

Ken McRae- Port Alberni, British Columbia



CITY OF PORT ALBERNI

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May 26, 2011

Ms. Rachel Shaw, Project Assessment Manager
BC Environmental Assessment Office
PO Box 9426, Stn Prov Govt
Victoria, BC V6G 1A5

Dear Ms. Shaw:

Re: Request for Independent Review – Raven Coal Project

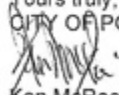
Following a presentation from the Alberni Environmental Coalition at a regular meeting on April 11th, 2011, Council for the City of Port Alberni directed that "staff provide a report regarding how an independent review panel might be appointed and what effect such a panel might have on the review process" regarding the proposed Raven Coal Project.

The report attached was provided to Council and reviewed at their regular meeting on May 24th. Council for the City of Port Alberni passed the following resolution:

"That the City of Port Alberni request the Federal and Provincial governments to refer the Raven Mine Proposal to a joint federal-provincial environmental review panel of independent experts."

In addition, Council requests that the social, environmental, economic and health impacts of the proposed transportation of coal be closely studied in the review process and specifically that a full cost/benefit analysis of the use of rail versus truck be required.

We would appreciate your consideration of the above.

Yours truly,
CITY OF PORT ALBERNI

Ken McRae
Mayor

Enc.

c Ken Watson, City Manager
Gary Swann, Alberni Environmental Coalition
Hon. Peter Kent, Minister of Environment
Hon. Terry Lake, BC Minister of Environment
Dr. James Lunney, MP (Nanaimo/Alberni)
Scott Fraser, MLA (Alberni/Qualicum)

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CITY OF PORT ALBERNI

CITY MANAGER'S REPORT

TO: Mayor and Council FILE

FROM: City Manager – Ken Watson

COPIES TO: City Clerk – Davina Sparrow
Pat Deakin – Economic Development Manager

DATE: May 12, 2011

SUBJECT: Raven Coal Independent Review Panel Information

Issue:

This is an informational report in response to Council's request that "staff provide a report regarding how an independent review panel might be appointed and what effect such a panel might have on the review process" regarding the proposed Raven Coal Project

Background:

Council's request for this report arose in response to a delegation from the Alberni Environmental Coalition (AEC) at the April 11, 2011 Regular meeting. As part of that delegation's presentation the AEC requested that Council resolve to request the Federal and Provincial government's referral of the proposed Raven Coal Mine project to a joint federal-provincial environmental review panel of independent experts.

The environmental review process currently underway for the proposed Raven Coal Project is being administered jointly by the Canadian Environmental Assessment Agency (CEAA) and the Environmental Assessment Office of B.C. (EAO). These agencies have signed an "Agreement for Environmental Assessment Cooperation" intended to streamline the process and avoid duplication of effort.

Notwithstanding the cooperation agreement, the regulations governing the environmental review processes fall under different legislation. The CEAA review process falls under the *Canadian Environmental Assessment Act (S.C. 1992, c.37)*. The EAO regulations fall under the B.C. *Environmental Assessment Act (SBC 2002 c.43)*

With regard to the Federal legislation, the *Canadian Environmental Assessment Act*, sections 25 and 28, provide discretion to the Federal Minister of the Environment to refer a project to a mediator or review panel where:

- a) "a project, taking into account the implementation of any mitigation measures that the responsible authority considers appropriate, may cause significant adverse environmental effects", or
- b) "public concerns warrant a reference to a mediator or a review panel"

Under this legislation for the Proposed Raven Coal Project the "responsible authorities" are the CEAA, Federal Department of Fisheries and Oceans (DFO) and the Port Alberni Port Authority (PAPA). The Federal Minister of the Environment is the Honourable Peter Kent.

Under the *B.C. Environmental Assessment Act*, Sections 10,12 and 14 pertain to referral to an independent panel or commission. Where the "Executive Director" refers a reviewable project to the Minister, the Minister may require that the assessment be conducted by a commission or by a hearing panel. The Executive Director may not directly assign the assessment to a panel and the Minister may only do so where the project has been referred to him by the Executive Director.

The Executive Director of the EOC is Cheryl Wenezeki-Yolland. This position is appointed by the Lieutenant Governor. The B.C. Minister of Environment is the Honourable Terry Lake.

Pertinent sections of both Environmental Assessment Acts as well as other background information regarding the CEAA and the EAC are attached to this report.

Discussion:

Officials from both the CEAA and the EAO have indicated that they are not currently considering referring the Raven Environmental Assessment to an independent review panel.

In November 2010, the CEAA posted a document titled: Synopsis of Comments Received During Initial Comment Period the CEAA stating that:

"At this time, after considering the project information received to date from the proponent and the comments from the public, the Agency and other federal departments have not identified significant adverse environmental effects that may result from the project after applying standard mitigation measures. The project will continue to be assessed as a comprehensive study. The Agency will monitor issues raised by the public throughout the environmental assessment process."

Andrew Rollo of the CEAA confirmed that this position has not changed since November. In recent correspondence, Rachel Shaw from the EAO advises that:

"Regarding the proposed Raven Coal Project, the Executive Director is not intending to make a referral to the Minister, as she is satisfied the current review led by the EAO is appropriate. The provincial EA process is rigorous and comprehensive, and determines appropriate measures to avoid, minimize or mitigate environmental, social, economic, heritage and health effects of a proposed project."

Notwithstanding the current position of both agencies on this point, the CEAA's position is subject to change as the process continues should significant adverse environmental effects that cannot be mitigated become apparent or should "public concerns warrant a reference to a mediator or a review panel".

Referral of the proposed Project to a joint federal provincial review panel, as suggested by the AEC, would require agreement of both the federal and provincial Ministers of Environment.

Several local governments including the Alberni Clayoquot Regional District, have requested that the proposed Raven Coal Project environmental assessment be referred to a review panel.

A comparison of the differences between the "comprehensive study" and the "review panel" processes in general terms is provided below:

<u>Joint Federal / Provincial EA Process</u>	<u>Review Panel</u>
<ul style="list-style-type: none">• Conduct of the assessment assigned to federal and provincial staff/technical experts• Assessment requirements proscribed by regulation through AIR process• Proponent required to provide required investigation in support of application.• Input from other Agencies facilitated through "working group" process• Process provides for iterative issues resolution as the assessment proceeds• Public and Stakeholder input provided for in written form and at public meeting usually open house format• Federal funding available• Adjudication of final assessment done by staff with recommendation to Ministers for approval.	<ul style="list-style-type: none">• Conduct of the assessment assigned to a panel of "experts" appointed by the Minister(s)• Assessment requirements overseen by panel within guidelines provided by Minister and legislation• Proponent required to provide required environmental impact statement in support of application.• Panel conducts public consultations on information received and holds public hearings. Public presentation of findings by proponent and other stakeholders are made including opportunity for questioning.• Federal funding available• Adjudication done by panel with recommendation to Minister (provincial) and Cabinet (Federal) for approval.

In my view, the current joint Federal/Provincial Environmental Review process is rigorous with regard to evaluation of environmental, social, economic, health and heritage impacts of the project. In addition, adequate opportunity and resources are provided to facilitate and receive broad public input regarding the project. A process which employed a review panel of selected experts would likely be equally rigorous however.

Both processes would likely employ a similar list of diverse professional experts to undertake similar investigations and offer professional opinions on identified potential impacts and provide recommendations on mitigation actions. Both processes also provide that the ultimate decision regarding approval is made by federal and provincial elected officials.

The joint EA process generally provides more opportunity for interactive issues resolution between government agencies and the proponent regarding project details and required mitigation actions as the assessment is being undertaken.

The "panel review" process generally provides a more transparent and formal forum for stakeholders to question or refute the findings of investigations done by the proponent.

It is difficult to speculate on the effect that moving to a panel review process might have on the outcome of the proposed Raven Coal Project Environmental Assessment. In my view, much would depend on the viewpoints of the individuals selected by the Ministers to sit on the panel.

Please advise if you have any questions or require any additional information on this issue.

Respectfully submitted