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## Cheviot Mine in Operation with Court Cases in Tow

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While Elk Valley Coal (EVC) mining trucks have begun hauling coal from the Cheviot Creek Pit area, a federal judicial review filed by Sierra Legal Defence Fund (SLDF) on behalf of environmental groups, including AWA, has taken a new turn.

In February, lawyers for Cardinal River Coal (CRC) served a *Notice of Constitutional Question* challenging the constitutional validity of the sections of the Migratory Bird Regulations that we rely on in our argument. CRC counsel intends to argue that the sections are beyond federal government powers.

In 2004 the ENGO coalition launched a legal challenge that included the argument that the federal government authorization of the Cheviot Creek Development (first phase of mine development) contravenes the *Federal Migratory Bird Convention Act* and regulations made under it designed to protect migratory bird habitat. SLDF lawyers argue that the authorization of activity will result in the destruction of sensitive migratory bird habitat and is therefore illegal.

"A constitutional challenge is really saying 'when you look at the list of things the feds have power over under the constitution, migratory birds are not on it,'" says SLDF lawyer, Tim Howard. "Our argument says that the federal government does have that power because, among others, it can regulate issues of national concern like the loss of transboundary bird species."

CRC argues that the regulations prohibiting the destruction of migratory bird habitat, including waters used by migratory birds, interferes with Alberta's ability to regulate provincial lands and wildlife. This argument implies that the protection of migratory bird habitat is not an issue of sufficient national importance to make it something the federal government would regulate.

"The proper implementation of the Act is essential to the protection of migratory birds and their habitat. If you can't protect where a species lives, you won't have any species to conserve," says Howard. "The protection of migratory birds is a federal matter of national concern requiring federal leadership, not a piecemeal provincial approach."

The *Migratory Bird Convention Act* is a critical piece of legislation. Rather than challenging our case, CRC should re-evaluate their project and accommodate these important and sensitive birds. This may show CRC to be a better corporate citizen.

The first phase of the judicial review is scheduled to begin on June 14, 2005 in Edmonton.

On April 8, 2005, the Minister of Environment, Mr. Guy Boutilier, approved recommendations made by the Alberta Environmental Appeals Board (AEAB). The AEAB determined that some aspects of the new design of the Cheviot mine haul road negatively affect Mr. Ben Gadd in terms of the use and enjoyment of the local wilderness areas and that the impacts of the new Cheviot mine project in many cases, are different from those of the original project.

The AEAB stated that, in many instances, the Environment Director did not have all the relevant information needed to make a proper decision for the approval of the application. Furthermore, the AEAB identified that this is the first approval that has come before them where the assessment of impacts and design of mitigation measures were not done prior to the approval.





In many instances, the impacts from the new haul road were found to be more severe and some still unknown due to lack of information and assessment. For example, in regards to wildlife impact, the AEAB believes the haul road has “changed the impact on grizzly bears and other wildlife from those identified in the original design.”

Many conditions and recommendations have been attached to the approval given to the mine company. These include

- The company must report any wildlife mortalities in relation to haul road within 24 hours of the occurrence and make recommendations for avoiding future mortalities.
- Inform affected public twice a year about the mine’s mitigation measures of environmental impacts.
- No use of salt on roads without written permission by Director of Environmental. Requests for use must be accompanied by an analysis of the impacts of salt on wildlife.

The issue remains however, who will monitor the company to ensure compliance.

To review the complete report, see <http://www3.gov.ab.ca/eab/dec/03-150-152-R.pdf>

