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RCE Saskatchewan Response to the Government of Saskatchewan Conditional Approval of the Yancoal Southey Potash Mine

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For Immediate Release

On August 9, 2016, CTV reported on the Government of Saskatchewan's conditional approval of the Yancoal Potash Mine near Southey (see “Province conditionally approves environmental assessment for Yancoal potash mine”, CTV Regina, available from <http://regina.ctvnews.ca/province-conditionally-approves-environmental-assessment-for-yancoal-potash-mine-1.3021739>). The report is consistent with the August 9 letter from the Saskatchewan Minister of Environment, Hon. Herb Cox outlining his reasons for his decision (see “Reasons for Decision Ministerial Approval Pursuant to Section 15 The Environmental Assessment Act—Yancoal Canada Resources Company Limited Southey Potash Project” EAB 2015-003). The following “conditions and permitting requirements” have been made (these are directly cited from the CTV report as a summary):

1. “Submitting a development agreement with the Rural Municipality of Longlaketon before construction begins to ensure that the RM is involved in the planning and development of the project.”

RCE SK Reply: This is a major issue for the RM of Longlaketon and those currently serving as political representatives on the RM have not been subject to an election in which citizens in the RM have expressed their democratic voice as to who they want to represent them in this negotiating process with Yancoal. The current RM does not have the political and legislative mandate of the RM's citizens to proceed with these negotiations as the Ministry of Environment has only just conditionally approved the project.

2. “Submitting a community involvement plan that commits to establishing a community advisory committee, community monitoring program, and further collaboration with community members.”

RCE SK Reply: it should not be Yancoal that is submitting a community involvement plan as they are

not an impartial body but have a clear conflict of interest in the design of such an advisory committee, including its terms of reference and composition, and the terms and processes by which “the community” (however this is defined by the company) engages in monitoring (including what is to be monitored). RCE Saskatchewan has already identified cases where Yancoal has engaged in illegal surveillance and hacking into the email accounts of its employees in Australia. This creates a lack of confidence in its ability to establish an impartial, and fairly constituted committee; the RCE has also documented substantial ways in which the company's local community engagement to date in the Southey area has been a failure (see original submission, Appendix A, Section 3.2 “Breakdown of Social Trust” available at <http://www.saskrce.ca/node/2573>). Yancoal is owned by the Government of China. The Government of China has an equally problematic record in relation to democratic processes and respect for human rights and natural justice of which the Provincial Government and Federal Government are well aware. Such a committee needs to be established by an impartial, public body informed by provincial and national statutes, constitutional requirements, legal precedents related to appropriate public consultation and involvement, and recent scholarship. This expertise is held by the public civil service, the legal community, relevant scholars, and the locally affected community(ies). A community monitoring program is equally problematic. Monitoring while reasonably involving community input is a provincial and, potentially federal legal responsibility. Given serious conflicts of interest, self-monitoring by a company is not appropriate—rather public, independent, transparent monitoring and reporting by a democratically and/or publicly accountable body is required.

3. “Submitting an environmental protection plan that includes monitoring of agriculture land, Loon Creek and water quality.”

RCE SK Reply: Again the environmental monitoring needs to be done by an independent, publicly accountable, scientific body as this is a state/governmental responsibility to Saskatchewan citizens and requires scientific expertise held by relevant public agencies. In the recent Husky Oil Spill in the North Saskatchewan River the Provincial Government reasonably rejected Husky's suggestion that it would monitor drinking water quality following the oil spill. The same principles of impartiality, accountability, and transparency apply in this case.

4. “Acquiring a permit to construct and operate the facility under The Mineral Industry Environmental Protection Regulations of 1996 pursuant to The Environmental Management and Protection Act of 2010.”

RCE SK Reply: RCE Saskatchewan has contended that the project should be subject to the higher standards set by the Federal Government in the area of Environmental Assessment which would have applied to a project of this magnitude and type up until 2012 when amendments were made to the Federal Act. These go beyond existing provincial legislative requirements.

5. “Acquiring a water allocation licence from the Water Security Agency for the use of water from Buffalo Pound Lake.”

RCE SK Reply: The Water Security Agency operates under the same Ministerial Authority as the Ministry of Environment and SaskWater (that is, Minister Herb Cox is the same minister responsible

for all 3 agencies, with Minister Cox acting as chair of the WSA Board; see <https://www.wsask.ca/About-WSA/Governance/WSA-Board/>). Recent reports suggest that SaskWater is being run with the goal of generating revenues for the Government of Saskatchewan through water sales (see Bruce Johnstone, “SaskWater posts \$7.4 pays first dividend as commercial crown in 2015-16 fiscal years”, *Regina Leader-Post*, July 13, 2016” <http://leaderpost.com/business/local-business/saskwater-posts-7-4m-profit-pays-first-dividend-as-commercial-crown-in-2015-16>). This suggests that the impartiality of water licensing of the project would potentially be inappropriately influenced by this revenue generation motive. The Minister of Environment explicitly states in his letter of August 9, 2016, regarding the Yancoale Project that “Diversion of water from Buffalo Pound Lake for multiple industrial users, including the volume proposed for the Yancoale project, was assessed and approved in March 2015 *under a separate environmental assessment application with SaskWater as the proponent*” [p. 6-7, emphasis added]. This statement documents the actual conflicts of interests involved given SaskWater's structuring as a commercial crown. Again, however, even from an economic perspective no assessment of the opportunity costs of the use of freshwater from Buffalo Pound lake of this magnitude in comparison with other potential uses (upstream and downstream recreational uses/water quality improvements, irrigation, etc.) has ever been presented. The Minister in his letter notes that “[t]his assessment included a rigorous analysis of available historical hydrological data under various climatic conditions and conservative assumptions regarding water volumes to be diverted” (p. 7). However, relying on historical data on its own is insufficient given the unprecedented changes occurring with climate change that go beyond the historical record. RCE Saskatchewan's own internal assessment of the Yancoale Southey Environmental Impact Study (EIS) highlights this inadequacy.¹

6. “Acquiring a licence from the Ministry of the Economy for wells used in the mining process or the injection of brine.”

RCE SK Reply: RCE Saskatchewan's caution in relation to this entire proposal from a mining perspective is that it is our understanding that this is Yancoale's first ever potash mine. Yancoale's mining expertise is in the area of *coal mining*. While the RCE has documented in its original submission to the Saskatchewan Ministry of Environment a number of environmental problems with Yancoale's coal mining operations around the world (see Appendix A, section 3.4 of RCE Saskatchewan's original

1 RCE Saskatchewan in its internal analysis of the Yancoale EIS notes that in the EIS's intensive analysis of surface water supplies it makes no mention of climate change. As is conventional engineering practice, large amounts of historical water and weather data are analyzed assuming (explicitly or implicitly) that they represent 'normal' environmental conditions and these do not change and therefore the past is indicative of the water and climate to expect for several or many decades to come. We know that this is a poor assumption. While there is a section on climate change in the main EIS report, in APPENDIX 4-E “Effects of the Environment on the Project”, it is unfortunately very cursory. While the information is technically accurate as it relies on the work of the Prairie Adaptation Research Collaborative (PARC) at the University of Regina as its main source, the interpretation and analysis is very superficial. On page 26 of the Yancoale EIS the report suggests that the impacts of future Hydrological Drought Conditions have been mitigated because “[a] reliable water source has been identified and preliminary approvals obtained”. On page 28 under “effects of wet and dry periods and climate change on project operations” the report refers only to “similar mitigation as for other climate effects”. Thus the entire strategy for dealing with future water deficits is to assume “a reliable water source” and yet the analysis of surface water in the Yancoale EIS assumes no climate change.

submission available at: <http://www.saskrce.ca/node/2573>) we would further expect a *higher degree of regulatory oversight* of a mining operation by a company with a lack of previous experience in the proposed type of mining activity. Presumably new and previously untested technologies will be employed by a coal mining company in adapting its knowledge and expertise to potash mining. Implementation of these new technologies and processes would need to be adequately monitored from an environmental perspective.

7. “Obtaining approval from the Ministry of Environment for a decommissioning and reclamation plan and providing a financial assurance prior to project construction to address any environmental considerations that occur from the operation and eventual decommissioning of the facility.”

RCE SK Reply: While requiring financial assurance for a company's ability to mitigate environmental damage is prudent, this still assumes that environmental damage caused by the mine can be reversed or mitigated through subsequent human activity. History shows that this is often not the case as certain forms of environmental damage are irreversible and potentially very serious. A prudent approach to development found in sustainable development is to employ a *precautionary approach* that the RCE has recommended the government employ for this and other development projects. Rather than conditionally approving the Yancoal project, a better course of action would be to assess all of the environmental considerations upfront and in an integrated way (which would include assessing simultaneously the other developments needed for the overall project, such as new water transportation systems, railroad and highway construction/improvements, housing for workers employed on a temporary and/or longterm basis, etc.). Only at this point (assuming all environmental considerations can be met in an adequate way that assumes a precautionary approach) should permission be granted.

Further concerns in relation to the project that have not been addressed in the proposed conditional terms specified by the Province (and the overall process itself) can be found in the initial submission of RCE Saskatchewan found at: <http://www.saskrce.ca/node/2573>

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