

NEWS RELEASE

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FEDERAL COURT RULES CHEVIOT MINE APPROVAL VIOLATED ENVIRONMENTAL LAWS:

STRIKES DOWN PERMIT FOR OPEN PIT MINE NEXT TO JASPER NATIONAL PARK

(Ottawa) - The Federal Court has ruled in favour of five Canadian conservation organizations that challenged the federal approval of the Cheviot open-pit coal mine adjacent to Jasper National Park. The ruling sets major new precedents for Canadian environmental law. Justice Douglas Campbell found that the joint federal-provincial environmental review did not comply with the Canadian Environmental Assessment Act (CEAA). He struck down the federal authorization for the mine that had been issued under the Fisheries Act. And he ruled that the permanent dumping of millions of tonnes of waste rock on migratory bird habitat does fall under the Migratory Bird Convention Act, which prohibits the deposit of substances harmful to migratory birds.

"We're ecstatic," exclaimed Cliff Wallis of the Alberta Wilderness Association (AWA). "The review has been found to be incomplete, which means there will be a reopened hearing to address the shortcomings. It's a huge boost to our campaign to gain legal protection for this nationally significant area, rather than leaving its future to the ups and downs of the Asian steel market."

The ruling sets an important precedent for future environmental assessments. It strengthens and clarifies the responsibility of the federal government to require, through CEAA, a careful assessment of alternatives to developments (e.g. underground mining), and the cumulative effects of proposals in conjunction with other existing or planned projects. The ruling places an onus on this and future panels to gather and consider all environmental information rather than simply relying on the information presented by the proponent, which the panel did in the Cheviot case.

"We've believed all along that once the federal government has all the information in hand as required by CEAA, they would be compelled to turn down an open pit mine at this location. Their initial report was based on a seriously incomplete picture," said Mr. Wallis. "Now, we also hope that the government will do the environmentally acceptable thing, and enforce the Migratory Bird Convention Act regulations."

The effect of the ruling is that the mine proposal must now go back to the

review panel to consider all the environmental information which it failed to consider in the first hearing. Once this important missing information on the mine's environmental effects is gathered, the federal government must then decide if it still wants to approve the project.

The ruling also establishes an important precedent that the federal Migratory Birds Act protects migratory birds' nesting habitat, even on provincial lands. The mining company and federal government had argued that the Act did not apply to activities that destroyed birds' habitat, but only to activities that caused direct harm to birds. However, the court rejected this argument and concluded that waste rock deposited on habitat constituted a "harmful substance."

"This ruling establishes that the Migratory Birds Act protects not just birds but also their habitat," said Stewart Elgie of the Sierra Legal Defence Fund. "This is a very important precedent. Habitat destruction is the main reason that harlequin ducks and many other bird species are declining."

This decision is also important for other wildlife species, in particular grizzly bears, who migrate in and out of Jasper National Park through the proposed mining area. This area is critical grizzly bear habitat. "This is a great day for the grizzly bears of Jasper National Park," said Mary Granskou of the Canadian Parks and Wilderness Society. "The Cheviot mine is a gravely damaging project. It should never see the light day."

The final outcome of the whole matter is of international concern. UNESCO's World Heritage Committee has asked Canada to reconsider its approval of the mine which will be located to within 3 kilometres from Jasper National Park - a UN World Heritage Site. "This ruling will give a boost to organizations around the world that are trying to stop the deterioration of some of the planet's great natural wonders, which includes Jasper National Park," said Kevin McNamee of the Canadian Nature Federation. "We will be notifying the World Heritage Committee of the Court's decision and continue to have them press the federal government to reconsider its approval."

The groups that launched the legal action in October of 1997 are: Alberta Wilderness Association, Canadian Parks and Wilderness Society, Canadian Nature Federation, Pembina Institute for Appropriate Development and Jasper Environmental Association. They are represented by lawyers from the Sierra Legal Defence Fund, a Canadian non-profit environmental law group.

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Please consult <http://www.parksandwilderness.org/cheviot> for additional information and maps. Updates and information are also available on <http://www.web.net/~awa/>

A complete copy of the decision is available from any Federal Court location in Canada for about \$25.00. They will fax copies.

BACKGROUNDER TO CHEVIOT MINE DECISION

The proposed Cheviot mine would involve digging a series of large open-pits across an area 28 square kilometres in a mountainous area next to Jasper National Park, part of the Canadian Rocky Mountain Parks UN World Heritage Site. This area provides critical habitat for many species of wildlife, many of which travel in and out of Jasper National Park.

Summary of Decision

The five conservation groups challenged the joint federal-provincial environmental assessment panel and the mine approval on two main grounds, both of which the Court agreed with in its ruling. First, the Court ruled that the Panel contravened the requirements of the CEEA by failing to consider alternatives that could have reduced the mine's impact, particularly the alternative of underground mining, and by failing to consider the extensive cumulative effects that would be caused by extensive logging and mining that was planned in the vicinity of the proposed mine. Second, the Court ruled that the company's plans to dump millions of tons of waste rock into stream valleys that are important nesting habitat for harlequin ducks and other birds likely would contravene the Migratory Bird Convention Act.

Background to Court Case by Five Conservation Groups

The case was heard March 1-3, 1999, in Edmonton, Alberta. The Court was not asked to rule on whether or not the mine will cause unacceptable environmental harm. The environmental review process had already concluded that there would be significant, irreparable harm done to the wildland landscape and terrain, soils, neotropical migratory birds, and tourists and residents seeking the undeveloped, wildland experience that the landscape presently offers without the mine. The Review Panel felt that the irreparable loss of prime habitat for grizzly bears, cougars, wolves and wolverines was justified. The Court was asked to determine three key legal

questions.

First, the Court was asked to determine whether the Panel's review considered all relevant information required under the Canadian Environmental Assessment Act in reaching this conclusion. In particular, the groups argued that the option of underground mining had not been adequately examined and that the cumulative effects of the proposed Cheviot mine in combination with other planned mines and forestry projects in the area were not analyzed. Second, the Court was also asked to interpret whether waste rock was a substance harmful to migratory birds under the Migratory Birds Convention Act. Third, the Court was asked to determine whether the Panel violated due process requirements by ignoring the submissions of the Canadian Nature Federation submitted to the hearing. The Court found in favour of the five groups on all three grounds.

Excerpts from Justice Douglas Campbell's Decision

Justice Douglas Campbell found with respect to the Applicants' allegation that the Panel failed to comply with the Canadian Environmental Assessment Act:

Paragraph 69: "...I find that the Joint Review Panel breached its duty to obtain all available information about likely forestry in the vicinity of the Project, to consider this information with respect to cumulative environmental effects, to reach conclusions and make recommendations about this factor, and to substantiate these conclusions and recommendations in the Joint Panel Report."

Paragraph 76: "... I find that the Joint Review Panel breached its duty to obtain all available information about likely mining in the vicinity of the Project, to consider this information with respect to cumulative effects, to reach conclusions and make recommendations about this factor, and to substantiate these conclusions and recommendations in the Joint Review Panel report."

Paragraphs 80-82: "While the alternative means of underground mining is generally considered in the Joint Review Panel Report, the effects of this alternative means, as compared to the effects of open pit mining, are not considered in any meaningful way. I agree with the applicant's argument that simply identifying potential "alternative means" without discussing their comparative environmental effects fails to provide any useful information to decision makers, and fails to meet the requirements of s.16(2)(b) of CEAA. While it is true that, as the Joint Review Panel asserts, CRC has the right to carry out the extraction of the coal resources within the applied for mine permit boundary, I find that it does not have the right to do it by open pit mine. Thus, I find that a comparative analysis between open pit

mining and underground mining at the Project site is required to comply with the provisions of s.16(2)(b)."

Justice Douglas Campbell found with respect to whether waste rock is covered by the Migratory Birds Convention Act which prohibits the deposit of substances harmful to migratory birds in areas frequented by them:

Paragraph 103: "I find on the basis of these provisions that there is a clear intention expressed to provide wide protection to migratory birds... While rock might indeed be inert, as the Respondent [CRC] contends, I agree with the applicant's argument that millions of tonnes of it deposited into creek beds constitutes a threat to the preservation of migratory birds that nest there, and, therefore, in such circumstances is "harmful" and, thus, within the meaning of that term as used in s.35(1) of the Act."

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