infrastructure to the Wolverine Mine, referred to as the Wolverine-Hermann Amendment (the Amendment). As a result of Section 78(9) of the *Environmental Assessment Act* (2018) (the Act), the former Act applied to the assessment of the Amendment, and my decision was made pursuant to Section 19(3)(a) of the former Act. Under that section I must amend, or refuse to amend, the EAC, and may vary, delete or attach new conditions.¹

2.0 THE NATURE OF THE DECISION

A decision on an application for an amendment to an EAC involves the consideration of a number of factors. Depending on the amendment in question, these may include the potential effects of the facilities and activities within the scope of the amendment and whether those would differ from those originally authorized by the EAC, their impacts to Indigenous nations and others and the viability of the project in the event that the amendment were refused. My consideration of the factors relevant to my decision on the Amendment is discussed below.

On February 1, 2021, EAO staff referred Conuma's application to me for a decision. Section 19(2) of the former Act requires that I consider the reasons provided by the holder. I have considered the Assessment Report prepared by EAO staff, the review and engagement process undertaken, the key issues and effects identified, submissions referenced in the

¹ Under s. 3 of the Environmental Assessment Transition Regulation, I may exercise the powers of the executive director under the former Act in relation to amendments assessed under the former Act.

Assessment Report and staff's conclusions and recommendations regarding matters that may be pertinent to my decision, including additional conditions to attach to Conuma's EAC.

Furthermore, I have reviewed common law for relevancy, and past EAO practice. I have also considered the decision in the context of the Act in its entirety. Finally, I note that, although the Amendment was assessed under the former Act, in light of the requirement to seek consensus with Indigenous nations with respect to amendments, set out in s. 32 of the *Environmental Assessment Act* (2018), before making my decision under s. 19, the EAO sought to achieve consensus with Indigenous nations.

It is important to note that Ministers, in issuing an EAC for a project and applying specific conditions to the EAC, have considered whether a project is in the public interest. Subsequent decisions respecting a project, including a decision to extend an EAC, are made in the context of that determination.

2.1 Past Practice

With respect to past practice, I note that, to the best of my knowledge, the EAO has not previously declined an application for an EAC amendment. In saying this, I am of course mindful of the need to consider each application on its own merits and am satisfied that the EAO has thoroughly assessed the Amendment to allow me to consider all relevant aspects of the proposal.

2.2 Impact upon Interested Parties

With respect to the impact of my decision on individuals, I would note that refusing to amend the EAC would have a significant impact on the EAC holder as well as individuals employed by Conuma at the Wolverine Project. This amendment would extend the life of the Wolverine Mine by seven years, as coal reserves at the Perry Creek Pit are nearing depletion and the permitting process for the East Bullmoose Pit was voluntarily deferred due to concerns regarding high-value caribou habitat in the area. Extending the life of the Wolverine Mine would allow Conuma to maintain employment for their workforce.

I acknowledge that the interests of other parties also have the potential to be impacted by the EAC amendment decision. My views and conclusions regarding the issues raised during the extension review are discussed below.

3.0 KEY ISSUES

The EAO evaluated the potential for the Amendment to have significant adverse environmental, economic, social, heritage and health effects, including cumulative effects, considering practical means to reduce or avoid these effects. During the review, key issues identified by the working group focussed on impacts to woodland caribou and impacts to water, specifically selenium bioaccumulation, water quality, the proposed water treatment system.

3.1 Consultation and Engagement

The EAO invited Doig River First Nation, Halfway River First Nation (HRFN), McLeod Lake Indian Band (MLIB), Saulteau First Nations (SFN) and West Moberly First Nations (WMFN) to participate in the amendment review process, although I am aware that Doig River First Nation requested only to be notified of key assessment milestones. Each of the Treaty 8 nations participated as members of a working group providing technical input, as well as traditional knowledge and information of potential effects on the nation and its Treaty rights and interests. Nations were also afforded the opportunity to review and comment upon draft referral materials, including a draft of the report provided to me. In some cases, key sections of the report were developed collaboratively between the EAO and the nation. Nations were also provided with the opportunity to review and comment on a draft Certified Project Description, and a draft Table of Conditions.

During consultations strong concerns were expressed about the effects that the Amendment would have on caribou, which would impact the Nations' Treaty 8 right to hunt, which includes hunting caribou. Recognizing that the Amendment would have the potential to cause significant effects to caribou, the nations indicated that their goal is to protect all critical habitat within the Quintette southern mountain caribou herd and focus on caribou recovery at a pace and scale that allows caribou populations to recover to a level where such Nations can begin again to hunt caribou pursuant to their Treaty right to hunt.

The EAO undertook significant work to ensure that the concerns raised about the impact of the Amendment upon the Quintette Caribou herd were understood and that solutions were realized to address the concerns to the satisfaction of the nations.

Significant concerns were also consistently raised by the nations that their ability to drink the water and eat the fish in their traditional territories is a paramount concern. The EAO worked with Conuma and technical reviewers, including the nations who engaged in a protracted process of commenting and submitting information requests aimed at better understanding the viability and efficacy the water treatment system.

In my view, the work undertaken during the assessment clearly demonstrates that the EAO not only sought to engage in meaningful consultation with Indigenous Nations, but also that concerns raised were given careful consideration and addressed.

The EAO worked closely with nations during all phases of the EA and I am satisfied that on behalf of the Provincial Crown, the EAO has fulfilled its obligations for consultation and accommodation for HRFN, MLIB, SFN, and WMFN relating to the issuance of this Amendment. I am also satisfied that the notification to Blueberry River First Nations, Doig River First Nation, and Horse Lake First Nation about the proposed Amendment has been carried out adequately by the EAO and fulfills the Provincial Crown's obligations for consultation and accommodation.

3.2 Water

The EAO Assessment Report considered the adverse effects of the amendment on water. Specifically, the report considered the effects on selenium bioaccumulation, human health, water quality and the efficacy of and confidence in the proposed water treatment system.

In the Amendment application, Conuma proposed passive water treatment technology in the form of biochemical reactors (BCRs), a biological system, for the treatment of selenium, nitrate, nitrite and ammonium over the life of mine. The working group expressed a lack of confidence in BCRs as the primary water treatment mitigation and consequently requested that Conuma develop an alternate plan for primary water treatment. In response, Conuma proposed an active water treatment system known as the Frontier SeHAWK® water treatment system (SeHAWK®), as primary mitigation for water quality during the life of the mine. During the assessment, reviewers from the Ministries of Environment and Climate Change Strategy (ENV) and Energy, Mines and Low Carbon Innovation (EMLI) indicated to the EAO that, at a conceptual level for the purposes of the assessment, SeHAWK® would be an effective system for the treatment of water. However, they noted that more detail would be required during the review of applications for permits related to the Amendment, and that another system that is as or more effective may ultimately be preferred should an alternate treatment system be proposed and authorized.

Appreciating the expertise of working group members, I am satisfied that SeHAWK® would be an acceptable measure for the purposes of the assessment and note that additional detail will be required at permitting. I am furthermore satisfied that the condition proposed by EAO staff to require Conuma to use SeHAWK®, or another technology that demonstrates equal or greater protection of the environment and Treaty rights, for the treatment of water, as outlined in the Assessment Report, is appropriate.

3.3 Woodland Caribou

A key issue of concern raised by the Treaty 8 First Nations and provincial agencies was the potential impact of the facilities and activities covered by the Amendment on the Quintette southern mountain caribou herd, which is a non-migratory species of caribou that remains in forests throughout the seasons. These facilities and activities would be located within critical habitat of the Quintette herd. This group is designated as Threatened under Schedule 1 of the federal *Species at Risk Act* (SARA) and listed as Endangered by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). Provincially, the Quintette herd is red listed in BC, which is a Conservation Status Ranking of extirpated, endangered, or threatened.

I note that the federal and provincial governments, WMFN, and SFN have negotiated the Partnership Agreement² which sets out the actions that the parties agree to take to stabilize and grow the Central Group of southern mountain caribou (which includes the Quintette herd) to levels that are self-sustaining and support the re-establishment of a traditional Indigenous nations' harvest. The Partnership Agreement defines and spatially identifies moratorium areas that prohibit provincial statutory decision-makers from adjudicating applications for all resource development activities. Moratorium areas are identified in an order in council issued under Section 7 of the *Environment and Land Use Act* as well as an order under Part 13 of the *Forest Act*.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) and the nations raised a number of concerns regarding potential impacts to woodland caribou and their critical habitat. Following extensive discussions between the EAO, FLNRORD, nations, and Conuma to identify means for the facilities and activities covered by the Amendment to have an overall neutral effect to caribou, Conuma provided an inventory of candidate mineral tenures within high-value caribou habitat that were available for restoration. After this inventory was prepared, during the assessment a number of commitments were made for the protection of caribou:

- Conuma committed to an initial financial contribution of \$744,560 toward the habitat restoration component of the Provincial Caribou Recovery Program, in respect of which I have attached a new EAC condition;
- Conuma agreed to permanently relinquish an additional 292 ha of caribou habitat in support of the maternal penning program;
- The Province will be providing additional funding of \$300,000 to support caribou habitat restoration, as detailed in a letter provided from FLNRORD to the EAO on January 29, 2021³; and,
- Conuma entered into an agreement with WMFN pursuant to which Conuma agreed to provide an additional \$745,000 in funding for caribou habitat offset measures, as detailed in a letter provided from WMFN to the EAO on January 22, 2021⁴.

In consideration of the above suite of mitigations, FLNRORD informed the EAO that, in its view, the project would have neutral or positive effects to caribou.

² Intergovernmental Partnership Agreement for the Conservation of the Central Group of the Southern Mountain Caribou, February 2020. The parties are the Government of Canada, the Government of British Columbia, Sauleau First Nations, and West Moberly First Nations). Available online: <https://species-registry.canada.ca/index-en.html#/consultations/3202>.

³ Available online:

<https://projects.eao.gov.bc.ca/api/public/document/601996d7901afe0020553e52/download/2021.01.29%20FLNRORD%20caribou%20response%20combined.pdf>

⁴ Available online:

<https://projects.eao.gov.bc.ca/api/public/document/6019ba732090f10020b5303b/download/2021%2001%2022%20Ltr%20THT%20to%20EAO%20e%20Hermann%20Caribou%20Offsets.pdf>

Given the sensitivity of caribou to further human disturbance, and that cumulative effects on caribou habitat have already resulted in a decline of caribou numbers over the past decades, I concur with the view of EAO staff that this Amendment, without additional mitigation measures, would likely have significant adverse effects on caribou. However, if the proposed mitigation, monitoring, and offsets, which were included in EAO's proposed condition #14, and which I have attached as a new condition to the EAC, are effective, the effect would be net neutral or positive.

4.0 CONCLUSION

With respect to the matters relevant to my decision, I agree with the conclusions reached by EAO staff in the bullets in section 8.0 of the Assessment Report, for the reasons detailed in that report, in particular that:

- The Amendment assessment has adequately identified and assessed the potential adverse changes to the environmental, economic, social, heritage and health effects of the Wolverine Mine resulting from the proposed Amendment;
- Issues identified during assessment of the Amendment Application, which were within the scope of the assessment of the Amendment, were adequately and reasonably addressed by Conuma or the EAO's proposed conditions;
- Practical means have been identified to prevent or mitigate any potential adverse environmental, economic, social, heritage and health effects of the facilities and activities covered by the Amendment such that no significant adverse effect is predicted or expected as a result of this proposed Amendment;
- The provincial Crown has fulfilled its obligations for consultation and accommodation of Halfway River First Nation, McLeod Lake Indian Band, Sauleau First Nations, and West Moberly First Nations, and Doig River First Nation relating to the issuance of this Amendment; and,
- Notification of Blueberry River First Nations, Doig River First Nation, and Horse Lake First Nation about the proposed Amendment has been carried out adequately by the EAO and fulfills the Provincial Crown's consultation obligations.

After consideration of the EAO's Assessment Report, the review process undertaken, the approach to consultation with Indigenous nations and efforts to seek consensus, the development of EAC conditions to mitigate adverse effects, and the existing overall regulatory regime for the Project, I decided to issue an order under s.19(3)(a) to amend the EAC approving the Wolverine-Hermann Amendment with the conditions contained in schedule B of the Amendment #7 Certificate #M04-01.



Elenore Arend
Chief Executive Assessment Officer
Environmental Assessment Office

Signed this 18th day of February 2021