

MEDIA RELEASE

For Immediate Release

November 2, 2004

Controversial Alberta open-pit coal mine project faces next legal challenge

Conservation groups argue project will destroy sensitive migratory bird habitat

EDMONTON, AB – A coalition of Canadian conservation groups announced today that they are launching another legal challenge of the controversial Cheviot Coal Mine Project underway near Jasper National Park, Alberta. The groups argue that the federal government's recent authorization of the first part of the mine, called the Cheviot Creek Development, should be quashed because it would result in the destruction of sensitive migratory bird habitat – directly contravening the federal *Migratory Bird Conventions Act*.

"Simply put, the federal government has authorized activities that are clearly in violation of federal law and will result in the destruction of the habitat for thousands of migratory birds," said Sierra Legal Defence Fund lawyer Justin Duncan. "We are asking the court to immediately quash these authorizations."

On behalf of the Nature Canada (formerly Canadian Nature Federation), Pembina Institute for Appropriate Development, Jasper Environmental Association, Sierra Club of Canada and the Alberta Wilderness Association, Sierra Legal applied for a Judicial Review at the Federal Court earlier today.

The massive 7,455-hectare mine is proposed for an area that has been designated by the federal and provincial government as 'nationally significant' for its unique natural features. If the open-pit mine is fully developed, the Canadian Wildlife Service estimates that habitat for up to 5,000 songbirds will be lost, including 24 migratory species. Additionally, a federal-provincial review panel found that the mine would have a significant and permanent adverse effect on neotropical songbird and Harlequin duck habitat, reducing the Harlequin population that nests and summers in the area. Since 2001, the Alberta Government's Endangered Species Committee has listed Harlequin ducks as a "Species of Special Concern." Environment Canada described these colourful ducks as good indicators of pristine, wilderness ecosystems; reliant on undisturbed mature and old growth habitat, and streams with healthy invertebrate populations.

"More than ten million tonnes of rock will be permanently dumped on pristine headwater streams and valleys each year for the next fifteen years" notes Dianne Pachal of the Sierra Club of Canada. "That is truly unacceptable for such a hotspot of biological diversity."

In August, the groups launched a similar legal challenge against Cheviot, arguing that the project had fundamentally changed since it was initially reviewed, and that the environmental impact of the new, revised project must undergo a full Environmental Assessment. The groups also argued in both challenges that mitigation and compensation conditions ordered through the previous Environmental Assessment processes have largely been ignored.

The Cheviot open-pit mine is a project of Teck Cominco (TSX: TEK.A, TEK.B) and the Fording Canadian Coal Trust (TSX: FDG.UN, NYSE: FDG), through their Elk Valley Coal Partnership, which runs the Cardinal River Coals operation. The original project was proposed in 1996 and would have processed the raw coal on site. The new, revised project includes expanding the mine area to take in the McLeod River valley and the construction of a high-speed, 24-hour haul-road along its length to truck raw coal 22 km north to the Luscar Mine for processing. An environmental assessment pursuant to the *Canadian Environmental Assessment Act* has not been performed in relation to the modifications made to the project.

Both cases are expected to be heard in early 2005.

The company's case against the Alberta Environmental Appeals Board for its decision to hold a hearing on author and naturalist Ben Gadd's appeal of the Alberta approvals will be heard in the Court of Queens Bench in Edmonton on Wednesday, November 3, 2004.

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CHEVIOT MEDIA BACKGROUNDER

November 2, 2004

Location of the Cheviot Coal-Mine Project

- The project is being developed at the tree line in the Rocky Mountains of Alberta, southwest of Hinton and 2.8 kilometres from Jasper National Park; a UN designated World Heritage Site.
- The site includes the core of four contiguous Environmentally Significant Areas that have been identified and designated by the federal and provincial governments as nationally significant; having a combination of natural features not found elsewhere in Canada.
- The mine area is astride the continental watershed-divide between waters flowing to the Arctic Ocean and those flowing to the Atlantic Ocean.
- Known as the Mountain Park or Cardinal Divide area, provincial scientists first proposed its protection in the early 1970s and conservation groups together with scientists have been proposing legislated protection of the 461 square kilometre proposed park since the mid 1980s.

The “Cheviot Creek Development”

- The federal authorization being challenged permits the first phase of the coal mining operation, known as the Cheviot Creek Development, which would dig up and dump rock on an area of approximately 350 ha.
- Most of the physical destruction will be from the excavation of five huge coal pits and from excavated rock being dumped onto the surrounding landscape.
- This phase amounts to approximately 12% of the total physical disturbance area planned for the project.
- Approximately 70% of the excavated rock will be dumped on the local landscape instead of back into the mine pits, filling the valleys of Cheviot and Thornton Creeks.
- Upon completion of this phase of the project, two large pits (32.5 and 1.3 hectares in surface area) will be left open to fill with water (called “end-pit lakes”).

Chronology of Legal Challenges

- The original mine proposal reviewed by federal-provincial hearings in 1997 and 2000 did not proceed due to public opposition and for economic reasons.
- The Federal Court ruled in March 1999 that further environmental assessment ought to be done of the Cheviot open-pit coal mine to assess cumulative effects
- The Federal Court also ruled that authorizations issued under the *Fisheries Act* may be illegal for allowing destruction of migratory bird habitat, being contrary the *Migratory Birds Convention Act*. Mining would permanently dump millions of tonnes of excavated rock onto migratory bird habitat. Mine plans have not been altered to avoid this destruction.
- A significantly different and potentially more destructive mine development was applied for to provincial authorities in August 2002. Construction began in March of this year, prior to any of the required federal authorizations being in place for the mine.
- To date, no environmental assessment of the modified project has been required by either the provincial or federal governments, nor have associated public hearings been held.
- Baseline studies (e.g. on wildlife movement), design of mitigation measures to lessen adverse impacts (e.g. selenium contamination of waters) and compensation for the loss of carnivore habitat, all previously required as conditions of approval, have not been done.
- In April of 2003, the Alberta Energy and Utilities Board issued a new mine permit approving a significantly larger mine area.
- Approvals issued by the Alberta Environment Department in December 2003 are currently being appealed to the Alberta Environmental Appeals Board (EAB) by naturalist and author Ben Gadd.
- Just prior to the commencement of the EAB hearing, which was set for Sept. 27 and 28 in Hinton, the company filed a case against the EAB. That case will be heard Nov. 3rd in the Court of Queens Bench of Alberta, in Edmonton.

- On August 12, 2004 a coalition of conservation organizations filed a case against the federal Department of Fisheries and Oceans for failing to require that an environmental assessment of the modified mine project be performed. The case is expected to be heard in Federal Court early in 2005.
- On October 12, 2004 the federal Department of Fisheries and Oceans notified legal counsel for the coalition that an Authorization for the first part of the Cheviot mine, the Cheviot Creek Development, had been issued on Sept. 20th, 2004.

Silencing Spring

- On average, eight tonnes of rock will be excavated and permanently dumped on the landscape for each tonne of coal produced. This will occur at a rate of 15 million tonnes per year over the proposed 15-year life of the modified mine.
- Canadian Wildlife Service experts testified at hearings on the previous mine proposal that the area's species richness and diversity of song birds is "as high as it gets in North America."
- They concluded that Cheviot would result in the loss of 4,000 to 5,000 songbirds and their offspring, including birds from 32 species whose populations are already declining in North America. Twenty-four of the species are migratory.
- There are 127 species of birds that inhabit the Cheviot site. Nine are listed as "Special Concern" or "At-Risk" (at risk of extirpation) in Alberta.
- The federal-provincial Environmental Review Panel concluded in 1997 that for neotropical songbirds, there would be significant adverse impacts remaining after the mine is reclaimed. Neotropical birds nest and summer in Canada and spend their winters in the tropics.

Harlequin Ducks – The Spotted Owls of Mountain Streams

- Harlequin duck populations require pristine mountain habitat and clean headwater rivers and streams in order to survive.
- "The Harlequin duck's dependency on riparian habitats associated with undisturbed mature and old growth habitat, and streams with healthy invertebrate populations makes it a good indicator of pristine, wilderness ecosystems" (Environment Canada submission at 1997 Environmental Review Panel hearings).
- The Cheviot site includes prime Harlequin duck habitat in the upper McLeod River watershed, which is home to Alberta's largest breeding population next to that of the Bow River in Banff National Park.
- Since 2001, the Alberta Government's Endangered Species Committee has listed Harlequin ducks as a "Species of Special Concern."

Adverse Impacts

- The 1997 and 2000 federal-provincial reviews concluded that the mine would result in significant, adverse effects on fish and fish habitat, neotropical birds, soil landscapes, general terrain features, people seeking a wildland experience and First Nations' traditional use of the lands.
- They also concluded the mine would destroy prime grizzly bear habitat and that the loss would have to somehow be compensated. This has not been accomplished and deadlines have not been met.

The Revamped Mine Proposal

- The revised Cheviot Mine Project will require more public land, with the mine now covering 7,455 hectares, with the physical disturbance area stretching as long as the width of the City of Edmonton.
- Instead of the previous Access Corridor, which included an existing fair-weather public road, the permit area for the active mine has been extended to take in the Access Corridor along the McLeod River valley, linking Cheviot with the existing Luscar mine located to the north.
- At almost three times the width of a secondary highway in Alberta, the 22 kilometre haulroad will have trucks hauling raw coal to the Luscar Mine site every nine minutes, twenty four hours a day, seven days a week.
- Compared to the earlier proposal, the revised project is expected to mine less than half the available coal and will employ less than 200 people for, at most, 15 years.