

January 8, 2007

MEMORANDUM

TO: Council

FROM: Montana Office

SUBJECT: Council Consideration of Letter Regarding Proposed Coal Mine in the North Fork of the Flathead

Attached please find a letter proposed for Chair Karier's signature directed to British Columbia focused on a proposed mine at the headwaters of the Flathead River. Attached also please find a recent newspaper article about the proposed mine as well as other supporting documents, including comments submitted by Montana on this matter.

For more information go to the Flathead Basin Commission website at www.flatheadbasincommission.org where you will find a link to specific information on the proposed Cline Mine or contact the Montana Office with any questions or concerns.

January 17, 2007

Gary Alexander
Project Assessment Office
Environmental Assessment Office
PO Box 9426 Stn. Prov. Govt.
Victoria, BC Canada V8W 9V1

Re: Cline Mining Proposal for the Headwaters of the Flathead River

Dear Mr. Alexander:

The Northwest Power and Conservation Council is deeply concerned about the potential of negative downriver impacts to fish, wildlife, and overall water conditions in the Flathead and Columbia Basins from the proposed Cline Mine just north of the Montana/British Columbia border on the North Fork of the Flathead River.

The Northwest Power and Conservation Council (hereafter, the Council) is a federally authorized compact between Idaho, Montana, Oregon and Washington as set forth in the Northwest Power Act of 1980. The Council works to determine the future of key resources common to all four states, including fish and wildlife issues. To this end, the Council develops a fish and wildlife program to protect and rebuild fish and wildlife populations in the region affected by the hydrosystem in the Columbia Basin, including a specific mitigation plan for the Flathead subbasin. The Flathead subbasin plan includes a detailed assessment of the area, an inventory of ongoing activities, and a management plan for critical species in the Flathead. Representatives from British Columbia participated in the development of the plan, particularly on the technical elements of the plan.

The Council extensively funds mitigation projects for critical species in the Flathead drainage, including bull trout and westslope cutthroat trout which will be impacted by the proposed mine. The ongoing Hungry Horse Mitigation Project uses scheduled water chemistry samples to provide additional baseline water quality information in North Fork tributaries in the United States and Canada. Montana Fish, Wildlife, & Parks collaborates with Canadian officials to collect baseline fisheries and water data downstream of the proposed mine site. The Flathead Basin Commission and other entities continue to request additional environmental baseline data prior to embarking on any assessment of potential environmental damage to waters, fish and wildlife in the sub basin.

In the mutual interests of our stakeholders, the Council encourages British Columbia to work with and incorporate the concerns of interested parties in Montana and throughout the Columbia Basin. Because of the location of the mine at the headwaters of the

transboundary river in British Columbia, it is questionable how the negative impacts associated with proposed mine could be mitigated. The process should include an assessment of potential impacts south of the Canadian border using baseline and other data mentioned above as well as any data from the Montana Department of Natural Resources and Conservation, Montana Fish, Wildlife & Parks, the Flathead Basin Commission, the Confederated Salish and Kootenai Tribes, the Council's subbasin plan, the U.S. Fish and Wildlife Service, and other pertinent entities. The process should also look at any impacts in the Kootenai basin from similar activity in the Elk River drainage. The Council is concerned that the information currently gathered is insufficient to accurately determine the impacts of the proposed Cline mine on the fish, wildlife, and other resources of the Flathead Basin and beyond, and encourage you to significantly broaden your inquiries into the potential impacts of the proposed mine.

Sincerely,

Tom Karier
Chair

Cc: (all of the entities mentioned, as well as Governor's offices in the 4 states, BPA, the Corps)



BC launching review of Cline Mine

By JIM MANN *The Daily Inter Lake*

Meetings also will be held in Flathead Valley

British Columbia is about to open a public-comment process on the terms and conditions that will be required of a proposed coal mine in the headwaters of the Flathead Basin.

But state and federal officials in Montana are unsatisfied with the draft "terms of reference" for the Toronto-based Cline Mining Co.'s Lodgepole Mine, so the state likely will conduct a public-comment process of its own.

Rich Moy, chairman of Montana's Flathead Basin Commission, said the British Columbia provincial government essentially "ignored" recommendations that a Montana delegation submitted on the draft terms of reference.

"We're appreciative that British Columbia allowed us to participate in the regulatory process regarding the Cline mine," he said. "We would have hoped that British Columbia would have incorporated our comments, but they did not ... Basically, for the most part, they ignored our issues."

So the basin commission and other groups in Montana are ramping up a campaign aimed at educating the public about potential ecological impacts that mining in the Canadian Flathead could have south of the border.

"We are in discussions about holding public meetings in the Flathead ... to provide information to folks so they can comment on this" to the BC provincial government, Moy said.

The Montana meetings are in response to meetings that Cline will be holding in January in southern BC. A Cline advertisement in Wednesday's Inter Lake announced that the meetings will be held Jan. 16 in Elko, Jan. 17 in Sparwood, and Jan. 18 in Fernie.

Caryn Miske, the new executive director of the basin commission, said the thinking is that Montanans likely won't travel to meetings in Canada that will be held between 7 and 9 p.m., and it's likely that many Montanans want to be heard.

The draft terms of reference will be the focus of the meetings, outlining just what Cline must do in producing a satisfactory application and environmental assessment for a mountain-top removal operation that is expected to process 2 million tons of coal annually during a 20-year period.

Moy said the draft did not incorporate Montana's main concerns: that the environmental assessment account for the cumulative impacts of the Lodgepole mine and other potential mining projects; and that there won't be an assessment of potential impacts south of the border.

"They are stopping at the border, and we don't think that's appropriate," Moy said.

Under BC's laws, Cline Mining will conduct its own environmental assessment following the terms of reference that eventually are adopted. Organizations in Montana have long contended that the assessment should not be limited to impacts from the Lodgepole Mine alone, but also should consider collective impacts if other mines are developed in the Canadian Flathead. Exploration was under way this summer for another potential mining site called Lillyburt in the Canadian Flathead flood plain.

And just this week, Canada's Globe and Mail newspaper reported that the Canadian government has been negotiating to transfer ownership of so-called Dominion Coal Blocks, also in the Canadian Flathead, to the British Columbia provincial government. That federal government had intended to conduct a study to determine the feasibility of expanding Waterton Lakes National Park, but those plans have been dropped, the newspaper reported.

Miske said a transfer of the vast Dominion coal deposits to the province will "greatly increase" the potential for coal mining in the Canadian Flathead.

About the Lodgepole Mine, concern is growing in Montana about the nutrient and heavy-metal pollution that could spill from the mine into Foisey Creek, a tributary of the Canadian Flathead River that is about 22 miles north of

the border.

Those concerns are based on water chemistry and aquatic insect samples from the currently pristine stream, compared to samples that have been collected from Michelle Creek, an Elk River tributary that's only about 10 miles north.

There are striking differences between the two, and a professor at the University of Montana's Yellow Bay Biological Station says its because Michelle Creek has been impacted by a the Coal Mountain Mine, another mountaintop removal operation.

Professor Ric Hauer has reported that the phosphorous and nitrogen levels are much higher in Michelle Creek, and levels of selenium are about 10 times higher. Hauer said the concern is that similar pollution in Foisey Creek would eventually work its into Montana's Flathead River system and ultimately Flathead Lake.

Last summer, student researchers collected 50-60 different aquatic insects from Foisey Creek and nearby streams, indicating there is an ecologically diverse and strong system. Michelle Creek, by contrast, supports only a handful of highly tolerant aquatic insect species.

Concerns also exist about impacts to terrestrial wildlife, particularly grizzly bears.

Chris Servheen, grizzly-bear-recovery coordinator for the U.S. Fish and Wildlife Service, has submitted comments to BC's Environmental Assessment Office that conclude that current "baseline data" on grizzly bears and other carnivores in the area of the mine "are not sufficient to make a defensible decision" in approving the mine.

"This mine, if approved, will impact grizzly-bear recovery in adjacent areas of the U.S. and will impact other sensitive species that we share along the U.S.-Canada border," Servheen asserted in his comments.

The basin commission and others are pushing to gather as much environmental baseline data as possible before mining gets under way in the transboundary Flathead basin. The commission is drafting a bill for the upcoming Legislature that would provide \$308,477 for continuing research, and it is negotiating with the BC provincial government to kick in an additional \$183,477.

Various entities, including Glacier National Park and the National Parks Conservation Association, have cobbled together funding for water-supply monitoring that has been conducted at eight sites near the proposed mine site during the past two years. New funding sources are needed, Moy said.

The basin commission has recruited willing sponsors from the Flathead Valley's legislative delegation. Miske said the list of sponsors includes Rep. Bill Jones, R-Bigfork; Rep.-elect Doug Cordier, D-Columbia Falls; Sen. Greg Barkus, R-Kalispell; and Sen. John Brueggemann, R-Polson.

"We want to make sure that we send a clear signal to BC that we are serious about the need to have this kind of data to do an appropriate impact assessment of BC mining," Moy said.

The state of Montana may not have much influence on BC's environmental rules and processes for mining, but the state's leverage with Canada can be found in the Boundary Waters Treaty of 1909. Montana has attempted to work directly with the provincial government, but eventually it could pursue action through the International Joint Commission, a panel of American and Canadian representatives with jurisdiction to prevent or resolve Boundary Waters Treaty disputes.

Copies of the draft terms of reference for the Lodgepole Mine can be found at the Flathead County Library in Kalispell or Whitefish, or at the Polson City Library. The documents also are online at:

<http://www.eao.gov.bc.ca>

Reporter Jim Mann may be reached at 758-4407 or by e-mail at jmann@dailyinterlake.com

State of Montana Comments
Draft Terms of Reference – Cline Mining Corporation Lodgepole Project
April 12, 2006

Findings from the 1988 Flathead River International Study Board Reports to the International Joint Commission that are relevant to the proposed Cline Lodgepole Project

After three years of intensive evaluation and assessment by a bi-national group of 50 U.S. and Canadian scientists, the *Flathead River International Study: Board Supplementary Report* to the IJC in 1988 stated: “It became apparent during the impact assessment phase that the available data were often inadequate, and that an improved database was required before confident predictions could be made about the likely impacts of the proposed mine” (p. 3). The report goes on to state: “The information needed for confident prediction of impacts of the mine is substantially the same as that needed to determine necessary mitigative measures and to assess their effects.” The report states further: “Data deficiencies of major concern include those describing ground water, sediment, nitrate and ammonia, nutrients, and various components of the biota including fish.” Baseline and data assessment for the Sage Creek Coal mine did not include wildlife such as carnivores, ungulates, amphibians, reptiles and bird species nor important vegetative and riparian habitats of the transboundary Flathead.

In the 1988 Supplemental Report to the IJC, the following physical studies were identified for defining mitigation measures and for conducting the assessment for the proposed Sage Creek coalmine. These studies are applicable to the proposed Cline mine site.

1. Quantify the ground-water systems(s) including flow rates, water levels, connection between aquifers, extent of tertiary materials along creeks, and existing ground-water contributions to surface flow, especially in critical spawning areas.
2. Assess ground-water quality and temperatures within the existing ground-water system.
3. Investigate the permeability of pond and ditch areas, overburden dump sites, and other disturbed areas to allow an assessment of potential infiltration to ground water.
4. Obtain additional overburden analyses to assess any impacts for leaching of waste dumps.
5. Design and implement a water quality-sampling program at ground-water discharge points at existing mines in the Elk River valley. This information could be used to assess impacts at the mine site.
6. Conduct mapping and sampling to identify and locate phosphorus-rich geologic units.
7. Determine the sediment concentrations, loads, and carrying capacities of the various creeks, and the Flathead River at the International Boundary. Use the

- results to refine the assessment of sediment impacts and of design of control processes.
8. Assess those water quality parameters that may be affected by the proposed mine. They include: concentrations of dissolved oxygen; temperature; concentrations and loads of total, particulate, and soluble reactive phosphorus; and compound of nitrogen. At the International Boundary, assess the seasonal levels of the metals aluminum, barium, cadmium, chromium, mercury, and lead.

To address biological data needs to mitigate the impacts on fish habitats and fish populations, especially bull trout, two approaches were offered for mitigation: on-site and off-site impacts at the Sage Creek site.

On-site:

1. Assess the biophysical characteristics of those streams that are impacted by the mine and the Flathead River, which will be directly affected by the mine. This would include:
 - a. A description of the physical characteristics of fish habitats along the inhabited reaches of the streams including a determination of their relationship to ground-water sources;
 - b. A determination of the abundance and diversity of algae and aquatic invertebrates above and below the mine site;
 - c. A determination of the seasonal distribution of egg deposition, and of young-of-the-year, older juveniles, and adults of bull trout and cutthroat trout in relation to habitat type and, especially, ground-water influences;
 - d. A detailed study of the characteristics of typical spawning sites of major species including such factors as water velocity and depth, substrate characteristics, intra-gravel water quality, and relationship to cover; and
 - e. A study of fish production, including enumeration of spawning escapements, egg-to-fry survival, the densities of various life history states, and the production of downstream migrant juveniles.
2. Review the literature to determine what is known of the habitat requirements of various life history stages of bull trout and cutthroat trout, and the kinds of habitat improvements and habitat enhancement structures which might be appropriate for the study area creeks.
3. Conduct field studies to fill in the data gaps identified in 2 above.
4. Determine whether the bull trout populations in the mine site streams are genetically unique.
5. Identify factors controlling algal growth rates and standing crop in streams of the mine site area, and the Flathead River down to Flathead Lake.

Off-site:

1. Monitor spawning escapement of adult bull trout in those creeks that are impacted by the mine site in relation to other tributary streams of the Flathead River in Canada, the North Fork Flathead River and Flathead River in Montana.
2. Determine the extent of interchange of bull trout among Howell, Cabin and Couldrey Creeks, and other tributary streams of the Flathead River system.

3. Determine what opportunities exist for habitat enhancement in adjacent tributaries.
4. Determine whether Howell Creek bull trout can be imprinted to home to adjacent tributary streams.
5. Evaluate the success of hatchery production and survival of stocked bull trout in the Arrow Lakes, B.C. as a model for the Flathead system.

Terms of Reference

The following are our comments on the draft Terms of Reference:

1. The TOR must include a detailed description of the proposed project, in which all elements of the proposed mine are described. This information is essential for defining the effluent discharge from the mine site and needs to include the following:
 - Technical information (design and dimensions) on settling ponds and waste dumps.
 - Geophysical properties of the mine site.
 - Location of settling and/or tailings ponds (including alternates).
 - Location of waste dumps (including alternates)
 - Dimensions of buffer strips
 - Location of contaminated and uncontaminated ditches around the mine and waste sites
 - Details on the road upgrade for the coal haul from the mine to Elko
 - Storage of explosives on site.
 - Multiple maps visually displaying the layout of the mine and all related infrastructure.
2. The study area for collection and assessment of baseline chemical, physical, biological and socio-economic data needs to be clearly defined in the TOR.
3. The Cline Mining Corp. Lodgepole Project study area must include the entire extent of the Flathead River drainage from the site of the mine to the outlet of the river in Flathead Lake. For example, bull trout spawning in the vicinity of the proposed mine are part of the same population of bull trout that occur in Flathead Lake within the State of Montana. Carnivores and ungulates migrate back and forth across the international boundary. Water quality changes in the vicinity of the proposed mine site could clearly impact waters of the United States.
4. The study area also must include the haul road from the mine to the proposed load-out facility at Elko. As proposed, the haul road will cross or come in close proximity to the following water bodies: North Lodgepole Creek, Lodgepole Creek, Morrissey Creek, the Elk River, and several unnamed tributaries, all of which need to be included in the scope of the Project study area. Since upgrades to this roadway and increased traffic have the potential to impact all of these waters, it is recommended that baseline water quality data (chemical, physical, and biological) and surface water hydrology data be collected at representative sites in all of these waters.

5. The TOR lack site-specific details regarding methods or approach to data collection. For example, the duration and frequency of the baseline water quality study is not adequately defined. A minimum of three years of data, ideally including wet, dry, and “normal” years is necessary to adequately characterize water quality conditions. Both the duration of the baseline water quality study and the frequency of sampling need to be defined.
6. The TOR are largely inadequate in terms of the type of groundwater data that will need to be collected at the mine site to address environmental concerns. The TOR needs to include a thorough assessment of subsurface water conditions and evaluation of groundwater discharge to Crab Creek (and its contribution to base flow of Crab Creek and Foisey Creek). The level of effort by Cline Mining to address the assessment of potential effects, mitigation measures, and residual effects (section 8.2.3) of the TOR is especially critical to address potential impacts to the Flathead River and its tributaries. Review of the February 22, 2006 Technical Report does not include the type of detailed groundwater evaluation required to achieve this effort.
7. The TOR must include a Canadian federal review under the Canadian Environmental Assessment Act and the environmental assessment must address cumulative impacts and transboundary impacts. The proposed mine triggers Section 47 of the CEAA, which, “Allows a foreign state or subdivision thereof (ie; the State of Montana) to initiate this reference through a request to the Canadian Minister of the Environment based on concerns that developments in one country will negatively impact another.”
8. The TOR must include a Cumulative Effects Analysis (CEA) component. This needs to include any other reasonably foreseeable coal mining or mineral exploration projects (ie; the Lilyburt proposal) as well as existing activities within the Flathead and Elk River watersheds, such as forest harvest, road construction, and recreational and outfitter use, that may contribute additional impacts to each biophysical/environmental component.
9. Based on information obtained during the March 28, 2006 Working Group meeting, traffic may increase substantially on the haul road between the mine site and Elko (3 trucks/hour, 24 hours/day). The TOR need to specifically identify this issue and propose a study approach to assess potential impacts to wildlife.
10. With respect to wildlife, at the March 28, 2006 meeting of the Working Group, it was stated that 9 sites were visited in January of 2006 to assess the presence of forest carnivores. Since neither wolverine nor lynx were detected in this survey, no additional work was planned. Similarly, surveys for Harlequin Ducks consisted of a single survey on July 30, 2005 in which a helicopter was used to fly the Wigwam River, Lodgepole Creek and North Lodgepole Creek.

This type of data collection is inadequate and provides only a snapshot of baseline conditions. Surveys for detecting tracks of forest carnivores, especially those that may occur in low densities like wolverines, fisher and lynx, need to be conducted by systematically following linear routes many miles in length, several times per year to

account for changes in snow conditions, seasonal changes in habitat use, and other variables.

The following comments apply to specific sections of the draft TOR:

3.0: PROJECT DESCRIPTION

- The draft TOR need to contain specific Project information, such as a detailed mine plan, water management, haul routes, road construction and project schedules, needed to identify which issues and information should be addressed and required in the Application.
- The draft TOR states that it will describe the Project in sufficient detail to allow a meaningful assessment of the Project effects. Until "...all key project components and activities [are] clearly identified and explained..." it will not be possible to identify all issues and information needs.

3.1: PROJECT BACKGROUND AND RATIONALE

The draft TOR lists components of the Application, including an analysis of alternatives.

- One alternative that should be considered is the "no action" alternative, including evaluation of other potential uses for the area.
- This evaluation needs to consider environmental, social and economic values of the other uses in relation to the anticipated impacts of the Project.

4.11: WILDLIFE AND FISHERIES PROTECTION PLAN

- The draft TOR notes that a Fisheries Protection Plan will be provided if there is a requirement for CMC to provide on-going mitigation for stream flows or for fish habitat compensation:
 - What are the criteria for requirement of a Fisheries Protection Plan?
 - Will one be required for the Project?
- There are migratory bull trout and westslope cutthroat trout that use the immediate project site in both the Flathead River and Lodgepole Creek. Bull trout are listed as Threatened under the United States Endangered Species Act (ESA) and westslope cutthroat trout have been petitioned for listing.
- Bull trout in the Elk River/Lake Koocanusa are currently strong populations that provide valuable recreational fisheries. At this time, both species in the Flathead Basin are considered weak stocks and angler harvest is not permitted. In the Flathead, both species were at higher levels in the late 1980's, when the coal mine in the Cabin Creek drainage was proposed.
- The Flathead Basin westslope cutthroat trout and bull trout populations influence the ESA designation for these species. Bull trout were listed in 1998 largely due to the documented declines in the Flathead Basin populations.
- Further declines in population status will influence the future status assessments for the species across their range and affect the ability of western United States to de-list bull trout and relieve regulatory constraints.

4.4 WATER MANAGEMENT PLAN

- The TOR need to include designs of the sediment ponds, spillways and ditches based on the design event(s) chosen or required for sediment drainage and control.

4.5 ML/ARD PREVENTION, MANAGEMENT AND MONITORING PLAN

- Geochemical characterization approach and methods needs to include paste extract analysis for electrical conductivity (EC), major cations and anions
- The TOR need to include description methods for rock and waste sample collection and preparation.

4.12.2 MINE

- The TOR need to include a detailed final reclamation and decommissioning plan (rather than a conceptual plan), including a post-mining topography map (1" = 200 or 300 meters with a 3-4 meter contour interval), identified seismic and static safety factor analysis
- The TOR need to include objectives for waste dumps and reclamation plans for Crab Creek and the Lodgepole drainages

5.0 RISK ASSESSMENT AND MANAGMENT:

- The draft TOR states that there will be risk assessments conducted on various aspects of the Project.
Upon what information or databases will this be conducted?
- *In the Flathead River International Study: Board Report* under the International Joint Commission (IJC) 1988, the Board encountered two major problems with the terms of reference;
 - 1.) Conceptual level of design was not adequate to develop reliable, quantitative predictions of impacts on water quality, quantity and biological resources;
 - 2.) Baseline data required to assess impacts were not adequate requiring professional judgment, not data, to form conclusions.
- To address this concern, the TOR need to include a basin-wide comprehensive and quantitative baseline assessment of aquatic resources in both the Flathead and Wigwam river systems, including Flathead Lake and Lake Koocanusa used by the migratory trout.

6.0 OVERVIEW OF EFFECTS ASSESSMENT AND APPROACH METHODS:

- Effects assessments need to include cross-border effects, eg., hydrology, aquatic resources, vegetation and wildlife (including Threatened and Endangered species, and species of special concern in the U.S. and Montana, First Nations communities, land use, and cumulative effects).
- Study area boundaries need to include the entire Flathead River Basin, including the mining site-specific tributaries, the North Fork of the Flathead River, the main stem Flathead River and Flathead Lake. There is potential for project impacts to be observed in all four of these areas. Likewise the study area should include the Lodgepole Creek drainage, the Wigwam and Elk

ivers, and Lake Koocanusa given that impacts from the Project extend to all of these areas.

6.3 CUMULATIVE ENVIRONMENTAL EFFECTS

- Project impacts to water quality, migratory fish and wildlife are concerns that encompass the Wigwam, Elk and transboundary Flathead basins.
- The Effects Assessment needs to be conducted at these scales in a basin-wide approach. In addition, a basin-wide approach to baseline information collection and assessment will allow CMC to determine Project impacts by comparing aquatic conditions at the mine site to those in other tributaries, which will provide reference sections.
- This assessment needs to include social and economic impacts, such as those related to loss of fisheries in United State waters. For example, negative impacts to westslope cutthroat trout and bull trout could result in negative impacts to economies based on recreational fisheries in the Flathead Basin and in Lake Koocanusa. These economic impacts need to be addressed in the Effects Assessment.
- Quantify the cumulative impacts of the Cline Mine, proposed Lillyburt coalmine, proposed CBM developments and the gold mining proposal on air quality, wildlife populations and migratory patterns, water quality, including sediment, nutrients and heavy metals, water supply, fish and aquatic habitats in the transboundary Flathead River basin.
- Quantify the cumulative impacts of the Cline Mine, timber harvest and other changes in land use processes in the Wigwam drainage basin.
- Quantify the cumulative impacts of the above developments on the following federal and international designations: Glacier National Park, Waterton Lakes National Park, World Heritage site, Biosphere Reserve and the Wild and Scenic River of the NF of the Flathead.
- Quantify how existing land uses and practices within the transboundary Flathead and Wigwam drainage basins will change with the proposed developments described above.
- Cumulative effects analysis for wildlife needs to include an assessment of thresholds that may be reached when combined with other developments in the greater project area.

7.3 SURFACE WATER HYDROLOGY:

- The TOR need to include an assessment of the water drainage system for all existing roads and proposed road development, including small currently impassable roads used in past timber harvest operations.
- This section needs to address the increased efficiency of transporting rain and snowmelt waters across land to stream channels by these roads and the resulting impacts to channel morphology, sedimentation, and hydrology.
- Of significant importance is the upgrade and increased truck use on haul roads adjacent to Lodgepole Creek. Sedimentation will increase due to year round use by high numbers of large trucks. These sediments will be introduced into Lodgepole Creek and impact bull trout egg survival.

- The TOR need to include a comparison of the expected modified hydrograph of Lodgepole Creek with the existing hydrograph to assess impacts to channel morphology and sedimentation associated with channel changes. The pre-Project hydrograph must be well described to allow this comparison.

7.4.1 HYDROGEOLOGY BASELINE CONDITIONS

- The TOR need to include an evaluation of the quantity and quality of groundwater contributions from potentially affected geologic strata to all nearby surface streams.
- This work needs to be conducted at a scale that thoroughly characterizes the hydrogeologic conditions of the material to be mined, demonstrating which portions of the material are saturated and estimates of the character and quantity of groundwater contributions from this material to base flow in proximate streams.

8.0 WATER QUALITY AND AQUATIC FISH RESOURCES

- The study area for assessment of impacts to aquatic resources is limited to Foisey and Lodgepole creeks. An assessment at this scale would not include potential impacts to the North Fork of the Flathead River, the main stem Flathead River, and Flathead Lake and also the Wigwam and Elk rivers and Lake Koocanusa.
- The TOR need to include baseline conditions in not only Foisey and Lodgepole creeks, but also across the majority of these basins, including other important bull trout and cutthroat trout tributaries, downstream river sections and lakes, such as the North Fork and main stem Flathead River, and Flathead Lake.

8.2 WATER QUALITY (SURFACE WATER AND GROUNDWATER QUALITY)

- The TOR need to include baseline data on water quality and flow during a high flow year, an average year and drought year at a number of sites at the mine site and downstream in both the Flathead and Wigwam drainage basin (minimum of three years of data.) Synoptic measurements for all parameters are important within each of the major watersheds.
- Water Quality samples need to be taken at least two or three times during the rising limb of the hydrograph, one at peak discharge and two or three measuring during the descending limb and at base flow in August/September and one in the Winter (January or February).
- Baseline water quality samples should be taken for the major nutrients, and metals for a minimum of three years.
- The parameters in the report presented on March 28 need to be tied to flow.
- Quantify the amount of explosives that will be used at the mine site and the amount of nitrogen that can be expected be released in effluent discharges from the mine site and downstream. Determine the effect of increased nitrogen releases on the increased growth of algae and the greening of the Flathead and Wigwam rivers.

- The TOR need to include continuous depth integrated sediment data throughout the basin and tied to the hydrograph during a low, average and high flow years and especially at peak discharge as up to 90 percent of sedimentation occurs during this period.
- Water Budget. The TOR need to include a complete water budget for the mine site. Water used for washing the coal, mine site pumping, used on the roads etc.
- Define the relationship between surface water and ground water and the effects of dewatering streams and the groundwater recharge zones in the tributaries of the Flathead River that could be affected.
- Quantify the groundwater chemistry within and downstream of the mine site and the effects on surface water flows.

8.2.3 ASSESSMENT OF POTENTIAL EFFECTS, MITIGATION MEASURES AND RESIDUAL EFFECTS

- The TOR need to include a detailed characterization of geotechnical influence on inflowing groundwater from residual nitrates from blasting materials.
- The assessment of water quality needs to include suspended solids and petroleum hydrocarbons (fuels, oils, lubricants, solvents, etc.).
- The Flathead River *Board Supplement Report* also defined a number of mitigation measures for groundwater related impacts, surface water related impacts, needed waste dumps and nutrient controls and others impacts that should be quantified and assessed at this mine site.

8.3.1 FISHERIES BASELINE CONDITIONS:

- The document states that a baseline fisheries program will identify fish resources and describe biophysical habitat conditions in the three immediate tributaries to the Project and the Flathead River with reference to historical data sources and that the assessment will focus on fish presence, fish habitat, water quality and seasonal flows. Historic data sources include bull trout redd count surveys that describe redd numbers and locations of redds in Lodgepole Creek and the Flathead River.
- Fish presence and species distribution is an important fish step in assessing fishery resources, but provides limited information and does not prove absence. Generally, this type of information provides a snapshot in time of what was observed by the collector at that point in time. Fish presence information may change with the time of day, season-to-season, or year-to-year at any location in a stream.
- The TOR baseline fisheries data need to include more descriptive types of data designed to determine species abundance, seasonal migration patterns, habitat use by specific life stages, population status, and population demographics, such as genetic makeup, age structure and life history strategy.
- These types of fisheries information are needed to describe what fisheries resources exist in the Project area and be able to adequately assess potential impacts of the Project to these resources. Also, fish presence alone will not provide data to assess future changes to the fish populations.

- The TOR need to include a quantitative baseline data collection that incorporates spatial and temporal variation is needed to assess impacts to these fishery resources.
- The baseline collection needs to occur over a three to 10 year period to account for annual variation. In addition, assessing fish presence in only Foisey Creek and upper tributaries will not allow comparisons to fish populations in other portions of the basin. As stated in the above comments, the Project will impact fisheries in a much larger area than just the immediate tributaries.
- The Project would benefit from a comprehensive baseline data collection for fish populations throughout the Flathead Basin, Lodgepole Creek and the Elk River Drainage.
- In addition to the trout species, there are sculpin (Rocky Mountain and Columbia Mottled) in the Foisey/Lodgepole study area (Interior Reforestation.Ltd., 1997a,b). At this time there is little information describing the specie(s) distribution of sculpin in the Flathead River and tributaries.
- The TOR need to include a comprehensive study to determine which species of sculpin are present and may be impacted by the Project.
- The TOR need to include a distribution of sculpin species and an evaluation of the sensitivity of these species to mining pollutants. In some studies, sculpin are more sensitive to contaminants than trout. This relationship needs to be assessed for pollutants such as selenium and other mining wastes.
- The TOR fish habitat characterization needs to include techniques that assess specific seasonal habitats of each life stage. For example, spawning habitat should be assessed specifically to determine its quality by measuring fine sediment levels. Likewise, juvenile rearing habitat should be assessed for cover availability. Surveys should be designed to assess the critical habitat components that influence survival of the various life stages for each fish species.
- At this time, there is no documented use of tributaries to the Middle Fork of the Flathead River for spawning and rearing by westslope cutthroat trout from Flathead Lake. The Flathead Lake, North Fork and main stem Flathead River cutthroat trout fisheries appear solely dependent on westslope cutthroat trout production in the North Fork Flathead Drainage. Westslope cutthroat trout comprise the summer fishery in the North Fork and main stem reaches of the Flathead River. Numerous fishing guide services and equipment stores rely on these fisheries. An angler creel survey of these waters is needed to assess the potential impacts of the Project to these economies. Likewise, the westslope cutthroat trout and bull trout fisheries in Lodgepole Creek, the Wigwam and Elk rivers and Lake Koocanusa provide economic benefits to surrounding communities in both the US and British Columbia. An angler creel survey of these waters is needed to assess the potential impacts of the Project to these economies.
- A 1998 report, Selenium Mobilization from Surface Coal Mining in the Elk River Basin, British Columbia: A Survey of Water, Sediment and Biota

(McDonald and Strosher) from the Ministry of Environment, Lands and Parks, Kootenay Region, British Columbia, found elevated levels of selenium in water, sediments, and aquatic life including westslope cutthroat trout downstream of coal mining in the Elk River Drainage and recommended additional studies to further investigate selenium impacts. These recommended studies would provide baseline information on impacts to westslope cutthroat trout, side-channel wetlands, aquatic birds, and Lake Koocanusa and on release mechanisms responsible for high selenium concentrations. These issues should be revisited and considered in the draft TOR. In addition, the study is now 10 years old and should be repeated. There is the need to assess cumulative impacts of additional selenium mobilization from the proposed mining operations in the Lodgepole Creek Drainage and the associated impacts to the Elk River and Lake Koocanusa fish populations.

8.3.2 BENTHIC INVERTEBRATES AND PERIPHYTON:

- The TOR need to include a quantitative assessment that incorporates seasonal variation to assess impacts to these organisms.
- Baseline data need to be collected over a multiyear timeframe to address variation in population characteristics over time that may be due to diverse environmental conditions, such as the exceptionally high summer or fall stream flows in 2005.
- This needs to be conducted not only in the immediate three tributaries but also to all downstream waters, including reference reaches not impacted by the Project.
- The TOR need to include a basin-scale bioassessment (benthos and periphyton) assemblages and a quantitative physical habitat assessment via a statistically valid survey design.

8.3.3 IMPACT ASSESSMENT:

- The TOR need to address impacts to fish populations and other aquatic biota throughout the Flathead and Kootenai basins, downstream of the Project.
- The TOR need to include a quantitative assessment that incorporates spatial and temporal variation to assess impacts to the fishery resources.
- Baseline fisheries data should be collected over a multiyear timeframe (three to 10 years) to address variation in fish population characteristics over time. This should be conducted not only in the immediate three tributaries but also in all downstream waters, including reference reaches not impacted by the Project.
- The TOR need to include a delineation of important fish habitats, such as spawning or over-wintering areas to understand the existing fishery resources and assess impacts of the Project. The assessment for benthic invertebrates should be approached in the same manner.
- Impact assessments need to incorporate monitoring and impact data from the Elk River mines, including the effects of any failures of structures such as sediment ponds and waste rock dumps.

9.3 NOISE

- The draft TOR states that no baseline studies for noise are intended.
- Due to the wildlife values of the mine site, transboundary Flathead, and Lodepole/Wigwam, the TOR need to include baseline studies for noise and potential impacts to wildlife.

10.0 VEGETATION AND WILDLIFE

- The Vegetation and Wildlife sections need to be separated out into two distinct sections, each with their own baseline and impact assessment components.
- This section states that only habitats directly impacted by the mine's footprint, the load-out, the haul-out road, and the power line will be mapped and described.
- The TOR need to include a basin-wide assessment to better ascertain which habitats are rare and how this proposal may separate the connectivity of habitats.
- Given that this project will impact 2 large watersheds (the Elk and the Flathead), both should be mapped.
- John Weaver (2001) identified the Elko area and an area north of Fernie as potential linkage areas for grizzly bears to populations to the north and west of the project area. Areas important for linkage for grizzly bears invariably benefit most other mammalian species as well.

10.1.1 VEGETATION AND WILDLIFE BASELINE:

Amphibians

- The TOR need to include baseline data collection for all amphibian species in the Project area, tributaries not impacted by the Project, and the Flathead River.
- The TOR need to include a quantitative assessment for amphibian species that incorporates spatial and temporal variation .
- Baseline data for amphibians need to be collected over a multiyear timeframe to address variation in population characteristics and habitat used over time and across seasons.
- A simple one-time survey of any specific site will not provide reliable data to determine if amphibian species are absent from the site or what life stages potentially use the site seasonally.

Wildlife

- A number of large ungulate species and carnivores are known to summer and reproduce in the B.C. portion of the transboundary Flathead and winter in Waterton Lakes National Park and the lower portion of the Flathead basin within Glacier National Park, Flathead National Forest and the riparian corridor of the Flathead River.

- The TOR need to quantify the importance of the transboundary Flathead riparian corridor for wildlife species, periphyton, and physical and biological processes.
- The TOR need to quantify the migratory patterns of the large and mid-size carnivores as well as the large ungulate species.
- The TOR need to include data on the following mid-size carnivores: lynx, bobcat, wolverine, fisher,, badger, mink, river otters, and a number of large carnivores including wolves, grizzly bear, and mountain lion.
- The TOR need to include at least a three-year baseline data for the above species based on presence-absence inventories, demographic inventories and population trend analysis.
- The draft TOR states that a “wildlife” description and a “selected wildlife” suitability and capability mapping will be done only on areas directly impacted by this proposal. This needs to include both a local and basin-scale for both watersheds.
- Assuming that not every vertebrate species will be addressed, the TOR need to include a rigid and systematic survey consisting of small mammal trapping. It is very possible that species may be identified that were not known previously to occur in the area.
- In the case of lynx and wolverine, given their distribution throughout the Flathead drainage, there is absolutely no question that they use the project area and would be impacted by this proposed project. See Zielinski and Kucera (1995) for more detailed information on conducting surveys for forest carnivores.
- The TOR need to include track surveys to be conducted the entire length of the haul road for at least 3 years to better determine the locations of these primary points of crossing.

Birds

- The TOR need to include thorough and systematic breeding bird surveys and should be conducted for a minimum of 3 years to better ascertain which species occur in the area.
- The TOR need to include territorial counts and egg shell sampling for the pileated woodpecker, water ouzel and Harlequin ducks.

10.1.2 IMPACT ASSESSMENT:

Amphibians

- Impacts to all amphibian species and their sensitivity to expected mine pollutants need to be assessed.
- The TOR need to include a quantitative and comprehensive baseline assessment of amphibian species distribution that incorporates spatial and temporal variation is needed to assess impacts to these organisms.

Mammals

- This section does not address impacts to wildlife beyond the immediate area. The draft TOR states that the predictions for impacts on wildlife will be based on the project footprint.
- The TOR need to include the haul route and entire transboundary Flathead basin. Impacts from noise and disturbance can be far-reaching and should be considered from a basin-wide approach. Again, one example would be the travel corridor/linkage zone identified by Weaver (2001) for grizzly bears south of Fernie.
- The TOR need to define the effects of this and the other proposed mines on fragmentation and encroachment on habitats of large carnivores and what this will do to population numbers and genetic variability. According to a 2005 study on grizzly bears by Proctor, et. al., “Genetic analysis reveals demographic fragmentation of grizzly bears yielding vulnerable and small populations.” They concluded that, “trans-border bear populations may be more threatened than previously thought and conservation efforts must be expanded to include international connectivity.”
- The TOR need to quantify the effects of the proposed mine and other proposed developments in the transboundary Flathead on fragmentation of the available habitat for importance wildlife species, especially in the Crown of the Continent eco-region.
- The TOR need to assess the changes in winter ranges of a number of species such as mountain goats and sheep.
- The TOR wildlife assessment needs to include the impacts and disturbances associated with the haul road. As stated on 3/28, a minimum of 6 large trucks will be passing over this road each hour of every day, 365 days of the year. This is one large truck every 10 minutes, year-round. This does not include the large number of vehicle trips involved with transporting personnel, services and equipment each day.
- There are other issues relative to the haul road that are important beyond its effect on population connectivity. Roadsides planted to clover or other palatable cover may attract some species of wildlife, making them vulnerable to being struck or killed by vehicles or to being illegally shot. Dead ungulates may attract bears or other scavengers, increasing their vulnerability to mortality as well. McLellan (1989) showed that grizzly bears inhabiting the Flathead had higher rates of mortality if they used habitats near open roads. Salt on roads during the winter months to control ice may act to attract ungulates as well, making them vulnerable to being struck by a vehicle.

11.0 AIR QUALITY

- The TOR need to quantify the dust and particulate matter that will be released from the mine site and haul road and deposited in the Flathead and Wigwam rivers and tributaries. Define the impacts on water quality.
- The TOR need to quantify the impacts of dust and particulate matter in the lakes and air shed of Waterton Lakes National Park and Glacier National Parks. Both National Parks have Class 1 Air Quality standards.

15.1 SOCIO-COMMUNITY, SOCIO-ECONOMIC AND HEALTH:

- The scope of the detailed assessment must include the Flathead Basin in the United States, the Polebridge vicinity and the Flathead Valley including the Kalispell, Columbia Falls, and Whitefish vicinities and the Kootenai Basin in the United States, including Lake Koocanusa. There are potential impacts to these areas associated with degraded water quality and reduced migratory fish populations resulting from the Project.

15.2.7: BUSINESSES:

- This section should examine the businesses associated with recreational fisheries in the Flathead and Kootenai basins and the potential impacts to these businesses by development of the Project. To assess the potential impacts from the Project, baseline data collection should include angler creel surveys to determine angler use and catch in the river and lake fisheries and estimated economic values of these fisheries.

Potential for Dump and settling pond failures

- It was stated in the March 28th meeting at the St. Eugene Mission, B.C by one of the mine engineers that there would be dump failures at the Cline mine site. Please quantify the potential impacts that these dump failures will have on sedimentation, fisheries, and other ecological parameters.

References: (not all cited, relevant to TOR and Project Assessment)

Cope, R.S. and G.G. Oliver. Interior Reforestation Co. Ltd. Fish and Fish Habitat Inventory within Unlogged Watersheds – Upper Flathead River. Prepared for Crestbrook Forest Industries Ltd. April 1997. Prepared for the Ministry of Environment, Lands and Parks.

Deleray, M., L. Knotek, S. Rumsey, and T. Weaver. 1999. Flathead Lake and river fisheries status report. DJ Report No. F-78-R-1 through 5. Montana Fish, Wildlife & Parks, Kalispell.

Demarchi, R.A., Hartwig, C., and D. Phelps. 2003. Species at Risk Inventory Strategy for the Dominion Coal Block. Ecodomain Consulting.

Fraley, J. J. and B. B. Shepard. 1989. Life history, ecology and population status of migratory bull trout (*Salvelinus confluentus*) in the Flathead Lake and river system, Montana. Northwest Science 63:133-143.

Impacts of a Proposed Coal Mine in the Flathead River Basin, Board Supplementary Report. International Joint Commission, 1988.

Morris, K.J., R.S. Cope and L.P. Amos. Interior Reforestation Co. Ltd. Fish and Fish Habitat Inventory for Select Tributaries of the Upper Flathead and Elk Rivers. Sept. 1997. Prepared for Crestbrook Forest Industries Ltd. Sparwood Division.

McLellan, Bruce N. 1989. Population dynamics of grizzly bears during a period of resource extraction development. *Canadian Journal of Zoology*. 67:1856-1860.

Muhlfeld, C.C., S. Glutting, R. Hunt, D. Daniels, M. Boyer, J. Wachsmuth, and B. Marotz. 2005a. Hungry Horse Mitigation Program, 2004 Annual Progress Report: Investigations of the Flathead River Native Species Project. BPA Project Number 199101903.

Muhlfeld, Clint C., and Brian Marotz. 2005b. Seasonal movement and habitat use by sub-adult bull trout in the upper Flathead River system, Montana. *North American Journal of Fisheries Management* 25:797-810.

Muhlfeld, C.C., B. Marotz, S. Thorrold, and J. Fitzgerald. 2005c. Geochemical signatures in scales record stream of origin in westslope cutthroat trout. *Transactions of the American Fisheries Society* 134:945-959.

Proctor, M.F., et.al., Genetic analysis reveals demographic fragmentation of grizzly bears yielding vulnerably small populations. 2005. *Proceedings of the Royal British Society*. 272, 2409-2416. Published on-line 20 September 2005.

Summit Environmental Consultants, March 31, 2004. Summary of existing baseline water quality data. Prepared for the British Columbia Ministry of Energy and Mines.

Weaver, John.L. The Transboundary Flathead: A Critical Landscape for Carnivores in the Rocky Mountains. The Wildlife Conservation Society, Working Papers No. 18, July 2001.

Weaver, T.M. 2005. Forest-wide fisheries monitoring Flathead. 2005 Annual Progress Report. Montana Fish, Wildlife and Parks.

Zielinski, William J. and Thomas E. Kucera. 1995. American marten, fisher, lynx, and wolverine: survey methods for their detection. Gen. Tech. Rep. PSW-GTR-157. Albany, CA: Pacific Southwest Research Station, Forest Service, U.S. Dept. of Agriculture; 163 pp.

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

April 14, 2006

Garry Alexander
Director, Strategic Policy and Planning
Environmental Assessment Office
2nd Floor, 836 Yates Street
PO Box 9426 Stn Prov Govt
Victoria, B.C. V8W 0V1
CANADA

Re: *Lodgepole Project Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act*

Dear Mr. Alexander:

Thank you for allowing the State of Montana, the Confederated Salish and Kootenai Tribes, Flathead Basin Commission and various federal agencies to participate in your regulatory process regarding the proposed Cline Mine project in the Foisey/Lodgepole tributaries of the Elk and Flathead Rivers.

The following reflects the comments of the Montana Department of Environmental Quality, Department of Natural Resources and Conservation and the Department of Fish, Wildlife and Parks. Comments from the Flathead Basin Commission and the U.S. Environmental Protection Agency are also included herein.

After extensive review of the *Lodgepole Project draft Terms of Reference (TOR) for the Cline Mining Corporation's Application for and Environmental Assessment Certificate*, the above listed State and Federal agencies are concerned that the draft TOR, as currently written, contains insufficient information to adequately assess the environmental and socio-economic impacts of the proposed Cline Foisey/Lodgepole mine.

The Montana reviewing committee is also concerned that the timeline proposed by Cline Mining Corporation does not allow for a comprehensive environmental review, sufficient to evaluate the magnitude of the potential impacts of the proposed mine. As stated at the Working Group meeting on March 28, 2006, Cline intends to be in full production by December, 2007. Given the breadth of data collection required to attain a comprehensive baseline and scientific understanding of the potential impacts, the proposed timeline does not ensure that the socio-economic and environmental impacts of the proposed mine will be adequately assessed.

Garry Alexander
April 14, 2006
Page Two

Due to the lack of information in the TOR, including the lack of an adequate summary of the proposed project, the reviewing agencies found it difficult to provide detailed and constructive comments. Given this, the State and Federal government representatives request the opportunity to review a second draft of the TOR before Cline Mining Corporation enters the Application stage of the Environmental Assessment process.

With respect to baseline data collection, the reviewing committee referred to the extensive documentation contained in the Flathead River International Study Board reports (1988), resulting from the Sage Creek Coal Mine reference to the International Joint Commission. The Committee Technical Reports, based on over three years of intensive analysis by a bi-national team of fifty scientists, provided a critical starting point in determining baseline and impact assessment data for the proposed Cline Mine in the Foisey/Lodgepole drainages.

As you know, the State of Montana has been pursuing the collection of these data and other baseline data needs with British Columbia since 1988 when the IJC made its recommendations. Since it is difficult to define the data needs without a clear understanding of the proposed mine design, construction, operations and reclamation, we may be missing important impacts. However, based on our experience with large coal mines and the proposed Sage Creek coal mine at Cabin Creek, the following are the types of data that will be required for this project and the generic types of methodologies that will need to be deployed.

Rich Moy, Chair of the Flathead Basin Commission and Chief of the Water Bureau for Montana's Department of Resources and Conservation is the principle contact with regards to our review of the Draft Terms of Reference.

Thank you again for the opportunity to participate in the Environmental Assessment process, and for consideration of our comments.

Sincerely,



Hal Harper
Chief Policy Advisor to Governor Brian Schweitzer

Attachment

cc: Margaret Bakelaar, Senior Program Officer, 320-757 West Hastings Street, Sinclair
Centre, Vancouver, BC V6C 1A1 CANADA
Rich Moy, Chief, Water Management Bureau, Montana Department of Natural
Resources and Conservation, 1424 9th Ave., Helena, MT 59620

additional seven pages of comments regarding the inadequacy of information. However, despite the stated purpose of the Working Group, none of these comments were responded to or reflected in the Revised Draft.

Given that the comments of the State of Montana and the National Park Service have not been addressed, we again refer you to the entirety of the original comments submitted, which are contained in the documents referenced at the end of this letter. In addition to these comments, we would like to emphasize the following:

The Need for a Transboundary Basin-Scale Baseline and Environmental Assessment

At the September 2006 meeting of the Working Group, the Proponent stated that the transboundary, downriver impacts of the proposed mine are outside the scope of Cline's Environmental Assessment. Specifically, the Proponent has limited the scope of their EA to the mine site, haul road and loadout facility. The Proponent stated that they would not study the entire ecosystem and watershed of the Flathead River Basin, including water quality, transboundary bull trout and westslope cutthroat and mid and large carnivore populations.

As you well know, the proposed Lodgepole/Foisey mine lies within a region of international ecological significance. The State of Montana and Glacier National Park are downstream and downriver of the proposed Lodgepole/Foisey Project at the headwaters of the Flathead River. The proposed mine poses serious threat to the natural resource values of the Flathead National Wild and Scenic River, Glacier National Park, the world's first International Peace Park at Waterton-Glacier, a World Biosphere Reserve, World Heritage Site and the Crown of the Continent.

The Proponent has agreed to undertake an air quality analysis that includes potential impacts to Montana, Alberta and Waterton-Glacier International Peace Park. It logically follows that the assessment of wildlife, fisheries, water quality, noise and ecological impacts should also extend beyond the international border to encompass the entire Flathead Basin. Given the international significance of this landscape and the legacy of protection and preservation for this landscape, including transboundary populations of species listed under the United States Endangered Species Act (ESA), a responsible and accurate review of this mine must include the potential impacts at the basin-scale.

Lack of Detailed Mine Design Plan and Insufficient Comparison to Existing Open-Pit Coal Mines in the Elk River Valley

In the first meeting of the Cline Mine Lodgepole/Foisey Working Group in March 2006, the Proponent stated that they could not guarantee that the external waste dumps and settling ponds will not fail. At the second meeting of the Cline Mine Lodgepole/Foisey Working Group in September 2006, it was stated that all of the waste dumps in the Elk Valley have failed at least once. At present the Proponent has failed to submit a finalized mine design plan that addresses the steep topography and complex geology of the

mountainous terrain in which the mine is proposed. Specifically, the Proponent cited the following uncertainties:

- Stability of the waste pit walls
- Unknown groundwater regime and hydrogeology of the waste pit walls
- Stability of the footwalls
- Stability of the pit waste rock dumps
- Stability of the plant site
- Stability of waste retention ponds
- Stability of the loadout facility and associated infrastructure

The Flathead River supports rich periphyton, macroinvertebrate, bull trout and westslope cutthroat trout populations. These populations represent a level of diversity and abundance unique to cold, clear clean mountain watersheds and are particularly vulnerable to the type of disturbance posed by the proposed Lodgepole/Foisey open-pit coal mine. The above-listed mine plan and waste dump uncertainties, as specified by the Proponent, pose an unacceptable risk to the integrity of the Flathead River and the fisheries populations it supports downstream of the proposed open-pit coal mine.

Based on these uncertainties, the Lodgepole/Foisey Project Environmental Assessment needs to include the following:

- Documentation of Elk Valley mine failures and the associated impacts
- Documentation of the fish populations upstream and downstream of the Elk Valley mines
- Documentation of the macroinvertebrate and periphyton species abundance and diversity upstream and downstream of the Elk Valley mines
- Documentation of loading of heavy metals in fish tissues, particularly selenium, upstream and downstream of the Elk Valley mines
- Documentation of water quality upstream and downstream of the Elk Valley mines
- Documentation of sedimentation and heavy metals loading upstream and downstream of the Elk Valley mines
- Documentation of nutrient loading upstream and downstream of the Elk Valley mines

Insufficient Response to Data Recommendations of the Technical Subcommittees

We are concerned that the extensive analysis of baseline and impact assessment data needs provided by Working Group Technical Subcommittees has not been incorporated into the Revised Draft TOR, and is therefore, not included in the Environmental Assessment. As documented at the March 2006 meeting of the Working Group, “the purpose of the subcommittees is to provide a forum for discussion, analysis and resolution of key technical issues associated with the proposed Lodgepole Project, and to provide advice to the EAO, the Working Group and Proponent on technical issues.”

As documented in our letter dated September 19, 2006 the state and federal agencies participating in the review are concerned that the expertise invested in the Wildlife, Water Quality and Fisheries subcommittees have not been incorporated into the Revised Draft TOR. For example, at the July 2006 Wildlife Subcommittee meeting, it was confirmed that no baseline data for grizzly bears exists at the proposed mine site. Given this, extensive recommendations were made regarding the scope and scale of baseline data necessary to accurately assess the impacts of the proposed mine on the grizzly bear population of inter-provincial and international significance. Despite this, at present, the Proponent has determined they will not conduct any baseline data collection for grizzly bears.

Insufficient Detail Regarding Cumulative Effects Analysis

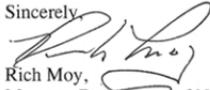
Montana has submitted multiple requests for more detailed information regarding Cumulative Effects Analysis (CEA), including a request for a CEA Subcommittee, which has not been established. According to the comments of the United States Fish and Wildlife Service,

“Any evaluation of the development of the Lodgepole mine must evaluate the probability and impacts of the development of other energy projects in the Flathead basin. The development of the Lodgepole mine will result in multiple impacts beyond the mine site and haul road location including: a higher speed and heavy capacity haul road into an area that currently has only low-standard timber roads; the creation of electric power facilities deep into this drainage that currently has no electric service; and continuous winter human presence, road plowing, and industrial operations in an area that is currently not open to anything but snowmachine winter travel. It is not credible or logical to evaluate the Lodgepole mine solely in the context of its immediate, direct impacts. A thorough and credible assessment would evaluate the ancillary impacts such as facilitating the development of other energy extraction actions in the Flathead and increasing the human impacts of presence, recreation, and development throughout the Flathead drainage.”

Finally, as stated previously, the proposed Cline Mine Lodgepole/Foisey Project lies at the headwaters of the Flathead Basin, which is a transboundary ecosystem of global significance. Given the ecological value of this region, we are gravely concerned at the lack of information provided thus far, and the lack of commitment on the part of the Proponent to carrying out the necessary scientific and technical research to conduct an accurate and responsible assessment of the proposed open-pit coal mine. Please refer to the referenced documentation below for a detailed description of the extent of our recommendations on the draft Terms of Reference. Based on the commitment of the Premier, we trust that you will continue to ensure the highest level of integrity for the Cline Mining Corporation Environmental Assessment, given the location of the mine within the transboundary Flathead Basin.

We look forward to our continued participation in British Columbia's environmental assessment process.

Sincerely,



Rich Moy,
Montana Department of Natural Resources and Conservation

Referenced Documents

April 11, 2006 United States Department of the Interior, National Park Service, Glacier National Park, RE: *Lodgepole Project Working Group Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act*

April 14, 2006 Office of the Governor, State of Montana, RE: *Lodgepole Project Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act*

May 2, 2006 United States Department of the Interior, National Park Service RE: *Review of Cline Mining Corporation Lodgepole Coal Mine Proposal (File: "2005 LODGEPOLE Fisheries Draft Report (Updated March 11).doc")*

May 4, 2006 Department of Natural Resources and Conservation, State of Montana, *Lodgepole Project Working Group Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act*

July 6, 2006 United States Department of the Interior, United States Fish and Wildlife Service, RE: *Lodgepole Project Working Group for Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act, Wildlife Technical Subcommittee*

September 5, 2006 Office of the Governor, State of Montana, *Lodgepole Project Revised Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act*

September 19, 2006 Office of the Governor, State of Montana, *Lodgepole Project Revised Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act*

September 19, 2006 State of Montana, Department of Fish, Wildlife and Parks RE: *Lodgepole Project Revised Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act*