

What Will Happen to the Grassy Mountain Joint Review Panel Report?

May 4, 2021



Dear Members of AWA's Grassy Mountain List Serv:

As mentioned in my May 4th note, the Joint Review Panel on the Grassy Mountain Coal Project must submit its report to the federal Minister of Environment and Climate Change **by no later than June 18, 2021**. That's only 42 days away and it's possible the JRP report could land on Minister Wilkinson's desk before then.

When Minister Wilkinson receives the JRP's report he will have up to 150 days (five months) to issue a Decision Statement about the project. What will the process between receiving the report and issuing the government's Decision Statement look like?

What's the Division of Labour/Responsibility Between The Minister and The Federal Cabinet?

Under section 52(1) of the *Canadian Environmental Assessment Act, 2012*, Minister Wilkinson must decide if Grassy Mountain is "likely to cause significant adverse environmental effects." That decision should take into account whatever mitigation measures he considers are appropriate.

If Minister Wilkinson decides that Grassy Mountain is likely to cause significant adverse environmental effects then he must refer the project to the federal cabinet (the Governor in Council). The cabinet then must decide if those significant adverse environmental effects "are justified in the circumstances." This is outlined in section 52(2) of the Act.

If the Minister doesn't conclude that Grassy will cause significant

adverse environmental effects then, as I understand it, the federal cabinet will not be involved in the decision process.

Minister Wilkinson, whether or not the matter is referred to cabinet, will release his Decision Statement within that 150 day window.

What Will the Decision Statement Say?

Basically...one of two things. The project is rejected; the project is approved.

If the cabinet decides that there are significant adverse environmental effects that are not justified in the circumstances, then Minister Wilkinson's Decision Statement will reject the project.

If the cabinet decides that such significant effects are justified then the Decision Statement will approve Grassy Mountain. However, this approval likely would come with conditions. As section 54(1)(b) of the Act states, this approval must include "any conditions that are established under section 53 in relation to the designated project and that must be complied with by the proponent."

Will A Decision Statement Be Issued by mid-November?

Not necessarily. As Drew Yewchuk from the University of Calgary's Public Law Clinic told me, the federal government may extend the time limit for issuing the Decision Statement. The Minister could extend the time limit for the Decision Statement by up to an additional three months; on the Minister's recommendation, the federal cabinet could extend this time limit beyond three months.

Will There Be More Consultation With First Nations Within the 150 Day Timeline from Report to Decision Statement?

I'm not sure what the answer is to this important question. I asked several lawyers familiar with the CEAA process and they couldn't give me a definitive answer. *Gitxaala Nation v. Canada, 2016 FCA 167* was the case that became instrumental to the Trudeau government's decision to reject Enbridge's Northern Gateway Pipeline Project in 2016. The Harper government had approved the JRP report for that project and, with it, the project. But, First Nations and others took that approval to court.

In *Gitxaala Nation v. Canada* the Federal Court of Appeal considered fourteen applications for judicial review of the Harper government's regulatory approvals for Northern Gateway/the JRP report. The Federal Court of Appeal quashed the approvals based on one failing – the failure to execute well the Crown's duty to consult First Nations during Phase IV of the consultation framework. Phase IV referred to the time period between the release of the Review Panel report and the Decision Statement.

I'm curious to know whether such a "Phase IV" consultation will be owed to Treaty 7 First Nations as well as the Ktunaxa Nation and the Shuswap Indian Band.

Once again, here are the contact details for Environment and Climate Change Canada Minister Wilkinson. Get ready to make those calls, write those messages:

Email: Jonathan.Wilkinson@parl.gc.ca

Telephone: (613) 995-1225

Fax: (613) 992-7319

Mailing

Address: House of Commons,

Ottawa, Ontario

Canada

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(Mail to any Member of Parliament may be sent postage-free)

Be well,

Ian Urquhart,

Conservation Director



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