

Mining and Natural Resources Law

January 7, 2014

First Decision Statement Issued Under New *Canadian Environmental Assessment Act*

The Federal Environment Minister issued the first Decision Statement under the new *Canadian Environmental Assessment Act, 2012* (the “**CEAA 2012**”). The Decision Statement was issued in connection with Shell Canada’s proposed Jackpine Mine Expansion project (the “**Project**”). The Project has been approved by Federal Cabinet, despite findings of the Federal Environment Minister that the expansion would likely cause significant adverse environmental effects.

The Project

The Project would expand Jackpine Mine to access neighboring oil sands deposits. The expansion would include construction of processing facilities, utilities and infrastructure, and would increase bitumen production by 100,000 barrels per day. Jackpine Mine is located approximately 70 km north of Fort McMurray on the east side of the Athabasca River.

Join Review Panel Decision

A federal-provincial review panel (the “**Panel**”), ruled in favour of the Project in July, despite findings that there would be significant adverse effects on certain wildlife and vegetation in the area. In coming to its decision the Panel noted that the proposed expansion is in an area surrounded by other oil sands mines; the Alberta government has identified bitumen extraction as a priority use in the area; and that the Project would provide significant economic benefits to the region, Province, and Canada.

Decision Statement

After considering the report of the Panel, the Federal Environment Minister held that the Project would likely cause significant adverse environmental effects.

This determination triggered the provisions of the CEAA 2012, requiring a referral to Federal Cabinet. Federal Cabinet subsequently determined that the significant adverse environmental effects are justified in the circumstances. The Project can therefore proceed subject to conditions set out by the Environment Minister in the Decision Statement. Generally, the conditions can be classified as:

1. preserving plants, aquatic and terrestrial wildlife;
2. implementing environmental mitigation measures;
3. considering Project effects on First Nations;
4. submitting annual reports; and
5. establishing plans for closing Jackpine Mine.

If Shell Canada does not comply with the conditions set out in the Decision Statement, it will face compliance and enforcement action. This may include financial penalties of up to \$400,000 per day if convicted for a continuing offence.

Although Shell Canada’s expansion of Jackpine Mine can proceed, Federal Cabinet provided no explanation to support its conclusion. Presumably Federal Cabinet relied on the recommendation and reasoning of the Panel, which included consideration of “significant economic benefits.” Moving forward, however, it remains unclear what factors Federal Cabinet will take into consideration to approve a project.

To discuss, please contact any member of our Mining and Natural Resources Group or one of the Environmental Law Group members listed below:

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