

# Coal and the Public Interest in Alberta

A brief submitted to the Government of Alberta Coal Policy Committee,  
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## Executive Summary

We are four Albertans from all across the political spectrum, all with deep experience in the realm of resource policy and law and public consultation. Because of our diverse political leanings, we have many disagreements, but we have found common ground on issues posed by coal mining in Alberta.

We have come together to advise the Coal Policy Committee that, in our collective view, coal surface mining has no place in the future of Alberta's Eastern Slopes.

The public interest is not served by surface coal mines in the Eastern Slopes. We say this for reasons of water security, conservation values, quality of life, economic costs and benefits, and the image of our province in the minds of its citizens and the world.

Albertans from all walks of life and perspectives share a deep love of nature in the Rocky Mountains. That is a major element of what makes this province special. That is what unites the four of us. We may use the land differently, but we share a fierce loyalty to it. Surface coal mining is not a competing use with other uses such as hunting, fishing, grazing, forest management or non-mechanized recreation. It is a dominant use that displaces and degrades those other uses.

We recommend a revised Coal Policy that prohibits new coal surface mines in Alberta's Rocky Mountains and foothills (the Eastern Slopes). Currently active coal mines actually in operation may continue but should not be permitted to expand, and when retired they should be robustly reclaimed with special attention paid to long-term selenium pollution mitigation.

## Planning and Regulating Coal in Alberta: the Public Interest

The terms of reference of this committee (ToR) entail consideration of the "public interest" with respect to matters "under the Minister [of Energy's] administration." These matters include three pieces of relevant legislation – the *Mines and Minerals Act*, the *Coal Conservation Act*

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<sup>1</sup> see end-notes for author information

(CCA),<sup>2</sup> and the *Responsible Energy Development Act* (REDA) – each of which stipulates or implies “public interest” criteria. The CCA, for example, seeks “to ensure the orderly, efficient and economic development of Alberta’s coal resources in the public interest” (s.4(c)). The CCA does not specify that coal development is always in the public interest; it indicates that coal development must be in the public interest in order to proceed and that, when that occurs, it needs to proceed in an orderly, efficient and economic manner. This distinction is made more explicit in section 8.1(1) which tells the regulator not to grant a permit, license or approval unless “...in its opinion it is in the public interest to do so.”

The three Acts specified by the ToR exemplify but do not exhaust what is “includ[ed] in the [energy] Minister’s administration.” The other obviously relevant law is the [Alberta Land Stewardship Act](#) (ALSA), which enables the development of regional land use plans in “the public interest.”

We appreciate that the current consultation is limited to planning coal and does not therefore extend to the kind of broad land use planning envisaged by the ALSA. Nevertheless, the ALSA and its planning principles are highly relevant to planning for coal because the Regulator is directed by s.20(1) of the REDA<sup>3</sup> to “act in accordance with any applicable” land use plans established under the [Alberta Land Stewardship Act](#) (ALSA). In other words, the broad discretion granted to the Alberta Energy Regulator under its legislation is specifically constrained by approved regional plans. This means that since any new coal policy must align with regional plans developed under the ALSA, it should be developed with an eye to ALSA principles.

Central to those principles is the concept of “public interest.” Indeed, the very first section of the Act (1(1)) declares that

In carrying out the purposes of this Act as specified in subsection (2), the Government must respect the property and other rights of individuals and must not infringe on those rights except with due process of law and to the extent necessary for the overall greater public interest.

In simple terms, the “public interest” requires striking a balance between the Act’s general purposes and rights negatively affected by the pursuit of those purposes. In fact, it also requires balancing the Act’s general purposes, namely the “economic, environmental and social objectives” set out in s.1(2).

We note that this is precisely the approach to public interest taken in the recent Grassy Mountain decision by the Joint Panel established by the Alberta Energy Regulator (AER) and the federal government.<sup>4</sup> Determining the “public interest,” said the panel, “involves comparing and weighing the potential positive and negative impacts ... across economic, environmental, and social domains.”

We maintain that this ALSA-consistent approach to determining the “public interest” across economic, environmental and social domains should apply to consideration of surface coal mining throughout the eastern slopes and is within the scope of this committee’s mandate. A

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<sup>2</sup> Coal Conservation Act [https://www.qp.alberta.ca/1266.cfm?page=c17.cfm&leg\\_type=Acts&isbncln=9780779772544](https://www.qp.alberta.ca/1266.cfm?page=c17.cfm&leg_type=Acts&isbncln=9780779772544)

<sup>3</sup> Responsible Energy Development Act <https://www.qp.alberta.ca/documents/Acts/r17p3.pdf>

<sup>4</sup> Decision 2021 ABAER 010: Benga Mining Limited, Grassy Mountain Coal Project, Crowsnest Pass June 17, 2021. ISBN: 978-0-660-38706-2

new coal policy devised in this manner will fit well with subsequent land-use planning under the ALSA.

## **Comparing and weighing the potential positive and negative impacts across economic, environmental, and social domains**

### **Water Security**

The Eastern Slopes provide most of the water that supports Alberta communities and Alberta's economy. Vegetation cover and the underlying soils are vital for the capture, retention and quality of water because of their role in impeding spring runoff and recharging the groundwater aquifers that sustain stream flows.

The importance of the Eastern Slopes in this regard is reflected in the South Saskatchewan Regional Plan<sup>5</sup> which sets watershed protection as the highest priority for land use in that region. A healthy eastern-slopes landscape is vital to the province's future water supply, especially in light of growing demand for water at a time of climate changes that increase risk.

As important as protection of the quantity and seasonal flows of streams draining from the Eastern Slopes, is the need to protect water quality. The Coal Policy Committee has heard compelling evidence on the selenium, arsenic, carbonate and other contamination problems that arise downstream from coal surface mines. These are problems that persist for decades after coal mines close, becoming liabilities to the public.

Climate change means we will have increasing pressure on our freshwater supply which we share with our downstream neighbours in Saskatchewan. We should be doing everything possible to maintain the quality and quantity of natural flows of the Eastern Slopes as a bedrock principle of this province's public interest.

In its decision (as part of a joint federal-provincial review panel) to reject the Grassy Mountain Coal Mine proposal, the Alberta Energy Regulator<sup>6</sup> concluded that the risks to surface water quality were significant and unmitigable by existing technologies that the proponent had identified. That risk to surface water quantity and quality was a primary reason why the AER concluded that Grassy would not be in the public interest. The same reasoning applies to any open-pit coal mining in the Eastern Slopes: it is not in the public interest.

### **Conservation**

It is in the public interest of Albertans to protect and restore native biodiversity and mitigate the risks of climate change to native plants and animals. This is both an ethical obligation reflected in provincial and federal legislation and international treaties, and a pragmatic consideration for a Province whose economy depends largely on access to global markets for our oil and gas.

Metallurgical coal lies in drainage basins that sustain the habitat of provincially and federally listed species at risk including westslope cutthroat trout, bull trout and Athabasca rainbow

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<sup>5</sup> <https://open.alberta.ca/dataset/460ac866-4416-4d77-a25a-a02fab85a6ec/resource/8261ce03-aa0f-4621-8e2d-c610a72ac37c/download/south-saskatchewan-regional-plan-2014-2024-february-2017.pdf>

<sup>6</sup> Op. cit.

trout<sup>7</sup>. Surface mining of that coal disrupts groundwater processes that sustain critical base flows for those streams and increases the risk of sedimentation and flood events that damage their structure<sup>8</sup>. Beyond fish, gravel-bed river floodplains with intact hydrological processes are the ecological nexus of the eastern slopes for the full range of biodiversity including grizzly bears, elk, birds, plants, amphibians, and aquatic insects.<sup>9</sup> Wildlife connectivity north-south along the mountains and up and down streams and rivers would also be compromised by coal mines, new roads and heavier traffic.

In its decision to reject the Grassy Mountain Coal Mine proposal, the Alberta Energy Regulator (as part of a joint federal-provincial review panel) concluded that selenium pollution, calcification of stream sediments, changes to groundwater discharge, water withdrawals and sedimentation issues associated with that proposed surface mine would cause significant harm to westslope cutthroat trout populations and that the company had not demonstrated an ability to avoid or effectively mitigate them.

The inevitable damage to the habitat of a threatened native fish species was a primary reason why the AER concluded that Grassy would not be in the public interest. The same reasoning applies to any open-pit coal mining in the Eastern Slopes given that most of the land currently leased for potential coal development is in basins that sustain habitat for westslope cutthroat trout, bull trout and/or Athabasca rainbow trout, all of which are classified as species at risk. Coal mining on the Eastern Slopes, for that reason, is not in the public interest.

Surface mines involve removing native vegetation, including provincially and federally listed species at risk like white bark and limber pine, and significantly reducing the biodiversity of the landscape even after reclamation. Many scientific publications and the recent G7 Leaders' 2030 Nature Compact<sup>10</sup> recognize that there is a global biodiversity crisis. Open pit coal mining can only make it worse at a time when we need to be moving towards a more nature-positive world.

Alberta has a critical need for biodiversity conservation success stories not only because they are needed to protect nature and our quality of life but also to counterbalance attacks on our oil and gas economic sector that threaten continued access to global markets. What Alberta does not need is an unnecessary fight over coal that clearly damages biodiversity while contributing relatively little to the overall economy.

## **Quality of Life**

What we do to our most treasured landscape tells our kids, downstream neighbours, and the world a lot about us. In a world where capital and labour are increasingly mobile, protecting the image of our province, keeping our young people here, and leveraging our natural capital to diversify our economy become critically important.

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<sup>7</sup> <https://www.alberta.ca/fish-species-at-risk.aspx>

<sup>8</sup> Decision 2021 ABAER 010: Benga Mining Limited, Grassy Mountain Coal Project, Crowsnest Pass June 17, 2021. ISBN: 978-0-660-38706-2 ; [Section 14. Fish and Aquatic Habitat](#)

<sup>9</sup> Hauer, F.R et al (2016) Gravel bed river floodplains are the ecological nexus of glaciated mountain landscapes *Science Advances* <https://advances.sciencemag.org/content/2/6/e1600026>

<sup>10</sup> [https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/g7/documents/2021-06-13-nature\\_compact-nature\\_horizon-2030.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/g7/documents/2021-06-13-nature_compact-nature_horizon-2030.aspx?lang=eng)

Writing for the School of Public Policy about “The State of the Alberta Economy and the Path Forward,”<sup>11</sup> economist Todd Hirsch also emphasizes reputation, devoting an entire subsection to the importance of “uphold[ing] our brand and reputation.” He argues that: “...as the world becomes more globalized, attracting and retaining the most talented people will come down disproportionately to lifestyle — amenities like recreation, vibrant culture, liveable communities, great post-secondary institutions and cultural diversity.”

“This is especially true of young, bright, talented people in sectors like technology and digital media,” says Hirsch. “They can live anywhere in the world they please.”

The eastern slopes are among the recreational amenities that “uphold” Alberta’s “brand and reputation.” We need not only to preserve but to enhance their recreational potential, as the recent increase in outdoor recreation in this landscape makes clear (the pandemic certainly contributed to this, but the trends predated the pandemic and will persist after it). Coal mining in the eastern slopes competes with this reputational goal, and for very little economic return. This is one of many tradeoffs that tilt heavily against coal.

### **Economic Benefit**

Oil and gas will remain central to Alberta’s economy for the foreseeable future, even as world markets shift to renewable energy sources. During this time of transition, diversification of the Alberta economy will be important, as Jack Mintz has pointed out. “As energy demands shift from oil and gas,” writes Mintz, “other sectors have an opportunity to pick up the slack, including agriculture, forestry, minerals, logistics and transportation, advanced manufacturing, financial intermediation, tourism and hi-tech.”<sup>12</sup> Oil and gas will continue to play an important role, but coal should not, especially in the eastern-slopes recreation amenity that helps draw the talented young to the diversifying opportunities in such areas as “logistics ... transportation, advanced manufacturing, financial intermediation, tourism, and high-tech.”

This perspective, it should be emphasized, is precisely what animated the Lougheed government’s 1976 coal policy. Lougheed stressed that the heavy restrictions on mining in the eastern slopes were necessary to preserve “the potential for recreation and tourism” in this particularly “beautiful” region<sup>13</sup>, and his energy minister, Don Getty, was prepared to see “potential developments ... leave our province and go elsewhere.”<sup>14</sup> Lougheed’s government clearly recognized that coal was far from being the highest and best use of the Eastern Slopes and that its economic value would always be eclipsed by oil and gas. This strategic perspective is no less relevant today and should be strengthened.

It should be noted that, contrary to Lougheed’s raising of coal royalties, low rents are now one of the attractions that Australian coal companies have highlighted in their investment prospectuses. This may be appealing to potential investors, but it isn’t such good news for Alberta. The return to the public treasury from our low royalty rates and generous discounts during the development phase of mines is unexceptional, to put it mildly. Coal mining, like most large resource extraction industries, is increasingly mechanized at the expense of jobs; that, in turn,

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<sup>11</sup> [https://www.policyschool.ca/wp-content/uploads/2021/05/AF2\\_AB-Economy\\_Hirsch\\_final.pdf](https://www.policyschool.ca/wp-content/uploads/2021/05/AF2_AB-Economy_Hirsch_final.pdf)

<sup>12</sup> <https://financialpost.com/opinion/jack-m-mintz-albertans-can-do-advantage>

<sup>13</sup> <https://www.cbc.ca/player/play/1758400579911>

<sup>14</sup> <https://newsinteractives.cbc.ca/longform/bringing-coal-back>

reduces the attractiveness of coal mining both for local economies and with regard to taxation returns to the Crown. On the other hand, legacy costs from coal are significant and go on for decades, long after the companies have left, dissolved or declared bankruptcy.

A clear-eyed assessment of economic benefits versus costs, both at the community and the provincial level, is required to determine whether coal mining is, in fact, in the public interest.<sup>15</sup> Several factors are relevant:

- the boom-and-bust nature of coal in Alberta's history, and the impacts that has had on coal-dependent communities
- the low returns to the provincial treasury even during the heyday of both thermal and metallurgical coal production
- significant unfunded liabilities such as selenium pollution and reclamation failures
- the potential of reputational costs to impair other aspects of our economic future
- coal is not an additional use of the landscape, it is a dominant use that displaces other well established traditional activities, and mining it threatens many water, wildlife and scenic values

We are led to conclude that, from an economic point of view, metallurgical coal production from Alberta's Eastern Slopes is no more in the public interest now than it was in the Lougheed era – less so, in fact.

### **Competing Values**

For all that economic diversification is often portrayed as essential to Alberta's future, in reality there is already a fair degree of diversity. Coal in the Eastern Slopes underlies landscapes that have sustained cattle operations for more than a century. Tourism operations guide anglers to trout in streams draining from coal basins and hunters to bighorn sheep and elk grazing on the rich soils derived from weathered shales in which coal seams are embedded. The movie industry has discovered the scenery under which that coal is found. And we have already noted the degree to which outdoor recreation — which relies on services, commodities and gear purchased from businesses in our cities and gateway communities — is treasured by those whom we need to attract and retain as owners and staff of businesses in a wide range of sectors.

The beauty and quality of life that the eastern slopes afford all Albertans is a competitive advantage for the province, a major draw to people to bring their talents to or locate their businesses in Alberta. If broad-scale economic diversity is in the public interest, then one must ask how the surface mining of coal — which harms that diversity — can be too.

### **Conclusion**

Individually, and certainly together, the criteria in the previous section make it impossible to conclude that surface coal mines in the eastern slopes are in the public interest; in fact, they would be just the opposite.

**There should thus be no new or expanded surface mining in the Eastern Slopes** and when existing mines are retired they should be robustly reclaimed with special attention to long-term selenium pollution mitigation.

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<sup>15</sup> <http://rainerknopff.com/2021/04/oil-and-gas-but-not-coal-thoughts-on-albertas-mining-imbroglio/>

**The reasoning of the 1976 Lougheed coal policy should be adopted and extended by removing the “not normally” loophole in category 2 lands, thereby turning the longstanding moratorium on mining in these lands into a simple ban. This ban should be extended to include all former Category 3 and 4 lands in the mountains and foothills of Alberta’s Eastern Slopes.**

**The authors:**

**Rainer Knopff**, a professor emeritus of political science at the University of Calgary, has published 9 books and numerous chapters and articles. Canadian political thought and the intersection of law and politics dominate his scholarship, but he has also written about conservation and land-use politics. He has consulted for the federal and provincial governments, been an expert witness in court cases, and was on the federal electoral boundaries commission for Alberta. In 2010 he served on the *Governor General Consultation Committee*, which advised the appointment of David Johnston as Governor General of Canada.

**Harvey Locke** is a fifth generation Albertan whose family arrived before the railway. Educated primarily at Strathcona Tweedsmuir School and the University of Calgary, he practised law in Calgary for fourteen years before devoting himself full-time to nature conservation. He was president of the Alberta Liberal Party and ran as a federal Liberal Candidate in Calgary Centre. Named by Time magazine one of Canada’s leaders for the 21<sup>st</sup> century, he is co-founder of both the Yellowstone to Yukon Conservation Initiative and the Nature Needs Half Movement. For the last four years he has led a global consultation on conservation targets.

**Ted Morton** was a professor at the University of Calgary from 1981 to 2017, and is now a professor emeritus and an Executive Fellow at The School of Public Policy. He has written and edited six books, two of which won book prizes. In 1995 Ted was awarded the Bora Laskin Fellowship in Human Rights. Ted was elected as the MLA for Foothills-Rocky View from 2004-2012. He served as Minister of Energy (2011-12); Minister of Finance (2010); and Minister of Sustainable Resources Development (2006-2009). He was the minister responsible for the Alberta Land Use Framework (2008); Alberta Land Stewardship Act (2009); and appointed the regional advisory committees (RACs) for Alberta’s first two regional plans: the Lower Athabasca and the South Saskatchewan.

**Kevin Van Tighem** is an Alberta conservationist and author of 14 books including *Heart Waters: Sources of the Bow River* and *Wild Roses Are Worth It*. A landscape ecologist, he has worked in all three Alberta national parks and served on the Regional Advisory Council for the South Saskatchewan Regional Plan, as well as on advisory committees for the Castle Parks and Porcupine Hills-Livingstone sub-regional planning. He retired as Banff National Park Superintendent in 2011 and has since served on the boards of the Nature Conservancy of Canada (Alberta chapter) and Livingstone Landowners Group.