

**JOINT REVIEW PANEL
IMPACT AGENCY OF CANADA REFERENCE NO. 80101**

IN THE MATTER OF
COAL CONSERVATION ACT APPLICATION NOS. 1844520, 1902073, *ENVIRONMENTAL
PROTECTION AND ENHANCEMENT ACT* APPLICATION NO. 001-00403427, *WATER ACT*
APPLICATION NOS.. 001-00403428, 001-00403429, 001-00403430, 001-00403431 AND
PUBLIC LAND ACT APPLICATION NOS. MSL160757, MSL160758 AND LOC970943

AND IN THE MATTER OF
THE GRASSY MOUNTAIN COAL PROJECT

FINAL ARGUMENT OF THE MUNICIPAL DISTRICT OF RANCLAND NO. 66

January 8, 2021

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I. INTRODUCTION

1. The Municipal District of Ranchland No. 66 (the “**MD**”) respectfully submits the following Final Argument to the Joint Review Panel (the “**Panel**”) in response to an Application by Benga Mining Limited (“**Benga**”) for a license from the Federal Minister of Environment and Climate Change (the “**Minister**”) to develop and operate a metallurgical coal mine on Grassy Mountain (the “**Project**”), located entirely within the borders of the MD (collectively, the “**Application**”). Grassy Mountain is located approximately 7 kilometres north of Blairmore, Alberta.¹
2. The MD is nestled in the Rocky Mountains and rolling foothills of Southern Alberta. The MD includes some of the finest ranching country in Canada. Located in the southwestern portion of the province, the MD’s municipal boundaries stretch north to Kananaskis Country, south to the border of the Municipal District of Crowsnest Pass (the “**MCNP**”), west to the British Columbia border and east to the ranch lands west of Willow Creek.
3. The MD encompasses approximately 631, 999 acres of land and is unique in that there are no urban municipalities, hamlets or urban service areas within the boundaries of the MD and almost all land within the municipality is used for agricultural purposes, particularly for ranching and grazing.
4. Benga proposes to disturb the local beauty of the MD on a magnitude never seen before by its residents. As part of its coal mine, Benga would be bulldozing the top of Grassy Mountain and creating irreversible disturbances for the entire 24-year life of the Project and beyond. Benga’s proposal for Grassy Mountain stands in stark juxtaposition to the largely undisturbed lands of the MD.
5. The economy of the MD is primarily dependent on the agricultural sectors.² The last coal mine located within the MD ceased operations in the 1960s. Since the closure of the last coal mine in the MD, the local economy has been almost entirely dependent on the ranching industry.
6. Within the boundaries of the MD, there exists one provincial park, a wildland park, an ecological reserve and three natural areas. The protection of these landscapes reflects the unique roles that the MD and its residents play in preserving Alberta’s native grassland ecosystems. Ranchers rely on the continued diversity and production of native grasses, and the fact much of the land is unbroken and without road access is a direct consequence of the MD’s stewardship.
7. The beauty of the MD lands is also a key component in the other growing industry in the MD, tourism.
8. The MD’s water basin is part of the Old Man River Basin, which is subject to the *Oldman River Basin Water Allocation Order* (the “**ORB Order**”).³ Pursuant to the ORB Order, water within the MD, and the Oldman River Basin in general, is strictly controlled.
9. The MD has a population of approximately 100 residents.⁴ However, the MD has significantly more landowners who reside outside the MD.⁵ The residents and landowners of the MD entrust

¹ CIAR #962, Joint Review Panel Impact Assessment Agency of Canada Reference No.80101 Final Argument [“Benga’s Final Argument”], para 1.

² CIAR #750, Hearing Transcript Volume 2: October 28, 2020 [“Transcript Volume 2”, page 242.

³ *Old Man River Basin Water Allocation Order*, Alta Reg 319/2003.

⁴ Transcript Volume 2 *supra* note 2 at page 262.

the stewardship of their pristine lands to the MD's Council, who have enacted the strictest land use bylaws permitted under the *Municipal Government Act* (the "MGA") to protect the largely undisturbed lands within the MD.⁶

10. The MD Council is currently made up of three Councillors, Mr. Ron Davis, Mr. Cameron Gardner and Mr. Harry Streeter. All three Councillors are life-long residents of the MD. Mr. Davis and Mr. Gardner both gave impassioned oral evidence during these Proceedings. The MD Council is chosen by the local constituents of the MD. Therefore, the MD Council is in a unique position to be live to the concerns of their constituents.
11. If the Panel recommends the approval of the Application, Benga would be permitted to build an open pit coal mine on Grassy Mountain. The Project has an estimated footprint of approximately 15.2 square kilometres with a life span of 24 years.⁷ Benga said that the only potential buyers for the metallurgical coal from the Project are from foreign markets, such as China and India.⁸
12. If the coal mine is approved and is constructed, it will radically impact the MD's ability to fulfil its mandate and will create significant issues for the MD and its residents, including, without limited to, concerns regarding noxious weeds and invasive species, water allocation and water quality, socio-economic effects, safety, dust and air pollution.
13. With respect to noxious weeds and invasive species, the MD commissioned an expert report from Dr. Osko, which is contained as CIAR 539 of this Application (the "**Osko Report**"). Dr. Osko also gave corroborating testimony on the Osko Report during these Proceedings. Discussions about the Osko Report and Dr. Osko's testimony are included in this Final Argument.
14. Based on the evidence before this Panel, the MD has well-founded concerns that the coal mine is fundamentally incompatible with the mandate of the MD and the pristine landscapes of the area. Further, the evidence before the Panel illustrates that Benga has failed to adequately consult with the MD during the Application process, and that many of Benga's procedures for the Project are either deficient or non-existent.
15. The MD also supports the submissions of some of the other intervenors in the Application in opposing the Project. These intervenors include the Alberta Wildlife Association, the Canadian Parks and Wildlife Society and the Livingstone Landowners Group.
16. Accordingly, and for the reasons that follow, the MD respectfully requests that the Panel recommend to the Minister that the Application be dismissed.

II. WRONG PLACE, WRONG TIME

A. Land Steward Mandate of the MD

17. The Project represents the first of several coal mines in various stages of development in the MD within the next several years. Specifically, there are other coal mines, being planned by other foreign controlled entities, such as Atrum Coal and Montem Resources.⁹ As the first coal mine,

⁵ *Ibid* at page 243.

⁶ *Ibid* at pages 243, 244.

⁷ Benga's Final Argument, *supra* note 1 at para 195

⁸ CIAR #771, Hearing Transcript Volume 5 ["Transcript Volume 5"]; November 2, 2020, page 989.

⁹ CIAR #786, Hearing Transcript Volume7: November 4, 2020, pages 1619 and 1620.

the Project and the Application will both establish an important precedent for future coal mine applications in the region.

18. According to Mr. Gardner, the MD has worked hard over several generations, as stewards of the land to protect the number one industry in the MD, which is ranching. Mr. Gardner was adamant in his testimony that the Project, and any future coal mines, were incongruous with the land stewardship ethic which has guided the MD for generations.¹⁰ In other words, the Project is fundamentally incompatible with the MD's goals and duties.
19. Benga has continually demonstrated through its Application that it has failed to grasp the importance of the ranching industry in the MD. Further, Benga has failed to properly mitigate the legitimate concerns of the MD with regards to the ranching industry in the area. Specifically, Benga has failed to:
 - (a) Provide any mitigation strategies to the likely scenario of noxious weeds leaving the coal mine site and getting into an adjacent rancher's field.¹¹ Instead, Benga has chosen to largely ignore the scenario in its mitigation strategy, and instead take the unrealistic position that noxious weed mitigation will be totally effective¹²;
 - (b) Account for grazing and ranching in its table for Valued Components at Table A-1-10 at CIAR 89¹³;and
 - (c) Perform any testing on potential effects of dust from the coal mine on local grazing lands, which lands are vital to the ranching industry¹⁴.
20. Based on the foregoing, Benga's whole approach to the Project and the Application seems oblivious its coal mine would be located entirely with the MD. Benga's oblivion is highlighted by the fact that Benga has shown no appreciation for the pristine area within the MD and through Benga's repeated failure to grasp the concerns of both the MD and the local ranching industry.
21. Benga also says that the Panel's role is to "advise whether Project EA presents any Project-induced environmental effects that is (*sic*) significant, adverse and likely to occur."¹⁵ Apart from anything else, how could blowing the top off Grassy Mountain not create environmental effects which are significant and adverse? Benga will never be able to fully reclaim the Grassy Mountain site at the end of the Project's roughly 24-year life.
22. Once reclamation is "completed", any adverse effects from the coal mine would be unilaterally saddled onto the MD and its constituents.
23. Benga has also repeatedly attempted to justify the irreversible damage to the MD landscape by saying that the MD will collect on average \$1 million per year in property taxes from the coal mine.¹⁶ However, as illustrated in Mr. Davis' testimony, the MD is not concerned about the

¹⁰ Transcript Volume 2, *supra* note 2 at page 235.

¹¹ CIAR #835, Hearing Transcript Volume 14: November 13, 2020 ["Transcript Volume 14"], pages 2871, 2871.

¹² *Ibid* at pages 2869, 2870.

¹³ CIAR #89, Eighth Addendum to the Environmental Impact Assessment, PDF page 794.

¹⁴ CIAR #931, Hearing Transcript Volume 26: November 27, 2020, pages 5624, 5625.

¹⁵ Benga's Final Argument, *supra* note 1 at para. 41.

¹⁶ Benga's Final Argument, *supra* note 1 at para 115.

economic “advantages” of the coal mine, but instead the MD’s primary concern is preserving a unique way of life within its borders.¹⁷

24. In its Final Argument, Benga has stated that the MD’s position is “restrictive” and “untenable” in a province where there should be a focus on “industrial development and economic diversification”¹⁸. However, this statement illustrates Benga’s own restrictive and singular focus on approving the Application to satisfy the bottom line of its Australian Principals, without any concern for the MD or its constituents. Approving the Project would endanger the ranching industry in the MD and undermine the local economy which Benga purports to stimulate with its coal mine.
25. Benga’s position that the region needs “investment in its natural resources, and its people”, is paternalistic and ignores the concerns of the residents of the MD, many of which have lived in the region for many decades¹⁹. The MD’s residents, and their Councillors, are in a better position than Benga to understand their needs. Those needs do not include destroying the natural beauty of Grassy Mountain for the benefit of Australian investors and foreign industrialists.

B. Undermining the Integrity of the Process

26. Benga has also admitted that the Project would be the first mine operated by the entity in Canada.²⁰ Mr. Gary Houston, the Chair of Benga’s Witness Panels during the Application, has repeatedly stated that Benga is a “baby”, and that the entity will develop many of its procedures as it operates the Project over its 24 year lifetime.²¹
27. This aforementioned statement by Mr. Houston is concerning for a number of reasons, some of which will be discussed later in this Argument. However, based on the additional coal mines proposed for the MD, the Panel should insist that Benga, as the first recent coal mine applicant within the MD, provide a more thorough Application, with complete policies and procedures, to establish a high standard for subsequent applicants.
28. Both the Panel and the Minister should be in possession of all of the relevant information to be able to make an informed decision on the Application. Not just the deficient information that Benga feels is important.
29. If the Panel recommends the approval of the Application, it will set a dangerous precedent to future applicants, and signal that deficient applications will be open for approval. Such a suggestion should be thoroughly rejected by the Panel, and the Panel should recommend to the Minister that the Application be dismissed on that basis alone.
30. More concerningly, Benga is seeking to undermine the integrity of the application process with statements such as “the hearing stage of an EA is not intended to act as a springboard for participants to re-open the earlier stages of the EA process.”²² Based on this statement, Benga is asking the Panel to “rubber stamp” the Application, and to ignore the legitimate concerns of the intervenors in this Application. This position by Benga ignores the jurisdiction of the Panel, and

¹⁷ Transcript Volume 2, *supra* note 2 at pages 265, 266.

¹⁸ Benga’s Final Argument, *supra* note 1 at para 89.

¹⁹ Benga’s Final Argument, *supra* note 1 at para 113, and Transcript Volume 2, *supra* note 2, pages 231, 232.

²⁰ Transcript Volume 9, page 2064

²¹ Transcript Volume 5, *supra* note 8 at page 1111.

²² Benga’s Final Argument, *supra* note 1 at para. 29.

belittles the issues raised by the various intervenors over the lengthy six-week oral Proceedings for the Application.

C. Water Allocation

31. Water is at a premium in the area, which is highlighted by the ORB Order. The ORB is unique legislation within the Province and only permits the use of 150-acre feet of water for commercial purposes.²³
32. Mr. Gardner gave poignant testimony on water scarcity in the MD, and how the Oldman River Basin supplies drinking water to over 120,000 people and provides valuable irrigation water for the MD.²⁴
33. To expect the MD to share water resources from the Oldman River Basin with Benga would put a further strain on the already limited water supply in the area. The finite water supply will only be further diminished if additional coal mines are approved within the area.
34. Benga has also failed to demonstrate an appreciation for the scarcity of water within the MD. Under cross-examination, Benga admitted that it had failed to consider the effects of water withdrawal on water licenses within the MD, and that an analysis was only done on water licenses within the MCNP.²⁵
35. Benga, through its subsidiary Hancock Prospecting Ltd. (“**Hancock**”), has also applied for lobbying status under the *Water Act* within the Province.²⁶
36. While Benga’s Witness Panel was unable to directly address any lobbying on behalf of Benga by Hancock, the document entered in at CIAR 894, raises a legitimate concern that Benga may ultimately need to amend the ORB Order to satisfy its water requirements for the Project on a long-term basis. Such an amendment would further strain the MD’s finite water resources.
37. Finally, the MD also shares the same concerns about water quality as the other intervenor groups, specifically selenium containment. To avoid a duplication of evidence, the MD did not adduce any evidence on this issue but the MD submits that this issue is also a paramount concern to its constituents.

III. MAKING IT UP AS THEY GO

38. As discussed, Mr. Houston has described Benga as a “baby”, and that this would be the first coal mine operated by Benga.²⁷ Characterizing Benga as a toddler is accurate, as Benga has repeatedly demonstrated, with its deficient policies and lack of long term planning on numerous issues, that Benga is simply making things up as they go with limited foresight and a deficient empathy and appreciation for the long-term consequences from the Project.

²³ *Supra* note 3, s 3.

²⁴ Transcript Volume 2, *supra* note 2 at pages 245, 246.

²⁵ CIAR #876, Hearing Transcript Volume 19: November 19, 2020 [“Transcript Volume 19”], pages 4029-4037.

²⁶ CIAR #894, Consultant Lobbyist Registration - Notice of Change.

²⁷ Transcript Volume 5, *supra* note 8 at page 1111.

39. In its Final Argument, Benga has admitted to this “make it up as they go” approach by stating that the legislation allows Benga to do any follow-up after its coal mine is approved.²⁸ Given that the Panel needs to establish a high threshold for subsequent coal mine applications in the region, this approach by Benga should be unequivocally rejected by the Panel.
40. This lack of concrete planning has already been illustrated by Benga’s approach to water allocation within the MD. Specifically, Benga is saying and doing two different things, which is that they have enough water for its coal mine, but at the same time its Principal, Hancock, has applied for lobbying under the *Water Act* to potentially amend the provisions of the ORB Order.²⁹
41. Unfortunately, the issue of water allocation is only one of several deficient policies developed by Benga for the Project.

A. Noxious Weeds and Invasive Species

42. Mr. Ron Davis, Councillor for the MD, provided testimony that the MD has had a decades long battle with noxious weeds around the Grassy Mountain site.³⁰ The proliferation of noxious weeds and invasive species are devastating for the ranching industry within the MD, which relies on sensitive fescue grasslands for cattle grazing.
43. Accordingly, the MD retained Dr. Terry Osko to address its concerns with regards to weeds during these proceedings. Dr. Osko has provided a thorough report on his findings and the deficiencies of Benga’s weed mitigation strategies included in the Application at CIAR 539.
44. A summary of Dr. Osko’s findings include the following:
 - (a) Benga has not presented evidence to support its assessment of weed impacts (i.e. impact ratings) resulting from their project;³¹
 - (b) Benga’s impact ratings hinge upon the site being “well managed” with respect to weeds, but Benga has provided little evidence that the site will be well managed in this regard. Specifically:
 - (i) Benga has demonstrated that it has no real plan in place for weed management and prevention. Benga has merely asserted that weeds will be controlled on site and not produce a dispersal hazard by providing vague assurances that Benga will follow provincial weed management guidelines. However, Benga has presented no concrete prescriptions to demonstrate how adherence to provincial guidelines will be achieved; and³²
 - (ii) Benga has occupied and managed the Grassy Mountain Mine location since 2016 with no demonstrable weed management and prevention plan in place.³³ If past

²⁸ Benga’s Final Argument, *supra* note 1 at para 44.

²⁹ *Supra* note 26.

³⁰ Transcript Volume 2, *supra* note 2 at page 230.

³¹ CIAR #539, Terry Osko, “Benga Grassy Mountain Coal Development Noxious Weed and Invasive Species Impact Assessment for Public Review Hearing” (18 September 2020) [“Osko Report”], page 4.

³² *Ibid* at page 17.

³³ *Ibid* at page 27.

performance is indicative of future performance, there is little assurance the site will be well managed with respect to weeds if the project is approved;

- (c) Benga has demonstrated that it has not considered the innumerable means by which weeds can and will disperse from the mine site area.
 - (d) Benga is dismissive to the idea that weeds can and will disperse from the site, indicating that it has little intention of considering the innumerable means of weed dispersal beyond the site. Notwithstanding, Benga has admitted that a spread of weeds outside the Local Study Area was entirely plausible;³⁴
 - (e) By overlooking the many vectors for weed dispersal and naively (or arrogantly) assuming weeds can be managed by adherence to vague guidelines, weed dispersal from the site and proliferation on adjacent lands is assured;
 - (f) Benga has not considered the high conservation value of the adjacent landscapes in their assessment of weed impacts; and
 - (g) Benga has not considered the devastating consequences of irreversible economic, ecologic, and cultural losses that could potentially arise from weed colonization on these landscapes from weed proliferation from the mine site.
45. Instead of adequately addressing Dr. Osko's concerns during cross-examination, Benga has entirely missed the point of Dr. Osko's analysis. Specifically, in Benga's Final Argument, Benga states that Dr. Osko's case studies have asked the Panel to consider situations of "limited relevance" and that Dr. Osko has accordingly "overflatted" the risk of noxious weeds and invasive species.³⁵ This is an inaccurate characterization of Dr. Osko's evidence.
46. Dr. Osko's case studies were used to demonstrate that vectors, such as humans and animals, could transmit noxious weed seeds. Dr. Osko's case studies were not meant to be relied on as exact factual representations of the situation on Grassy Mountain.
47. Further, additional concerns about weed's mitigation proposals were further highlighted in the cross-examination of Benga's vegetation witness panel. These concerns include:
- (a) Failing to acknowledge, or consult, with the MD on its long-term battle with weeds in and around the Grassy Mountain site;³⁶
 - (b) Benga conducting a deficient vegetation study on noxious weeds and invasive species in the Local Study Area, which is demonstrated by the following:
 - (i) Benga admitting that its field survey methodology for its vegetation study may have been missed identifying certain noxious weeds and invasive species in the Local Study Area;³⁷ and

³⁴ Transcript Volume 14, *supra* note 11 at page 2831.

³⁵ Benga's Final Argument, *supra* note 1 at para 298.

³⁶ Transcript Volume 14, *supra* note 11 at pages 2854, 2855.

- (ii) Benga admitting that it did not rely on the updated version of *Weeds on Industrial Development Sites, Regulations and Guidelines* when creating its weed mitigation strategies.³⁸

48. All of the aforementioned issues further demonstrate the risks of recommending the approval of the Application, and its potential destructive effects on the ranching industry within the MD through the uncontrolled proliferation of noxious weeds and invasive species emanating from the Project.
49. As stated by Dr. Osko, the only way to prevent the control of noxious weeds and invasive species from the Grassy Mountain site is for the Panel to recommend the rejection of the Application.³⁹

B. Emergency Response Planning

50. Section 551 of the MGA states that a municipality is permitted to take whatever steps it deems necessary in response to an emergency situation.⁴⁰
51. Despite Section 551 of the MGA, Benga admitted that it did not review the MD's emergency response plan in developing its emergency procedures for the Project.⁴¹
52. Benga also admitted that it has not yet developed an emergency response plan for the Project, further giving credibility to the concern that Benga is simply making things as they go forward in the process.⁴²
53. With regards to spill prevention, Benga also intends to rely on operating procedures for coal mines in Australia but has not currently developed any strategies to recognize the unique realities of Alberta.⁴³ This is particularly concerning since Benga does not currently operate any coal mines in Canada and has no effective Canadian specific spill prevention policies to rely on from previous projects.
54. Given the lack of concrete emergency response and spill procedures, the Panel should recommend the rejection of the Application.

IV. LACK OF CONSULTATION WITH THE MD

55. Throughout these proceedings, Benga has shown a shocking lack of adequate engagement with the MD on material issues for the Project. Further, the discussions that have occurred, have been filled with potential misinformation, which have potentially misled the MD on certain material points, such as water allocation.
56. Instead of proper consultation, Benga has attempted to take the path of least resistance in the Application, by largely appeasing its supporters for the Project, such as the MCNP. This appeasement is demonstrated by Benga's admission that it has only established an air monitoring

³⁷ *Ibid* at pages 2859, 2860, 2862, 2863.

³⁸ *Ibid* at pages 2865, 2866.

³⁹ Osko Report, *supra* note 31 at page 27.

⁴⁰ *Municipal Government Act*, RSA 2000, c M-26, s 551.

⁴¹ CIAR #799, Hearing Transcript Volume 9: November 6, 2020 ["Transcript Volume 6"], pages 2061, 2062.

⁴² *Ibid* at pages 2059, 2060, 2061.

⁴³ *Ibid* at pages 2066, 2067.

station within the MCNP, and not the MD, despite the coal mine being located entirely within the boundaries of the MD, and not the MCNP.⁴⁴

57. Benga has repeatedly highlighted the benefits of its coal mine to the MCNP and repeatedly stated the MCNP is in support of the Project⁴⁵. However, this appears to be a way for Benga to distract the Panel from its inadequate consultations within the MD, and completely ignores that the coal pit is located entirely within the borders of the MD.
58. Benga has admitted that it has not conducted any of the following:
 - (a) Coordination of emergency response plans with the MD despite Section 551 of the MGA;⁴⁶
 - (b) Coordination with the MD's Director of Emergency Response, Mr. Kelly Starling, despite Section 551 of the MGA;⁴⁷
 - (c) Coordination with the MD on water contamination protocols despite Section 551 of the MGA;⁴⁸ and
 - (d) Coordination with the MD on access to the Project site, despite Section 12 of the Alberta *Weed Control Act* permitting municipal weed inspectors to access the Site for the purpose of inspecting noxious weeds and invasive species.⁴⁹
59. Further, the MD has a strong concern that it was potentially misled by Benga in discussions of water allocation.
60. Based on the MD Council meeting minutes of April 3, 2018, Benga advised the MD Council that there would be no withdrawal of water from any local or regional watercourse.⁵⁰ This particular meeting was attended by Mr. Houston and Mr. Keith Bott, who was also apart of Benga's various witness panels during these Proceedings.
61. However, the lobbying registration under the *Water Act* by Benga raises a concern that this may no longer be the case, and the water allocation that is available to Benga under the ORB Order may no longer be sufficient for the entire 24 year life of the Project.
62. If Hancock, as Benga's principal, is able to amend the ORB Order through its lobbying efforts, then the representations made at the aforementioned meeting between Benga and the MD are inaccurate.
63. The above evidence represents a total lapse in consultation by Benga. As part of these Proceedings, Benga has a duty to have meaningful discussions with the MD, which Benga has failed to do as part of the Application. The above noted deficiencies provide further evidence that the Panel should recommend to the Minister to outright reject the Application.

⁴⁴ CIAR #928, Hearing Transcript Volume 26: November 27, 2020, pages 5635, 5636.

⁴⁵ Benga's Final Argument, *supra* note 1 at para 67.

⁴⁶ Transcript Volume 6, *supra* note 41 at pages 2060, 2061.

⁴⁷ *Ibid* at page 2063.

⁴⁸ Transcript Volume 19, *supra* note 25 at page 4055, 4056.

⁴⁹ Transcript Volume 14, *supra* note 11 at pages 2873, 2874, 2875.

⁵⁰ CIAR #872, MD of Ranchland Meeting Minutes 2017-2018.

V. CONCLUSION

64. Based on the foregoing, Benga has demonstrated no respect for the pristine area of the MD. The fact that Benga wants to bulldoze and destroy the beauty of Grassy Mountain supports this disturbing proposition.
65. Benga has also failed to adequately consult with the MD on critical issues which are material to the Application. By failing to discuss with the MD, Benga is forcing a coal mine onto the MD and its constituents, which they adamantly oppose, without giving the MD the respect of proper consultation on important issues, such as, without limitation, noxious weed control, water allocation and emergency response.
66. Benga's lack of concrete policies and procedures for the Project is both problematic and disturbing for a billion-dollar project. Benga has continually shown that it wants to have the Application approved, and then develop its policies, for issues such as noxious weed control and emergency response after receiving its license for its coal mine. The Panel should unequivocally reject Benga's approach and lack of concrete planning. This rejection by the Panel, including a subsequent rejection by the Minister, will set an important precedent for future coal mine applications in the region.
67. Instead of attempting to rectify the deficiencies within the Application, Benga has repeatedly resorted to the use of distracting *ad hominen* arguments, by directing arguments against the intervenors and their experts, instead of addressing the concerns raised by those individuals⁵¹.
68. The repeated use of paternalistic rhetoric by Benga, in implying they know what is best for the MD, insults generations of collective knowledge accumulated by the MD and its constituents.
69. The fact that Benga has applied to build this coal mine is outrageous, ill-conceived and short-sighted given the irreparable harm that the MD and its constituents would be subjected to.
70. The "right" thing would be for the Panel to recommend the Minister's rejection of the Application. The Panel has a duty to protect the public interest. In the MD's submissions, the Project is clearly not in the interest of the MD's residents. Based on the voluminous record for the Application, and nearly six (6) weeks of oral submissions, the Panel has the necessary evidentiary basis to recommend that the Application be rejected.
71. Based on the foregoing, the MD submits that the Application, as presented, is not in the public interest of the MD or its constituents. The MD submits that the Panel should recommend to the Minister that the Application be dismissed in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF JANUARY, 2021

CARSCALLEN LLP
<Original signed by>

Per:  Michael B. Niven

⁵¹ Benga's Final Argument, *supra* note 1 at para 386.