**Alberta Wilderness Association  Canadian Parks & Wilderness Society  Sierra Legal Defence Fund**

# NEWS RELEASE

For Immediate Release:  Feb. 17, 2000

## Federal Court Dismisses Company's Appeal of Cheviot Ruling

### Public hearings to re-open

The Federal Court of Appeal has dismissed Cardinal River Coals Ltd.'s (CRC) appeal of a 1999 Federal Court ruling which struck down the federal authorization for its proposed Cheviot Mine in Alberta, adjacent to Jasper National Park.  The appeal was dismissed because CRC did not submit its arguments or evidence within the time periods set by the Court.  A new public hearing on the mine will tentatively begin on March 1st.  CRC is the joint-venture company of Consolidated Coal, US's largest coal company, and Alberta based Luscar Ltd., chaired by former Alberta Premier, Peter Lougheed.

Conservation organizations say the dismissal of the appeal means the national precedents set by the 1999 ruling now stands. The ruling of Justice Douglas R. Campbell is of national significance from three different perspectives.  The Court found that adherence to all of Alberta's regulatory steps was not enough, and that following the more stringent requirements of the Canadian Environmental Assessment Act (CEAA) was essential.  It found that the federal government failed to comply with two key environmental assessment requirements of CEAA: assessment of alternatives and of the cumulative effects of the development. It also agreed with the conservation organizations' argument that issuing authorizations for the mine would be contrary to the Migratory Birds Convention Act.

"The province and industry cannot block Albertans from access to the environmental protection provided by CEAA," said Dianne Pachal, Conservation Manager of Alberta Wilderness Association (AWA).  "CEAA does not duplicate provincial legislation, rather it covers the gaping holes with a check list of what constitutes a thorough and proper review."

Mining industry representatives are currently lobbying the federal government to significantly weaken CEAA.  They want the federal-provincial harmonization agreement used to require the federal government to defer to provincial environmental assessments without doing the more thorough federal review.  They also want a "privative" clause to prevent citizens from challenging questionable reviews and potentially winning court decisions which require compliance with CEAA, as has happened with the successful Cheviot Mine and Sunpine logging cases launched by Alberta organizations with representation from Sierra Legal Defence Fund lawyers.

"We are happy that this key precedent – upholding the legal requirements of the Canadian Environmental Assessment Act and the Migratory Birds Convention Act – remains intact. I hope the federal government sees it as a call to improve environmental decision-making, rather than as an excuse to change the law so as to insulate bad decisions from judicial scrutiny," said Sierra Legal Defence Fund Staff Lawyer, Jerry DeMarco.

“When the industry finally sees it can’t easily evade environmental laws, they start lobbying to downgrade them. Given industry’s rhetoric about protecting the environment, it’s appalling behaviour,” said Sam Gunsch, Edmonton spokesperson for Canadian Parks and Wilderness Society (CPAWS). “The mining industry is attempting to use the mandatory five-year review of CEAA to ‘harmonize’ it down to the weaker provincial process and to exclude anyone from using legal means of ensuring that industry and review panels actually follow the law.”

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## Background to Feb. 17, 2000 News Release

The lawsuit was launched October 1997 by local, provincial and national conservation organizations. It challenged what was the first development application in Canada to go through a joint federal-provincial hearing process under the federal government's new "harmonization" program of downloading responsibilities to the provinces. Ruling in favour of the conservation organizations, the Federal Court, Trial Division, found that adherence to all of Alberta's regulatory steps was not enough, and that following the more stringent requirements of the Canadian Environmental Assessment Act (CEAA) was essential. The ruling made it clear that CEAA serves the interest of Albertans and hence, must be complied with. CEAA came into effect in 1995.

The Court found that the federal government failed to comply with two key environmental assessment requirements of CEAA: assessment of alternatives and of the cumulative effects of the development. 'Cumulative effects' are the environmental impacts of the development in addition to the developments all ready in place or likely to occur in the region (e.g. logging and oil and gas activities).

The Court also agreed with the conservation organizations' argument that issuing authorizations for the mine would be contrary to the Migratory Birds Convention Act. The open-pit mine would result in millions of tonnes of waste-rock being excavated and dumped into stream valleys at a rate of 30 million tonnes a year over 20 years. The valleys include habitat for Harlequin Ducks and thousands of migratory song birds. The colourful Harlequin Duck is listed by Alberta as a species potentially at risk of extirpation.

Last August, the same Review Panel for the first hearing began the process of a supplementary hearing to address the short-comings the Court identified with the first hearing. A pre-hearing meeting was held at Hinton in September. The new public hearing will tentatively begin on March 1st in Hinton.

The organizations which launched to original legal action are the 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 with the Sierra Legal Defence Fund, a Canadian non-profit law firm. With the exception of the Sierra Legal Defence Fund, all will be participating in the up-coming hearing and have provided the Panel with their written submissions.