

July 22, 2021

# **CONSULTATION REPORT**

## **Grassy Mountain Coal Mine Project (Alberta)**

Last Updated: July 22, 2021

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## 1 Introduction

The Impact Assessment Agency of Canada (the Agency), formerly the Canadian Environmental Assessment Agency, has prepared this report to document the consultations undertaken with Indigenous communities with respect to the Government of Canada's decisions under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) in respect of the environmental assessment (EA) of the Grassy Mountain Coal Project (the Project), as proposed by Benga Mining Limited (the Proponent), for potential impacts to potential or established Aboriginal or Treaty rights.

The intention of this report is to summarize the efforts of the Crown in fulfilling the procedural and substantive aspects of the Crown's constitutional duty to consult and, where appropriate, accommodate with respect to decision-making under CEAA 2012 in respect of the Project.

On June 17, 2021, the Joint Review Panel (the Panel) submitted its EA report for the Project to the Federal Minister of Environment and Climate Change (the Minister). The Panel concluded that the Project is likely to cause significant adverse environmental effects in a number of areas. In particular, the Panel found that the significant adverse environmental effects on surface water quality and the westslope cutthroat trout, a threatened species under the *Species at Risk Act* (SARA), outweigh the low to moderate positive economic impacts of the Project. The Panel, in its role as the Alberta Energy Regulator (AER), concluded that the Project is not in the public interest and denied the Proponent's provincial applications required for the Project to proceed.

The Agency is submitting this Consultation Report to inform the Minister on the adequacy of consultation as discharged by the Crown to date. The Government of Canada has a common law duty to consult and, where appropriate, accommodate, Indigenous Peoples when the Crown contemplates conduct that might adversely impact Aboriginal or Treaty rights protected under section 35 of the *Constitution Act, 1982*. This Consultation Report describes the Agency's consultation efforts and indicates whether the Crown's duty to consult has been fulfilled.

## 2 Environmental Assessment

### 2.1 Description of the Project

The Proponent, is a wholly owned subsidiary of Riversdale Resources Limited, and is proposing to construct and operate an open-pit metallurgical coal mine seven kilometres north of the community of Blairmore in the Crowsnest Pass in southwestern Alberta. As proposed, the mine would occupy approximately 1521 hectares of land and is expected to be operational for 23 years.

Components of the Project include surface coal mine pits and waste disposal areas, a coal preparation plant, and associated infrastructure, including a coal conveyor system, an access corridor, and a rail load-out facility. The proposed Project is a steel-making coal mine capable of producing 4.5 million tonnes of coal per year.

The proposed Project is situated in an area with historic mining thereby not a pristine environment, but the area is still a highly valued landscape by both Indigenous and non-Indigenous peoples.

## 2.2 Initial Phases of the Environmental Assessment Process

The Proponent submitted an environmental impact assessment (EIA) for the Project to the AER and the Canadian Environmental Assessment Agency on November 10, 2015, and submitted an updated EIA on August 15, 2016. The Proponent submitted an integrated application to the AER on October 25, 2017.

On May 14, 2015, the Agency determined that the Project would require an EA under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). On July 16, 2015, the Minister referred the Project to an independent review panel, in accordance with section 38(1) of CEAA 2012. On August 16, 2018, the Minister and the Chief Executive Officer of the AER announced the Agreement to Establish a Joint Review Panel for the Project. Under the agreement, the Panel was tasked with conducting its review in a manner that discharges the responsibilities of the AER under the *Responsible Energy Development Act*, the *Coal Conservation Act*, *Alberta’s Environmental Protection and Enhancement Act* (EPEA), the *Water Act*, the *Public Lands Act*, CEAA 2012, and the Panel’s Terms of Reference.

In August 2019, the *Impact Assessment Act* (IAA) came into force; however, given that the EA of the proposed Project began under the CEAA 2012, the assessment continued following the requirements of CEAA 2012 as per subsection 183(1) of the IAA.

Under CEAA 2012, the Panel assessed whether the Project would cause changes to the environment that would affect:

- current use of lands and resources for traditional purposes;
- physical and cultural heritage;
- any structure, site or thing that is of historical, archaeological, paleontological, or architectural significance; and
- as part of their terms of reference, the Panel also considered the adverse impacts of the Project on asserted or established Aboriginal and Treaty rights of 14 Indigenous communities in Table 1.

**Table 1: List of Indigenous communities**

<p>Treaty # 7 communities:</p> <ul style="list-style-type: none"> <li>• Káínai First Nation</li> <li>• Piikani Nation</li> <li>• Siksika Nation</li> <li>• Stoney Nakoda Nations (SNN) (representing Bearspaw, Chiniki and Wesley First Nations)</li> <li>• Tsuut’ina Nation</li> </ul>	<p>Métis communities:</p> <ul style="list-style-type: none"> <li>• Métis Nation of Alberta (MNA) - Region 3</li> <li>• Métis Nation of B.C. Region 4 (MNBC)</li> </ul> <p>Other First Nations (non-Treaty) :</p> <ul style="list-style-type: none"> <li>• Ktunaxa Nation Council (KNC) (representing ?Akisq'nuk, ?aqam, Lower Kootenay, Tobacco Plains)</li> <li>• Shuswap Indian Band</li> </ul>
<p>Treaty # 6 communities:</p> <ul style="list-style-type: none"> <li>• Ermineskin Cree Nation</li> <li>• Louis Bull Tribe</li> <li>• Montana First Nation</li> <li>• Samson Cree Nation</li> </ul>	<p>Other Indigenous communities:</p> <ul style="list-style-type: none"> <li>• Foothills Ojibway First Nation (non-status)</li> </ul>

## **2.3 EA during the Global Pandemic**

The final stages of the EA were conducted in the context of the COVID-19 pandemic. On April 3, 2020, in recognition of the complex situation arising from the pandemic, and its impacts on Indigenous communities, the Minister extended the time limit for the assessment of the Project by 90 days.

On June 25, 2020, the Panel announced that the information on the public registry was sufficient to proceed to the public hearing stage and a Notice of Hearing was issued on June 29, 2020.

In light of the pandemic, a virtual public hearing was held from October 27 to December 2, 2020, using electronic means (Zoom videoconferencing and streaming through YouTube). Nine Indigenous communities were granted full participation to the hearings. These were as follows: Káínai First Nation, Piikani Nation, Siksika Nation, Tsuut'ina Nation, SNN, KNC, Samson Cree Nation, Shuswap Indian Band, and MNA - Region 3.

The Indigenous communities of SNN, MNA - Region 3, Shuswap Indian Band, and KNC all participated in the hearing by providing written and oral submissions. KNC also presented their final argument focusing on water quality, wildlife, fish and fish habitat, reclamation and cumulative effects.

The Agency provided a written submission (October 23, 2020) focused on a preliminary assessment of the potential impacts of the Project on asserted or established Aboriginal or Treaty rights as described by Indigenous communities. The preliminary assessment was that the Project would likely have adverse biophysical effects that may have implications for the current use of lands and resources for traditional purposes, as defined under CEAA 2012, in addition to potential impacts on the exercise of Aboriginal or Treaty rights.

On December 17, 2020, the Governor-in-Council, under subsection 54(4) of the *Canadian Environmental Assessment Act, 2012*, extended the time limit for the issuance of the Decision Statement for the Project by 135 days. The additional time was to provide the Panel with an adequate timeframe to consider the volume and complexity of information on the record, and to address challenges related to the ongoing pandemic.

On June 17, 2021, the Panel released its environmental assessment report for the Project.

## **3 Indigenous Consultation**

### **3.1 Role of the Agency**

The Government of Canada takes a "whole of government" approach to consultation with Indigenous peoples in respect of the potential adverse impacts of a designated project on the exercise of Aboriginal or Treaty rights in the context of EAs. This ensures that Indigenous communities are, at a minimum, sufficiently consulted when the Government of Canada contemplates action(s) that may adversely impact the exercise of potential or established Aboriginal or Treaty rights that are recognized and affirmed under Section 35(1) of the *Constitution Act, 1982*.

In its capacity as the Crown Consultation Coordinator, the Agency supports and facilitates the integration of consultation activities into the EA process to the greatest extent possible. For EAs by a review panel, this role requires that the Agency lead the Government of Canada in the integration of consultation into the review panel process to the extent possible, to ensure best use of the information

provided to the Panel and an understanding of potential impacts of a designated project on Aboriginal or Treaty rights. The Crown Consultation Coordinator coordinates with Indigenous communities and federal authorities on the review of materials provided by Indigenous communities related to potential project effects and impacts, and assists federal authorities in the consideration of potential impacts on rights in the context of their technical review related to environmental effects.

### **3.2 Consultation and Engagement Activities**

Consultations with Indigenous communities began in 2015, and were fully integrated into all phases of the EA. These consultations consisted of exchanging information, including traditional knowledge, about the potential impacts of the Project on asserted or established Aboriginal rights and interests, and the identification of ways to prevent, mitigate or otherwise address those impacts. The Agency allocated \$714,704 in funding to support the participation of potentially affected Indigenous communities in the EA.

The final 15 months of the consultation process were conducted during an unprecedented global pandemic brought on by COVID-19. The majority of consulted Indigenous communities were heavily affected by the pandemic. As soon as the pandemic began, the Agency asked Indigenous communities about the situation in their communities and validated with them their capacity to continue participating in EA and consultation activities. Due to public health authorities' restrictions relating to the pandemic and the multiple outbreaks in most Indigenous communities in Alberta, it was decided that virtual meetings would replace face-to-face meetings. The communities confirmed their ability to continue working with the Agency and their willingness to meet via videoconference. As a result, between March 2020 and May 2021, approximately 26 virtual and telephone meetings were held.

The Agency maintained communication through letters, phone calls, and emails, and offered teleconferences and videoconferences, to explain the EA process and the proposed consultation approach, explain the Project and the potential changes the Project could cause to the environment, and solicit comments and opinions.

The consultation team extended multiple invitations to communities from March 2020 to June 2021, seeking to continue the dialogue on the assessment of impacts to rights and other concerns related to the Project. Few responses were received during this time, with several communities noting that they were either in negotiations or had concluded relationship agreements with the Proponent. The Agency did not receive any requests for further discussion or dialogue relating to substantive issues connected to the Project.

All Treaty 7 First Nations and MNA Region 3 signed confidential agreements with the Proponent and provided letters to the Panel stating they had no objection to the Project. They indicated that they came to agreement on the basis that the Proponent had addressed their concerns, noting, however that this should not be interpreted as abandoning, waiving or extinguishing their Aboriginal or Treaty Rights. KNC stated at the hearing that they were in discussions with the Proponent with the aim of negotiating an agreement as well. Prior to the release of the Panel report, the Proponent indicated to the Agency that they were nearing an agreement with both KNC and Shuswap.

## 4 Substantive Issues

### 4.1 What the Crown heard

The Project generated a wide range of views from Indigenous communities. Although a number of communities expressed confidence that the Proponent's proposed mitigations would address their concerns, there were a number of outstanding impacts that were highlighted by communities as potentially leading to adverse impacts on Aboriginal and Treaty rights.

Several Indigenous communities raised concerns about the Project's adverse impacts on the use of culturally important sites, access to traditional lands, the preservation of culturally and spiritually important archaeological sites, harvesting, and fish and fish habitat and other adverse environmental impacts affecting water and vegetation. Káínai First Nation in particular noted that impacts to access to culturally important sites adversely affect their ability to transmit their culture to future generations.

Indigenous communities estimated that 80% of the regional study area (RSA) that was studied by the Proponent is already inaccessible for traditional land use due to the privatization of land and fenced areas. Further loss of access to traditional land resulting from the Project would contribute to the cumulative loss of land use already experienced by the impacted Indigenous communities.

### 4.2 Overall Panel Conclusions

#### Treaty 7 Communities

The Panel found that, even with implementation of the Proponent's proposed mitigation, the Project would have a residual effect on Káínai, Piikani, Siksika, Stoney Nakoda, and Tsuut'ina Nations current use of lands and resources for traditional purposes. This is consistent with the Proponent's conclusions.

#### Káínai First Nation (Blood Tribe)

The Panel found that the Project would result in the loss of, or loss of access to, culturally and spiritual important sites adversely affecting the experience and ability of Káínai members to engage in traditional cultural activities and limiting their ability to share knowledge with younger generations. The Proponent's cultural site contingency plan would address archaeological and heritage finds, but the Panel was uncertain if the plan would fully mitigate the effects. The Project would result in considerable effects on areas of cultural importance to Káínai members and have a residual effect of high magnitude on physical and cultural heritage.

The Panel found that the Project, in combination with other projects and activities that have been or would be carried out, would likely contribute to existing significant adverse cumulative effects on Káínai First Nation's current use of lands and resources for traditional purposes and physical and cultural heritage.

Káínai First Nation identified the Project area as one of the few remaining areas where their members can still practise Treaty rights. The Panel found that, if the Project were to proceed, it would have a moderate impact on the Káínai First Nation's Aboriginal and/or Treaty rights that would have a high likelihood of occurring.

#### Piikani Nation

The Panel found that, even with the implementation of the Proponent's proposed mitigation, the Project would have an adverse residual effect on Piikani Nation's physical and cultural heritage,

including direct effects on potential archaeological or cultural sites linked to ceremonies, and indirect effects related to the use of and cultural connection to their traditional territory.

The Panel found that the existing effect is significant. There is a cumulative effect on current use of lands and resources, and physical and cultural heritage for Piikani Nation. The Panel found that the Project, in combination with other projects and activities that have been or would be carried out, would likely contribute to existing significant adverse cumulative effects on Piikani Nation's current use of lands and resources for traditional purposes, and physical and cultural heritage.

Piikani Nation identified the Project area as one of the few remaining areas where their members can still practise Treaty rights. The Panel found that, if the Project were to proceed, it would have a moderate impact on the Piikani Nation's Aboriginal and/or Treaty rights that would have a high likelihood of occurring.

#### *Siksika Nation*

The Panel found that, even with implementation of the Proponent's proposed mitigation, the Project would have a residual effect on structures and sites, such as cairns, ceremonial sites, and campsites that are of historical, archaeological, paleontological, or architectural significance for Siksika Nation.

The Panel noted the spiritual importance of Grassy Mountain and its association for Siksika Nation. The Panel found that the Project would result in the loss of, or loss of access to, culturally and spiritually important sites, which would reduce the ability of members to engage in and carry out traditional activities. The Panel concluded the effects of the Project on Siksika Nation's physical and cultural heritage would be significant.

The Panel found that the Project, in combination with other projects and activities that have been or would be carried out, would likely contribute to existing significant adverse cumulative effects on Siksika Nation's current use of lands and resources for traditional purposes and physical and cultural heritage.

Siksika Nation identified the Project area as one of the few remaining areas where their members can still practise Treaty rights. The Panel found that, if the Project were to proceed, it would have a moderate impact on Siksika Nation's Aboriginal and/or Treaty rights that would have a high likelihood of occurring.

#### *Stoney Nakoda Nations (SNN) (representing Bearspaw, Chiniki and Wesley First Nations)*

None of the cultural resource areas identified by SNN were close to the Project, and SNN provided limited information on the areas on Grassy Mountain that were recognized by their members as meditation sites. Given this limited information, the Panel could not determine the significance on the effects of the Project on any structure, site or thing that is of historical, archaeological, paleontological, or architectural significance to SNN.

Historical pressures have affected SNN's relationship with their traditional territory. The Panel expected that these effects would be exacerbated by the Project, but they could not characterize them or determine their significance based on the evidence.

SNN asserts Aboriginal rights in the project area, and have Treaty rights under Treaty 7. The Panel found that if the Project were to proceed, it would have a low to moderate impact on SNN's Aboriginal and/or Treaty rights that have a moderate likelihood of occurring.



Tsuut'ina Nation

The Panel found that, even with implementation of the Proponent's proposed mitigation, the Project would have an adverse residual effect on Tsuut'ina Nation's physical and cultural heritage, including direct effects on potential archaeological or cultural sites, and indirect effects related to the use of and cultural connection to their traditional territory.

Additional historical pressures have affected Tsuut'ina Nation's relationships with their traditional territory over time. The Panel expected that these effects would be exacerbated by the Project, but they could not characterize these effects or determine their significance based on the evidence.

Tsuut'ina Nation assert Aboriginal rights in the project area, and have Treaty rights under Treaty 7. The Panel found that if the Project were to proceed, it would have a low to moderate impact on Tsuut'ina Nation's Aboriginal and/or Treaty rights that would have a moderate likelihood of occurring.

Treaty 6 Communities

Based on the information provided to the Panel, the Panel did not expect the Project to have any adverse effects on current use of lands and resources, and physical and cultural heritage for Samson Cree Nation, Louis Bull Tribe, Ermineskin Cree Nation, and Montana First Nation. If any of the communities' members do conduct traditional land use or cultural activities in the vicinity of the Project, the Panel anticipated the effects to be limited to those involving access and sensory disturbances. The effects would not be significant.

Additional historical pressures have affected the relationships of Samson Cree Nation, Louis Bull Tribe, Ermineskin Cree Nation, and Montana First Nation with their traditional territories over time. The Panel expected that these effects would be exacerbated by the Project, but they could not characterize these effects or determine their significance based on the evidence. While the Panel agreed with the Proponent that the Project effects would not extend as far as Treaty 6 lands, they acknowledged there is uncertainty related to the extent that Treaty 6 communities harvest resources on lands within Treaty 7, including within the Oldman River watershed. The Panel found that they do not have sufficient information to make any determination of the impact on rights for Samson Cree Nation, Ermineskin Cree Nation, Montana First Nation, and Louis Bull Tribe.

Métis communities

Métis Nation of Alberta (MNA) – Region 3

The Panel found that even with implementation of the Proponent's proposed mitigation, the Project would have a residual effect on MNA - Region 3's current use of lands and resources for traditional purposes. This is consistent with the Proponent's conclusions.

MNA - Region 3 indicated that they have a cultural connection to the RSA, but the Panel received limited information about how the Project may affect their cultural and spiritual use of the Project area. If MNA - Region 3 members conduct cultural and spiritual activities in the vicinity of the Project, the Panel anticipated that their cultural connection to their traditional territory would be limited to those of a sensory nature. The effects would not be significant. MNA - Region 3 provided no evidence to suggest there is any structure, site or thing that is of historical, archaeological, paleontological, or architectural significance to them that would be affected by the Project.

Additional historical pressures have affected MNA – Region 3’s relationship with their traditional territory over time. The Panel expected that these effects would be exacerbated by the Project, but they could not characterize these effects or determine their significance based on the evidence.

The Panel found that if the Project were to proceed, it would have a low impact on MNA – Region 3’s Aboriginal rights that would have a moderate likelihood of occurring.

*Métis Nation British Columbia (MNBC)*

The evidence does not demonstrate that MNBC currently use lands or resources that overlap with either the local study area (LSA) or RSA. The Panel did not expect the Project to have any adverse effects on MNBC. If any of their members do conduct traditional land use or cultural activities in the vicinity of the Project, the Panel anticipates the effects would be limited to those involving access and sensory in nature.

MNBC asserts Aboriginal rights in the Project area. The Panel was not provided with any information to describe the historical relationship between MNBC and the Project area, or details on the conditions required by MNBC to exercise their rights or specific values of importance in assessing rights. The Panel did not have sufficient information to make any determination of impacts of the project on the rights of MNBC.

*Other First Nations (non-Treaty)*

*Ktunaxa Nation Council (KNC) (representing ?Akisq’nuk, ?aqam, Lower Kootenay, Tobacco Plains)*

The Panel found that, even with the implementation of the Proponent’s proposed mitigation measures, the Project would have a residual effect on KNC’s current use of lands and resources for traditional purposes.

The Panel also stated that even with the implementation of the Proponent’s proposed mitigation measures, the Project would have an adverse residual effect on KNC’s physical and cultural heritage due to indirect effects on the use of their traditional territory and their cultural connection to it.

Historical pressures have affected KNC’s relationship with their traditional territory over time. The Panel expected that these effects would be exacerbated by the Project, but they could not characterize these effects or determine their significance based on the evidence.

The Panel stated that if the Project were to proceed, it would have a low to moderate impact on KNC’s Aboriginal rights that would have a moderate likelihood of occurring.

*Shuswap Indian Band*

The evidence does not demonstrate that Shuswap Indian Band’s current use of lands or resources overlap the Project LSA. The Panel did not expect the Project to have any adverse effects on Shuswap Indian Band’s current use of lands and resources for traditional purposes. Should Shuswap Band members conduct traditional land use or cultural activities in the vicinity of the Project, the Panel anticipated the effects would be limited to access and sensory disturbances. The effects would not be significant.

As well, the evidence does not demonstrate that Shuswap Indian Band’s physical and cultural heritage overlap the LSA. Should Shuswap Band members conduct traditional land use or cultural activities in the

vicinity of the Project, the Panel anticipated the effects would be limited to access and sensory disturbances. The effects would not be significant.

Historical pressures have affected Shuswap Indian Band's relationships with their traditional territory over time. The Panel expected that these effects would be exacerbated by the Project, but they could not characterize these effects or determine their significance based on the evidence.

The Panel found that they did not have sufficient information to make any determination of the potential impact on rights for Shuswap Indian Band.

*Other Indigenous communities: Foothills Ojibway First Nation*

The Panel did not have sufficient information to make any determination about the impact of the Project on the rights of Foothills Ojibway First Nation.

#### **4.3 Panel Report Final Conclusions**

The Panel found that the Project will result in the loss of lands used for traditional activities and this would ultimately affect Indigenous communities and their members who use the Project area. The Panel also found that as a result of sensory disturbances from mining and blasting, the Project would have an adverse, but not significant, effect on the current use of lands and resources for Indigenous communities harvesting in the Project area, as well as those harvesting in the RSA. Specifically though, the Panel found that the Project would have a significant adverse effect on physical and cultural heritage for Káínai, Piikani, and Siksika Nations.

These Project effects, in combination with other projects and activities that have been or would be carried out, are likely to contribute to existing significant adverse cumulative effects on the current use of lands and resources by Káínai, Piikani, and Siksika Nations for traditional purposes and physical and cultural heritage.

The Panel found that the Project is not expected to have an effect on Indigenous health conditions.

Lastly, the Panel found that the Project is likely to have an impact on the Aboriginal and/or Treaty rights of the Treaty 7 communities, KNC, and MNA - Region 3. The potential severity of impacts on rights is low to moderate for these communities. For all other communities, the Panel summarized the information they received, but did not have sufficient information to make any determination of impact on rights.

#### **5 Agency's Adequacy of Consultation**

In terms of procedure, the Agency considers that the consultation process conducted to date with potentially affected Indigenous communities was reasonable and properly implemented. Indigenous communities received prompt notification explaining the consultation and EA processes and relevant and sufficient information to assess the potential adverse impacts of the Project on their rights. The Agency demonstrated flexibility in the consultation process, including adjusting its timelines and considering all comments, even when received outside of the formal public comment periods. The Agency made good faith efforts to understand and ensure that the concerns raised by Indigenous communities were appropriately addressed, and responded to in a timely manner.

The Agency is of the view that potentially affected Indigenous communities have had sufficient opportunity to express their views and share their concerns throughout the federal EA process.

The Agency has reviewed all available information on the potential adverse impacts of the Project on the Aboriginal and/or Treaty rights of potentially affected Indigenous communities and has made preliminary assessments of impacts on rights assessments for each of the communities potentially impacted by the project. The Agency shared its views with communities in 2020, prior to the virtual hearings, and sought to discuss further prior to the release of the Panel report at the convenience of Indigenous communities. Following the release of the Panel report, the Agency offered to discuss with Indigenous communities the report and any final considerations.

On July 13, 2021, Chief Stanley Grier of Piikani Nation wrote to the Minister expressing concern that the AER's decision to deny the project would result in the loss of "benefits and opportunities" for Piikani Nation. Chief Grier indicated his support for the Proponent's request that the Minister not issue a decision until the Proponent has had "sufficient time to consider its options, and if it elects to do so, to take steps to exercise the legal remedies available to it."

As of the date of this report, no other Indigenous communities had notified the Agency of any procedural or substantive issues that they wished to discuss following the release of the Panel report. While some Indigenous communities, including the Treaty 7 First Nations and MNA Region 3, entered into confidential agreements with the Proponent in respect of the Project, none of them raised issues relating to potential economic or social interests in the Project proceeding and how those interests may be adversely impacted if the Project were to not proceed.

## **6 Conclusion**

The Agency is of the opinion that the Crown has fulfilled its duty to consult in the event that the Minister accepts the Panel findings of significant adverse environmental effects relating to matters within federal jurisdiction and in the event that the Governor-In-Council decides that these effects are not justified in the circumstances thereby preventing the project from proceeding.

However, if the Minister does not agree with the Panel findings of significant adverse environmental effects relating to matters within federal jurisdiction or if the Governor-In-Council determines that these effects are justified in the circumstances, the Agency is of the opinion that the Crown has not yet fulfilled its duty to consult and further consultation is required on:

- Panel report findings;
- Agency's Decision Statement conditions;
- Agency's Final Assessment on the Impacts to Indigenous rights and interest; and
- Potentially required accommodation.