

From: Sharon Siu
To: [SOC](#)
Cc: bgregg@bighornmining.com; lacsteannemetis@zoho.com; [Tarlán Razzaghi](#)
Subject: Coalspur Mines (Operations) Ltd. / Vista Coal Project - Statement of Concern of Gunn Metis Local #55
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Dear Sirs/Mesdames:

Please see the attached Statement of Concern of Gunn Metis Local #55 with respect to the Coalspur Mines (Operations) Ltd. Vista Coal Project.

Regards,
Sharon

Sharon Siu, Legal Administrative Assistant
P 604 605 8338

Boughton Law Corporation

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GUNN METIS LOCAL NO. 55

Preserving Our Past...Ensuring Our Future

Gunn Métis Local #55

Lac Ste. Anne Métis

P.O. Box 2057

Stony Plain, AB T7Z 1X6

Email: lacsteannemetis@zoho.com

September 17, 2020

Via Email: SOC@aer.ca

Alberta Energy Regulator
Regulatory Applications Branch
Suite 1000, 250 – 5 Street SW
Calgary, AB T2P 0R4

Dear Sirs/Mesdames,

**Re: Statement of Concern
Coalspur Mines (Operations) Ltd. ("Coalspur")
Vista Coal Project: Coal Conservation Act ("CCA") applications 1929395,
1929396, 1929397; Environmental Protection and Enhancement Act ("EPEA")
application 010-00301345; and Water Act ("WA") applications 007-00311969
and 006-00311965 (collectively, the "Application")**

Please accept this Statement of Concern on behalf Gunn Métis Local #55 (Lac Ste. Anne Métis) ("GML/LSAM") with respect to the Application and in response to the Public Notice of Application dated August 17, 2020. GML/LSAM believes it may be directly and adversely affected by the decision of the Alberta Energy Regulator ("AER") and therefore requests a meaningful opportunity to participate in the AER's decision-making process on the Application.

A. Why GML/LSAM Believes it May Be Directly and Adversely Affected by a Decision of the AER on the Application

i. GML/LSAM

Gunn Métis Local #55 is a society incorporated pursuant to the *Societies Act*. It represents individuals who self-identify as the descendants of the historical Lac Ste. Anne Métis community. The society, on behalf of its members, asserts collective Métis aboriginal rights and interests stemming from its historical and genealogical linkages to the historic Métis community of Lac Ste. Anne. These rights include the use of their traditional lands, waters and resources for subsistence, medicinal, spiritual, economic,

commercial, recreational and cultural purposes and all activities necessarily incidental to these rights.

ii. GML/LSAM Use of Lands Affected by Vista Coal Mine

The Vista Coal Mine (the "**Mine**") has been approved to occupy nearly 6,000 hectares of GML/LSAM's harvesting areas from approximately 10km east of the town of Hinton extending away from Hinton to the southeast for about 12km, up to the McLeod River Valley. The Mine area and the McLeod River Valley are important locations for GML/LSAM's harvesting rights.

The Mine's large take up of traditional lands is made worse by the existing industrial, urban and agricultural development in the territory that already severely limits GML/LSAM's access to its traditional lands for its harvesting activities and exercise of aboriginal rights and also poses risks to water bodies important to GML/LSAM, including the McLeod and Athabasca Rivers.

GML/LSAM's rights include hunting, fishing and gathering within the Mine lands and surrounding areas and on Athabasca and McLeod Rivers. The Athabasca River and its tributaries are key cultural landscapes for the GML/LSAM for fishing, trapping, travel and other cultural, economic and social purposes. GML/LSAM's rights include fishing at McLeod River and the Athabasca River both downstream and in proximity to the Mine location.

GML/LSAM harvesters who participated in community-led traditional land use research between 2011 and 2020 indicate that they engage in traditional use activities (hunting, fishing, trapping/snaring, gathering and camping) in areas that could be impacted by the Application.

In the McLeod River Valley and in the McPherson Creek drainage, GML/LSAM members hunt for elk, moose and mule deer, including within the Mine areas where still accessible. The Mine and surrounding area is easily accessible along traditional use trails, cutlines and logging roads from Hinton on ATVs, on foot or on horseback. Further, the area is easily accessible by vehicle from the Yellowhead Corridor via logging roads. The extent of the deterioration of traditional harvesting activities due to existing Mine activities is currently being studied.

However, the traditional land use information shows that there is a high concentration of GML/LSAM hunting in close proximity to the Mine, within a 5km buffer zone. Numerous trails and traditional access routes intersect and run within 5km of the Mine location. The data represents areas GSML/LSAM regularly and currently uses to hunt moose, elk and deer, particularly along trails and roads for hunting around the Mine, which now takes up land.

Thus, the Mine area, and the lands and waters within 5km of the Mine, are important hunting areas for GML/LSAM. Based on members' experience with existing developments, members are concerned about impacts of large-scale development within 5km. While the GML/LSAM have been displaced by the existing Mine, members expect and hope to return to Mine lands upon adequate and timely reclamation. Accordingly, GML/LSAM also has an ongoing interest in the operation and reclamation of the Mine lands itself.

Downstream from the Mine site, GML/LSAM community members use the McLeod River, the Athabasca River and surrounding valleys and tributaries to fish, hunt, trap/snare and gather food and medicinal plants for traditional purposes.

Several traditional campsites used by generations of GML/LSAM hunters are situated along the McLeod River, including in the Hargwen and Marlboro areas. While occupying these camps, GML/LSAM members fish for rocky mountain whitefish, walleye and burbot.

GML/LSAM members indicate concern over anthropogenic disturbance to the lands and waterways that have already reduced the availability of fish that could be harvested for subsistence purposes. Traditional knowledge indicates that the native population of Athabasca River Rainbow Trout is in decline.

In addition, GML/LSAM use traditional camping areas along the Athabasca River between Hinton and Whitecourt to hunt, fish, trap/snare and gather food and medicinal plants. We are concerned about the extent to which the Application poses risks to the quality and availability of fish that GML/LSAM harvest for traditional subsistence purposes along the Athabasca River.

The Mine site is part of a broader landscape that continues to be used by GML/LSAM to hunt, fish, trap/snare and gather plants for food and medicine, but that is subject to

extensive and cumulative effects on the integrity of the land, watersheds, vegetation and air due to mining, pipeline construction, oil and gas extraction and forestry. The approval of the Application could further exacerbate the cumulative effects of industry on the Athabasca River and McLeod River watersheds and thus traditional resources (including species at risk such as the Athabasca River Rainbow Trout) and the rights of GML/LSAM.

A map of our traditional land use can be made available to the AER and Coalspur upon execution of an agreement of confidentiality to protect sensitive traditional knowledge information.

Coalspur has already acknowledged GML/LSAM as an interested stakeholder (see attached letter of October 30, 2015), and has, as recently of 2018, provided GML/LSAM with Mine information about its amendments as interested stakeholders.

iii. Potential Impacts of the Application on GML/LSAM's Use of Lands Affected by Vista Coal Mine

Coalspur has not carried out any stakeholder engagement with GML/LSAM on the specific Application, nor have we been provided with any capacity funding to conduct a technical review of the Application to be able to comprehensively and specifically identify the potential impacts of the Application on our rights, activities and interests. We submit this is in breach of procedural public interest concerns of the AER.

However, we understand that the Application proposes material and significant changes to the mine refuse process at the Mine by converting the McPherson mine pits to tailings cells due to the inability of the Mine's existing processing plant to process excess underflow.

No clear explanation is provided in the Application for the cause of this excess underflow and we have concerns about potential unexpected or unreasonable operational changes to the Mine that have resulted in this excess in underflow.

Overall, we are concerned that the material changes in the Mine refuse processing will pose unassessed, unmitigated and unacceptable risks to:

- the timing and adequacy of reclamation of our traditional lands and hunting areas;
- the air quality and enjoyment of adjacent lands as a direct result of tailings cells reaching fugitive emission thresholds;
- water quality and quantity of the adjacent lands and waters during mine operations and post-reclamation; and
- safety of land users accessing adjacent waters and lands for the exercise of their rights.

a. Potential Impacts of Coalspur's Changes to Mine Reclamation Plans

Restoration of the Mine's lands for harvesting purposes is critical to the mitigation of impacts of the Mine development on GML/LSAM. We understand the proposed changes to the Mine's reclamation plan will result in:

- a decrease in the rate of progressive reclamation;
- capping of the tailings cells;
- the addition of a large wetland to the reclaimed landscape;
- an increase in disturbance area due to infrastructure development;
- increase in soil stockpiles and decrease in direct placement; and
- a decrease in reclaimed steep slope topography i.e. a more gently post-reclamation topography.

The Application states that as a result of the proposed changes in reclamation plans, upon Mine reclamation, the lands will increase in homogeneity and will have a large wetland complex unlike pre-disturbance conditions. In our view such significant changes to the area do not equate to equivalent land capability. This will most likely affect the access to and availability of traditional resources at the Mine lands and surrounding areas. This will adversely affect the *function* of the post-reclamation lands for traditional land use, in particular for our hunting in the area. GML/LSAM's land use is dependent on a diversity of landscapes and those lands to support a diversity of traditional resources.

Uplands are important hunting areas. In any event, considerable uncertainty remains as to the ability to successfully reclaim lands into wetlands (2014 ABAER 004 at para. 59).

Further, the Application discusses the uncertainty in timeline and ability of tailings to settle and consolidate for reclamation purposes. Accordingly, GML/LSAM has significant concerns about the delays and challenges to adequate land reclamation as a result of tailings capping.

While we understand that Coalspur claims that the end of mine life is expected to decrease by a few short years, GML/LSAM is concerned that the decreased rate of progressive reclamation will adversely impact the timeliness of final reclamation of the Mine lands. Changes to soil salvage and placement activities also are of a concern as to the adequacy of reclamation of the Mine lands.

b. Air Quality Concerns

The Application states that it is predicted the Mine emissions will reach the (potential) maximum fugitive emission threshold in 2022 in direct response to the establishment of the McPherson tailings cells. However, the Application does not contain an updated air quality assessment as the Application states the model is currently being updated and is anticipated to be complete by Q4 2020 / Q1 2021.

The use and enjoyment of the GML/LSAM's traditional lands around the Mine area could be adversely affected by a deterioration of air quality and potential odours from the tailings cells, including at McLeod River. This could also deter members from accessing the adjacent lands and waters for harvesting activities around the Mine area, but no assessment has been conducted.

c. Potential Impacts of Changes to Ground and Surface Water Quality and Quantity to the Adjacent Lands and Waters During Mine Operations and Post-Reclamation

The AER's 2014 approval of the Mine noted the importance of the McPherson Creek and tributaries and McLeod River tributaries for sensitive fish species. This corresponds with our traditional knowledge of the area. The AER noted: "The panel recognizes the importance of maintaining high water quality in those water bodies throughout the life of the project." (2014 ABAER 004 at para. 40). As stated above, the Mine and surrounding lands are also important for harvesting of plants and wildlife and incidental activities.

The Application proposes to amend the Mine plans to propose tailings cells to run in close proximity to the McPherson Creek and in the sensitive watershed. We have significant concerns about potential pathways both via surface and ground water of harmful substances, including radio-active elements common with coal mines and sulphites, adversely affecting the area's sensitive watersheds.

The AER states that the Application is also expected to change the flow, direction and level of groundwater as a result of the operation and reclamation of tailings cells. The change in operations and reclamation of the tailings cells could also impact surface water flow and quality to adjacent lands and waters if surface water management is ultimately inadequate. These both also raise concerns about changes to water quantity discharge to adjacent lands and waters, during and after operations, which we highly depend on for our harvesting activities.

Water resources are an integral part of the GML/LSAM's harvesting activities and aboriginal rights. Fishing, trapping, gathering and hunting all involve natural resources dependent on clean and plentiful water. Members also require clean and plentiful sources of water for drinking and domestic purposes while out the land.

As no impact assessment on GML/LSAM appears to have taken place on the Application, GML/LSAM is concerned about the unassessed and unaddressed potential impacts of the changes in water flow to the adjacent waters and lands during and after reclamation and potential water quality impacts from ground and surface water pathways of tailings contaminants.

d. Dam Safety and Water Quality Concerns to McLeod River and McPherson Creek

The construction and operation of dams for the tailings cells raises concerns about the potential risks to the safety of members while on adjacent lands and waters to the Mine, as well as the potential failures, spills and leakages to the adjacent and important McPherson Creek, and tributaries and the McLeod River and tributaries.

GML/LSAM has not been provided with any capacity to raise its technical concerns about potential safety risks, nor has Coalspur engaged with GML/LSAM in order to address any concerns about safety. However, given the potential significant risk to our safety and the quality of the sensitive fisheries in the area, the AER and the Coalsupr have a duty to

engage with us directly to ensure the risks have been adequately assessed and addressed.

B. Nature of GML/LSAM Objection to the Application

i. The Application Proposes Unassessed and Unaddressed Impacts to GML/LSAM

While material and substantive amendments appear to be proposed by the Application to the original Mine plan, Coalspur has not conducted any substantive or meaningful assessment to the environmental and ecological impacts of the Application on the Mine lands, upon which GML/LSAM relies on for the exercise of its aboriginal rights and activities, nor does the Application contain any assessment on impacts to GML/LSAM's rights and interests.

GML/LSAM is opposed to the Application for this purpose because it is contrary to the public interest for the AER to approve unassessed and unmitigated risks to the environment and stakeholders in the Mine area, including GML/LSAM.

ii. The Application is Non-Compliant as no Stakeholder Engagement Has Been Conducted by Coalspur

As stated above, despite Coalspur's prior acknowledgment of GML/LSAM as an interested stakeholder in the Mine and providing application materials to GML/LSAM for its 2018 amendment, Coalspur has not provided any notice or undertaken any stakeholder engagement program on the Application.

We note that AER Manual 020 imposes a duty to maintain ongoing dialogue with stakeholders for the life of the project¹. Further, GML/LSAM submits that Coalspur's failure to undertake a stakeholder engagement program is in breach of the AER's regulatory application requirements as set out in Manual 020. Thus, the Application is non-compliant.

As a result of Coalspur's failure to engage, GML/LSAM has not been provided a meaningful opportunity to understand the extent and nature of the Application and its potential risks to our interests, through direct engagement with Coalspur or with capacity funding to undertake a technical review of the Application. Accordingly,

¹ AER Manual 020: Coal Development at s. 2.1.1, p. 7

approval of the Application violates procedural public interest concerns and GML/LSAM's extensive questions about the Application remain outstanding, including about the potential risks of the Application and adequate mitigation to address our concerns.

C. The Outcome of the Application GML/LSAM Advocate

GML/LSAM advocates that the Application be considered incomplete until a revised Application is submitted that:

- i) conducts a proper assessment of impacts and risks to GML/LSAM's rights and interests; and
- ii) demonstrates an adequate stakeholder engagement program was carried out pursuant to Manual 020.

Once the Application is revised as per above, GML/LSAM would advocate for:

- i) an alternative dispute resolution process; and
- ii) subsequent hearing, if necessary,

to address any outstanding concerns raised with the Application with an opportunity to submit an advanced cost claim for technical advice on the Application.

D. The Location of GML/LSAM Lands or Activity in Relation to the Location of the Energy Resource that is the Subject of the Application

As stated above, the GML/LSAM members hunt and harvest within the Mine lands and within 5km of the lands; fish and access the Athabasca and McLeod River for traditional aharvesting; and have numerous trails intersecting and coming within 5km of the Mine area.

E. Contact Information

The following is the contact information with respect to this Statement of Concern:

Murleen Crossen, President
Gunn Métis Local #55 / Lac Ste. Anne Métis
Ph: 780-591-5050
Email: lacsteannemetis@zoho.com

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Crossen", enclosed in a thin black rectangular border.

Murleen Crossen, President

cc: Brian Gregg, Coalspur Mines (Operations) Ltd.
(bgregg@bighornmining.com)

October 30, 2015

Tracy L. Friedel
Lac Ste. Anne Métis
(Gunn Métis Local 55)
PO Box 2057
Stony Plain, AB T7Z 1X6

Ms. Friedel

Thank you for your response to our October 22 letter to the Alberta Energy Regulator (AER). As an interested stakeholder we are providing you with the enclosed CD copy of our Amendment Application and our responses to the Supplemental Information Requests (SIR's) we submitted to the AER pertaining to the Amendment. We have also included shp files of our current Mineral Surface Lease and Life of Mine physical disturbance footprint as requested.

You raised a number of concerns in your letter to the Alberta Energy Regulator dated October 28, 2015 that I would like to provide a brief response to, with the understanding that we will provide more detail when we meet.

1. Decision to use trucks and excavators

The proposal to remove the dragline and use truck and excavators results in 25% less land disturbance and more progressive land reclamation. The total number of truck hours (for Life of Mine) actually decreases from the approved project, which reduces greenhouse gases, particulates, energy consumption, etc; and all occur within the existing MSL.

2. Increased quantity of coal used

This increase in coal production is due largely to increased efficiency in the pit and in the plant, does not result in an increase of the physical footprint, and occurs within existing MSL;

3. Increased train traffic

Due to an increase to the annual clean coal production the total number of trains on the main line will increase by 1.3 trains per week. This increase is minimal compared to the 30-40 trains per day currently on CN's main line, and will not have any impacts to the environmental assessment conclusions for the mine.

4. Construction of two silos

The construction of the two proposed silos occurs within a smaller footprint (still within our existing MSL) than in the approved plan, and does not significantly increase particulates as they will be equipped with exhaust scrubbing equipment to manage any dust generation that may occur. The silos will result in a decrease in the amount of clean coal being stored outside in the stockpile at the processing plant.

5. Changes in road alignment

These changes were made to improve the safety of our employees and other road users by decreasing the grade of the road. These changes are extremely minor, do not increase the overall disturbance footprint, and occur within the existing approved MSL.

The proposed changes result in a decrease in energy use, particulate emissions, physical footprint, and impacts to wildlife, air and water. More details pertaining to your concerns as outlined above can be found in the Amendment Application and the SIR responses within this package.

We understand the Gunn Métis concern that there are many resource development applications in their area of interest, and that it could be difficult to follow through on every one of them. This is why Coalspur wanted to make sure that potentially interested stakeholders had a wide range of options to review the application – specific open house dates, digital versions of the amendment application (and original application) on-line, invitations to arrange one-on-one meeting times if the open house dates did not work, the newsletter summary, etc. In addition to making these options available to the Gunn Métis, we also ensured that the proposed changes also addressed previously raised stakeholder concerns (see explanations above) and remained within our approved MSL. Coalspur's position remains that the AER has all of the necessary information to review the Amendment Application and to move forward with their decision.

You indicated in your SOC and October 22 letter that you would be interested in meeting with Coalspur to discuss the content of these proposed changes and the approved plan. We would be able to meet in the Lac Ste. Anne area, Edmonton or another location if that is most convenient for your group. Please contact Sheri Fraser, Aboriginal / Community Relations at sfraser@coalspur.com or 780-740-2459 to arrange for meeting date and location.

We look forward to meeting with you soon.

Regards



Ryan O'Regan
Operations Manager, Vista Project

Cc. Val Silva, AER
Bill McElhanney (Ackroyd Law LLP)