

Clerk's Stamp

COURT FILE NUMBER 2001-08938
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS E. MACLEAY BLADES, ROCKING P RANCH LTD., JOHN SMITH and PLATEAU CATTLE CO. LTD.
RESPONDENTS HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and THE MINISTER OF ENERGY FOR THE PROVINCE OF ALBERTA
DOCUMENT **AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Alberta Justice and Solicitor General Legal Services Division**
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File No. LIT-11521

AFFIDAVIT OF MICHEAL MOROSKAT

Sworn on November 30, 2020

I, Micheal Moroskat, of the City of Edmonton, in the Province of Alberta, MAKE OATH AND SWEAR THAT:

1. I am Director, Coal and Mineral Development, with Alberta Energy. I have personal knowledge of the facts and matters in this Affidavit, except where stated to be based on information and believe, in which case I believe them to be true.
2. Attached are the following exhibits:
 - (a) **Exhibit "A"** – copy of AR35437 (redacted to remove privileged communications); and
 - (b) **Exhibit "B"** – copy of Information Letter 2020-23.
3. I make this Affidavit in support of the Respondents' application for an Order:

- (a) Striking the Amended Originating Application for Judicial Review (the "Amended Application"); and
- (b) In the alternative, summarily dismissing the Amended Application.

SWORN BEFORE ME at the City of
Edmonton, in the Province of Alberta,
this 30th day of November, 2020.



A Commissioner of Oaths in and for
the Province of Alberta

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) Micheal Moroskat

Karen Cheuk
Barrister and Solicitor, Notary Public and
A Commissioner for Oaths in and for Alberta

This is Exhibit "A"
referred to in the Affidavit of Micheal Moroskat
Sworn before me this 30th day of November, 2020



A Commissioner of Oaths
in and for the Province of Alberta

Karen Cheuk
Barrister and Solicitor, Notary Public and
A Commissioner for Oaths in and for Alberta

**ADVICE TO MINISTER
 For Decision about Alberta's Coal Policy**

ISSUE

Options to rescind the 1976 Coal Policy for Alberta.

RECOMMENDATION

Option A: The Minister directs Alberta Energy to rescind the 1976 coal policy immediately, and undertake a 120 day process to resolve existing held coal lease applications before issuing newly available coal rights.

DECISION

- Option A
- Option B
- Option C
- Other

AGREE: 

DATE: March 31, 2020

RATIONALE

- The coal categories, and the associated leasing rules, are the only policy mechanism of the 1976 coal policy that remain in effect today. Other mechanisms, such as provisions pertaining to royalties, labour requirements, environmental protection, and Crown equity participation, have been superseded or become irrelevant.
- Coal is the only mineral commodity in Alberta that has its own land classification system that guides not only exploration and development, but also the leasing of Crown rights. Rescinding the 1976 coal policy will therefore increase equity among all industrial users who compete for access to Alberta's working landscape.
- Rescinding the 1976 coal policy and its land classification system is expected to increase the province's attractiveness as an investment destination for coal by expanding and unifying the land base that is available for coal leasing, exploration, and development. It will also make it clear that all proposed Alberta coal projects will be reviewed based on merit through a modern regulatory process. This outcome has been uncertain historically because of the ambiguous wording that exists for coal categories 2 and 3.
 - Whether projects are pursued with resulting economic and job benefits will remain largely driven by global coal price expectations and other factors affecting project viability, such as royalty and tax rates, and production and transportation costs.

IMPACTS

- Converting all existing coal lease applications to leases (those that are currently active in coal categories 2 and 3, would result in annual rental payments of approximately C\$2.3 million (\$3.50 per hectare)).
 - As of February 28, 2020, there were 1,026 coal leases (419,000 hectares) and 506 coal lease applications (652,000 hectares) province-wide. Some coal lease applications may be held as applications for reasons other than the coal categories and would be unaffected by the rescission of the 1976 coal policy.
- The potential revenue that could be realized from issuing coal leases within coal category 1 areas (where coal rights are currently reserved from disposition) cannot be estimated.
- The policy shift will be viewed positively by the coal industry, as rescission is something the industry has been advocating for years.

- However, it will draw criticism from environmental groups and other user groups active within Alberta's Eastern slopes, particularly if the decision is made without prior public consultation.
- Rescinding the 1976 coal policy creates possible expectations that coal exploration and development will be permitted where it has been historically limited. The risk that important land use values will be compromised as a result of rescission is mitigated by the suite of land use policies and plans active within the Eastern Slopes region and by Alberta's modern regulatory process. The latter includes a potential Joint Review Panel review and Environmental Impact Assessment for major coal projects.
 - The majority of the coal category 1 area along the Eastern Slopes, with the exception of a significant area within the Upper Athabasca Region, is protected from industrial development by statutory conservation area restrictions (existing or proposed), or is an area where the coal rights have been reserved for other reasons (e.g., caribou range, prime protection zone). See Attachment 1 for a region-by-region analysis.
- Despite existing land use policies, there is a risk that rescission could result in policy gaps because several Integrated Resource Plans that remain active within the Eastern Slopes rely on the coal categories to establish baseline conditions (mostly in the South Saskatchewan Region, but also a portion of the Upper Athabasca Region).
 - The full extent of the policy gap risk will not be quantified until Alberta Energy completes its review of the coal categories with input from Environment and Parks. This work is expected to be complete in summer 2020.

IMPLEMENTATION

- The 1976 coal policy was not enacted using a legislative tool, so it can be rescinded unilaterally by Alberta Energy at any time.
 - [REDACTED]
- Alberta Energy Regulator (AER) Directive 61: How to Apply for Government Approval of Coal Projects in Alberta (1983) includes several key references to the 1976 coal policy including how to apply for a coal category reclassification and description of the leasing rules for the various coal categories. It also references the preliminary project disclosure obligations and the coal royalty structure introduced by the 1976 coal policy.
 - [REDACTED]
- An information letter and corresponding information bulletin are most appropriate tools to communicate rescission as there is no coal tenure regulation and coal leasing has relied on this mechanism historically. See Attachments 3 and 4.
 - Public announcement of the rescission could be referenced in and coordinated with the release of the new coal and minerals strategy.
- Given the number of coal lease applications currently being held by the department, once the coal policy is rescinded, and if Alberta Energy continues to post land sales, there will be an operational transition period.
 - The department will place a 120 day moratorium on new applications while all existing coal lease applications are resolved. After the 120 day moratorium, new coal leases will be accepted and will be considered requests for public sale. New rights will be issued through public offering and will be granted to the highest bidder as has been the process for coal rights in the previous coal category 4 lands.
- Alberta Energy will also need to inform the province's land managers (Environment and Parks and the AER) about the rescission and position them to be able to effectively respond to questions.

BACKGROUND

- A Coal Development Policy for Alberta was published in 1976. It was an early attempt at a land use plan for resource development in Alberta before modern regulatory processes existed.
- Among other things, the 1976 coal policy set out a land classification system, the four coal categories, to provide direction regarding where and under what conditions coal leasing, exploration and development would occur.
 - Leasing rules are further described in the Alberta Energy information letters 2014-07, 1995-26, and 1980-07.
- The Minister of Energy issued a letter to the AER on February 18, 2020, which clarified that all project applications in coal category 2 are to be reviewed in accordance with normal regulatory processes (AR34868).
 - This direction did not change Alberta Energy's leasing rules.
 - An information letter was being drafted along with key messages to inform the public. However, work on an information letter specific to coal category 2 is on hold pending decision on rescission of the Coal Policy in its entirety.

ALTERNATIVE OPTIONS

Option B: The Minister of Energy directs Alberta Energy to rescind the 1976 coal policy but continues to reserve coal rights in coal category 1 until the overlapping regional plans are completed.

IMPACTS

- The known revenue impacts will be the same as Option A.
- Government will likely receive less criticism from environmental groups and other land users as this option will maintain the status quo (i.e., no coal in areas where alternative land uses have been the historic priorities) until regional plans are complete.
- It provides an opportunity for government to confirm what its management intent is for lands that have historically not allowed coal leasing, exploration or development with public input and based on site-specific analysis (currently being undertaken by Alberta Energy and Environment and Parks).
- The coal industry will be supportive since its primary concern is having clear policy direction for pursuing surface mining projects in coal category 2.
 - The ability to acquire leases in category 2 lands prior to receiving regulatory approval increases certainty for the industry and is an improvement on the status quo (Option C).
- This option also provides assurance to the coal industry that government is intent on providing clear policy direction for coal, but in a manner that is aligned with the purpose and objectives of regional planning, including those related to engagement and transparency.

IMPLEMENTATION

- Implementation will occur as set out in Option A, with the exception that final decisions regarding coal category 1 will occur through the applicable regional plans.
 - The regional plans that overlap coal category 1 (North Saskatchewan, Upper Athabasca, and Upper Peace, along with the already complete South Saskatchewan Regional Plan) are the priority regional plans to be completed.
 - The Land Use Secretariat is in the process of developing a timeline for this work, but the expectation is that these plans would be in effect before 2022.
- Alberta Energy will continue its work with Environment and Parks to identify site-specific implications of rescinding coal category 1. The results of this work will inform the

development of the three remaining regional plans, which overlap the coal categories, and final implementation of the South Saskatchewan Regional Plan.

- If for some reason regional planning is delayed, at that point, Alberta Energy would be able to remove the reservation and begin selling rights in the coal category 1 area.

ALTERNATIVE OPTIONS

Option C: the Minister of Energy directs Alberta Energy to rescind the coal categories concurrently with the completion of the applicable regional plans. The 1976 coal policy would be rescinded once all four regional plans, which overlap the coal categories, are in effect.

IMPACTS

- This is the status quo option.
 - It is consistent with the commitment that was made in the South Saskatchewan Regional Plan.
- This option provides an opportunity for government to confirm what its management intent is for the province's coal-bearing areas, including those that have not allowed coal leasing, exploration or development historically, in the context of balancing regional goals and inclusive of site-specific analysis and public input.
 - Because it upholds the 1976 coal policy's current restrictions on leasing over the short term, it is the most risk-averse option.
 - This risk comes at the expense of providing less certainty to industry than the other options and temporarily giving up new coal leasing revenues.
- Government will likely face the least amount of criticism overall if it pursues this option.
 - The policy clarification regarding coal category 2 provided to the AER should address the coal industry's current concerns about access to the regulatory system.
 - Other Eastern Slopes land users will have the assurance that any concerns they raise about rescission will be considered by government before long term decisions are implemented by the regional plans.

IMPLEMENTATION

- No immediate action is required as Alberta Energy is in the process of developing the coal category 2 information letter and associated key messages.
 - ADM approval to post the information letter will be requested.
- Alberta Energy and Environment and Parks are actively reviewing the coal categories to identify site-specific locations where coal category direction remains relevant for achieving desired land management outcomes.
 - The results of this review will inform the drafting of regional plans (e.g., conservation area considerations).
- Changes to Alberta Energy's coal leasing policies will be implemented as the regional plans become effective.

ATTACHMENT

- Attachment 1 – Coal Category 1 Analysis by Land Use Region
- Attachment 2 – Letter to Alberta Energy Regulator
- Attachment 3 – Information Letter
- Attachment 4 – Information Bulletin

Drafted by: Brock Ellis
 Senior ADM: Martin Chamberlain, Q.C.

Resource Stewardship Policy Branch
 Energy Policy Division

This is Exhibit "B"
referred to in the Affidavit of Micheal Moroskat
Sworn before me this 30th day of November, 2020



A Commissioner of Oaths
in and for the Province of Alberta

Karen Cheuk
Barrister and Solicitor, Notary Public and
A Commissioner for Oaths in and for Alberta



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May 15, 2020

INFORMATION LETTER 2020-23

Subject: Rescission of *A Coal Development Policy for Alberta* and new leasing rules for Crown coal leases

A Coal Development Policy for Alberta, more commonly known as the 1976 Coal Policy (Coal Policy), has been rescinded effective June 1, 2020.

The only mechanism left in effect from the Coal Policy before rescission was the land use classification system comprising four coal categories. Other mechanisms, such as provisions pertaining to royalties, labor requirements, environmental protection, and Crown equity participation, were superseded or not enforced.

The coal categories are no longer required for Alberta to effectively manage Crown coal leases, or the location of exploration and development activities, because of decades of improved policy, planning, and regulatory processes.

Those interested in acquiring Crown coal leases and pursuing exploration and development opportunities will now face the same restrictions as other industrial users. These restrictions include but are not limited to: the South Saskatchewan Regional Plan, including the subregional Livingstone-Porcupine Hills Land Footprint Management Plan; the Integrated Resource Plan zoning that remains in effect throughout much of Alberta's Eastern Slopes; and regulatory instruments (e.g., reservations and notations) applied under the *Public Lands Act*. Regulatory approval requirements to conduct coal exploration and development activities remain in effect.

Coal leases

With the rescission of the Coal Policy, all restrictions on issuing coal leases within the former coal categories 2 and 3 have been removed. Alberta will continue to restrict coal leasing, exploration and development within public lands formerly designated as coal category 1. This prohibition on coal activities is being continued to maintain watershed, biodiversity, recreation and tourism values along the Eastern Slopes of Alberta's Rocky Mountains.

Alberta Energy will be offering the right of first refusal to the holders of active coal lease applications. While Alberta Energy works through the coal lease applications, no new coal lease applications will be accepted for a 120-day period beginning May 15, 2020. Coal Information Bulletin 2020-02 provides details on this process.

For further information, please contact:

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Authorized by: Martin J. Chamberlain, Q.C.
Senior Assistant Deputy Minister
Energy Policy