



Environmental Law Centre

July 13, 2021

Our File:

Coal Policy Committee
via Email: energy.coalpolicy@gov.ab.ca

RE: Coal Policy Engagement

Thank you for the opportunity to participate in the Coal Policy Committee's consultation session held on June 9, 2021. The following submissions are in addition to those made on April 19, 2021.

1. What is your organization's background, experience and interest in relation to potential coal exploration and development in Alberta?

The Environmental Law Centre (ELC) is Alberta's oldest public interest environmental law organization and believes that law is a powerful tool to protect the environment. Since it was founded in 1982, the ELC has been dedicated to providing credible, comprehensive and objective legal information regarding natural resources, energy and environmental law and policy in the Province of Alberta. The ELC's mission is to advocate for laws that will sustain ecosystems and ensure a healthy environment and to engage citizens in the law's creation and enforcement.

2. What are the concerns that your community or organization has about current, or future, coal developments, including positive or adverse impacts?

The *Coal Development Policy for Alberta* (Coal Policy) was rescinded without public consultation and without sufficient regulatory structures in place to reflect the policy's objective and purpose. At the time of rescission, the only portion of the Coal Policy remaining in effect was the public land use categories pertaining to coal exploration and development. While these land categories were reinstated in February 2021 as a result of public concern and to allow for public consultation, in the interim new coal leases and authorizations for coal exploration were issued and remain in place (the Minister's directive to the Alberta Energy Regulator only stopped processing of *new applications* as of February 8, 2021).

The Eastern Slopes region has long been valued for its landscape and habitat, and is critical to watershed health (hence, the reason for the development of the Coal Policy land categories in the first place). Without high level policy protections in place, cumulative impacts on the Eastern Slopes cannot be effectively managed by using a project by project approval approach. The habitat of several endangered/threatened species is at risk with coal exploration and development (e.g. caribou, west slope cutthroat trout, bull trout, grizzly bear). The Eastern Slopes play a critical role in watershed health critical for the social, economic and environmental values held by Albertans. In a healthy state, the Eastern Slopes and the headwaters located



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therein may provide climate change refugia offering opportunities to shelter species from the impacts of climate change.¹

With the Eastern Slope's critical role in watershed health and as habitat for aquatic species, the potential for selenium water pollution associated with coal development is troubling to say the least. Past coal developments in both B.C. and Alberta appear to have resulted in selenium concentrations in excess of guideline levels for aquatic health.² Further, the efficacy of selenium treatment by a proposed future mine (Grassy Mountain Coal Project) has recently been questioned, with the Government of Canada noting "uncertainties remain with respect to the sources of selenium and the concentrations used by Benga to model bioaccumulation of selenium in migratory birds and other wildlife receptors".³

Further, given the recognized need to transition from fossil fuels and to lower greenhouse gas emissions (see the International Energy Agency's recent [Net Zero by 2050](#) report), the Government of Alberta should not be allowing any new development or expansion of thermal coal. Rather the focus should be on the development of green energies such as wind, solar and geothermal. We note that this approach aligns with the recent [policy statement by the Government of Canada](#) on thermal coal mining.

With respect to development of metallurgic coal (which we understand is the thrust of most new proposals), there needs to be heightened scrutiny of and public participation in such developments recognizing that mountain-top removal or open pit mine developments have significant environmental impacts and are incompatible with other potential land uses. The impacts of coal development on Indigenous, social, recreational, economic and environmental values is reflected in the recent [statement by the federal Minister of Environment and Climate Change](#) that new or expanded metallurgic coal developments with the potential to release selenium will be designated for review under the *Impact Assessment Act*.

3. In light of points #1 and #2, what are your concerns about the current 1976 Coal Policy? Specifically:
 - a. What elements of the 1976 Coal Policy need to be retained, changed or improved?
 - b. What elements of the 1976 Coal Policy need to be eliminated?

We have several specific comments on the Coal Policy relating to the need for landscape level policies, water quality concerns, reclamation and remediation, and future coal development. As requested by the Coal Policy Committee, we also make some comments on freehold coal rights.

Landscape level policies

¹ Dian Strasberg et al., "Climate-change refugia in boreal North America: what, where, and for how long?" (2020) *Front Ecol Environ* doi:10.1002/fee.2188 <https://esajournals.onlinelibrary.wiley.com/doi/pdfdirect/10.1002/fee.2188>.

² Bob Weber "Contaminant from coal mines already high in some Alberta rivers: unreported data", January 25, 2021 <https://www.cbc.ca/news/canada/edmonton/selenium-alberta-coal-mines-contamination-1.5886293> also see Bob Weber "Coal company Teck fined \$60M for contaminating rivers in southeastern B.C.", March 26, 2021. Canadian Press. <https://www.cbc.ca/news/canada/british-columbia/teck-fined-60m-contaminating-bc-rivers-1.5965646>

³ From the Government of Canada (Environment and Climate Change Canada, Health Canada, Fisheries and Oceans Canada, Natural Resources Canada) to the Joint Review Panel re: Final Argument Re:Grassy Mountain Coal Project, online: Impact Assessment Agency <https://iaac-aeic.gc.ca/050/documents/p80101/137581E.pdf> at page 2. Also see the submissions of the Livingstone Landowners Group to the Joint Review Panel on the Grassy Mountain Coal Project, at <https://iaac-aeic.gc.ca/050/documents/p80101/137586E.pdf>. See also, for instance, the submissions of the Livingstone Landowners Group to the Joint Review Panel on the Grassy Mountain Coal Project, at <https://iaac-aeic.gc.ca/050/documents/p80101/137586E.pdf>.



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Landscape level policies are necessary to address cumulative impacts of coal development and should remain in the Coal Policy. Coal development is not simply a matter of tenure, royalties and resource management. There is potential for significant environmental impacts – including those on water and wildlife – associated with coal development throughout the Eastern Slopes (and not just on the category 2 lands). Environmental challenges related to coal development, as well as the recreational and cultural impacts on Alberta communities, requires a full and transparent discourse with Albertans which is based in science and precautionary in its approach as the threat of irreparable harm clearly exists. This is a discussion of science and also of values; the values Albertans place on the landscapes, their headwaters and the culture that accompanies it.

Until such time as regional planning for all lands encompassed by the Coal Policy is complete, it is not appropriate to rescind the land categories and even then it should not occur without significant and meaningful public participation. The land use categories and accompanying restrictions under the Coal Policy should remain in place until such time as regional planning under the *Alberta Land Stewardship Act (ALSA)* is completed. That is, on Category 1 lands neither coal exploration or development activities are allowed and on Category 2 lands only limited exploration is permitted (with strict controls) and there is no open pit mining allowed (only underground or in-situ development).

The regional and sub-regional plans (once complete) should include clear and regulatory/prescriptive requirements which clearly delineate areas which are not appropriate for coal exploration or development (such as species at risk habitat). Until such time as all lands encompassed by the Coal Policy are subject to regulatory/prescriptive requirements in an applicable regional or subregional plan, at a bare minimum the land categories and restrictions of the Coal Policy must remain in place.

While the development of regional plans may ultimately lead to change in the land categories (through extensive stakeholder consultation and public participation, and a science-based, precautionary process), the existing restrictions on Category 1 and 2 should not be reduced. If anything, the development of regional plan should result in expanded restrictions on new coal activities in other parts of the Eastern Slopes (for example, no exploration or development of any kind in species at risk habitat). Until such time as sufficient consultation and engagement has occurred to development regional plans for all lands under the Coal Policy, there should be no reduction in the existing land category restrictions. Any changes to the land category restrictions should only be to increase protections.

Water quality concerns

We are aware that the Government of Alberta has begun public consultations for two new surface water quality management frameworks (for the North Saskatchewan and Battle Rivers, and for the upper Athabasca River). Based on comments by Minister Nixon, it seems that the decision to develop these surface water quality management frameworks is a response to concerns around selenium pollution associated with coal mine development.

However, we have concerns about the increased reliance on environmental management frameworks under regional plans, specifically surface water quality frameworks, as a response to water quality concerns. These frameworks should not be relied on for managing water quality for the following reasons:



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1. The surface water quality frameworks that have been completed to date do not approach issues at a relevant scale to ensure against localized aquatic impacts. For example, any responses under the Lower Athabasca Surface Water Quality Framework are based on cumulative effects as measured at one station on the main stem of the Athabasca River. Impacts on aquatic species on tributaries will therefore be easily masked by the dilutive effect of the measurement approach. Similarly, localized effects are unlikely to be captured under the South Saskatchewan Surface Water Quality Framework.
2. Notwithstanding these frameworks being under regional plans, these are not regulatory planning tools rather they are reactive regulatory tools that seek to reverse water quality degradation. The frameworks rely on water quality based triggers, investigation of sources and responses after an impact is known. This is not planning for water quality. Instead this approach creates a complicated, time consuming and likely contentious government reaction to water quality exceedances. We recommend that the appropriate approach is to model and manage potential loads prior to project approvals. Where it is found that potential loads can lead to an exceedance of water quality at the relevant tributary scale, the project should not proceed.

Given the potential impacts of selenium pollution from coal development on vital watersheds (see for example the recent study by [Stelfox and Donahue](#)), avoidance of such pollution is a more effective approach than attempting to reverse damage already done. This requires proactive modelling and management prior to project approvals rather than a reaction post-approval (and post-release). Surface water quality management frameworks provide only the latter and cannot capture significant impacts on a local level.

Reclamation and remediation

A key concern with completed, existing and any future coal developments is the adequacy of reclamation and remediation. Reclamation and remediation must be required for both exploratory and extraction operations. It is essential that sufficient advance security be obtained for reclamation and remediation activities, as well as sufficient funding for monitoring activities beyond the life of the coal development (for example, monitoring for potential selenium release). Timelines should be imposed to require completion of reclamation and remediation activities, and establishment of monitoring programs in a timely fashion.

Too often, extraction activities have ceased without reclamation and remediation occurring, leaving an insufficiently monitored liability on Alberta's landscapes (often to end up on the public purse). As noted by the Auditor General of Alberta, the Alberta Energy Regulator (AER) starting in 2014 raised concerns that it "lacked sufficient funding to appropriately manage, investigate and clean up legacy and specific orphan sites".⁴ In 2017, the Government of Alberta did advise the AER that it could apply to the Environmental Protection and Enhancement Fund for reclamation of legacy coal mines but that fund was disestablished in 2019 and the AER did not receive any funding for coal mine reclamation. While the AER has used some of its administrative levies to partially deal with urgent issues at a legacy coal mine and the Smoky River Coal Mine,⁵ lack of funding to address legacy coal mines is an ongoing issue.

The Coal Policy should address both adequacy of advance security, requirements for insurance, timelines for remediation and reclamation, and necessary monitoring programs. Furthermore, the Coal Policy should

⁴ Auditor General of Alberta, *Report of the Auditor General: Alberta Environment and Parks, Alberta Energy Regulator, Alberta Transportation, Processes to Provide Information about Government's Environmental Liabilities* (June 2021) <https://www.oag.ab.ca/wp-content/uploads/2021/06/oag-aep-aer-trans-env-liabilites-fs-june-2021-report.pdf> at page 13.

⁵ *Ibid.* at page 13 and Appendix: Sample Sites and Related Findings.



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specifically address Alberta's legacy sites from past coal development (i.e. identify the responsible government entity/regulator, identify the source of funding, establish management and monitoring programs, prioritize sites for cleanup, and so forth).

Freehold coal rights

We note that the Coal Policy addresses the impacts of imposing restrictions on freehold rights as follows (page 19):

Where freehold rights to coal and leases of such rights are affected by the restrictions on exploration and development imposed by Categories 1, 2 and 3, the Government is prepared to purchase the lessor rights at fair value determined by agreement or arbitration, and to acquire any lessee rights on the same basis as for lessees of Crown rights.

There is no reason to exempt freehold minerals from the land category restrictions, the same environmental concerns apply regardless of whether the minerals are held by the Crown or by a freeholder. The Coal Policy indicates that it will compensate freeholders at fair value and we recommend that this same approach be adopted if (as we recommend) the land category restrictions are expanded.

Future coal development and approvals

The Coal Policy should explicitly state that there will not be any new development or expansion of thermal coal. With respect to development of metallurgic coal (which we understand is the thrust of most new proposals), there needs to be heightened scrutiny and public participation. Furthermore, the Coal Policy should be clarified to indicate that coal exploration and/or development activities using mountain top removal or open pit mining are not authorized on Categories 1 and 2 lands due to its significant environmental impacts and incompatibility with any other potential land uses.

In order to ensure the integrity of the restrictions found in the Coal Policy, on lands that fall into Category 1 and 2 under the Coal Policy, all dispositions for coal and all authorizations/approvals/ permits/licenses associated with coal exploration and development should be cancelled immediately. On lands that fall into Category 3 and 4 under the Coal Policy, all dispositions for coal and all authorizations/approvals/permits/licenses associated with coal exploration and development that were issued after May 1, 2020 and do not pertain to an already active coal mine or processing plant should be cancelled immediately.

Thank you for the opportunity to make additional written submissions on the Coal Policy. Please feel free to contact the undersigned with any questions or for further discussion.

Yours truly,

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