



Reasons for Determination of the Chief Executive Assessment Officer

IN THE MATTER OF A SUBSTANTIALLY STARTED DETERMINATION
UNDER SECTION 31 OF THE *ENVIRONMENTAL ASSESSMENT ACT*
FOR THE MURRAY RIVER PROJECT

FEBRUARY 25, 2025



EAO

Environmental
Assessment Office



1.0 THE DETERMINATION

On March 24, 2025, pursuant to Section 31(7) of the *Environmental Assessment Act* (2018) (the Act), I, the Chief Executive Assessment Officer of the Environmental Assessment Office (EAO), determined that the Murray River Coal Project (the Project) has been substantially started.

2.0 NATURE AND SCOPE OF THIS DETERMINATION

This determination is regarding whether the Project held by HD Mining International Ltd. (HD Mining) is, in my reasonable opinion, substantially started as of the date of HD Mining's [request for a determination](#) on October 11, 2024.

Every Environmental Assessment Certificate (EAC) has a deadline by which the Project must be substantially started in the reasonable opinion of the Minister or delegated authority. That deadline is usually five years and can be extended, on one occasion only under the Act, for an additional five years to a maximum of ten years.

If the Project has been substantially started, then the EAC, including any conditions, remain in effect for the life of the Project. Under Section 31(6) of the Act, if the Project has not been substantially started by the deadline set out in the EAC or by the end of the period of extension, if an extension has been granted, then the EAC expires.

The requirement that a project to be substantially started by the deadline specified in the EAC is intended to balance the economic development and environmental protection purposes of the Act. This time limit ensures that the assessment used to inform the Ministers' decision to issue an EAC remains appropriately current given the potential for existing conditions of the Project area to change over time and the potential for advances in technology that could result in improved mitigation measures. In addition, a project that has been substantially started is more likely to proceed in the near future, which means that the assessment conducted in respect of it, and the limitations and conditions placed on it through its EAC, remain timely. By contrast, a project that has not been substantially started is less likely to be completed in the near future such that the assessment and EAC could become outdated. In that case, the Project would be required to go through a new assessment.

In the sections that follow, I discuss both the matters that I am to consider as outlined in the EAO's [Substantial Start Determination Policy](#), as well as additional considerations that factored into the EAO's assessment of this determination.

3.0 BACKGROUND

HD Mining received EAC #M15-03 under the *Environmental Assessment Act* (2002) (the Former Act) for the Project on October 1, 2015. The Project also required a federal Environmental Assessment under the *Canadian Environmental Assessment Act*, 2012, and federal approval for the Project was granted on December 13, 2017. The deadline in the EAC to substantially start the Project was October 1, 2020. On July 14, 2020, a five-year extension was granted to extend the EAC expiration to October 1, 2025.

On October 11, 2024, HD Mining wrote to the EAO requesting a substantial start determination for the Project. The request included a report that describes the work completed by HD Mining to advance the Project.

West Moberly First Nations and the District of Tumbler Ridge provided letters of support for a substantial start determination, which were included in Appendix A of HD Mining's request.

The EAO undertook a process to ensure that HD Mining and the First Nations and communities potentially impacted by this determination had an opportunity to provide their views on whether the Project was substantially started.

On November 4, 2024, and December 18, 2024, the EAO notified West Moberly First Nations, Sauteau First Nations, McLeod Lake Indian Band, Horse Lake First Nation and Doig River First Nation that a request for a substantial start determination had been received from HD Mining and invited any comments or information with respect to the substantial start determination. The EAO did not receive any comments in response.

HD Mining, West Moberly First Nations, Sauleau First Nations and McLeod Lake Indian Band were provided an opportunity to review a draft version of the report titled: “The EAO’s Analysis of a Substantially Started Determination Request: Murray River Coal Project” (the EAO’s report). The EAO’s report contains all information that I considered in forming my opinion that the Project is substantially started.

4.0 GENERAL CONSIDERATIONS FOR SUBSTANTIALLY STARTED DETERMINATIONS

The EAO’s [Substantial Start Determination Policy](#) is available online. The term “substantially started” is not defined in the Act, although the courts have provided guidance on its meaning. Ultimately each determination is made by the decision-maker on a case-by-case basis considering all relevant facts related to whether the Project is substantially started. What has taken place primarily at the site is a primary consideration, although there is latitude to consider other factors.

As set out in the EAO’s policy, key considerations include:

- What time, effort, and resources have been invested to physically develop one or more main project elements?
- How have the activities undertaken to date contributed to the development of the overall project? For example, are the activities in relation to a significant or important step, or are they ancillary, secondary or temporary?
- Is the activity or component identified in the Certified Project Description as part of the Project?
- Did the activity occur after the EAC was issued and before its expiry (i.e. between October 1, 2015, and October 1, 2025, for the Project)?

5.0 APPLICATION OF CONSIDERATIONS

With respect to the matters relevant to my determination, I have considered the following factors.

5.1. Physical Works Undertaken

As I note above, case law provides guidance that the physical development of the Project following the issuance of the EAC on October 1, 2015, should be a primary consideration in my determination, with an emphasis on what is a permanent structure and included in the Project’s Certified Project Description.

I note that HD Mining conducted most of its physical works in support of mine exploration including a bulk sample program prior to the issuance of the EAC. Given that several of the components built as part of the bulk sample program are also listed as project components in the Certified Project Description, I have considered both pre-EAC and post-EAC physical works in making my decision, though pre-EAC physical works have been given lesser weight in this determination.

As described in the EAO’s report, construction of the following physical components of the Project was initiated prior to the issuance of the EAC:

Underground Mine

- Service decline, which will serve as the main entry for personnel and equipment, as well as fresh air intake.

Decline Site

- Service decline portal;
- Equipment assembly and maintenance shops;
- Diesel storage tanks and fuel station;
- Emergency diesel generators;
- Truck load-out;

- Water Treatment facilities, including a sedimentation pond and discharge exfiltration galleries;
- Contact water collection ditches, sedimentation pond(s), and water management structures;
- Non-contact water diversion ditch network and water management structures;
- Sewage treatment and disposal facilities;
- Water supply facilities; and,
- Overburden and soil storage areas.

Shaft Site

- A waste rock pile on a lined waste rock storage pad;
- Exfiltration gallery to M20 Creek;
- Contact water collection ditches, sedimentation pond(s), and water management structures;
- Non-contact water diversion ditch network and water management structures; and,
- Overburden and soil storage areas.

As described in the EAO's report, since the issuance of the EAC on October 1, 2015, the following physical components of the Project have been constructed as part of the overall Project and are listed in the Project's Certified Project Description:

- A hoist house to house the monorail which will be used to hoist workers, materials and equipment into and out of the mine; and,
- An electrical substation.

5.2. Other Factors Considered

Although guided by the courts to focus more on physical factors and less on other matters such as permits granted and money expended to advance a project, I am given latitude to consider other factors relevant to whether HD Mining has substantially started the Project.

HD Mining has reported spending 294 million Canadian dollars to date to advance the Project, including exploration, engineering, equipment, construction, financial and management costs, which I consider evidence of HD Mining's intention to advance the Project in the near term.

HD Mining has also negotiated benefit agreements with West Moberly First Nations and Sauleau First Nations and has presented a draft agreement to McLeod Lake Indian Band. The effort put into negotiating and concluding these agreements indicates to me a strong interest from HD Mining in advancing the Project.

Although HD Mining is still waiting on two Occupant Licenses to Cut to clear trees and a Special Use Permit, the Project has received its *Mines Act* and *Environmental Management Act* Permits.

I also considered the rationale for requiring a substantial start determination – that the assessment conducted in respect of the Project and the limitations and conditions placed on it through its EAC, remain timely. For this Project, 17 of the 24 conditions listed in the EAC to mitigate potential adverse impacts of the Project require HD Mining to develop management plans. Management plans are important tools for supporting the outcome of environmental assessment processes and a key means of addressing the need for flexibility during project implementation, such as in the event of changes to or effects of the environment on the Project. They are required to be prepared in consultation with parties that may be directly impacted by the Project, include mechanisms for adaptive management and may be revised as required to ensure they remain relevant and effective. The use of management plan conditions in the Table of Conditions

(Appendix B of the EAC) and the requirement of them to be adaptive, reassures me that the limitations and conditions placed on the Project through its EAC will remain current and appropriate throughout the life of the Project.

6.0 OVERALL DETERMINATION AND CONCLUSION

I am satisfied with the level of consultation and engagement that the EAO conducted with First Nations and HD Mining during the evaluation of the request for determination, including how the EAO assessed the factors described in the sections above in the EAO's report.

I carefully considered the courts' guidance that physical works should be a primary consideration and whether the physical work undertaken by HD Mining is sufficient to base a conclusion that the Project is substantially started. Recognizing that the courts have given me latitude to consider both pre- and post-EAC physical works if they are included in the Certified Project Description as well as additional factors, I have also considered the Project components built prior to the issuance of the EAC and the additional facts presented by HD Mining. Having considered the EAO's report, the submission from HD Mining, and the factors set out in the EAO's Substantial Start Policy, I have determined that the Murray River Coal Project is substantially started.



Alex MacLennan
Chief Executive Assessment Officer
Environmental Assessment Office

Signed this _25_ day of February, 2025.