



## **FINAL ARGUMENT**

**JOINT REVIEW PANEL HEARING  
GRASSY MOUNTAIN COAL PROJECT  
Impact Agency of Canada Reference No. 80101**

**From**

**Crowsnest Conservation Society**

**Submitted To**

**Joint Review Panel Secretariat  
Grassy Mountain Coal Project  
Impact Assessment Agency of Canada  
By E-Mail  
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## Introduction

1. The Crowsnest Conservation Society (hereafter referred to as CCS) is providing the following Final Argument to Joint Hearing Panel (hereafter referred to as the Panel) for consideration in respect to the Grassy Mountain Coal Project (the Project) proposed by Benga Mining Ltd/Riversdale Resources (hereafter referred to as the Proponent or Benga).
2. In making this Final Argument submission, CCS would first like to thank the Panel for the opportunity to participate in the process and extend its appreciation to the Staff of the AER and CEAA for their professionalism in administering what has been a fair, efficient, comprehensive and transparent process undertaken under unique circumstances and constraints. Likewise, we thank the many participants for their contributions and perspectives on what we see is as a defining decision that will shape the future of our community. Regardless of the result, the virtual hearing process should serve as a model that can have application into the future, serving as an effective tool in ensuring broad public understanding and representation in consideration of such development projects. Contrary to our initial expectation, the virtual format has served to substantially increase the amount of public exposure and engagement on the proposed Project, particularly at a community level. One very positive result of the hearing process has been the high level of participant engagement of organizations, institutions and residents of these jurisdictions (particularly Crowsnest Pass) as well as the well articulated and creditable presentations made to the Panel by these parties. The live YouTube access to the hearing proceedings significantly expanded this engagement in the local community. Much of this should be considered incremental to what might have been expected from a conventional ‘in person’ hearing federal-provincial process typically held remote from the impacted communities. While intended or otherwise, the process and its delivery should be considered the primary and defining public consultation and information mechanism that has been applied to this development to date.
3. CCS submissions respecting this matter predate the establishment of the Joint Hearing process and have involved Statements of Concern filed by CCS with the Alberta Energy Regulator (AER) in January 2016 and December 2017 respectively. With respect to the Joint Hearing process, our submissions and appearances have involved the following: i) request for full participant standing in the subject hearing in July 2020 (CIAR #433) and the Panel’s approval thereof (CIAR #468); ii) submission for the evidence portion of the hearing in September 2020 (CIAR # 551); iii) request for hearing appearance preferences including making a final argument (CIAR # 612); iv) hearing appearance submission in the form of a verbal opening statement (Hearing Week 1) and v) member witness appearance and presentation before the Panel in the Purpose of the Project and Socio-Economic Effects topic block during Hearing Week 2 (CIAR #775). In addition, CCS members have continuously followed the hearing proceedings throughout and exercised its right to cross examination as appropriate. Overall, we estimate, that in excess of 500 hours of member volunteer time has been dedicated to the hearing process itself. To ensure its independence and objectivity, CCS has taken a deliberate decision that its efforts are entirely a contribution to public and community service and not linked to any expectation of compensation that the hearing process may provide for.
4. CCS as an organization advocates for strong conservation values being applied to protect the natural environment offered by the Crowsnest Pass (CNP) and surrounding lands. Along with its people, we consider this landscape and the natural environment defining it to be the community’s primary asset. We are strong advocates for the low impact recreation opportunities that allow public enjoyment of public lands and landscape. We see this as a key part of the community’s

social fabric and economic well being for the future. However, at the same time CCS is not opposed in principle to other forms of economic development including resource development if undertaken consistent with conservation values and demonstrated environmental impact avoidance and mitigation. In this regard we recognize and value the history of industrial activity in the CNP as well as the community's need for sustainable and responsible economic development generally. Consistent with this general philosophy, CCS has attempted to take an openminded position respecting the Grassy Mountain Coal Mine, starting with its original ownership as Riversdale Resources and now its present evolution as Benga. It is from this perspective that CCS has participated in these proceedings and guides the following final argument.

5. As indicated in its direct evidence in this hearing, the CCS position on the Project up to this point is that the Project should not proceed in the absence of effective conditions such as recommended in our submissions. CCS notes that conversely, we remain open to supporting the Project if conditions ensuring the key issues identified in its submissions and now informed through the hearing process to date are addressed adequately. In taking this position, CCS has taken into consideration it's positive and cooperative relationship with the Project at a local, if not corporate, level since its inception, something we remain open to continuing should the Project move beyond this stage assuming this remains consistent with the principles above.
6. The approach CCS is taking in presenting its Final Argument is to address what we see as being the key issues from a local community perspective based on observations on the evidence presented in the hearing and particularly the final argument submitted by Benga (CIAR #962). CCS will do this at a high level recognizing that other parties are more qualified to argue the legal, technical and methodological details on the many specific detailed issues that also required judgement and resolution in the Panel's deliberation and decisions. In the concluding section, CCS will provide the Panel with its final position on the Project and its recommendation respecting the Panel's decision.

### **General Observations on Benga's Final Argument**

7. Overall, CCS feels that Benga presented its case in the evidence portion of the hearing in a generally competent and professional manner. This acknowledged limitations and uncertainties, while undertaking to address these going forward, at least in principle. In most cases, Benga showed reasonable respect to participants with adverse positions and in some cases agreed to accommodate contrary positions. However, it is our general observation that Benga's Final Argument adopts a much more aggressive position on what it is prepared to do and its expectations of the Panel's decision. Benga appears to adopt a position that it has done all that is necessary to get the Panel's approval. It states that it has proven that the Project is in the public interest and that it will not cause significant environmental impacts taking into account Benga's proposed mitigations. In terms of conditionality, Benga makes clear that the Panel should limit conditionality to what it has committed to at this point, that being essentially what are conventionally applied in a routine regulatory process of this nature. It warns the Panel that any application of conditionality that it calls extraneous (without definition of what that might apply to), puts the project at risk of proceeding due to adverse impacts on the business decision making respecting further investment on their part. Effectively this could be interpreted as demanding the Panel's positive decision with minimal constraints as a precondition for its business decision to proceed with further substantive work. We believe in principle such work is required to support validation of the fundamental presumption that the public interest has been proven and that significant environmental (and presumably socio-economic) impacts can and would be mitigated as proposed. Furthermore, their Final Argument comes across to be a "take it or leave it"

proposition that the Panel should defer resolution of the significant remaining uncertainties, risks, and potential legal issues to routine regulatory processes not generally subject to full transparency and to the courts.

8. From the perspective of the community most impacted, Benga's apparent change to this hardline approach at the conclusion of the hearing process is significant cause for concern and should raise questions as to how committed Benga might be to community interests and to proactively addressing environmental and socio-economic concerns in the future. In fact, CCS wonders if this position reflects a change in Benga's commitment in financial and technical terms to the Project. It is our view that the hearing did raise significant unanswered questions and uncertainties about the degree to which the public interest is demonstrated, particularly in relation to projected project benefits balanced against risks, and the effectiveness and mechanisms by which significant environmental and negative socio-economic impacts can be mitigated. Addressing these in a timely, proactive and acceptable manner will require renewed and expanded rather than constrained commitment to adequately demonstrate that the Project is in the public interest and does in fact have acceptable mitigation of serious environmental and socio-economic impacts felt directly in the CNP as the host community.

### **Public Support for the Project**

9. As a general principle, CCS suggests that the one factor that should guide the Panel's decision related to the Project being in the broader public interest is the degree to which there is public support or at least acceptance for it, particularly within the host communities where citizens are directly impacted. In practical terms for this Project, this encompasses the residents of the Municipalities of Crowsnest Pass, Pincher Creek and Ranchlands, and the Towns of Pincher Creek and Sparwood.
10. Benga in its Final Argument notes that it has received explicit participant support from local governments in two of the above jurisdictions, Crowsnest Pass and the Town of Pincher Creek as well as "number of individuals" perhaps with the intent of implying general public support at a community level. CCS suggests that this a highly selective assessment of the degree of public support as reflected in the hearing testimony. In this regard we note the following:
  - At the local government level, the MD of Ranchlands where the proposed mine is physically located and where the most property tax revenue flows, is explicitly and strongly opposed to the project in principle, considering it not consistent with the traditional ranching economy and associated land and water conservation ethic of its residents.
  - While the MD of Pincher Creek chose not to participate in the hearing directly, the Livingstone Landowners Group with wide membership among residents in the north western part of the MD in closest proximity to the mine site likewise strongly opposes the Project for similar reasons.
  - CCS counts a total of 25 individual residents living in reasonable proximity of the Project in and around the principal communities within the CNP and along the east side of Livingstone range that have appeared as witnesses in the hearing, either as individuals or as citizen witness participating within a group. Two such individuals indicated direct support for the project, 22 stated opposition to the project, and one took the individual position of potential support if conditionality that mitigated community risks were applied.

- CCS presented results of an informal survey of its members and supporters which indicated that 85% of respondents were opposed to the Project, 10% stated possible qualified support, and 5% supported the Project.
11. CCS likewise notes that project support based on appearances by various national and provincial public interest non-government organizations is limited to the support from the Canadian Coal Association. On the other hand, CCS counts a total of 5 provincial or national level environmental and conservation groups that appeared and explicitly opposed the project and calling for the application to be denied. An additional two provincial conservation-oriented groups (Oldman Watershed Council and Trout Unlimited) took neutral positions qualified with well articulated concerns respecting water quality and use, and aquatic impacts specific to fish.
  12. The other evidence presented in the hearing that indirectly may inform public support or otherwise for the Project is a survey done by the Municipality of Crowsnest Pass in June of 2020 as part of updating the Municipal Development Plan. The summary of survey results as posted on the Municipal website was included in the CCS evidence (CIAR#765) and summarized in its evidence presentation during Week 2 (CIAR # 775). This survey solicited community views on opportunities and challenges facing the CNP. Based on 650 responses, the significant relevant results showed i) 93% of respondents identified the CNP with the natural environment, while only 12% identified it with industry; ii) in terms of identified community values, the most common values stated were associated with the natural landscape, small town atmosphere, and outdoor recreation; while lowest were work and business opportunities; iii) the most significant community challenge requiring attention was the economy while the environment was seen as less of a priority in that context; and iv) there was general support for a balance between tourism and resource extraction economic development with a higher number favouring a preference in that balance for tourism and environmental protection over industry. At a lesser level there was an almost equal number favouring industry over tourism in the balance, strong regulation of industry, material contribution by industry to community quality of life including recreation, and placement of industrial sites out of sight so as not to impact tourism. The lowest number of comments generally reflected absolute opposition to industrial development.
  13. CCS is repeating what was in its evidence on this survey in this Final Argument firstly because this survey when viewed in its overall context provides some important messages relevant to public acceptance of the proposed Project. This message is that generally there is potential for public acceptance of a Project like to develop in expectation of economic benefit that the CNP needs but that this is strongly conditioned on preservation of the environment, the natural landscape, and the tourism, recreation and lifestyle opportunities associated with it. In that context CCS finds it disappointing that the Municipality did not choose to provide this evidence itself. Similarly, CCS notes that Benga, while acknowledging it belatedly in its Final Argument submission, has chosen to essentially “cherry pick” a single point out of context that would somehow support an unqualified preference for a balance between tourism and resource development, something that is clearly not correct in the overall context of the survey results.
  14. Overall, it is apparent that, based on what has been presented strictly within these proceedings themselves, there does not appear to be a significant level of public support for the Project and this is particularly applicable among community residents impacted directly by the project. However, CCS recognizes that this likely overstates the case in terms of opposition. Rather than extrapolate this evidence to a general conclusion that local residents are overwhelmingly opposed to the Project, CCS believes that public support in the CNP in particular is mixed and perhaps somewhat conflicted. At a grass roots or “main street level”, our experience within the community

suggests that there is support for the Project not accounted for in the evidence. This support is understandably based on the expectation that direct and indirect economic benefits will rapidly appear. In fact, CCS is surprised that Benga has not presented more robust evidence demonstrating this support, given its ability to collect and document opinions at its periodic public information events as is the normal and common practice for development proponents.

15. Based on the above, CCS believes that the Panel should acknowledge and, in its decision, consider the level and nature of local public support for the Project in establishing whether the Project is in the public interest. The level of such support is likely mixed even though it falls on the side of opposition based on participation in the formal hearing process. The other message that the Panel should consider conveying in its recommendations and approvals conditionality is that Benga still has significant work to do if it proceeds with the Project in order to earn substantive support of the community. This will involve not only addressing the many issues of concern being expressed. This will also entail: i) using robust, independent and fully transparent community advisory mechanisms; ii) engaging more effectively and cooperatively directly with stakeholders in the community; and iii) in making commitments that truly enhance the potential for compatibility between this type of industrial development and the current lifestyle, recreation and tourism based economic development direction now being established in the CNP.

### **Socio-Economic Impacts**

16. Benga's socio-economic impact assessment (SEIA) as presented in its filings, hearing evidence and Final Argument is essentially a standard benefits analysis based on a widely used macro-economic input-output model. This has been used for many years in preparation of regulatory applications applicable to industrial, infrastructure and resource extraction projects. The Benga SEIA focused on providing high level estimates of construction and operational period direct employment, GDP impact, and taxation/royalty revenues distributed at the local, provincial and federal level with standard factors applied for indirect and induced benefits. These benefits estimates represent a principal pillar in Benga's argument that the Project is in the public interest. At the local level and specifically in the communities considered the local impact area (Pincher Creek, Sparwood, CNP and MD of Ranchlands) estimates of the potential distribution of local expenditure and employment are made, qualified by the reasonable uncertainty that these are by definition indicative. A general profile of the residential and service capacities as well as development potential and available infrastructure are attributed to these jurisdictions. In its final argument, Benga makes the case that this fully satisfies the requirements for a SEIA as required by the Panel in these proceedings.
17. CCS observations on the quality of the SEIA as stated in its hearing submission (CIAR#551) remain as originally filed and we have no opinion of the lengthy debates between economic experts on methodologies that were or could have been used nor the extensive and aggressive rebuttal of adversarial parties presented in Benga's Final Argument submission (CIAR #962). CCS' only observation is that, if this does in fact meet the basic requirements of the Panel and the regulatory standard applied in Alberta, the bar set for proponents in this area is low, particularly regarding any actual assessment of potential negative impacts occurring at the local level.
18. It is CCS' view that for the most part all of this is largely irrelevant in any practical sense at a local level. CCS would simply advocate that the Panel look beyond the essentially academic exercise undertaken to "jump through the required hoop" in this area, and consider the actual situation in the immediate region and specifically the CNP. These have been noted our CCS submission referenced above, and are well documented in the factual and articulate submission by Fred

Bradley (CIAR# 550). The reality is that the Project could create meaningful and welcome economic stimulation in the local region but there will inevitably be significant inequities within that region because of the disparities in the baseline capacities that different communities have to capitalize on the economic benefits opportunities the Project may provide. More directly, the CNP is poorly positioned both relatively and in absolute terms in this regard. At the same time, the CNP and its people stand to bear the large majority of the Project's negative consequences in terms of social and environmental impact, and public financial impact related to disparity in tax revenue and making up accumulated deficits in public infrastructure and services. As discussed further in the following section, the development of renewed extractive resource industrial activity such as this Project represents a reversal of the CNP's current development path which has major immediate and long-term socio-economic consequences, something that the prospect of a numbers of additional similar developments will accelerate.

19. On that basis CCS requests that the Panel carefully assess the overall issue of accepting the pro-forma estimates of standard high level economic benefits as the basis of demonstrating the Project is in the public interest, without accounting for the negative impacts that weigh against these nominally positive benefits in the assessment.

### **Impact on Local Lifestyle, Recreation and Tourism based Economic Development**

20. CCS believes that the most consequential socio-economic impact issue for CNP is the effect the Project will have on the community's current economic development path based on its attractiveness as a residential lifestyle, recreation and tourism destination. Over the last decade, this path has been a major factor in stabilizing the declining population in the CNP and is largely responsible for what additions are occurring to the shrinking retail and service sector. In the absence of large scale intensive industrial resource extraction based economic development in this area, this kind of economic development would continue to expand and potentially grow amenity in-migration particularly as remote virtually based employment accelerates as is generally predicted. While perhaps these are not as dramatic in terms of near-term economic benefits compared to those purported to occur from the Project, they represent a more stable and sustainable long term economic development path for the community.
21. Benga argues that the mining development and the economic stimulation that it is presumed to provide are compatible and supportive to maintaining the current economic development path. Effectively the CNP can have the best of both worlds. Benga supports this argument with points such as: i) the indirect economic development from the project will stimulate services that also add to visitor attractiveness; ii) the recreational landscape and associated recreational opportunities are good for them in terms of attracting staff, iii) the land base disturbed by the project is small relative to the public land available for recreation in the broader area; iv) the visual presence of the Project will not have significant aesthetic visual impact; and v) the reclamation of historic and current impacts on Grassy Mountain at the Project's end of life will provide an expanded land base for recreation. Additionally, reference in the hearing has been made to the significant investment in the new community golf course as a contribution already made to the CNP's attractiveness.
22. Notwithstanding, the genuine hope that both economic development paths might co-exist and be mutually supportive, CCS argues that these simplistic arguments are flawed for a number of reasons as follows:
  - The reality is that a large coal mining operation adjacent to and visually present in the community and the main highway access through the community is a significant entry liability

to lifestyle migration, recreation and sustained tourism no matter what rationalization may be applied. No credible examples of positive results for tourism are cited and experience in the neighbouring Elk Valley suggests otherwise.

- This view is reflected in the opinions expressed by CCS members, community members, and potential visitors/ future residents who indicate that the reintroduction of large- scale extractive resource development is not consistent with why they now live in the CNP, why they might have moved here, would potentially result in their leaving, and would preclude their coming as visitors or residents.
- The stimulation of some service amenities that could serve both economic development options is acknowledged but this assumes that the visual and aesthetic deficit created entices visitors to stop in the first place and may be not result in loss of other forms of retail and service development that now exists. The reality is that the current centre piece recreational and tourist amenities and the main commercial centre of the CNP are part of the visual landscape prominently occupied by the Project. In the case of the golf course, the visitor attraction is essentially integrated physically with large scale mine infrastructure that will be operating continuously.
- While the natural landscape disturbed by the Project may be not large compared to the overall natural landscape and public lands referenced as being available for recreation and tourism, CCS would point out that much of these public lands are as or more accessible from other neighbouring communities. Some of these are better serviced so they are more likely to benefit given a tendency to avoid the new industrial presence in the CNP. This may be a significant factor in where incoming Benga's employees choose to live, noting the experience in the Elk Valley. A significant proportion of mine employees choose to reside in Fernie and currently in CNP rather than in Sparwood or Elkford where mine infrastructure is visible. It also should be noted that a significant part of the larger footprint in this potential recreational landscape directly accessible from the CNP is now being restricted by additional coal development exploration and pending development.
- The potential for return of the project's impacted footprint to a restored state could, if done well, add to recreational opportunities locally but given this is many years in the future it can hardly be considered a significant factor in relation to the current economic development direction issue of concern.
- A claim that Benga's financing of the relocation and reconstruction of the community golf course should be viewed as some kind of altruistic contribution to the community's recreational and tourist assets is not accurate. While indeed the new golf course configuration and facilities are appreciated, the relocation was an essential part of the Project's capital development in order that viable load out facilities with mainline rail access could be assured, given the significant constraints imposed by other landowners, existing commercial development, and highway upgrading being planned by the province. However, the Benga's golf course investment may provide a potential precedent for Benga to pursue in undertaking offsetting contributions to recreational and tourism related economic development as part of mitigation of otherwise negative impacts.

23. In summary, CCS requests that the Panel acknowledge in its decision the importance of this key economic development issue as widely reflected by residents in the CNP and address it in



conditionality requirements that direct Benga to initiate consultation with stakeholder community groups on how the company may materially support the sustainability and growth of economic opportunities aimed at enhancing the attractiveness of the CNP for recreation and tourism and mitigating the negative impacts inherent in its proposed Project.

## **Public Transparency and Community Advisory Mechanisms**

24. In its Final Argument, Benga places strong emphasis on the fact that it has done sufficient work to satisfy the requirements of the approval process. However, Benga correctly acknowledges that substantial additional study, design, pilot testing, and actual operational performance monitoring is required to fully address technical and environmental performance uncertainties respecting the Project's impacts and effects in order to validate the effectiveness of its proposed mitigation. In doing so Benga makes the point that the approval is required before the significant further financial commitments made in order to do this work can be justified, and this approval is part of its business decision making to actually proceed with the investment. In this regard, Benga places some weight on a position that a lot of detailed work required to address these uncertainties is a matter to be dealt with in detailed negotiations with regulators after the public review process is completed and an approval is obtained.
25. In general, CCS appreciates the practical business reality that is the basis for this approach. We recognize that the Project's investors and lenders have to know the rules, ultimate cost, and have resolution of any outstanding regulatory risks before fully making financial commitments to the Project. At the same time, the public generally and particularly those stakeholders who have constructively invested time and effort into this process have a continuing interest in the outcomes that follow. They are entitled to and should reasonably expect timely transparency and consultation related to the results from this subsequent work and to the regulatory decision-making process that evaluates and grants key approvals. For that reason, we believe that the Panel should address the need for robust and transparent mechanisms being put in place for the public and stakeholder engagement on resolution of principle issues where this hearing process has demonstrated significant concerns that remain unresolved.
26. The need for such a mechanism or mechanisms is particularly important at a local level within the local communities that are directly affected. Benga in association with the Municipality of Crowsnest Pass is suggesting a vague community consultation committee modeled on something that exists in Sparwood. It is basically run and controlled by the Municipality, and notionally consists of Municipal Councillors and citizens selected by the Municipality. CCS has expressed strong concerns about this somewhat token and politically controlled structure, seemingly established after the Project is in operation and primarily acting as a vehicle to deal with complaints on nuisance issues. We would submit that this type of approach will be viewed as the Proponent essentially hiding behind an assumed compliant local government which has been virtually invisible in this public hearing process to date. The actual structure likewise lacks credibility in that any citizen membership has no guarantee of being selected on a representative basis and is inherently limited in its coverage of stakeholder interests.
27. CCS requests that the Panel address the need for public transparency and community advisory mechanisms this matter directly in its decision report. In particular, we are recommending that such a body or mechanism be structured as an independent local engagement and advisory body being established under Benga's direct sponsorship but operating independently under a neutral chair and with broad creditable stakeholder membership. This stakeholder membership should include the Municipality of Crowsnest Pass but also equal membership from the M.D of

Ranchlands and M.D of Pincher Creek. Public stakeholder membership should encompass representation from the principal interests in the CNP and neighbouring jurisdictions covering recreation, local business, conservation, and landowner interests as well as recognized independent experts on major issues (aquatic issues and reclamation being examples). It is also important that this mechanism be established as early as possible, ideally at the time of or even before the Panel's final decision. In this regard, a commitment from Benga to adopt this approach in its response to Final Argument would be helpful, noting that to Benga's credit, it has committed to this kind of robust mechanism with respect to engagement of affected First Nations.

## **Aquatic Resource Protection**

28. CCS recognizes that a number of technical and environmental impact issues have been debated in the hearing process with many remaining of concern and without resolution and/or adjudication. CCS trusts that the latter will be done by the Panel in its decision and in routine regulatory approval processes to follow. In general, we will leave these to be addressed by Benga and well-resourced stakeholders with specific expert opinions to address in final argument submissions. However, we do wish to address what appears to us to be the defining overall environmental impact issue for the Project, namely direct aquatic impacts on Gold and Blairmore Creeks, as extended potentially to the receiving Crowsnest River and general Oldman watershed. More specifically, the main aquatic concerns are potential selenium release principally to Blairmore Creek and impacts of the mine site development on the populations of pure strain West Slope Cutthroat trout (WSCT) in Gold Creek and to some extent near pure strain WSCT in Blairmore Creek.
29. CCS submits that the evidence in the hearing shows that there will be adverse harmful aquatic impacts on both Blairmore and Gold Creeks generally. At this point, the extent of these impacts is not fully defined and requires more study, some of which (particularly selenium release) can only be determined after operation begins when performance of proposed theoretically based design and mitigation measures can be validated and adjusted as required. CCS understands the reality that at the conceptual design stage with any engineered project, even when competent science-based principles are applied, uncertainty in performance will exist and operational performance evaluation, detailed regulatory enforcement decision making, and incremental improvement will be required. This will entail detailed design work, pilot testing of technology and monitoring to validate all of this will be required. However, it is also correct to apply a precautionary approach at this stage when making decisions such as this Panel is now charged with. In the case of the key aquatic impact issues, it is appropriate for the Panel to assume that there are significant negative and damaging impacts. As a consequence, the Panel should provide guidance on the steps leading to the specific regulatory permitting required. This would specifically define what studies, data collection and demonstration of mitigation or offsetting measures that Benga must undertake in advance of seeking such permits. The Panel should include provision in this guidance the process involved this permitting to be fully transparent in respect to public and stakeholder consultation and input.
30. As an additional observation on this topic, CCS has particular concerns respecting Benga's approach to the issue of WSCT in Gold Creek and potentially Blairmore Creek in relation to regulatory treatment under the Species at Risk Act (SARA). Benga makes what appears from a public perspective to be a convoluted path supporting an exemption to the application of the basic prohibition of doing harm to a listed species at risk. In terms that an ordinary citizen might understand Benga's argument appears to be that: i) the development is exempt because it is incidental to the impact and damage that may result from the Project; ii) this damage is small

relative to other conditions and historical impacts that have placed the subject WSCT population at risk in the first place; iii) the subject population itself is not significant enough to have an overall impact on the broader WSCT population and iv) Benga's proposed Offset Plan (that only exists as draft and appears to be a work in progress) is sufficient for current purposes of dealing with the issue by the Panel. The main message is that the subject population is essentially on its last legs anyway, and all of this would be dealt with through a negotiation with Federal authorities. CCS' notes that there is substantial contrary testimony to most if not all of its points from credible independent expert witnesses, the principal Federal Regulatory body and perhaps most notably an ordinary citizen (Mr. Rennie) who provided the most understandable demonstration of the decline in WSCT in Gold Creek over time. On this basis, CCS urges the Panel to address this issue carefully and in a balanced manner that ensures that the integrity of the SARA legislation is preserved. In particular, the guidance it might provide to the subsequent Federal regulatory process in its decision accomplishes this in the interests of all parties. In particular, CCS recommends that Benga be required to immediately finalize its Offset Plan and implement it in advance of construction and any final decision making on the overall investment.

31. As a final point on the above, CCS notes the potential for a protracted legal challenge developing over this issue, if it is not addressed and managed to the satisfaction of all parties. A scenario could develop where a Federal permitting decision was perceived to be not in accordance with the intent of federal legislation, this could be challenged on its merits in terms of the Federal government not fulfilling its obligations under its obligations. This would create significant delay in the final approval process that would damage both the Project's prospects and, of more concern to CCS, leave the local community in limbo indefinitely, something that is the worst of all outcomes from the community's perspective. We assume that the Panel and the legal experts involved in this process are aware that there are precedents where such legal action has occurred resulting in lengthy delays if not abandonment of Projects. In fact, legal action by large environmental groups in the 1980s on water reservoir developments influenced creation of the joint federal-provincial review process that we are now participating in. In making this point, CCS is not itself indicating any interest in participating in such a challenge but sees the management of the issue by Benga, the Panel and respective federal and provincial authorities as critical to arriving at a path that would avoid damaging delays in a decision on the Project.

### **Cumulative Effects of Further Coal Mining Development**

32. A reoccurring theme throughout the hearing process to date is how the inevitable cumulative effects resulting from multiple coal mining projects in and around the CNP should be considered in relation to the current process. CCS fully recognizes that the scope of the cumulative effects assessment required of Benga is limited to what can be reasonably foreseen and has sufficient technical definition for impacts to be assessed in this context. Benga has generally adhered to that principle in its evidence and has taken the position that other projects known to be being developed will be obligated to consider the Grassy Mountain Mine in its EIA and proposal submissions to future proceedings such as this. However, the reality is that there are other projects now active in the CNP and MD of Ranchlands that, based on their exploration footprints, will raise many similar concerns as those applicable to this Project from an environmental, landscape preservation and use, and socio-economic perspective. The aggressive promotion of these projects is clearly supported as public policy by the Government of Alberta and by the Canadian Coal Association, a politically influential industry lobby group. CCS particularly notes Mr. Campbell's appearance before the Panel where he clearly indicated that the Grassy Mountain Coal Project was the "test case" for major follow-on development of this industry in the CNP area.

33. In light of the above, CCS requests that the Panel's decision at least acknowledge this reality and identify the obvious cumulative effects that the results of these proceedings indicate would likely have to be considered in EIAs and proposals applicable to any future coal mining projects in the area. Noting that these are not the only issues that might be identified, CCS specifically recommends issues that should be included are: i) cumulative aquatic impacts, particularly selenium release and downstream accumulation impacts at least through to the Oldman Reservoir via the Crowsnest, Oldman and potentially Castle Rivers; ii) the impact on WSCT and future impacts under SARA being cumulative to those from this Project; and iii) the further negative impact such developments inherently have on economic development based on lifestyle in-migration, recreation, and tourism in affected communities. With respect to the latter, CCS argues that any prospect of compatible and synergistic economic development path for the CNP that Benga suggests is possible is essentially negated by additional similar developments. There is a strong view in the communities affected that one development might be tolerated but multiple developments would eliminate the lifestyle, recreation, tourism based sustainable option. In summary, we believe that at the very least the Panel's decision needs to warn future developments that cumulative effects will dictate a higher bar being met respecting cumulative impacts.

### **Project Schedule, Economic Viability, and Sustainability Uncertainty.**

34. The final general aspect of the Benga proposal that CCS wishes to address relates to the uncertainties that remain respecting the Project's schedule, economic viability and sustainability. As stated in relation to other issues addressed above, CCS fully recognizes that these are issues that impact the business decisions made by Benga shareholders and lenders on actually fully committing financially to the Project. Benga for its part takes the position that the next perquisite milestone toward this point is the approvals resulting from this process on terms acceptable to Benga and its investors. What is not acknowledged is the collateral impacts on the local community associated with the above uncertainties both before and after the business decision commitments are made.
35. Clearly a fundamental factor in making a final investment decision and a determinant in its timing are a complex combination of factors such as the market for the product, the price that this market will bear, the cost of production and delivery, and competitiveness with other like producers and other technological options for steel making. Benga has expressed confidence that all these factors are favourable in the longer term based on its studies, experience and expertise. However, the Panel has heard debate indicating that present prices are low relative what would be profitable, that the current market is negatively impacted by global recessionary trends in steel demand, that the current trends in new steel production development favour scrap-based steel production with a lower carbon footprint and lower capitalization, lower carbon foot print scrap-based steel making technology. In the longer-term, developments in very low carbon footprint hydrogen-based processes have progressed to the point where they are entering commercial use in Europe where carbon is monetized. This kind of technology will have a major impact on Projects such as this in the longer term. It is a fact that globally public policies to address the imperative of dealing with the prospect of catastrophic climate change are now becoming generalized. These are internalizing the generation of green house gasses into industrial production costs as a primary mechanism to enable countries to meet net zero carbon emission target. Interestingly, 2050 carbon neutral targets have recently been adopted in number of Benga's prospective markets including, Japan, Korea, and China. This time frame when overlaid with Benga's likely Project life cycle and suggests the demand for its output may not be sufficiently

sustainable to make the projected life realistic. A December 2020 publication<sup>1,2</sup> by a group of internationally recognized organizations including the Winnipeg based International Institute for Sustainable Development, the Stockholm Environmental Institute, and United Nations Environmental Programme on the need to slow fossil fuel production specifically identified coal production, including metallurgical coal, as a critical goal in order to arrest global warming. Canada was identified as being an important country needing to act for this reduction to be achieved.

36. In addition to the above factors, the need for significant work design, procurement and other technical study work in advance of actually undertaking construction, the potential risk of lengthy legal challenges involving federal legislation and/or neighbouring landowner disputes create significant uncertainty on when the actual construction commitment will be made. The current schedule for the Panel's report and recommendation to provincial and federal governments is now June 2021. Recent, local press reports indicate that Benga has advised the Municipality that they will not start construction until into 2022. Separately it has been reported that the Federal approval will not occur before the end of 2021. The time and debate often associated with respective cabinet level approvals from Federal and Provincial Governments is rarely predictable. Likewise, being able to complete enough design and business case work to support financing is often a schedule constraint in practice. The potential for further delays related to market and price issues would also seem a reasonable possibility given uncertain global economic prospects. All of this suggests that the real date for final financial commitment and construction to start remains indefinite and still some time off.

37. The significance of this to the community's interests is the risk it assumes related to the timing of actually seeing substantive economic and benefits from the Project. It is clear that there already is a negative impact associated with the prospect of the Project being approved, specifically to the CNP's attraction for lifestyle in migration and keeping those who are already here for that reason or might come. This continues through this undefined front end pre-construction period. For those wanting to invest in the community in preparation for anticipated economic activity, significant risk will be assumed without knowing when an actual return on their investment might materialize. The need for investment by the Municipality in public infrastructure and expanded services will entail taxpayer backed financial risks as this investment needs to be made in advance to be competitive with neighbouring communities already having available capacity. More generally, that portion of the population that support the Project in expectation of benefits may well become frustrated and disillusioned. In the longer term, once the Project is operational there will continue to be uncertainty risk at the community level associated with project sustainability if potential trends in technology change, markets and internalization of climate costs alter coal competitiveness.

38. Based on the above, CCS requests that the Panel considers the impact of the Project schedule, economic viability, and sustainability uncertainties in its evaluation of the Benga's proposal and as has been elaborated in the CCS submissions to date, CCS believes the Panel should seriously consider a recommendation that approvals for starting construction have a specified time within which Benga or its successors must make the formal financial commitment and start construction,

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<sup>1</sup> <https://www.developmentaid.org/#!/news-stream/post/80510/worlds-governments-must-wind-down-fossil-fuel-production-by-6-per-year-to-limit-catastrophic-warming?>

<sup>2</sup> [https://www.developmentaid.org/api/frontend/cms/file/2020/12/PGR2020\\_FullRprt\\_web.pdf](https://www.developmentaid.org/api/frontend/cms/file/2020/12/PGR2020_FullRprt_web.pdf)

after which the approval would be subject to public review respecting it remaining in the public interest.

## Conclusion

39. The overall conclusion CCS makes in respect to Benga's proposal from the local community's perspective is that Benga has not at this point in the process demonstrated that the Project is in the public interest nor that it will not cause significant environmental impacts taking into account Benga's proposed mitigations. On that basis, in our opinion the Panel has two options in rendering its decision. One is that the proposal and application for approval be denied outright, a course advocated by the large majority of hearing participants. The other option is to approve Benga's proposal, subject, to conditionality that requires action that may sufficiently demonstrate it is in the public interest and does not cause significant adverse environmental and socio-economic impacts.
40. As stated in Paragraph 5 above, CCS has taken the position that the Project should not proceed in the absence of effective conditions such as recommended in our submissions, while retaining the potential for ultimately supporting the project if the local community's interests are protected by the applied conditionality. At this concluding point in the hearing process, we generally adhere to that position and in principle can support the second option above as a course of action for the Panel. This would entail a conditional approval defining the work Benga must undertake in the form of additional study, design, selected demonstration works, and incremental mitigation commitments that would be sufficient to demonstrate the project is in the public interest and that acceptable levels of environmental and socio-economic impact as determined by competent authorities having jurisdiction are likewise demonstrated. Conditions applied should be reasonably met prior to allowing of only physical works required to fulfil the conditions. Mechanisms should also be in place to provide for full and transparent disclosure of principle results from the above activities and regulatory decision making.
41. As a final concluding remark in respect to its position above, CCS flags the concerns expressed in Paragraphs 7 and 8 above in respect to Benga's much more rigid position on what it is prepared to commit to prior to getting a full clearance to proceed. We appreciate the business pressures involved and the need for certainty. However, from the perspective of the local community we also respectively point out that the many the uncertainties associated with the Project impacting the community are related Benga's business decisions including how it addresses mitigation of Project impacts felt directly by the local community. CCS remains willing to continue a constructive engagement with Benga on a mutually open and cooperative basis moving forward. This willingness likely extends to many CNP community members and interests across a range of positions on the Project. However, A positive, consensus-based relationship with the general community will not be possible in an adversarial environment in the event the Project ultimately receives approval and Benga chooses to proceed with it.