

EAO's Assessment of an Application for Certificate Extension

MURRAY RIVER COAL PROJECT (#M15-03)

Requested by:
HD Mining International Ltd.

JULY 14, 2020

Pursuant to Section 31 of the Environmental Assessment Act, S.B.C. 2018, c.51



EAO

Environmental
Assessment Office

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MURRAY RIVER COAL PROJECT - #M15-03

1.0 OVERVIEW OF REQUESTED EXTENSION

HD Mining International Ltd. (HD Mining) received an Environmental Assessment Certificate (EAC) #M15-03 under the *Environmental Assessment Act*, 2002 for the Murray River Coal Project (the Project) on October 1, 2015. The Project also required a federal Environmental Assessment (EA) under the *Canadian Environmental Assessment Act*, 2012, and federal approval for the Project was granted on December 13, 2017. Documentation relating to the provincial EA of the Project, the EAC, Certified Project Description (CPD), and Table of Conditions (TOC) are on the Environmental Assessment Office (EAO) [Electronic Project Information Centre \(EPIC\)](#).

[Section 31\(2\)](#) of the 2018 *Environmental Assessment Act* (the Act) allows for the holder of an EAC to apply for an extension of the deadline specified in the EAC for substantially starting the project. A decision is required from the Chief Executive Assessment Officer (CEAO) of the EAO on whether to provide a maximum five-year extension to EAC #M15-03 for the Project. HD Mining initially applied for an extension on December 19, 2019, as the EAC was set to expire on October 1, 2020. The EAO requested further information to support HD Mining's request, which was provided on February 28, 2020 (December and February documents are henceforth referred to as the Extension Application). The EAO accepted the Extension Application for review on March 6, 2020. Included in the Extension Application were letters of support for the Project from Saulteau First Nations, West Moberly First Nations and Halfway River First Nation.

HD Mining stated that the Project is not anticipated to be substantially started before the October 1, 2020 deadline and that the reasons for the Extension Application relate primarily to market and financing challenges. The Extension Application also notes uncertainties stemming from the potential need for southern mountain caribou protection in the Project area. HD Mining also cited the federal EA decision as a reason for delay, as federal approval was granted in December 2017, two years after the 2015 provincial EA approval. Due to this delay, HD Mining stated they experienced labour force disruptions due to challenges in foreign worker permits and the limited trained underground coal workforce in Canada. An extension to the EAC would allow for HD Mining to address marketing and financing challenges to allow for a substantial start by October 1, 2025.

2.0 PROJECT DESCRIPTION

The Project involves the construction and operation of an underground coal mine, located approximately 12.5 kilometres south of Tumbler Ridge. The EA assessed the underground coal mine and supporting surface infrastructure, including a coal processing facility, 230 kilovolt transmission line and substation, and natural gas pipeline. The Project required an EAC as its proposed annual production of 4.8 million tonnes per year of clean coal exceeds the 250,000 tonnes per year threshold in the *Reviewable Projects Regulation* (2002). The EA of the Project included the underground coal mine and the supporting surface infrastructure including the coal processing and load out site. The Project would have an estimated 25-year operating life. Once operations have ceased, the decommissioning and reclamation will take three years. Reclamation activities and post-closure monitoring will continue during the post closure phase. The Project is anticipated to create around 19,100 person-years (764 jobs) of direct employment.

HD Mining received a non-material amendment to its EAC on March 23, 2018. The amendment added two components to the Project, including a laydown area to the coal processing site and a ventilation system to the shaft site. Two figures were also updated in the CPD.

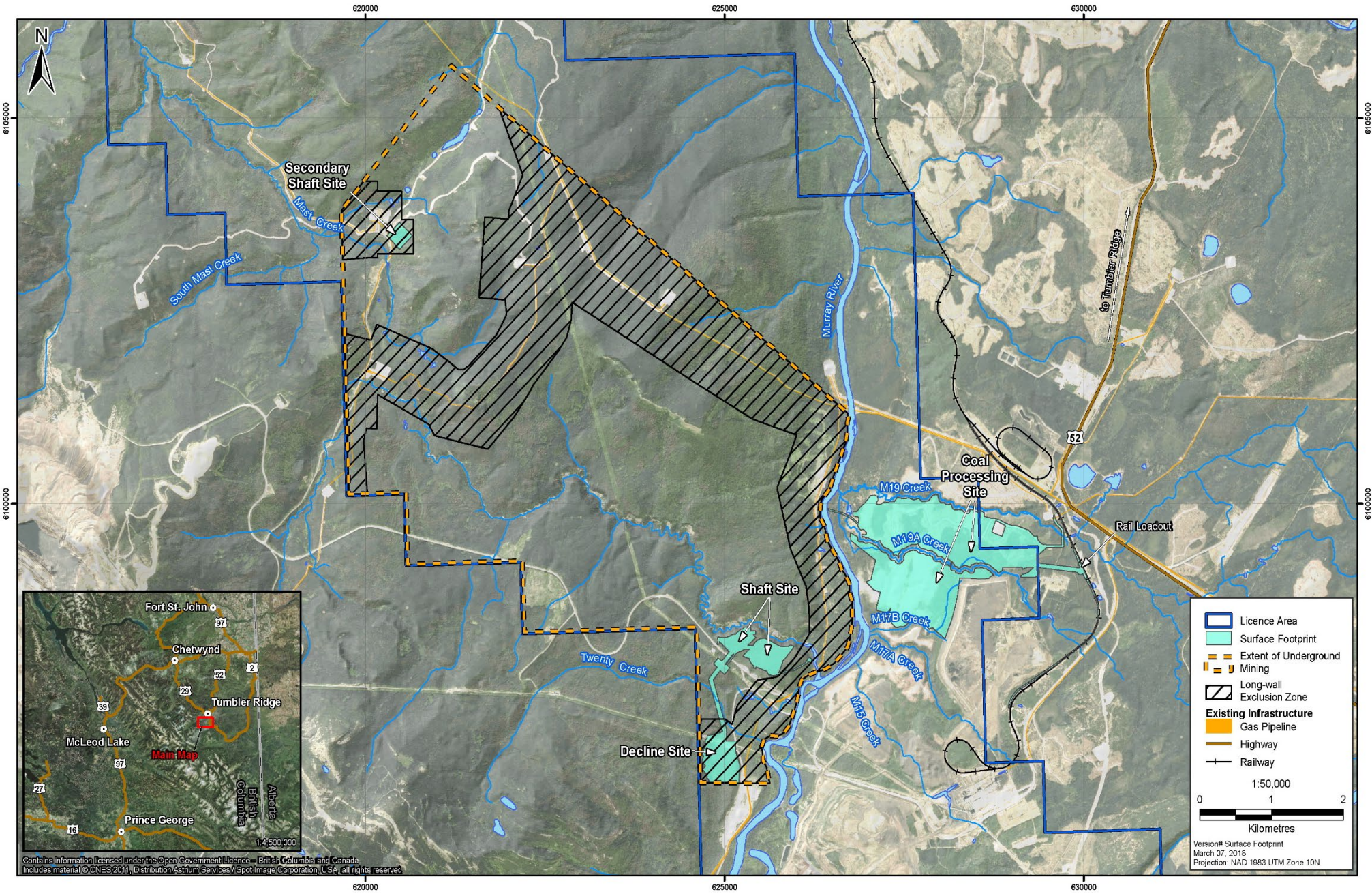


Figure 1. Project Overview

3.0 EXTENSION APPLICATION REVIEW

The EAO engaged Technical Reviewers, who were previous members of the EA Working Group, to assist in the review of the Extension Application. The following participants were invited to review the Extension Application: Ministry of Energy, Mines and Petroleum Resources (EMPR), Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD), Ministry of Indigenous Relations and Reconciliation (MIRR), District of Tumbler Ridge, Ministry of Transportation and Infrastructure, Ministry of Environment and Climate Change Strategy (ENV) and Sauteau First Nations, West Moberly First Nations, McLeod Lake Indian Band, Horse Lake First Nation and Halfway River First Nation. The EAO also notified the Impact Assessment Agency of Canada of the Extension Application, for their information, as the Project had previously undergone a coordinated EA review.

As outlined in the Section 11 Order issued in December 2012, the Project area lies in, or is in the vicinity of, the traditional use territories of West Moberly First Nations, Sauteau First Nations, and McLeod Lake Indian Band. As such, these three groups were consulted during the EA regarding potential adverse effects on their Treaty 8 rights. Also, in accordance with the Section 11 Order, the EAO notified Fort Nelson First Nation, Prophet River First Nation, Doig River First Nation, Blueberry River First Nations, and Halfway River First Nation of key project milestones. The EAO also provided notifications of key project milestones to Horse Lake First Nation in accordance with a Section 13 Order issued in December 2014. During the non-material amendment review in 2018, the EAO moved to consult deeper with Horse Lake First Nation due to a change in boundaries.

Consistent with the above approach, on March 6, 2020, the EAO invited West Moberly First Nations, Sauteau First Nations, McLeod Lake Indian Band and Horse Lake First Nation to be participating Indigenous nations in the Extension Application review. The EAO sought feedback on the approach and schedule for engaging on the review of the Extension Application, and also informed the participating Indigenous nations that before a decision is made on the Extension Application, the EAO will be seeking to achieve consensus. Fort Nelson First Nation, Prophet River First Nation, Doig River First Nation, Blueberry River First Nations and Halfway River First Nation were notified of the Extension Application review and provided a copy of the Extension Application.

The Technical Reviewers were given three weeks to review and comment on the Extension Application. The purpose of this engagement was to better understand whether there had been any changes to the Project setting the EAO should be aware of, or if the Technical Reviewers had any concerns with the EAO granting an extension request. The EAO received comments from EMPR, FLNRORD and ENV. District of Tumbler Ridge submitted a comment supporting the Extension Application. Other Technical Reviewers did not comment on the Extension Application or indicated that they had no comment. The EAO received comments from McLeod Lake Indian Band and did not hear back from West Moberly First Nations or Horse Lake First Nation. The EAO corresponded with Sauteau First Nations, who indicated it was providing an independent review in April 2020, however, it was not received. Engagement with Indigenous nations is described in [Section 6](#) of this Extension Report.

Key issues identified in relation to the Extension Application are outlined in [Section 5](#) of this Extension Report. The EAO requested that HD Mining respond to comments from Technical Reviewers, which are documented in the "Murray River_HD Mining's Responses Tracking Table" and a corresponding memo. The EAO provided this tracking table alongside the draft Extension report for Technical Reviewers to for concurrent review on May 22, 2020. The Technical Reviewers were given three weeks to review and comment. The EAO received responses from EMPR, ENV and FLNRORD. EMPR responded to state it had no concerns with the Report and the Extension. ENV responded to state that its comments had been addressed and it supported the proposed extension. FLNRORD responded to state its comments had been addressed and represented accurately in the draft Extension Report.

4.0 REGULATORY CONTEXT AND REQUIREMENTS

HD Mining is subject to permitting requirements under the *Mines Act* and the *Environmental Management Act*, along with various authorizations related to access and ancillary infrastructure (e.g. License to Cut, Water License, and License of Occupation). HD Mining indicated it received its Provincial *Mines Act* Permit C-244 on April 6, 2018. HD Mining has indicated it has received all other required provincial authorizations required to operate the Project.

5.0 SUMMARY OF ISSUES AND EFFECTS

5.1 Environmental Effects

5.1.1 Caribou

HD Mining indicated in its Extension Application that decisions on southern mountain caribou population caused delays in the Project development. In May 2018, Environment and Climate Change Canada announced this caribou population was facing an imminent threat and an emergency protection order may be required, which was followed by a period of extensive consultation. The Southern Mountain Caribou Bilateral Conservation Agreement¹ (Section 11) and the Inter-Governmental Partnership Agreement for the Conservation of the Central Group of the Southern Mountain Caribou (Partnership Agreement)² were released as drafts in 2019 and were signed on February 21, 2020. The Section 11 Agreement is a conservation agreement between the federal and provincial governments under Section 11 of the *Species at Risk Act* (2002) (SARA) to establish a framework for cooperation and describe the commitments, measures, and strategies that will be undertaken to support the recovery of southern mountain caribou in British Columbia (B.C.) to self-sustaining populations, aligning outcomes with the 2014 Federal Recovery Strategy³ and with the rights of directly-affected Indigenous Groups. The Section 11 Agreement also aligns with B.C.'s Provincial Caribou Recovery Program. The Partnership Agreement sets out the actions that the parties agree to take to stabilize and grow the Central Group of southern mountain caribou to levels that are self-sustaining and support the re-establishment of a meaningful First Nations' harvest. The areas for protection identified in the Partnership Agreement are outside of the Project area. In support of these initiatives, HD Mining has identified 967 hectares of coal tenures to include in the interim protection areas selected by the Province.

The provincial EA concluded that the Project would have negligible effects on low elevation caribou habitat and that no high-quality caribou habitat was identified in the Project footprint. The EAO found that the incremental effects of the Project on caribou would be small and any effects would be effectively mitigated by the Wildlife Management Plan and other mitigations required in the EAC Conditions.

A Technical Reviewer with FLNRORD commented that there has been no change to caribou policy in the Project area since the EAC was granted and that the EA findings remain valid. Further, there has been no change to how the habitat is considered or classified and it remains as low elevation matrix range. FLNRORD highlighted the Partnership Agreement reflects a commitment from the Province of "immediately stabilizing and expeditiously growing the population of the Central Group to levels that are self-sustaining and support traditional Aboriginal harvesting activities, consistent with

¹ Government of Canada. *Southern Mountain Caribou in British Columbia: bilateral conservation agreement between Canada and British Columbia*. February 21, 2020. Accessed at: <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/conservation-agreements/southern-mountain-caribou-british-colombia-2020.html>

² Government of Canada. *Intergovernmental partnership agreement: central group Southern Mountain Caribou*. February 21, 2020. Accessed at <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/conservation-agreements/intergovernmentalpartnership-conservation-central-southern-mountain-caribou-2020.html>

³ Government of Canada. *Recovery Strategy for the Woodland Caribou, Southern Mountain population (Rangifer tarandus caribou) in Canada - 2014 [Final]*. Accessed at <https://www.registrelep-sararegistry.gc.ca/default.asp?lang=En&n=5837FBB5-1&offset=1&toc=show>

existing Aboriginal and Treaty rights”, and any decision maker associated with Murray River should consider how the stated “minor impacts on low elevation caribou habitat” relates to meeting this commitment.

FLNRORD stated it would look to the forthcoming Caribou Mitigation and Monitoring Plan (CMMP) to analyze the protection measures HD Mining is considering onsite. The EAO has required a Wildlife Management Plan in the EAC, which requires HD Mining’s wildlife mitigations to align with management direction of the Peace Northern Caribou Plan. The Peace Northern Caribou Plan requires CMMPs be prepared for any project that impacts identified high elevation caribou habitat. Although no high-quality caribou habitat was identified in the Project footprint, FLNRORD recommended that all major projects within the Quintette range prepare a CMMP to consider and mitigate specific impacts to caribou. FLNRORD noted that they would be reviewing the Wildlife Management Plan once developed to ensure the relevant caribou mitigation measures are included appropriately in the plan. The EAO also notes that the federal approval requires the development of a CMMP.

5.2.2. Ecosystems

FLNRORD submitted comments related to Qualified Environmental Professionals (QEPs), at risk bat species and Bull Trout. Firstly, in the Extension Application, HD Mining indicated that it was not aware of any new information, including information related to physical changes to the landscape, watershed or airshed, since the EAC was granted in 2015 that would impact the conclusions reached in the EAC. In response to this, FLNRORD sought clarification as to whether relevant QEPs undertook a review to support these claims. HD Mining prepared a memo in response, signed by a Wildlife Biologist, a Registered Professional Fisheries Biologist and a Professional Geoscientist to discuss the analysis that went into the statement regarding lack of new information. The memo also states that #M15-03 and the *Mines Act* permit include conditions that the Project maintain a Wildlife Management Plan that is prepared by a QEP. The Plan is to be updated at minimum 90 days prior to the start of construction.

FLNRORD sought clarification as to whether HD Mining considered a recovery strategy for three at risk bat species (Little Brown Myotis, the Northern Myotis and the Tri-colored Bat) in the original EA. In response, HD Mining conducted an evaluation of whether any species listed by Committee on the Status of Endangered Wildlife in Canada (COSEWIC) have subsequently been listed by SARA and whether any recovery strategies were produced since the EAC was issued. Since the EAC Application was submitted, several species have been added to SARA Schedule 1, including two bat species, the Little Brown Myotis and Northern Myotis (endangered). The recovery strategy for at risk bat species was released after the EAC Application was submitted. HD Mining stated that hibernacula was identified as critical habitat for the bat species at risk. The closest known hibernacula are listed in the recovery strategy exist between Hudson Hope and Fort St. John, none exist in the Project site. HD Mining referenced the EAC Application, which found no potential for cave-based hibernacula at the Project site, due to a lack of karst formations and natural cave systems.

Under the *Mines Act* permit, HD Mining will be required to monitor the presence of bats in the permit, prior to construction and throughout the operations. An operational management plan would also be required within 30 days of any bat observations, alongside pre-construction surveys, lighting and noise mitigations and setback requirements. FLNRORD highlighted that the Western Arctic DU population of Bull Trout now appears on Schedule 1 of SARA as a species of Special Concern. FLNRORD further stated that a management plan will be developed for the species to provide measures of progress and management goals and questioned whether the mitigations proposed by HD Mining is still adequate in consideration of the change in conservation status for Bull Trout.

In response to this, HD Mining stated that the change in conservation status for Bull Trout does not change the intended mitigation approach: the construction of rock weirs on M20 Creek prior to the start of longwall mining and on Mast Creek later in mine life. HD Mining also highlighted that 12 conditions related to fish and fish habitat were associated with the

federal EA decision, one of which requires further consultation with the Department of Fisheries and Oceans (DFO) and Indigenous nations prior to installing rock weirs. In addition, changes to the *Fisheries Act* since the EAC was issued will require further discussion with DFO before construction. The Water License 500270 (PG193554) requires an updated design in conjunction with the latest water modelling predictions. The EAC and the Water License both require the Fish and Fish Habitat Management Plan, which HD Mining will be required to update at a minimum of 90 days prior to construction.

A Technical Reviewer with ENV highlighted that since issuance of the EAC for Murray River, the nearby Wolverine Mining Project has proposed the Hermann expansion, which has a receiving environment that overlaps that of the Murray River Coal Project. In response to this, HD Mining stated that it considered Hermann mine as a reasonably foreseeable project in its cumulative effects assessment. Murray River's aquatic monitoring program includes sampling locations downstream of Conuma Coal Resources Limited's (Conuma) Hermann Mine, but upstream of Murray River, at M20 Creek. The recent EAC amendment request by Conuma for the Wolverine Coal Mine Project included Murray River in its cumulative effects assessment. Further, HD Mining participated in the Murray River Watershed Aquatic Cumulative Effects Assessment Committee, which is working to develop an aquatic cumulative effects assessment intended to inform future management decisions. After reviewing this Report, ENV stated this comment was addressed.

5.2 Economic Impacts

The December 2019 request indicated that although a considerable amount of work and planning has occurred, that the Project would not be substantially started before the October 2020 expiry. The February 2020 request further indicated that HD Mining has spent over \$200 million on the bulk sample program, exploration work, the EA and permitting. The bulk sample program involved the construction of a decline rock tunnel, which was completed in 2016, at the cost of \$50 million. Additional work involved the installation of the shaft site and the construction of discharge facilities for the decline site and shaft site and facilities for waste rock storage. HD Mining indicated in the February 2020 supplemental information that the volume of work that has occurred at the site means HD Mining is proceeding on the basis that this work could be taken into consideration if a substantial start decision was required.

HD Mining has spent over \$200 million on the Project; including on the EA, permitting, exploration work, the bulk sample program and the decline construction. The Project is anticipated to create 19,100 person years of direct employment, amounting to 764 jobs. The Extension Application estimates the Project would have an estimated \$10.7 billion in total operating expenditures, of which \$9.96 billion (93%) would be spent in Canada.

5.3 Permitting Requirements

In its comments, ENV included a suggestion to update the EAC for consistency with *Environmental Management Act* (EMA) permitting requirements, as 5 management plan conditions referenced submitting plans with permit applications. As per Section 4 of this Extension Report, EMA permitting is now complete, and these 5 plans are to be submitted 60 days prior to Construction. The EAO looked to address this suggestion by updating the EAC for consistency with permitting requirements, however, concluded that to update this language would also require a number of other changes to modernize the EAC, including the addition of new template conditions, all of which could have compliance implications. It is the Proponents responsibility to ensure compliance with the timelines in the EMA permit as well as the EAC as they move forward with the development of plans into the future. This information from ENV assists in EAO's understanding of timing implications for this EAC and for any future compliance determination on those specific conditions with that reference the EMA permits.

6.0 INDIGENOUS NATION ENGAGEMENT

6.1 HD Mining-Led Engagement

The Extension Application outlined that HD Mining has undertaken significant consultation for this Project, including the signing of Impact Benefits Agreements with Saulteau First Nations, West Moberly First Nations, and Halfway River First Nation. These Indigenous nations provided letters of support which were included in HD Mining's December 2019 Extension Application. HD Mining also has a protocol agreement with McLeod Lake Indian Band. HD Mining sent correspondences to Halfway River First Nation, West Moberly First Nations, Saulteau First Nations and McLeod Lake Indian Band in October and November 2019. These correspondences included offers to meet for a discussion on the extension request. HD Mining had not received responses to these requests.

HD Mining indicated it had discussed the extension request with West Moberly First Nations during a joint meeting on another Project. HD Mining also indicated they provided copies of the Extension Application to Halfway River First Nation, West Moberly First Nations, Saulteau First Nations and McLeod Lake Indian Band. HD Mining has indicated it provided the Project's annual review as well as updates to various permitting documents to these Indigenous nations in April 2020.

The letters of support included in the Extension Application stated that West Moberly First Nations, Saulteau First Nations and Halfway River First Nation supported the Project. These letters also described that each Nation would not oppose or challenge the approvals required for the construction and operations of the Project and that no additional compensation or measures or accommodation from the Province or Canada would be sought.

6.2 EAO-Led Engagement

As noted in [Section 3](#) of this Extension Report, on March 6, 2020, the EAO invited West Moberly First Nations, Saulteau First Nations, McLeod Lake Indian Band and Horse Lake First Nation to be participating Indigenous nations. On March 6, 2020, the EAO also notified and provided copies of the Extension Application to Fort Nelson First Nation, Prophet River First Nation, Doig River First Nation, Blueberry River First Nations and Halfway River First Nation.

During the review period, a public health emergency was declared on March 17, 2020 in relation to the COVID-19 pandemic. With respect to the Indigenous nations who were invited to engage as participating Indigenous nations in the Extension Application review, the EAO was aware that West Moberly First Nations, Saulteau First Nations and McLeod Lake Indian Band had closed their offices for non-essential services and staff were shifting to work from home as much as possible, which could affect consultation timelines. Horse Lake First Nation had informed the Province that its staff would continue to review files remotely. By March 17th, the EAO had not yet received any responses from these Indigenous nations on the March 6, 2020 correspondence. The EAO followed up with these Indigenous nations on March 30, 2020 to check in on how each Indigenous nation's office was operating during the COVID 19 pandemic, and to offer additional time for their review of the Extension Application.

Saulteau First Nations responded to indicate additional time was required to review the request and to internally discuss previous consultation on the Project. Saulteau First Nations informed the EAO that it had requested an independent review of the information in the Extension Application. The EAO followed up with Saulteau First Nations on May 6, June 8, June 19 and June 24, 2020 but no further information was provided.

The EAO provided a draft of this Report to Saulteau First Nations, West Moberly First Nations, McLeod Lake Indian Band and Horse Lake First Nation on May 22, 2020, for a three-week review period, indicating the opportunity to seek consensus on any concerns identified, including in relation to the conclusions and recommendations. When providing the Extension Report for review, the EAO offered the continued opportunity for Indigenous nations to review and comment

on the Extension Application. The EAO followed up on this request on June 8, 2020 to offer additional time and a teleconference meeting to discuss.

On June 8, 2020, McLeod Lake Indian Band stated their trust in the technical review on the Application and that future comments will be warranted if the Project is determined to have additional effects on Treaty Rights. McLeod Lake Indian Band also sought confirmation that if any changes were expected to affect the EAC or if there was any intent to develop the mine or any mine components, that they would be consulted and finally that the EAC will expire if mine development is not started at the end of the five-year extension. The EAO confirmed that McLeod Lake Indian Band will be consulted in the development of the management plans where required or noted in the EAC, that further consultation will be required if HD Mining were to seek any changes to the EAC, and that the EAC will expire if the Project is not substantially started at the end of the extended five-year period.

On June 19, 2020, the EAO called and left messages for Saulteau First Nations, West Moberly First Nations and Horse Lake First Nation to follow up on the EAO's initial request of March 6, 2020 for comment on the Extension Application and of May 22, 2020 for review of the draft Extension Report and. The EAO did not receive any response.

7.0 CONCLUSIONS

Based on:

- The information contained in HD Mining's Extension Application;
- HD Mining's consultation with Indigenous nations;
- The EAO's engagement with Indigenous nations and Technical Reviewers;
- Comments on the Extension Application from Technical Reviewers, and HD Mining's responses to those comments;
- The impact benefit agreements between West Moberly First Nations, Saulteau First Nations and Halfway River First Nation and HD Mining, as well as the Protocol Agreement between McLeod Lake Indian Band and HD Mining;
- HD Mining's requirements under the EAC to mitigate and monitor the effects of Murray River;

The EAO is satisfied that:

- The clarifications requested by Technical Reviewers, which were within the scope of the assessment of the Extension Application, were adequately and reasonably addressed by HD Mining;
- There are no changes proposed to the EAC and the conclusions predicted in the original EA of Murray River are still valid;
- The extension request is unlikely to cause incremental or additional negative effects to the Indigenous nations or their Treaty 8 rights;
- Efforts to seek consensus on any concern that Indigenous nations raised with the Extension Application and these conclusions were undertaken, with consideration given to the purpose of the EAO to support reconciliation with Indigenous peoples in B.C. as set out in [Section 2\(2\)\(b\)\(ii\)](#) of the Act;
- The provincial Crown has fulfilled its statutory and constitutional obligations owed to Indigenous nations relating to the issuance of an extension to the EAC; and
- The EAC should be extended.

The EAO recommends that the Chief Executive Assessment Officer of the EAO, upon consideration of the Extension Application and conclusions in this Report and any other relevant factors, issue an extension of the EAC under [Section 31](#) of the Act to allow for a one-time, five-year extension of EAC #M15-03 for the Murray River Coal Project. The EAO notes that all other conditions and requirements arising from the original assessment (unless altered by this extension) remain

in effect for the duration of the lifecycle of the Project. Extending the EAC would allow the EAC Holder an additional five years to obtain required regulatory approval and substantially start the Project. If the Project is not substantially started in five years, the EAC will expire.