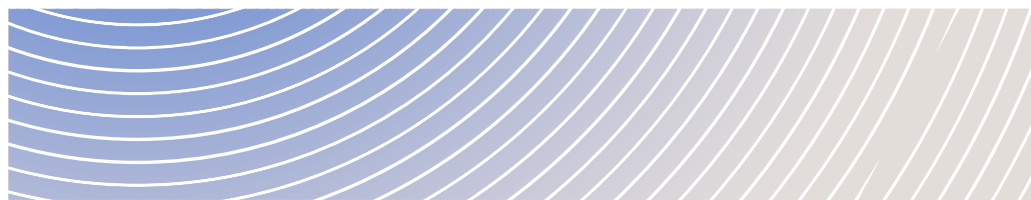


Analysis Report



WHETHER TO DESIGNATE THE **VISTA COAL MINE PHASE II EXPANSION PROJECT** IN ALBERTA PURSUANT TO THE *IMPACT ASSESSMENT ACT*

December 6, 2024



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Purpose

The Impact Assessment Agency of Canada (IAAC) prepared this report in response to a request to designate the Vista Coal Mine Phase II Expansion Project (the physical activities referred to as the Project) proposed by Coalspur Mines (Operations) Ltd. (the Proponent) pursuant to section 9 of the *Impact Assessment Act* (the IAA), as amended.

Context of Request

Current Designation Request

On August 7, 2024, the Minister of Environment and Climate Change (the Minister) received a request to designate the Project and the Vista Underground Mine Project from Ecojustice on behalf of Keepers of the Water Society and the West Athabasca Watershed Bioregional Society. On September 11, 2024, the Vice-President of Operations of IAAC, responded to the requester, indicating that the Vista Underground Mine Project had substantially begun and the Minister cannot designate the Vista Underground Mine.¹ Therefore, the Vista Underground Mine Project will not be assessed as part of this analysis. No action has been taken that would prevent the Minister from exercising their authority to designate the Project (see Authority to Designate the Project).

On September 18, 2024, the Minister received a second request to designate the Vista Coal Mine Phase II Expansion Project and the Vista Underground Mine Project from the Yellowstone to Yukon Conservation Initiative. On October 7, 2024, the Minister received a third request to designate the Vista Coal Mine Phase II Expansion Project and the Vista Underground Mine Project from the Canadian Parks and Wilderness Society, Northern Alberta. On November 4, 2024, the Minister received a fourth request to designate the Vista Coal Mine Phase II Expansion Project from the Canadian Association of Physicians for the Environment.

On September 26, 2024, Ecojustice on behalf of Keepers of the Water Society and the West Athabasca Watershed Bioregional Society, provided additional information. As part of this additional information, Ecojustice, on behalf of Keepers of the Water Society and the West Athabasca Watershed Bioregional Society, expressed concerns regarding cumulative effects of the coal mines in the vicinity of the Project, including the Phase I mine and Vista Underground Mine Project, and concerns regarding the Fisheries and Oceans Canada's responsibilities in investigating and enforcing the *Fisheries Act* and *Species at Risk Act*.

The requesters (Ecojustice on behalf of Keepers of the Water Society and the West Athabasca Watershed Bioregional Society; Yellowstone to Yukon Conservation Initiative; Canadian Parks and Wilderness Society, Northern Alberta; and Canadian Association of Physicians for the Environment) raised concerns regarding

¹ Vice-President's Response regarding the Vista Underground Mine Project; <https://iaac-aeic.gc.ca/050/evaluations/document/158944?culture=en-CA>



changes to the environment, including the deposition of deleterious substances such as selenium in the environment, and resulting effects to species at risk (including the federally endangered Rainbow Trout (Athabasca River populations) and its critical habitat, and the special concern Bull Trout (Western Arctic Populations), migratory birds, and fish and fish habitat; surface water and groundwater quality and quantity; impacts to Indigenous peoples and lands, and established Aboriginal and treaty rights; cumulative effects; effects to human health; climate change and greenhouse gas emissions; the scale of the Proponent's expansion activities in relation to the thresholds in the *Physical Activities Regulations* (the Regulations); and economic costs of reclamation and remediation for the Project and the Proponent's financial stability.

On September 11, 2024, IAAC determined that the Vista Underground Mine Project could not be designated as it has substantially begun. For the Phase II Expansion, no action has been taken that would prevent consideration of designation of the Project. IAAC focused its assessment on the potential effects of the Project within federal jurisdiction as outlined in subsection 9(1) with consideration of subsection 9(2) of the IAA and followed IAAC's Operational Guide: Designating a Project under the *Impact Assessment Act*.

On September 11, 2024, IAAC sent a letter to the Proponent notifying them of the designation request and requested information regarding the Project. IAAC sought input from the Proponent, federal authorities, the Alberta Energy Regulator (AER), and 44² potentially affected Indigenous groups.

IAAC considered input received from 20 Indigenous groups³, Alberta Wilderness Association, Castle-Crown Wilderness Coalition, Climate Action Newmarket Aurora, and members of the public. Advice on potential effects of the Project, and applicable legislative frameworks was received from Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC), Natural Resources Canada (NRCan), Health Canada (HC), Transport Canada (TC), Women and Gender Equality Canada (WAGE), Indigenous Services Canada (ISC), and the AER.

² Alexander First Nation, Alexis Nakota Sioux Nation, Anishnawbe Nation of the Rocky Mountains, Aseniwuche Winewak Nation, Bears paw First Nation, Buffalo Lake Métis Settlement, Chiniki First Nation, East Prairie Métis Settlement, Elizabeth Métis Settlement, Enoch Cree Nation, Ermineskin Cree Nation, Fishing Lake Métis Settlement, Foothills First Nation Heritage Society, Foothills Ojibway First Nation, Gift Lake Métis Settlement, Goodstoney First Nation, Horse Lake First Nation, Kehewin Cree Nation, Kelly Lake Cree Nation Society, Kelly Lake First Nation Society, Kelly Lake Métis Settlement Society, Kikino Métis Settlement, Lac Ste Anne Métis Community Association, Louis Bull Tribe, Métis Community Society of Kelly Lake, Métis Nation British Columbia, Michel Callihoo Nation Society, Montana First Nation, Mountain Cree Camp, Mountain Métis Community Association, Nakcowinewak Nation of Canada, O'Chiese First Nation, Otipemisiwak Métis Government, Paddle Prairie Métis Settlement, Paul First Nation, Peavine Métis Settlement, Piikani Nation, Saddle Lake Cree Nation, Samson Cree Nation, Sturgeon Lake Cree Nation, Sunchild First Nation, Swan River First Nation, Tsuut'ina Nation, and Whitefish Lake First Nation #128.

³ IAAC received input from 17 Indigenous groups: Alexander First Nation, Aseniwuche Winewak Nation, Enoch Cree Nation, Ermineskin Cree Nation, Foothills First Nation Heritage Society, Foothills Ojibway First Nation, Kelly Lake Cree Nation, Lac Ste. Anne Métis Community Association, Louis Bull Tribe, Montana First Nation, Mountain Métis Community Association, O'Chiese First Nation, Peavine Métis Settlement, Samson Cree Nation, Swan River First Nation, Tsuut'ina Nation, and Whitefish Lake First Nation #128. Additionally, in their response to IAAC, the Proponent provided letters addressed to the Minister that they received from three Indigenous groups – Anishnawbe Nation of the Rocky Mountains, Descendants of Michael First Nation Associations, and Mountain Cree Camp – that were not sent directly to IAAC but have been taken into consideration in this analysis.



Previous Designation Requests

There have been multiple designation requests for the Project in the past. The Project has been previously designated twice, and underwent one terminated planning phase under the IAA, as described below. The Project is not currently designated.

Coalspur Vista Coal Mine Phase II Expansion Project Designation Decision – December 20, 2019

On December 20, 2019, the Minister declined to designate the Coalspur Vista Coal Mine Phase II Expansion Project.⁴ The Minister determined designation was unwarranted because the adverse effects within federal jurisdiction were expected to be appropriately managed by other legislative mechanisms including the provincial environmental assessment and regulatory processes.

Vista Coal Mine Phase II Expansion Project and Vista Underground Mine Project Designation Decision – July 30, 2020

On July 30, 2020, the Minister designated the Vista Underground Mine Project and the Vista Coal Mine Phase II Expansion Project^{5,6} based on new designation requests. The requesters expressed concerns about project splitting, the provincial process, impacts on Indigenous people, traditional land and established Aboriginal and Treaty rights, the lack of federal assessment for the Project, the scale of the proponent's expansion activities in relation to the thresholds in the Regulations and project-related effects to the local environment and to areas of federal jurisdiction (including to fish, migratory birds and climate).

In August 2020, the Proponent and Ermineskin Cree Nation both filed judicial review applications in Federal Court challenging the Minister's designation order. On May 6, 2021, IAAC accepted the Proponent's Initial Project Description, initiating the planning phase under the IAA. On June 4, 2021, IAAC issued the Summary of Issues. On July 19, 2021, the Federal Court set aside the designation order and remanded it for reconsideration, finding that the Minister failed to consult Ermineskin Cree Nation before designating the Vista Underground Mine Project and the Vista Coal Mine Phase II Expansion Project. This resulted in the termination of the planning phase, as the Vista Underground Mine Project and the Vista Coal Mine Phase II Expansion Project were no longer designated. The Federal Court dismissed the Proponent's judicial review application as moot.

⁴ December 20, 2019, Minister's Response; <https://iaac-aeic.gc.ca/050/evaluations/document/133222>

⁵ July 30, 2020, Minister's Response; <https://iaac-aeic.gc.ca/050/evaluations/document/140819>

⁶ July 30, 2020, Order Designating Physical Activities; <https://iaac-aeic.gc.ca/050/evaluations/document/140820>



Vista Coal Underground Mine Project and Vista Mine Phase II Expansion Project – September 29, 2021

On September 29, 2021, the Minister issued a new decision to designate the Vista Coal Underground Mine Project and Vista Mine Phase II Expansion Project^{7,8} following a reconsideration process that included consultation with potentially impacted Indigenous groups. Effects on newly protected critical habitat for federally endangered Rainbow Trout (Athabasca River populations) downstream and within the Vista Mine Phase II Expansion Project footprint were taken into account. The Minister also considered the Government of Canada's Policy Statement on Future Thermal Coal Mining Projects and Project Expansions⁹ in rendering his decision to designate the Vista Coal Underground Mine Project and Vista Mine Phase II Expansion Project.

The Proponent, Ermineskin Cree Nation, and Whitefish (Goodfish) Lake First Nation #128 each brought separate judicial reviews challenging the 2021 designation Order.

On October 13, 2023, the Supreme Court of Canada (SCC) issued its decision on the constitutionality of the IAA. In light of the SCC decision, the Federal Court set aside the designation Order for the Vista Coal Underground Mine Project and Vista Mine Phase II Expansion Project.

Project Context

Project Overview

The Project as proposed is the westward expansion of the existing Vista Coal Mine Phase I Project (Phase I), a surface mine, situated on forested provincial crown land (Figure 1). The Project would expand the Phase I mine pits and be mined as an integrated operation with the Phase I mine. The Project would use existing Phase I mine infrastructure, facilities, and roads, and would include extracting coal in the Val d'Or, Arbour, McLeod, and McPherson seams including highwall mining. The Project is expected to be in operation for 11 years. The Phase I mine is being reclaimed progressively (reclamation activities are conducted at the same time as mining operations allow), and the Proponent indicated that they would update their Progressive Reclamation Plan to minimize changes to the environment due to the Project.

The area of mining operations associated with the Project is estimated to be approximately 630.44 hectares. Based on current projections, the maximum production year for the Vista Mine (the Proponent's overall coal mining operations in the region) would be 2026 with an estimated annual production (from both Phase 1 and the Project) of 8,015,588 tonnes/year (or approximately 21,960 tonnes/day). Of this, the Project would

⁷ September 29, 2021, Minister's Response; <https://iaac-aeic.gc.ca/050/evaluations/document/141492>

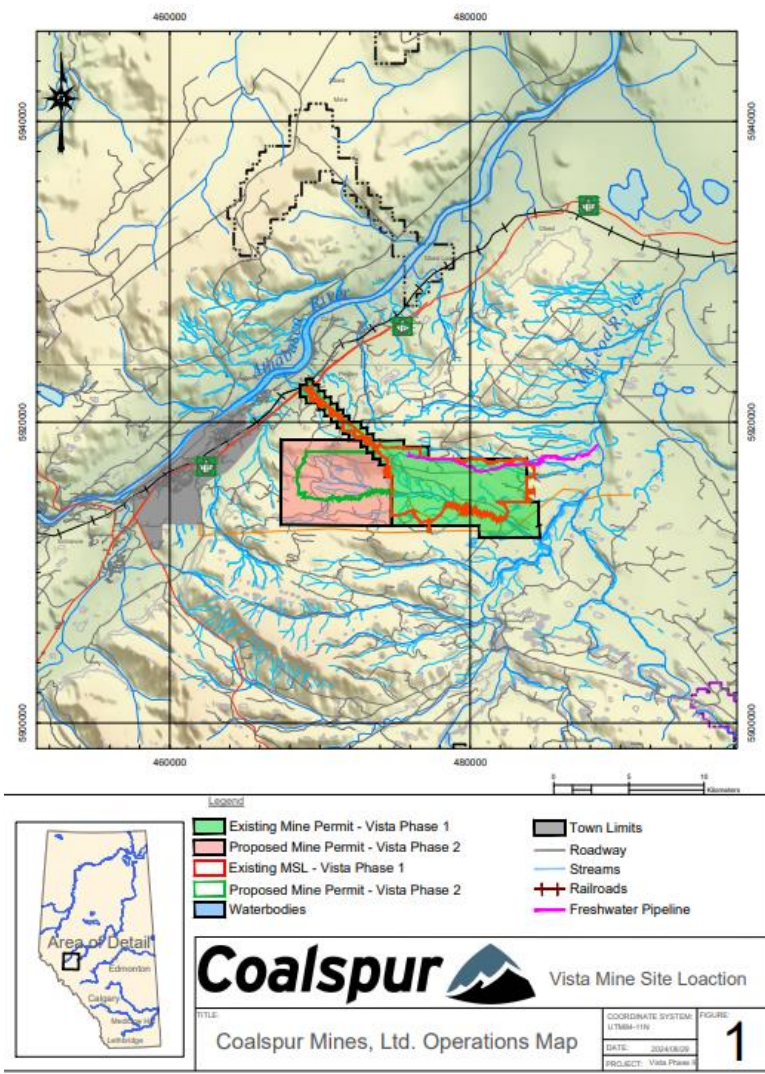
⁸ September 29, 2021, Order Designating Physical Activities; <https://iaac-aeic.gc.ca/050/evaluations/document/141457>

⁹ Policy Statement on Future Thermal Coal Mining Projects and Project Expansions; <https://www.canada.ca/en/environment-climate-change/corporate/transparency/strategic-environmental-economic-assessments/future-thermal-coal-mining-projects-project-expansions.html>



account for 2,628,834 tonnes/year (or 7,202 tonnes/day). However, the Proponent indicated that the average long-term annual coal production from the existing mine would not increase with the Project's approval. The Proponent indicated that there would be no change to the processing capacity of the plant that would increase maximum daily production potential.

Figure 1: Project Overview Map



Source: Coalspur Mines (Operations) Ltd., 2024

Figure Description: Project overview map for the Vista Coal Mine depicting Phase I (green shading), the Vista Coal Mine Phase II Expansion Project (red shading), and the tributaries of McPherson Creek.

Project Components and Activities

The Project includes all physical works and activities associated with the construction, operation and decommissioning of the expansion of the Phase I mine. The Proponent stated that the Project requires no new equipment or infrastructure for mining or processing coal. The Project would utilize the existing Phase I mine infrastructure including conveyor belts, raw and clean coal storage areas, coal preparation facilities, roads, refuse storage areas, and rail loadout. IAAC understands that the Vista Mine consists of a coal processing plant, Phase I open pit surface mine, the Vista Underground Mine Project, and associated infrastructure, including conveyors, power distribution, haul roads, access roads and water management.

Components and activities related to the Project include:

- open pit surface coal mine;
- highwall mining;
- existing facilities currently used for Phase I; and
- a freshwater pipeline.

Analysis of Designation Request

Authority to Designate the Project

Regulations identify the physical activities that constitute a designated project and include coal mine expansions:

19. The expansion of an existing mine, mill, quarry or sand or gravel pit in one of the following circumstances:

- (a)** in the case of an existing coal mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total coal production capacity would be 5 000 t/day or more after the expansion;

The Project, as described in the information submitted by the Proponent, is not included in the Regulations. The total coal production capacity after expansion would be 21,960 tonnes/day (of this, the Project would account for 7,202 tonnes/day). While the daily production capacity would exceed 5,000 tonnes/day, the Project would not increase the area of mining operations by 50% or more as defined in subsection 19(a) of the Regulations. The Project would increase the area of mining operations by 44 percent. As such, the Project is not prescribed by the Regulations.

Under subsection 9(1) of the IAA the Minister may, by order designate a physical activity that is not prescribed in the Regulations. The Minister may do this, if, in the Minister's opinion, the physical activity may cause adverse effects within federal jurisdiction or direct or incidental adverse effects.

The Minister cannot designate a physical activity if the carrying out of the physical activity has substantially begun, or a federal authority has exercised a power or performed a duty or function in relation to the physical activity (subsection 9(7) of the IAA). Under subsection 154(1) of the IAA, the Minister may, subject to any terms and conditions that the Minister specifies, delegate to IAAC any powers, duties, or functions that the Minister is authorized to exercise or perform under the IAA. On July 26, 2024, the Minister delegated the authority to respond to designation requests in which limitations on designation described in subsection 9(7) of the IAA apply, to IAAC's President or Vice-President of Operations. The Minister has since delegated the powers under section 9 of the IAA, related to designation requests, to IAAC's President.

IAAC is of the view that the President may consider designating the Project pursuant to subsection 9(1) of the IAA as the carrying out of the Project has not substantially begun and no federal authority has exercised a power or performed a duty or function that would permit the Project to be carried out, in whole or in part.

Existing Legislative Mechanisms

Key federal and provincial legislative mechanisms that are or may be relevant to the Project are summarized below.

Federal Legislative Mechanisms

Fisheries Act

The *Fisheries Act* provides protection for fisheries and their ecosystems. Through the Fish and Fish Habitat Protection Program, DFO reviews projects for their impacts to fish and fish habitat to ensure compliance with the *Fisheries Act* and *Species at Risk Act* (SARA). Through this program, DFO may provide a Letter of Advice to the proponent containing information to avoid and mitigate negative, project-related impacts to fish and fish habitat.

A *Fisheries Act* Authorization would be required if a project is likely to cause the harmful alteration, disruption, or destruction to fish habitat and/or is likely to result in the death of fish. The *Fisheries Act* also prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations or other federal legislation.

Consideration of the issuance of a *Fisheries Act* Authorization includes consultation with Indigenous groups. The Minister of Fisheries and Oceans must consider any adverse effects that the decision (under paragraphs 34.4(2)(b) and 35(2)(b)) may have on the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*. The precise nature of DFO's consultation activities is dictated by developing a shared understanding with each respective community and determining a mutual path forward. Feedback from Indigenous groups would be incorporated into DFO's assessment of impacts, and contribute to methods used to mitigate, offset, and monitor impacts within the bounds of DFO's mandate.

If granted, a *Fisheries Act* Authorization would include legally-binding conditions for avoidance, mitigation, and offsetting requirements commensurate with project impacts. Monitoring to validate impacts and verify efficacy of mitigation measures and offsetting are also part of Authorization conditions.

ECCC administers and enforces subsection 36(3) of the *Fisheries Act*, which prohibits the deposit of deleterious substances into waters frequented by fish, or to any place, under any conditions, where they may enter waters frequented by fish.

To date, there have been no *Fisheries Act* approvals or permits granted in relation to the Project. In January 2021, DFO notified the Proponent that an application for authorization under the *Fisheries Act* would be required as the physical activities were likely to result in prohibitions under the *Fisheries Act* and SARA. As of September 20, 2024, DFO has not received any applications for authorization for the Project from the Proponent.

DFO also noted that the existing Phase I mine has been operating under a Letter of Advice issued by DFO on May 3, 2012, which was rescinded on July 18, 2024, as DFO's advice no longer applied due to changes in the *Fisheries Act* and SARA. On August 19, 2024, DFO sent a Ministerial Request pursuant to Subsections 34.3 (1) and 37 (1) of the *Fisheries Act* to the Proponent requesting additional information and monitoring for the Phase I mine and Vista Underground Mine Project from the Proponent, given uncertainty regarding the hydrogeologic condition, monitoring, and concerns with ongoing water management practices.

Species at Risk Act

A *Species at Risk Act* authorization is required if there are impacts to an aquatic species at risk, any part of their critical habitat or the residences of their individuals.

For non-aquatic species listed in Schedule 1 of SARA as Extirpated, Endangered, or Threatened, a permit may be required from ECCC (i.e., under section 73 of SARA) for activities that affect a listed terrestrial wildlife species, any part of its critical habitat, or the residences of its individuals, where those prohibitions are in place. Such permits may only be issued if: all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted; all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and, if the activity will not jeopardize the survival or recovery of the species. For a SARA permit issued by ECCC, ECCC would advise the permit applicant on any consultation requirements.

Species that are both a migratory bird protected under the *Migratory Birds Convention Act, 1994*, and listed on Schedule 1 of SARA as endangered, threatened or extirpated receive protections under both pieces of legislation. For some species, their inactive nest and/or roost sites are protected under SARA.

ECCC does not expect that it will be required to exercise a power or perform a duty or function related to the Project to enable it to proceed. It is possible that prohibitions may come into force through Orders in Council for individuals, residences, and critical habitat on Project-implicated, non-federal lands and a SARA permit may be required for the Project. ECCC would require detailed information on the potential effects of the Project before determining whether a SARA permit would be required.

Migratory Birds Convention Act, 1994

The *Migratory Birds Convention Act, 1994* protects migratory birds and their eggs and nests, wherever they occur, regardless of land tenure. A permit may be required for activities affecting migratory birds, with some exceptions detailed in the *Migratory Birds Regulations*. The *Migratory Birds Convention Act, 1994* prohibits the disturbance or destruction of migratory bird nests and eggs, including for those species also listed under SARA. It also prohibits the deposit of harmful substances into waters or areas frequented by migratory birds or in a place from which the substance may enter such waters or such an area. The Project would be subject to the *Migratory Birds Convention Act, 1994*.

Canadian Environmental Protection Act, 1999

The Proponent may be required to provide greenhouse gas (GHG) emissions reporting as required by the Greenhouse Gas Reporting Program under the *Canadian Environmental Protection Act, 1999* if ten kilotonnes or more of GHGs are emitted in carbon dioxide equivalent units per year. The Project would be subject to the *Canadian Environmental Protection Act, 1999*.

Canadian Navigable Waters Act

The *Canadian Navigable Waters Act* (CNWA) applies to projects that will interfere with navigable waters. Transport Canada may be required to exercise a power or perform a duty or function with respect to the CNWA, however, further detailed project information is needed to determine if an approval under the CNWA would be required and to determine potential effects of the Project on navigation. Transport Canada has determined that none of the waterways in the project area are on the CNWA list of scheduled waterways.

Explosives Act

The *Explosives Act* applies to projects that involve explosives (i.e., blasting explosives, fireworks and pyrotechnics, ammunition, rocket motors and special purpose explosives such as flares and reactive targets). This Act also covers chemicals that have many legitimate uses (for example, they can be used as fertilizers, cleaning products, stump removers, paint thinners, camping fuel tablets or nail polish remover) but that could also be misused to illegally manufacture homemade explosives. These are called “restricted components.” Under the *Explosives Act*, proponents may need a licence, certificate, permit or enrolment to work with explosives or restricted components, depending on the type and the amount.

On August 31, 2018, NRCan issued a Factory Licence under 7(1) of the *Explosives Act* for the operation of a bulk explosives plant at the Phase I mine site. NRCan granted an amendment to the Factory Licence in April 2020, to allow the relocation of the emulsion plant. NRCan does not expect the Project to require a new authorization under the *Explosives Act*.

Coal Mining Effluent Regulations (pending)

The *Coal Mining Effluent Regulations* (proposed under the *Fisheries Act*) are being developed by ECCC and would provide effluent quality standards to deposit deleterious substances (selenium, nitrate and suspended



solids as well as requirements related to pH and toxicity). They will also set requirements for monitoring, reporting and record keeping, including environmental effects monitoring. The target to pre-publish proposed regulations in Canada Gazette, Part I is in the spring of 2025. Final regulations are targeted for publication in 2026. The Project would be subject to these regulations once they are in force.

Provincial Legislative Mechanisms

Environmental Protection and Enhancement Act

Alberta's *Environmental Protection and Enhancement Act* (EPEA) supports and promotes the protection, enhancement and wise use of the environment. Alberta Environment and Protected Areas (AEPA) reviews applications under EPEA to assess the potential environmental impacts of a proposed project.

If an Environmental Impact Assessment (EIA) is required, an approval issued under EPEA would identify a proponent's obligations and responsibilities for design, construction, operation, and reclamation relative to air, water, land, and biodiversity. A reclamation certificate issued under EPEA asserts that all reclamation requirements have been met and allows a proponent to close their project(s) and end their surface lease(s).

The AER advised the Proponent that the Project is a mandatory activity pursuant to Schedule 1(g) of the *Environmental Assessment (Mandatory and Exempted Activities) Regulation* and directed the Proponent, pursuant to section 44(1)(a) of EPEA, to prepare and submit an EIA report. The Final Terms of Reference were issued by the AER on June 18, 2019, and to date, the EIA report to the AER has not been submitted.

The Proponent noted that Indigenous traditional lands; impacts on health, social and economic conditions of Indigenous peoples; and impacts on Aboriginal and treaty rights will be assessed through the provincial EIA and subject to consultation. The Proponent indicated that they anticipate submitting an EIA report to the AER in December 2024 and indicated that they would require an amendment to EPEA Approval 301345-00, as amended.

Coal Conservation Act

Alberta's *Coal Conservation Act* establishes a regulatory framework, administered by the AER, for the development of coal and related facilities in Alberta, and assists to control pollution and ensure environment conservation in the development of the coal resources of Alberta. The *Coal Conservation Act* applies to mines, coal processing plants, coal schemes in Alberta, and in situ coal produced and transported in Alberta.

The AER indicated that the Proponent is required to submit an application under the *Coal Conservation Act* for the Project. The Proponent indicated that they would require a new mine licence as well as amendments to Mine Licence C 2015-5H, Mine Permit C 2011-5I, Coal Processing Plant Approval C 2011-3K, and Mine Licence C 2014-7E.

Water Act



The *Water Act* supports and promotes the conservation and management of water, through the use and allocation of water in Alberta. It requires the establishment of a water management framework and sets out requirements for the preparation of water management plans. Approvals and licences require an assessment of potential adverse effects on the aquatic environment, and approvals contain conditions which are expected to address various potential environmental effects and require ongoing monitoring and reporting.

Under the *Water Act*, AEPA ensures that companies use and manage water safely by:

- reviewing applications that relate to the *Water Act*;
- issuing water approvals for activities that occur in or near water bodies, including wetlands;
- issuing water licences and temporary diversion licences for energy resource operations that require water;
- requiring companies to have a licence before using surface water and groundwater; and
- allocating the amount of water companies can use.

The AER stated that the Proponent is required to submit an application under the *Water Act* for the Project.

Public Lands Act

The *Public Lands Act* regulates public land allocations, the sale or transfer of public land to other levels of government or private entities, and the uses (including recreational use, commercial use, and industrial use) of public land. Proponents may be delegated procedural aspects of Indigenous consultation (proponent-led consultation) as part of their approval.

The AER indicated that the Proponent is required to submit an application under the *Public Lands Act* for the Project. The Proponent indicated that they would require an amendment to Mineral Surface Lease 210425 and that new land disposition(s) would be required for a proposed freshwater pipeline to the McLeod River and for the water intake, if applicable.

Historical Resources Act

The *Historical Resources Act* provides for the use, designation, and protection of moveable and immovable historic resources. Clearance is required prior to any site preparation or construction activities.

Under the *Historical Resources Act*, proponents are required to address lands with an identified Historic Resource Value within the project area via the submission of a Historic Resources Application. Historic Resources include archaeological sites, paleontological sites, Indigenous traditional use sites of a historic resource nature, and historic structures.

The Proponent indicated that *Historical Resources Act* Approval 4560-13-0002-004 was issued on October 28, 2018, for the Phase I mine and the project area.

Wildlife Act

The *Wildlife Act* provides for the protection and conservation of wild animals in Alberta. The *Wildlife Act* includes the establishment and maintenance of an Endangered Species Conservation Committee which functions to advise the provincial Minister about endangered species and make recommendations to the Minister. Provincial recovery plans are required when a species is listed as Threatened or Endangered under the *Wildlife Act*.

Rainbow Trout and Bull Trout are classified as Threatened under the provincial *Wildlife Act*, and there are provincial recovery plans in place for both Rainbow Trout and Bull Trout. The recovery plans propose strategies to address threats and priority actions to maintain or recover the species.

Adverse Effects within Federal Jurisdiction that Carrying Out the Project May Cause

IAAC's analysis identified that the carrying out of the Project may cause adverse effects within federal jurisdiction as defined in subsection 2(1) of the IAA including adverse impacts on the rights of Indigenous peoples, with consideration of subsection 9(2) of the IAA. As outlined below, IAAC is of the view that existing legislative mechanisms provide a framework to address those potential adverse effects. Federal and provincial legislative and regulatory mechanisms relevant to the Project described above were considered in IAAC's analysis.

Fish and Fish Habitat

IAAC considered information provided by the requesters, Proponent, DFO, NRCan, ECCC, Castle-Crown Wilderness Coalition, Alberta Wilderness Association, Climate Action Newmarket Aurora, members of the public, and Indigenous groups¹⁰ and is of the view that the Project may cause adverse effects to fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act*. However, IAAC is of the view that existing legislation provides a framework to address these potential effects.

Concerns expressed by the requesters, Indigenous groups¹⁰, and the public include:

- changes to surface water quantity and stream flows through physical activities related to water withdrawal and discharge, including dewatering;
- changes to surface water quality due to physical activities (i.e., drainage, run-off, seepage, effluent discharge) resulting in increased contaminants (including selenium) or sediment from physical activities, or changes in water temperature, including increased mining and associated activities and groundwater-surface water interactions, as groundwater upwelling is necessary for Rainbow Trout (*Oncorhynchus mykiss*) and Bull Trout (*Salvelinus confluentus*) spawning;
- changes to groundwater quality and quantity;

¹⁰ Alexander First Nation, Enoch Cree Nation, Foothills Ojibway First Nation, Kelly Lake Cree Nation, O'Chiese First Nation, and Tsuut'ina Nation.

- the deposition of deleterious substances, such as selenium and metals, potential for bioaccumulation, into water frequented by fish due to drainage, run-off, seepage, effluent discharge, and accidents and malfunctions including operational and structural failures;
- the physical removal of fish and fish habitat, including designated critical habitat for fish species at risk (Rainbow Trout [Athabasca River populations]);
- there is no suitable mitigation or offsetting that would be effective at addressing project effects to fish and fish habitat, especially when dealing with species at risk;
- that the Proponent has not reported key details to federal regulators and inadequately managed the environmental impacts from the existing mine, specifically in relation to wastewater management, highlighting the risk of further potential impacts on federally-protected fish species;
- DFO's responsibilities in investigating and enforcing the *Fisheries Act* and *Species at Risk Act*, and therefore concerns regarding reliance on these mechanisms to address effects;
- the physical removal of designated critical habitat for Rainbow Trout; and
- incubation of trout eggs requires appropriate surface water flows which could be altered by the Project.

The Project is located between the McLeod River to the east and the Athabasca River to the west. McPherson Creek and its tributaries run through and drain the Project area. Two SARA-listed fish species occur within the area of the Project: Rainbow Trout (Athabasca River populations) and Bull Trout (Western Arctic populations)—see the Aquatic Species section below for further information. The Recovery Strategy for Rainbow Trout in Canada (Athabasca River populations) was finalized in 2020 and identified critical habitat. Rainbow Trout (Athabasca River populations) are listed as Endangered and Bull Trout (Western Arctic populations) as Special Concern under SARA. Both species occur within the area of the Project. The requesters expressed concern regarding Saskatchewan-Nelson Rivers populations of Bull Trout (listed as Threatened under SARA), however DFO confirmed that it is Western Arctic populations that occur within the Project area. Additionally, IAAC notes that Rainbow Trout and Bull Trout are classified as Threatened under the provincial *Wildlife Act*, and a provincial recovery plan is required when a species is listed as Threatened or Endangered under the *Wildlife Act*.

DFO indicated that it is of the opinion that the Project has the potential to cause adverse effects to fish and fish habitat including the harmful alteration, disruption, or destruction of fish habitat, or death of fish which are regulated under the *Fisheries Act*. DFO indicated that the Project would overlap tributaries that are within the distribution of Rainbow Trout (Athabasca River populations) and would alter stream flow due to water withdrawal and discharge, and that the Project is located within critical habitat of Rainbow Trout (Athabasca River populations). The Project has the potential to cause adverse effects to populations and the critical habitat of a federally listed species at risk, Rainbow Trout (Athabasca River populations), protected under SARA. Some adverse effects from the Project could be managed through the issuance of a *Fisheries Act* Authorization and/or a SARA permit which would include conditions to avoid, mitigate, or offset impacts to fish and fish habitat resulting from the Project.

DFO noted that it is of the opinion that there is significant uncertainty as to whether an offsetting plan could adequately balance Project effects without jeopardizing the survival and recovery of Rainbow Trout (Athabasca River populations), which is a required consideration to be met under section 73 of SARA. DFO notified the Proponent in January 2021 that an application for authorization under the *Fisheries Act* would be required for the Project as the physical activities were likely to result in prohibitions under the *Fisheries Act*

and SARA. Unless authorized, the Project would likely cause effects to listed aquatic species at risk which is prohibited under sections 32, 33 and subsection 58(1) of SARA.

DFO sent a Ministerial Request to the Proponent on August 19, 2024, requesting additional information and monitoring for the Phase I mine and Vista Underground Mine Project (VUM) from the Proponent. Given that Phase I does not currently have federal authorizations in place, IAAC is of the view that the Ministerial Request indicates that DFO and the Proponent are currently working to address potential information gaps associated with Phase I and the VUM. The Project is an expansion of the existing Phase I mine and would use existing Phase I infrastructure, therefore DFO's request would provide additional information that would be applicable to the Project. The Ministerial Request includes:

- groundwater modelling in relation to hydrogeologic impacts of the underground mine, with analysis of risks specific to Rainbow Trout (Athabasca River populations);
- a revised groundwater monitoring program in relation to the underground mine;
- additional data collection to characterize the groundwater system;
- mitigation triggers and responses related to the underground mine in the event of impacts to groundwater;
- that the Proponent provide reports related to the site water balance and rates of infiltration into underground works and if observed inflow rates significantly exceed predicted rates, an updated water balance and hydrogeologic impact study;
- analysis, risk assessment, and a contingency plan in relation to dewatering from the underground mine to surface ponds;
- a temperature monitoring program to assess the temperature of water discharging from surface water ponds, including water temperature monitoring within McPherson Creek;
- assessment of flow related impacts to fish habitat; and
- a flow augmentation plan that stipulates that the source water is of adequate quality and that withdrawals from the source will not result in reductions in flow within nearby fish habitat.

ECCC noted that the Project could have adverse effects on groundwater, surface water and hydrological regimes through the release of contaminants, minerals, deposition of airborne particulate matter and erosion. Contact water that contains contaminants (including selenium) could potentially impact water quality during all stages of the Project. Coal mining projects can also result in the acidification of the receiving environment due to the potential exposure of acid-generating rock to air and water. ECCC also raised concerns about the potential for the Project to result in adverse effects to groundwater quality through the seepage of tailings disposal areas or other water impoundments. Coal mining projects can result in adverse effects to water quantity by reducing the inflows of nearby water bodies and the drawdown of the water table; these reductions can potentially increase the concentration of contaminants and natural elements in these water courses and water bodies and could also alter the temperature regime at all stages of the Project.

ECCC indicated that the Project's potential adverse effects on water quality and quantity could also have an adverse effect on fish and fish habitat and sensitive ecosystem receptors. Coal mining can result in metal leaching into the receiving environment, including potential selenium contamination which can have adverse effects on water frequented by fish. Due to the proximity of McPherson Creek and its tributaries to the Project area, it can be inferred that contaminants are likely to end up in McPherson Creek and its tributaries. If not



mitigated or properly managed, these contaminants could potentially have an adverse impact on these water bodies.

ECCC noted that the Project's potential adverse effects to water quality and quantity could negatively impact aquatic species at risk. However, the nature of these effects can vary based on a number of factors, including project location, duration, scale and configuration, ancillary project activities, existing cumulative effects, the type of habitat that may be disturbed, and the sensitivity of species found in the project area.

NRCan noted that the Project has the potential to result in an increased release of metal and metalloids, including selenium, and increased contaminant loading on an ecosystem that is already impacted. Changes in groundwater flow could also potentially change groundwater-surface water interactions and impact fish habitat and aquatic species.

The Proponent noted that, based on sampling, the overburden is non-acid producing. The Proponent stated that water quality monitoring for the past six years of Phase I mine operations has shown that selenium concentrations in waters downstream of the mining operations have remained at low levels and have not caused detrimental effects on fish. Additionally, the Proponent stated that the AER's Terms of Reference for the Project's EIA includes assessment of effects on water, including water quality, that may be caused by release of substances such as selenium. The Proponent stated that the EPEA approval would address potential effects of the Project on water quality and that a *Fisheries Act* authorization and a potential SARA permit would likely address sediment and erosion control, water management and release, and associated monitoring and reporting.

The Proponent indicated that the Project mine plan has been designed to avoid removal of any fish or fish habitat. Additionally, the Proponent stated that fish spawning and population survey results for the past six years of Phase I mine operations have not indicated adverse effects due to mining. The 2023 Fish Population Monitoring Program report for the existing Phase I mine concluded that the results were not indicative of mine-related effects on fish populations at monitoring stations observed in McPherson Creek and a McLeod River Tributary and are relevant to the Project because, according to the Proponent, the Project would not require new equipment or infrastructure for mining or processing coal and will use existing Phase I mine infrastructure.

The Proponent acknowledged that the same federal protections apply to fish and fish habitat and for species at risk (under the *Fisheries Act* and SARA) regardless of whether the Project is designated under the IAA. The Proponent committed to working with DFO to identify potential impacts and required authorizations under the *Fisheries Act* and SARA.

The Proponent has proposed the following monitoring, mitigation and avoidance measures:

- 100 metre buffer of mining activities along identified critical habitat (Figure 2);
- water management flow augmentation plans to mitigate potential impacts on surrounding water systems by treating mine wastewater and ensuring adequate flows are maintained in the adjacent creek (McPherson Creek); and
- water quality monitoring, flow monitoring, groundwater level and quantity monitoring, benthic invertebrate monitoring, and aquatic monitoring throughout the Project's operating life.



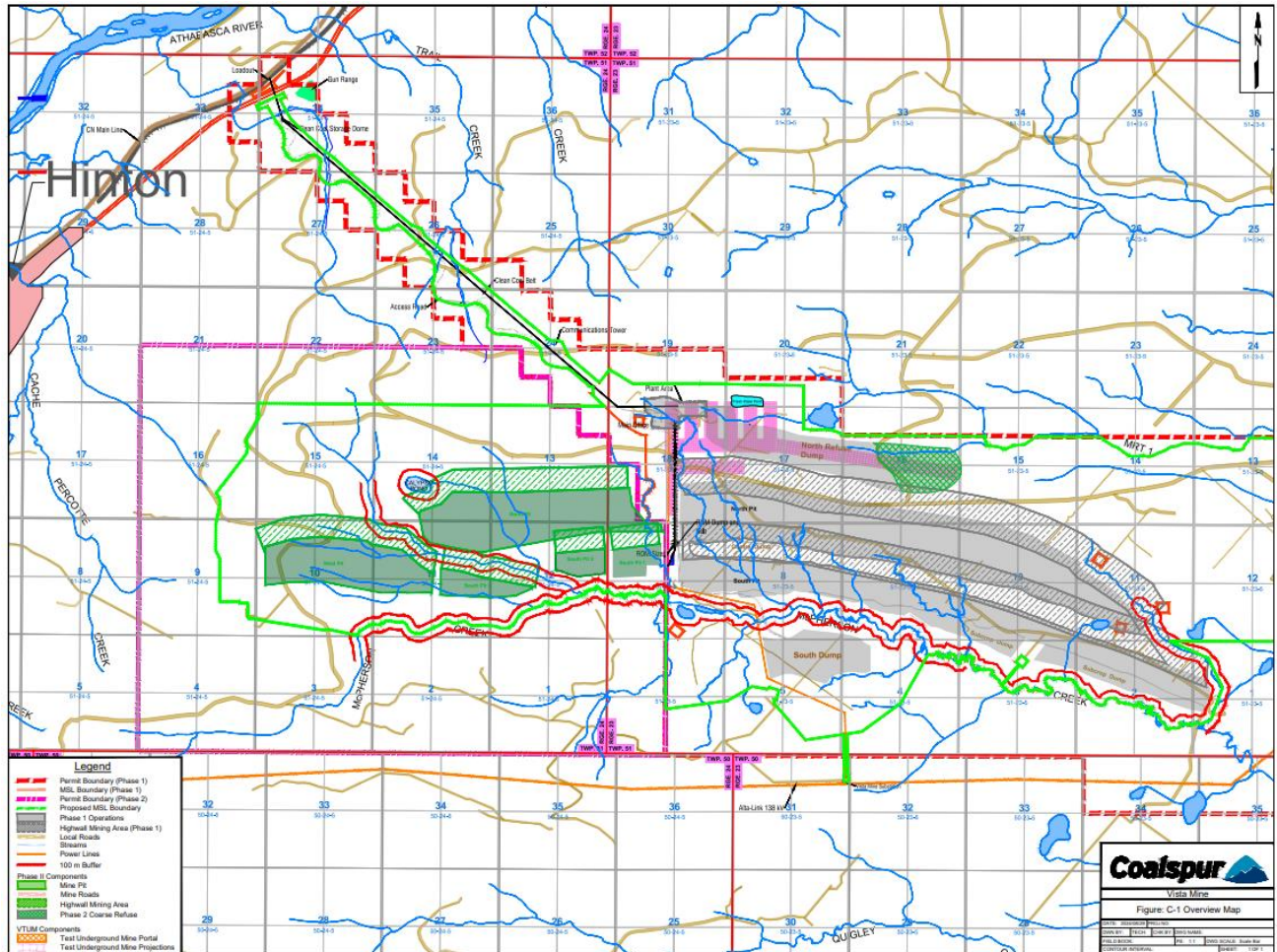
The Proponent expects that:

- a *Fisheries Act* authorization and potential SARA permit would address impacts to fish and fish habitat – including species at risk – as well as sediment and erosion control, water management and release, and monitoring and reporting obligations to DFO;
- an EPEA approval would address leaching, water discharge and monitoring for the Project, as well as water quality (including groundwater quality), quantity and aquatic resource monitoring; and
- a *Water Act* licence and approval would address water quantity and groundwater quantity.

IAAC understands that potential adverse effects of the Project to fish and fish habitat are considered and addressed under the federal *Fisheries Act* and SARA, and also typically under the provincial EPEA and *Water Act* approvals. Additionally, the proposed Coal Mining Effluent Regulations under the *Fisheries Act* are currently being developed by ECCC and would provide effluent quality standards for coal mining in Canada and are expected to be in force in 2026. Once in place, they will apply to existing coal mines in Canada and all future coal mine expansions and new coal mine projects. Additionally, there are provincial recovery plans in place for both Rainbow Trout and Bull Trout, as required under the *Wildlife Act*.



Figure 2: Project Overview Map with Proponent's Proposed Buffer Zones for the Protection of Fish and Fish Habitat



Source: Coalspur Mines (Operations) Ltd., 2024

Figure Description: Project overview map for the Vista Coal Mine depicting Phase I (grey shading), the Vista Coal Mine Phase II Expansion Project (green shading), and buffer zones (red lines) delineating buffer zones for the protection of fish and fish habitat.

Aquatic Species

The Project may result in a change to aquatic species, as defined in subsection 2(1) of SARA. See the section Fish and Fish Habitat section for analysis relating to fish species at risk. The Project will not affect the marine environment or marine plants.

Migratory Birds

IAAC considered information provided by the requesters, the Proponent, and ECCC. IAAC is of the view that the Project has the potential to adversely affect migratory birds, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994* and Schedule 1 of SARA. However, IAAC is of the view the existing legislative mechanisms provide a framework to address potential adverse effects to migratory birds.

Concerns expressed by the requesters include:

- habitat alteration;
- increased mortality from collisions and interactions with components of the Project;
- effects to health through exposure to deleterious substances;
- sensory disturbance;
- habitat fragmentation;
- impacts to movement; and
- effects to migratory bird species due to landing on wastewater.

ECCC noted that activities linked to the construction, operation and decommissioning of a mine and associated infrastructure could have negative effects on terrestrial wildlife, including migratory birds and species at risk. The nature of effects to wildlife and habitat can vary based on a number of factors, including but not limited to project location, scale, existing cumulative effects, and sensitivity of species found in the project area. Individual mortality and the destruction of nests and eggs could occur during all phases of the Project. Mining activities typically result in large-scale land-clearing activities, which can lead to the destruction and disturbance of migratory bird habitat, habitat avoidance, and sensory disturbance. Sensory disturbance includes noise from various Project activities, lights, vibrations from excavation work and the operation of machinery, as well as the presence of workers. Attraction to lights at night or in poor visibility conditions during the day may cause birds to collide with lit structures; birds can also become disoriented while circling light sources and deplete their energy reserves, which can result in death from exhaustion or dropping to the ground where they are at risk from predation. New roads and the increased use of existing roads can also result in increased collisions with vehicles.

ECCC also noted that the deposition of contaminants out of the air into the surrounding environment may result in adverse impacts to terrestrial ecosystems and elevated concentration of contaminants in water, soil, flora, and fauna. Birds that land on and/or frequent wastewater also have the potential to come into contact with toxic substances, which can result in both on and off-site mortalities.

The Proponent indicated that the Project would comply with the requirements of the *Migratory Birds Convention Act, 1994*, and that the EPEA approval would include wildlife monitoring and a mitigation plan (informed by the provincial EIA), including migratory birds. The EIA would include a desktop analysis, field surveys, traditional land use studies conducted by Indigenous groups, and ongoing monitoring; mitigation measures would be developed based on the findings of the EIA.

IAAC is of the view that existing legislative mechanisms, including the federal *Migratory Birds Convention Act, 1994* and the provincial EPEA approval, provide a framework to address potential adverse effects to migratory birds.

Indigenous Peoples

IAAC considered information provided by the requesters, Proponent, CIRNAC, ECCC, ESDC, HC, ISC, NRCan, WAGE, and Indigenous groups.³ Comments received from Indigenous groups included both positive and negative views on the Project. IAAC is of the view that the Project may cause a change to the health, social, or economic conditions of the Indigenous peoples or an impact that results from any change to the environment on physical and cultural heritage, the current use of lands and resources for traditional purposes, or on any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance to the Indigenous peoples. IAAC is of the view that existing legislation will provide a framework to address these effects.

IAAC noted that of the 20 submissions received from Indigenous groups, four Indigenous groups wrote letters in support of a federal impact assessment under the IAA, 10 wrote letters requesting that the Minister not designate the Project under the IAA, and the remaining six provided overall views and concerns in relation to the Project.¹¹ Some Indigenous groups¹² have negotiated, or are in the process of negotiating, agreements with the Proponent to assess and address potential impacts of the Project on their Treaty rights and to receive benefits, including economic benefits, sponsorship of community initiatives, and support for employment opportunities. IAAC understands that there are concerns that designating the Project could delay economic benefits to Indigenous groups that have signed agreements with the Proponent.

Views expressed by the requesters and Indigenous groups³ included:

- concerns that designation of the Project could delay economic benefits to some Indigenous groups which could negatively affect their communities;
- optimism that the Project could provide potential economic and employment opportunities, including for young families, youth, and adults of all genders, therefore providing a greater standard of living;
- concern regarding impacts to Indigenous peoples' traditional ways of life, knowledge, language, and culture, and practice of section 35 rights of Indigenous peoples;
- concern regarding impacts to Métis Aboriginal rights to harvest and practice rights within and around the Project area;
- concern regarding impacts to Indigenous peoples' traditional lands, including trapping, fishing, hunting, and gathering;

¹¹ The following Indigenous groups wrote letters in support of a federal impact assessment under the IAA: Foothills Ojibway First Nation, O'Chiese First Nation, Montana First Nation, and Swan River First Nation.

The following Indigenous groups wrote letters requesting that the Minister not designate the Project under the IAA: Alexander First Nation, Aseniwuche Winewak Nation, Ermineskin Cree Nation, Kelly Lake Cree Nation, Mountain Métis Community Association, Peavine Métis Settlement, and Whitefish Lake First Nation #128.

Additionally, in their response to IAAC on October 2, 2024, the Proponent provided letters of support for the Project addressed to the Minister they received from Anishnawbe Nation of the Rocky Mountains, Descendants of Michael First Nation Associations, and Mountain Cree Camp, that were not sent directly to IAAC but have been taken into consideration.

The following Indigenous groups provided their overall views and concerns in relation to the Project: Enoch Cree Nation, Foothills First Nation Heritage Society, Lac Ste. Anne Métis Community Association, Louis Bull Tribe, Samson Cree Nation, Tsuut'ina Nation.

¹² Anishnawbe Nation of the Rocky Mountains, Aseniwuche Winewak Nation, Descendants of Michel First Nation Association, Ermineskin Cree Nation, Foothills Ojibway First Nation, Louis Bull Tribe, Mountain Cree Camp, Peavine Métis Settlement, Samson Cree Nation, and Whitefish Lake First Nation #128.

- concern regarding impacts to wildlife (including bighorn sheep, eagle, and waterfowl), fish and migratory birds of importance including loss of habitat and access to resources;
- concern regarding impacts to the ability to maintain the relationships that Indigenous peoples have with the land, including access to sites of ceremonial and spiritual significance, and the subsequent impacts on the intergenerational transfer of knowledge;
- concern regarding accidents and malfunctions leading to contamination of water and terrestrial resources;
- concern regarding impacts to quality and availability of country foods and food security;
- concern regarding impacts to Indigenous peoples' health through consumption of drinking water, country foods contamination of water, air, and soil, and subsequent ecosystem degradation;
- concern regarding impacts to mental and physical health of Indigenous peoples due to restricted access to ceremonial sites and areas for practicing land-based cultural activities and through loss of connection to the land due to dramatic environmental change and fragmentation;
- concern regarding changes in air quality, noise and water quality and quantity;
- concern regarding potential barriers to meaningful employment including that work camps or lodging could create conditions for the solicitation of sex work, addiction, racism, and result in adverse experiences from intergenerational trauma, especially for young Indigenous men and women;
- concern regarding uncertainty on the economic impacts of the Project and the need for clarity on the economic opportunities, revenue sharing and other agreements presented to Indigenous groups;
- concern regarding lack of meaningful consultation by the Proponent to identify and accommodate impacts to rights;
- concerns regarding cumulative impacts of increased industrial activity on resources and ecosystems critical for the practice of rights-related activities; and
- concerns regarding contributions to climate change.

Additionally, the Proponent noted that they have heard the following additional concerns from Indigenous groups:

- concerns with reclamation timelines, schedule and plan;
- concerns that the reclamation plan will not return Crown Lands to pre-existing conditions appropriate for traditional land use;
- concerns regarding impacts to future food security and medicines;
- concerns regarding impacts to McPherson Creek and the Rainbow Trout (Athabasca River populations);
- concerns regarding groundwater contamination and site water runoff contamination;
- concerns regarding tailings ponds and the contaminants being contained; and
- concerns regarding employment opportunities for members and contract work.

Alexander First Nation, Anishnawbe Nation of the Rocky Mountains, Aseniwuche Winewak Nation, Descendants of Michel First Nation Association, Ermineskin Cree Nation, Foothills Ojibway First Nation, Kelly Lake Cree Nation, Lac Ste. Anne Métis Community Association, Louis Bull Tribe, Mountain Cree Camp, Mountain Métis Community Association, Peavine Métis Settlement, Samson Cree Nation, Tsuut'ina Nation, and Whitefish Lake First Nation #128 indicated that they have been in communication or consultation with the Proponent regarding the Project and potential impacts to their Aboriginal and treaty rights. Montana First Nation and O'Chiese First Nation expressed concerns regarding the adequacy of consultation by the



Proponent, and Foothills Ojibway First Nation and O'Chiese First Nation expressed concerns regarding the adequacy of provincial regulatory processes. O'Chiese First Nation requested that the Proponent support the designation of the Project and provide preliminary information and capacity funding for consultation.

ISC raised concerns about the possibility of the Project to directly and cumulatively lead to loss of lands used for traditional purposes, resulting in a potential disruption to the physical and cultural connection that Indigenous peoples have with their traditional territories. Similarly, the Project could potentially limit access to traditional foods and medicines, through direct loss of land or contamination of the surrounding environment. ISC also noted that accidents and malfunctions during the construction and operations phases of the Project could lead to an increased use of local healthcare services, potentially leading to a decreased ability for local Indigenous peoples to access these services.

HC noted that the Project could have adverse impacts on Indigenous peoples' health and well-being due to potential physical and perceived changes to air quality, noise, drinking water and recreational water quality, and contamination of and access to country foods. The Project is on forested land potentially being used for traditional activities and could potentially be a pathway for adverse impacts to Indigenous health in the region. HC noted that the Project could adversely impact both the harvesting and quality of country foods. Potential adverse effects to several waterbodies that overlap the Project footprint could result in negative impacts to fishing grounds and Indigenous health.

HC noted that the Project could amplify cumulative adverse impacts to human health resulting from the Phase I mine and other industrial activities in the area. The Project would increase noise disturbances and impact air quality, water quality, and socioeconomic conditions. The Project may result in increased cumulative effects on the health and well-being of Indigenous peoples.

ECCC noted that project activities can result in adverse effects to air quality through the release of contaminant emissions and particulate matter. In addition to the adverse effects this can have on air quality, contaminants can deposit in the surrounding environment and adversely impact water, soil, flora and fauna. Potential accidents and malfunctions could result in adverse effects to air quality, water quality and wildlife through the accidental release of high concentration of ammonia, hydrocarbons, and other contaminants to surrounding water.

CIRNAC raised concerns about the need to engage with Indigenous groups that have expressed a desire to be consulted on the Project but have not been scoped into the provincial process.

WAGE indicated that the Project has the potential to cause adverse effects within federal jurisdiction or direct or incidental adverse effects, particularly a non-negligible adverse change to a health, social or economic matter that is within the legislative authority of Parliament.

The Proponent indicated that they were directed by the provincial Aboriginal Consultation Office to undertake Level 3 Extensive Consultation with seven Indigenous groups (Alexander First Nation, Aseniwuche Winewak Nation, Ermineskin Cree Nation, Kehewin Cree Nation, Louis Bull Tribe, O'Chiese First Nation, and Whitefish Lake First Nation #128). The Proponent stated that they have communicated with over twenty Indigenous groups regarding the Project and that at least seven traditional land use studies have been completed. The Proponent has entered into agreements with eleven Indigenous groups to formalize their relationship and



provide these groups with benefits from the Project. The Proponent noted that designation of the project could adversely affect the interests of Indigenous groups who could benefit from the Project.

The Proponent stated that the concerns they heard have been addressed through open houses and site tours with question-and-answer sessions, involvement of Indigenous groups in on-site monitoring (including groundwater monitoring) and reclamation work, review of aquatic works by Indigenous groups, supporting multiple ceremonies and events on and off-site, and providing funding for traditional land use studies.

The Proponent indicated that a Historical Resource Impact Assessment was completed to assess the land associated with the Phase I mine and the Project, which was included in a historical resources report as part of the provincial EIA for the Phase I mine. The Proponent indicated that *Historical Resources Act* Approval 4560-13-0002-004 was issued on October 28, 2018. Archaeological or other sites of historical importance were identified, and the Proponent noted that the Project has the potential to impact one recorded historic resource. The Proponent stated that they would establish a buffer around the historical resource site.

The Proponent indicated that traditional land use by Indigenous groups would also be assessed through the provincial EIA with consultation, and that impacts to the land and environment would be addressed through the EPEA approval process. Impacts to physical and cultural heritage sites would be addressed through a *Historical Resources Act* approval and would include avoidance of one heritage site as well as monitoring and reporting. The Proponent stated that impacts on the health, social and economic conditions of Indigenous peoples, as well as impacts on Aboriginal and treaty rights, would be assessed through the provincial EIA with consultation and impacts would be addressed through EPEA approval. Additionally, the Proponent noted that impacts to air quality would be addressed through EPEA approval specific emissions monitoring and reporting, EPEA emissions reporting under Alberta's Annual Emissions Inventory Reporting Program, and emissions reporting to ECCC under the Greenhouse Gas Reporting Program.

The Proponent is committed to ongoing consultation with Indigenous groups. The Proponent indicated that impacts on Aboriginal and treaty rights would be assessed through the provincial EIA and subject to consultation, and that impacts would be addressed through the EPEA approval. The Proponent has stated that they are committed to:

- invite Indigenous groups to view, question, and understand company plans and work;
- prioritize meetings with Indigenous people who reside near, use, or have a specific interest in the Project area;
- have ongoing, open, and cooperative dialogue with Indigenous groups directly affected by the Project;
- find options, where possible, to address Indigenous group concerns that benefit the Indigenous group and the Proponent; and
- provide ongoing Indigenous engagement for the life of the Project.

IAAC recognizes that there are Indigenous groups that would experience economic and social benefits due to the Project. IAAC understands that potential effects to species of cultural importance to Indigenous peoples that the Project may cause, could adversely affect the current use of lands and resources for traditional purposes by Indigenous peoples. Potential effects to the health of Indigenous peoples could occur from physical activities-related changes to air quality, water quality, noise, and country foods and food security. IAAC acknowledges that Project activities could adversely affect sites of importance and land use by

Indigenous peoples. Additionally, IAAC understands that that the province is subject to its legal and constitutional duty to consult First Nations, and that the province also consults with Métis Settlements and Credibly Asserted Métis Communities to understand and consider potential adverse impacts. Potential adverse effects of the Project to Indigenous peoples are considered during the federal *Fisheries Act* and SARA process, and also typically during the provincial EPEA, *Water Act*, *Public Lands Act*, and *Historical Resources Act* approval processes.

Federal Lands

The Project is not located on federal land. Jasper National Park is located approximately 30 kilometres southwest of the Project. The Castle-Crown Wilderness Coalition expressed concerns regarding the potential effects of the Project on Jasper National Park, considering the effects of climate change on the park. Additionally, a member of the public raised concerns that that the Project could negatively affect the tourism and recreation-based economy of the Jasper community.

IAAC is of the view that the Project may not cause an adverse change to the environment occurring on federal lands.

Other Effects

The Project is approximately 80 kilometres from the Alberta-British Columbia border. Alberta Wilderness Association expressed concerns regarding the movement of coal dust containing carcinogens across provincial borders. The Proponent indicated that changes to surface water and groundwater quality and quantity would be addressed through the *Water Act*, EPEA, and *Fisheries Act* approval processes, and that that impacts to air quality would be addressed through EPEA approval specific emissions monitoring and reporting, EPEA emissions reporting under Alberta's Annual Emissions Inventory Reporting Program, and emissions reporting to ECCC under the Greenhouse Gas Reporting Program.

IAAC is of the view that the Project may not cause non-negligible adverse changes from pollution to the marine environment and to boundary waters or international waters, as those terms are defined in subsection 2(1) of the *Canada Water Act*, or to interprovincial waters, as defined in section 2 of the IAA. As well, existing legislative mechanisms such as the *Water Act*, EPEA, and the *Fisheries Act* provide a framework to address such adverse effects within federal jurisdiction and protect water quality, quantity and flow.

Direct or Incidental Adverse Effects

Direct or incidental adverse effects refer to effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity, or to a federal authority's provision of financial assistance for the purpose of enabling that physical activity to be carried out, in whole or in part. The carrying out of the Project has the potential to cause direct or incidental adverse effects; however, IAAC is of the view that existing legislation provides a framework to address them.

DFO indicated that the Project would require an application for authorization under the *Fisheries Act* and advised the Proponent of this in January 2021. Transport Canada may be required to exercise a power or perform a duty or function with respect to the CNWA. However, further detailed project information is needed to determine if an approval under the CNWA would be required and to determine potential effects of the Project on navigation. The Project may also potentially require the exercise of powers, duties, or functions by a federal authority to proceed, such as a SARA permit for impacts to Rainbow Trout (Athabasca River populations) or other species at risk.

IAAC is of the view that existing legislation provides a framework to address direct or incidental adverse effects.

Public Concerns

IAAC considered information provided by the Alberta Wilderness Association, Castle-Crown Wilderness Coalition, Climate Action Newmarket Aurora, and members of the public. Alberta Wilderness Association, Castle-Crown Wilderness Coalition, Climate Action Newmarket Aurora, and seven members of the public indicated support for an impact assessment of the Project, including support for the designation request submitted by the requester. Forty-three members of the public expressed support for the Project, including comments that were submitted to IAAC through a letter writing campaign.

IAAC is of the view that existing legislation, including the provincial EIA under EPEA, provides a framework to address the concerns about the adverse effects within federal jurisdiction and direct or indirect adverse effects and would include opportunities for public participation and consideration of public comments.

Views expressed by the public included:

- concern that the Project's contribution to climate change and how the Project may impede meeting Canada's current climate change and emissions targets;
- concern regarding potential contamination of downstream waters due to sediment and other contaminants (including selenium);
- concern regarding cumulative effects associated with the Project, considering ongoing development in Alberta's eastern slopes and watersheds;
- concern regarding effects of the Project on Jasper National Park;
- concern regarding effects of coal development and exploration on water, wildlife, vegetation, air, and human health;
- concern regarding effects of the Project to local communities and displacement of other economic activities like ranching, recreation, and tourism;
- concern that the Project is narrowly below the threshold in the *Physical Activities Regulations* to be considered a designated project;
- concern regarding project effects on wildlife and on habitat and habitat connectivity;
- concern regarding project impacts to the Aboriginal and treaty rights of Indigenous peoples, and concern regarding the lack of consultation through the provincial permitting process for the Project;

- concern the current Phase I mine is an important employment and revenue source, and loss of the Project would have potential adverse social and economic effects on Hinton and the surrounding area;
- support for the Proponent's environmental practices to date, indicating that the mining industry has taken steps towards improved environmental practices;
- optimism that proposed mitigations and other provincial and federal legislative mechanisms can address potential adverse effects resulting from the Project; and
- acknowledgement of the Proponent's reliability in the industry and their approach to improving welfare for the local community and economy.

The Proponent is working with the federal and provincial government to address concerns related to the Project, including through public consultation and open houses. The Proponent indicated that the designation request submitted by Ecojustice on behalf of Keepers of the Water Society and the West Athabasca Watershed Bioregional Society misrepresented their compliance with regulatory requirements federally and provincially and misrepresented their financial stability. The Proponent noted that open houses, public communications, and mailouts were conducted between May 2019 and Fall 2020, and since 2020, the Proponent has continued to engage with public stakeholders. Through the public engagement process, the Proponent heard concerns regarding business and economic stability and job security due to market and policy uncertainty and regulatory delays. The Proponent is continuing engagement with public stakeholders regarding the Project.

The Proponent indicated that the Project would result in economic benefits to local communities and the federal and provincial economies. The Proponent is the largest employer in the town of Hinton and the Project would sustain direct jobs and indirect jobs in the Hinton area. The Project would sustain the existing Phase I Mine workforce an additional eleven years and extend the Phase I mine life by five years. The Proponent indicated that delay or denial of the Project through the IAA process would result in potentially devastating social and economic consequences for Hinton and the surrounding area.

IAAC is of the view that public concerns about the adverse effects within federal jurisdiction and direct or indirect adverse effects will be addressed by existing legislative mechanisms.

Adverse Impacts on the Section 35 Rights of Indigenous Peoples

The Project is situated on forested, provincial crown land, in Treaty 6 territory and the North Saskatchewan River Territory – Jasper House Métis District of the Otipemisiwak Métis Government. The concerns raised by Indigenous groups in relation to federal effects described above are linked to potential adverse impacts on the rights of Indigenous peoples, where those rights are recognized and affirmed by section 35 of the *Constitution Act, 1982*. In relation to subsection 9(2)(b) of the IAA, IAAC is of the view that while there is the potential for the Project to cause adverse impacts on rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982* (section 35 rights), existing legislative mechanisms applicable to the Project, and any consultation obligations associated with that specific legislative mechanism, may trigger the duty to



consult thereby provide a framework to address potential impacts and allow for consultation with potentially affected Indigenous groups.

The Project may adversely impact the exercise of Aboriginal or treaty rights of Indigenous groups. All Indigenous groups³ that provided input to IAAC identified the potential for the carrying out of the Project to impact their rights. Some Indigenous groups¹³ indicated that they are in communication or consultation with the Proponent to address potential impacts on rights.

Potential adverse impacts on the section 35 rights of Indigenous peoples are considered during the federal *Fisheries Act* and SARA process and also typically during the provincial EPEA, *Water Act*, *Public Lands Act*, and *Historical Resources Act* approval processes. IAAC understands that that the province is subject to its legal and constitutional duty to consult First Nations, and that the province also consults with Métis Settlements and Credibly Asserted Métis Communities to understand and consider potential adverse impacts. IAAC understands that the Proponent has already begun consultation with multiple Indigenous groups and that the Proponent is committed to meeting with Indigenous groups who reside near, use, or have a specific interest in the Project area; having ongoing dialogue with Indigenous groups directly affected by the Project; addressing concerns where possible; and providing ongoing engagement for the life of the Project.

With respect to impacts on section 35 rights, IAAC is of the view that existing legislative mechanisms, including the federal *Fisheries Act* and provincial EPEA, *Water Act*, *Public Lands Act*, and *Historical Resources Act*, provide a framework to address potential impacts and allow for consultation with potentially affected Indigenous groups.

Other Considerations

Cumulative Effects

IAAC considered information provided by the requesters, the Proponent, ECCC, ISC, HC, Alberta Wilderness Association, members of the public, and Indigenous groups¹⁴ in relation to adverse effects within federal jurisdiction and direct and incidental adverse effects in relation to the designation request under subsection 9(1) and considered the factors in subsection 9(2) of the IAA and is of the view that existing legislation provides a framework to address cumulative effects.

Concerns expressed by the requesters, Indigenous groups¹⁴, and the public include:

- the Project's contribution to cumulative development in the area and resultant adverse impacts to the area's ecological integrity;
- cumulative effects of multiple operating coal mines in the vicinity of the Project including the Phase I mine and Vista Underground Mine, and a proposed increase in coal production for the Vista

¹³ Alexander First Nation, Anishnawbe Nation of the Rocky Mountains, Aseniwuche Winewak Nation, Descendants of Michel First Nation Association, Ermineskin Cree Nation, Foothills Ojibway First Nation, Kelly Lake Cree Nation, Lac Ste. Anne Métis Community Association, Louis Bull Tribe, Mountain Cree Camp, Mountain Métis Community Association, Peavine Métis Settlement, Samson Cree Nation, Tsuut'ina Nation, and Whitefish Lake First Nation #128.

¹⁴ Enoch Cree Nation, Foothills Ojibway First Nation, Kelly Lake Cree Nation, and O'Chiese First Nation.

Underground Mine noted in the Proponent's application to amend *Coal Conservation Act License C2022-1A* dated August 16, 2024;

- cumulative adverse effects to fish and fish habitat and species at risk from the Project in combination with existing human activities and mining in the area, that may not be mitigated through project design or standard mitigation measures;
- consideration of ongoing effects to Alberta's eastern slopes and watersheds due to industrial development;
- the use of a project-by-project approach to reviewing proposed development projects and not looking at the big picture of cumulative effects of development in the region;
- cumulative impacts to wildlife health in the region due to compounding impacts of forestry, oil, gas and coal mining activities; and
- the need to consider cumulative effects from the Project to Aboriginal and treaty rights.

ECCC raised concerns about the potential cumulative effects of the Project in combination with other past, present and foreseeable future developments; there could potentially be cumulative effects of coal mining-associated contaminants and substances in the watershed and downstream environment. ECCC also noted that the Project may contribute to additional greenhouse gas emissions and hinder the Government of Canada's commitments in respect to climate change. Additionally, the Project has the potential to be affected by future climate change including extreme weather events. ECCC asserted that the Government of Canada's public policy statement⁹ on new thermal coal mining or expansion projects should inform any federal decision making on thermal coal mining projects.

HC noted that the Project could amplify the cumulative impacts of other industrial activities in the area (including the Phase I mine), which could result in cumulative impacts to the health and well-being of Indigenous peoples.

ISC raised concerns about the possibility of the Project to cumulatively lead to loss of lands used for traditional purposes, resulting in a potential disruption to the physical and cultural connection that Indigenous peoples have with their traditional territories.

The Proponent stated that cumulative effects were assessed in the Phase I mine application to the AER, which included consideration of the Project. Cumulative effects are considered under the federal *Fisheries Act* and typically also under provincial EPEA and *Water Act* approvals.

IAAC is of the view that existing legislative mechanisms, including the federal *Fisheries Act* and provincial EPEA and *Water Act*, provide a framework to address potential cumulative effects.

Policies and Commitments

On June 11, 2021, the Government of Canada issued a Policy Statement on future thermal coal mining projects and project expansions. The statement indicated that the Government of Canada considered that new thermal coal mining or expansion projects are likely to cause unacceptable environmental effects within federal jurisdiction (as it was then defined) and that these activities were not aligned with Canada's domestic and international climate change commitments. The statement also indicated that it would inform the use of

the discretionary authority under section 9 of the IAA (under the former IAA) to designate any proposed new thermal coal project or expansion that is not listed in the *Physical Activities Regulations*.

On October 13, 2023, the SCC issued its decision on the constitutionality of the IAA, finding that the IAA was unconstitutional in part. On June 20, 2024, the amended IAA came into force to respond to the SCC decision by focusing decision-making, including the authority to designate, on areas of clear federal jurisdiction. For primarily federally regulated projects (e.g., offshore energy, federal ports, interprovincial pipelines), decisions and condition-setting under the amended IAA continues to be based on a range of adverse environmental and socio-economic effects, including greenhouse gas emissions and other transboundary effects. However, for primarily provincially regulated projects, such as this mine, in decision-making at all stages of the process—including the exercise of the authority to designate—the focus is more narrowly on adverse effects in areas of federal jurisdiction as defined under the amended IAA. Transboundary effects are limited to areas of established federal jurisdiction identified under the IAA, such as pollution of transboundary waters and the marine environment.

Regional and Strategic Assessments

There are no regional or strategic assessments pursuant to sections 92, 93, or 95 of the IAA that are relevant to the Project.

Conclusion

IAAC considered the information it received as part of the designation request process for the Project to inform its analysis. IAAC is of the view that the carrying out of the Project may cause adverse effects within federal jurisdiction and adverse direct and incidental effects. IAAC is of the view that existing legislation – such as the provincial *Environmental Protection and Enhancement Act*, *Coal Conservation Act*, *Water Act*, *Public Lands Act*, and *Historical Resources Act* and the federal *Fisheries Act*, *Species at Risk Act*, *Migratory Birds Convention Act, 1994*, *Canadian Environmental Protection Act, 1999*, *Canadian Navigable Waters Act*, *Explosives Act*, and *Coal Mining Effluent Regulations* (pending) – provides a framework to address the potential adverse effects within federal jurisdiction such as:

- fish and fish habitat;
- migratory birds;
- species at risk;
- adverse impacts to section 35 rights;
- cumulative effects; and
- the potential adverse direct or incidental effects that the Project may cause.

IAAC also acknowledges that the Coal Mining Effluent Regulations under the *Fisheries Act* currently being developed would provide effluent quality standards for coal mines in Canada by 2026. IAAC understands that that the province is subject to its legal and constitutional duty to consult First Nations, and that the province also consults with Métis Settlements and Credibly Asserted Métis Communities to understand and consider



potential adverse impacts. IAAC understands that the issuance of a *Fisheries Act* authorization for harmful alteration, disruption, or destruction of fish habitat or death of fish also acting as a permit under SARA, or the issuance of a stand-alone SARA permit, are regulatory decisions that likely trigger the duty to consult federally.

Reasons for designating the Project in 2021 included that the area of mining operations would be just below the 50 percent threshold and well above the total coal production capacity threshold of 5,000 tonnes per day described in Item 19(a) of the Regulations; potential adverse effects to fish and fish habitat, including critical habitat for the endangered Rainbow Trout (Athabasca River populations); potential deposition of deleterious substances into fish habitat, including selenium; and potential impacts to Indigenous peoples and their rights.

IAAC is of the view that the primary pathways of effect in relation to the Project are fish and fish habitat and effects to Indigenous peoples. Since the previous designation request process in 2021, IAAC is aware of key changes to the Project:

- while the Project remains close to the thresholds in the Regulations, the Proponent indicated that the Project will not change the maximum daily production of coal. Additionally, the Proponent has now indicated that they will use Phase I equipment and infrastructure and will not require additional infrastructure as was previously part of the Project description;
- DFO has confirmed that an application for a *Fisheries Act* authorization would be required for the Project and has issued a Ministerial Request for additional information and monitoring. The Proponent has changed the project components, provided more data on Phase I related to monitoring of fish populations and selenium, and proposed more extensive mitigations (in relation to the buffer zone around critical habitat); and
- the Proponent has undertaken consultation since 2021 with multiple Indigenous groups and are committed to meeting with Indigenous groups who reside near, use, or have a specific interest in the Project area; having ongoing dialogue with Indigenous groups directly affected by the Project; addressing concerns where possible; and providing ongoing engagement for the life of the Project;
- of the 20 Indigenous groups that IAAC considered input from, 10 wrote letters requesting that the Minister not designate the Project; and
- at least seven traditional land use studies have been completed.

IAAC concludes that a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the carrying out of the Project.