

January 31, 2007

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

Re: Public Comment Period; Draft Terms of Reference for Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act

Dear Mr. Alexander,

On behalf of the State of Montana, I would like to thank you for acknowledging the international significance of the Flathead and Elk Rivers by graciously including citizens of Montana and the U.S. in the public comment period for Cline Mining Corporation's Lodgepole/Foisey Mine. The following reflects the comments to date of the Flathead Basin Commission, the Flathead Lake Biological Station of the University of Montana, College of Forestry and Conservation of the University of Montana, the National Park Service, the Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, and Montana Department of Fish, Wildlife and Parks.

The above listed state and federal agencies do not feel that the draft Terms of Reference submitted for public comment include sufficient environmental, social and economic information to accurately and responsibly assess the impacts of the proposed Lodgepole/Foisey mine.

We would refer you to the comments submitted by the State of Montana on April 14, 2006 and on October 18, 2006 for the entirety of our recommendations on the information that is essential to the Terms of Reference. A comparison of the original draft Terms of Reference (February 2006) submitted by the proponent, and the draft submitted for public comment (December 2006), reveals that the comments submitted by the State of Montana have resulted in no change to the draft Terms of Reference. This is of particular concern, given that many of these data requirements come directly from the Sage Creek Coal Mine report by International Joint Commission in 1988 which was produced by a team of over fifty scientists from Canada and the U.S. A thorough review of the IJC recommended data requirements reveals that nearly all of the information needs remain unfulfilled.

As such, we are officially re-submitting our original comments and request that the Environmental Assessment Office not approve the current draft Terms of Reference for the proponent's Application until these comments are addressed and incorporated into the

Terms of Reference. We request that the EAO require the proponent to collect a minimum of 3-5 years of baseline data for the environmental and socio-economic components of the project and require the proponent to extend the scope of the EA to the transboundary basin-scale, including potential impacts in Montana and Waterton-Glacier International Peace Park. Please refer to the referenced comments for the level of detail recommended by our top scientists and agency resource managers.

In addition, we would like to highlight the lack of information included in the draft Terms of Reference with regards to both our shared fisheries and wildlife populations. We refer you to the comments (dated October 19, 2006) of Dr Chris Servheen, U.S. Fish and Wildlife Service, for the extent of data requirements required to accurately assess the impacts of the proposed Lodgepole/Foisey mine on mid and large-size carnivores, several of which are provincially and federally listed.

We are also greatly concerned about the impacts of the proposed mine on transboundary bull trout populations. The proponent has not collected sufficient population data, data on spawning redds, and data on spawning and over-wintering habitat in the area of the mine or downriver in the mainstem of the Flathead River. We would refer you to the comments (dated April 7 and May 4, 2006) of Mark Deleray, Montana Department Fish Wildlife and Parks on the data needs to accurately assess the impacts of the proposed mine on westslope cutthroat, bull trout and sculpin species. Based on the draft Terms of Reference, the proponent does not intend to assess the availability and quantity of upwelling groundwater in the footprint and downriver of the mine or the impacts of de-watering and water quality impacts in these recharge zones. Results from field work conducted in 2006 will not be sufficient given that the Flathead River had a record low flow year and data is not representative of average conditions. The Department of Fish Wildlife and Parks recommends baseline collection over a 3-5 year period to account for annual variation.

Further, we have concerns about the recent data collected by the Ministry of the Environment in tributaries of the Elk River, downstream of the Coal Mountain mine, a mine that is comparable in size and design to the proposed Lodgepole/Foisey mine. The recently collected data show that selenium, nitrates and sulfates are present in extremely high concentrations downstream of the Coal Mountain mine. In addition, recent data of Dr. Richard Hauer, Flathead Lake Biological Station, on the aquatic communities of the mine-impacted tributaries show decreased biological diversity, a loss in species that are sensitive to water pollution, and hyper-production of green algae from nutrient loading compared to Flathead waters. We are concerned about the lack of comprehensive data relative to these extremely important water quality issues and subsequent lack of assurances that the water quality and aquatic community of the Flathead River, including those of Glacier National Park and extending to Flathead Lake, will not be degraded. The Flathead Lake Biological Station recommends baseline collection of water quality data and of the aquatic community over a 3-5 year period to capture the inter-annual and intra-annual range of variation.

Finally, we are immensely concerned that the proposed coal mine in the headwaters of the Flathead River will violate the intent of the Environmental Cooperation Arrangement signed by Governor Martz and Premier Campbell in 2003. Specifically, the mine threatens “the protection, conservation and enhancement of our shared environment for the benefit of current and future generations.”

Please take into account these concerns and the detailed recommendations out-lined in our comments to date (referenced below) as you review and evaluate the draft Terms of Reference for the Lodgepole/Foisey coal mine. Again, we ask that you not approve the current draft Terms of Reference until our data recommendations and concerns are incorporated into the ToR in accordance with the commitment of the Premier to protect our shared environment.

Thank you.

Sincerely,

Brian Schweitzer
Governor of Montana

Cc: Margaret Bakelaar, Senior Program Officer, 320-757 West Hastings Street, Sinclair Centre, Vancouver, BC VC6 1A1 CANADA

Rich Moy, Chief Water Management Bureau, Montana Department of Natural Resources and Conservation, 1424 9th Ave., Helena, MT 59620

Referenced Documents

April 7, 2006 Montana Department of Fish, Wildlife and Parks, RE: *Baseline Data Needs Associated with the Lodgepole Mine Project*

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, RE: *Lodgepole Project Working Group Cline Mining Corporation's Application for an Environmental Assessment Certificate Pursuant to the Environmental Assessment Act*

May 4, 2006 Montana Department of Fish, Wildlife and Parks, RE: *Comments on the Scope of Work 2006: Fisheries and Aquatic Resources Assessment*

July 6, 2006 United States Department of the Interior, 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*

October 18, 2006 State of Montana Department of Natural Resources and Conservation 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*

October 19, 2006 United States Department of the Interior, Fish and Wildlife Service 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*