

Joint Review Panel

Established to review the Jackpine Mine Expansion Project

Canadian Environmental Assessment Agency, 160 Elgin Street, 22nd Floor, Place Bell Canada, Ottawa, ON, K1A 0H3, 613-948-2674
Energy Resources Conservation Board, 9915 Franklin Avenue, Provincial Building, 2nd Floor, Fort McMurray, AB, T9H 2K4, 780-788-6406

December 19, 2012

The Honourable Peter Kent
Minister of the Environment
10 Wellington Street, 28th Floor
Gatineau, Quebec
K1A 0H3

Mr. Dan McFadyen
Chairman, Energy Resources
Conservation Board
Suite 1000, 250 – 5 Street
Calgary, Alberta
T2P 0R4

Dear Minister Kent and Chairman McFadyen:

SHELL JACKPINE MINE EXPANSION PROJECT

I am writing to you as the Chair of the Joint Review Panel considering the Shell Jackpine Mine Expansion (JPME) application. The Minister of Environment Canada and the Chairman of the Energy Resources Conservation Board (ERCB) established the panel in September 2011 through an agreement. The agreement and its Terms of Reference include ERCB matters, the environmental assessment for the project, consideration of cumulative effects, and the need to report on information related to the nature and scope of asserted or established Aboriginal and treaty rights in the area of the project, as well as information on the potential adverse environmental effects on those rights. The Terms of Reference also directed the panel to deliver its report within 90 days of the close of record of the hearing.

The panel issued the notice of hearing on August 12, 2012. The hearing commenced on October 23, 2012 with arguments pertaining to the Notices of Questions of Constitutional Law (NQCL) filed by both First Nations and Métis interests. Although the panel decided that it did not have the jurisdiction to make a determination of the adequacy of Crown consultation as requested in the NQCLs, it was clear from this preliminary process that First Nations and Métis groups would be submitting substantial information in the course of the hearing.

The evidentiary part of the hearing commenced on October 29, 2012 as planned and ran for some 15 days, including evening sittings to accommodate witnesses' schedules and other matters. Final argument took place on November 20 and 21, 2012. The length of the argument (2 full days) gives an indication of the size and complexity of the record. An outline of the issues that the panel gave to the parties for argument organization can be found at the following link:
<http://www.ceaa.gc.ca/050/documents/p59540/83703E.pdf>

The record is very extensive. There are more than 1400 exhibits/documents involving some 60 000 pages but the record has not yet closed. The transcript totals more than 4400 pages. During the course of the process, a number of substantial new issues arose out of government announcements, including the Lower Athabasca Regional Plan, the federal-provincial announcements on integrated monitoring, and the preliminary results of a number of scientific studies. These new matters added to the complexity of the process and the size of the record that the panel will need to assess and make findings on. I have served on many joint review panels and cannot recall a record as extensive and complex as this one.

Assuming that the record will be complete and closed soon (which is not a certainty), the 90-day report preparation period would conclude in late March 2013. This period includes the upcoming Christmas holiday season which, given the specific days of the key holidays, will likely result in an effective stand-down from December 21st to January 2nd.

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Having regard for all of the above, and the overall importance of providing a sound report that will deal with the many and complex issues and give full and well considered reasons, it is unlikely that the panel will be able to issue its decision/recommendations by March 2013. To the extent that it has been able to estimate a release date, the panel believes that it will be able to issue the report some time in April or May, 2013.

Accordingly, the joint review panel requests your concurrence to provide its report by May 31, 2013. This would be much more appropriate timing for the panel to assess the extensive evidence and argument and to prepare a suitable report that deals properly with the mandates of ERCB and CEAA. Such timing would also respect the Minister's direction that the report be provided within 350 days of the date on which the *Canadian Environmental Assessment Act, 2012* is proclaimed into force. Of course, the panel will strive to complete the report as soon as possible and if it is complete before May 31, 2013, it will be provided to you immediately.

If you have any questions, please do not hesitate to contact me.

Yours sincerely,

<original signed by>

J.D. Dilay, P.Eng.
Joint Panel Chair – JPME

cc: G. Perkins
M. LaCasse
C. Birchall
J. Adams
A. Black
E. Feldman