

October 23, 2025

Taking Stock of the Grassy Mountain Project and Other Coal Matters: Update 4, October 2025

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Cases and Decisions Commented On: *Northback Holdings Corporation v. Alberta Energy and Joint Review Panel For the Grassy Mountain Coal Project acting in its capacity as the Alberta Energy Regulator*, [2025 CanLII 99179](#) (SCC) and *Northback Holdings Corporation v. Canada (Environment and Climate Change)*, [2025 FCA 31 \(CanLII\)](#).

In addition to ABlawg's coal law and policy series and the [Coal Law and Policy ebook](#), we have provided occasional posts updating readers on the status of the Grassy Mountain Coal project and the related litigation. As the title of the post suggests, this is the fourth update following earlier updates in [February 2024](#), [August 2024](#), and [June 2025](#).

Benga, now known as Northback, first applied for permits for the Grassy Mountain Coal Project in May 2015 (GM.1). A Joint Review Panel (JRP) consisting of federal and provincial regulators held a hearing from October 2020 to January 2021. The [JRP report in June 2021](#) denied provincial permits for the project and in August 2021, the Minister of Environment and Climate Change [denied federal permits for the project](#). Recognizing that the project requires both federal and provincial permits, Northback brought litigation relating to the provincial permits in Alberta courts and litigation relating to the federal permits in federal courts in its efforts to get the project approved. In order to revisit the JRP report and decision and revive GM.1, Northback needed to succeed with its litigation in both the Alberta courts and the federal courts. The most recent developments confirm that all of Northback's attacks on the provincial decision-making have failed and GM.1 is dead and buried. While there is some outstanding litigation in the federal courts relating to GM.1, even if Northback or the First Nation applicants are successful, the remaining litigation cannot obtain the permits necessary for GM.1 to proceed.

Northback's Alberta Court Proceedings

As recounted in previous posts, Northback's litigation against the provincial permit denials had two tracks because of an administrative law issue that potentially directed questions of law and questions of fact to different levels of court.

In track 1 Northback sought to appeal the JRP's decision to the Court of Appeal on questions of law. The Court of Appeal denied Northback permission to appeal ([2022 ABCA 30](#)), and the

Supreme Court of Canada declined to hear an appeal of that denial ([2022 CanLII 88683 \(SCC\)](#)), ending the track 1 litigation.

In track 2, Northback sought to argue questions of fact, starting at the Court of King's Bench. The first instance judge threw the case out on the application of the Alberta Energy Regulator (the AER, as the provincial part of the JRP) on the basis that the legislature had confined judicial supervision of AER decisions to the Court of Appeal by way of what is known as a privative clause, and thus the Court of King's Bench has no role to play ([2023 ABKB 700 \(CanLII\)](#)). Benga appealed and the Court of Appeal confirmed that King's Bench decision ([2025 ABCA 186 \(CanLII\)](#)). The Supreme Court of Canada declined to hear an appeal on October 2, 2025 ([2025 CanLII 99179 \(SCC\)](#)), ending the track 2 litigation.

As the Supreme Court of Canada declined to hear appeals on both the track 1 and 2 litigation, Northback's litigation relating to the provincial permits appears to be finished.

Northback's Federal Court Proceedings

In a February 2024 decision, a federal court trial judge granted the separate applications of two First Nations on procedural fairness grounds (whether Canada failed to reasonably consult and accommodate those First Nations before issuing decisions on the project) but rejected the substantive grounds for review raised by Northback ([2024 FC 231 \(CanLII\)](#)). Northback appealed. The Federal government sought to have Northback's appeal set aside on the basis that it was moot given the federal Minister had been ordered to reconsider their decision on the application of the Nations. In February 2025, the Federal Court of Appeal ([2025 FCA 31 \(CanLII\)](#)) ruled that the issue Northback wished to raise was not moot and allowed the appeal to proceed. However, on October 1 2025, Northback sought to stay the federal court proceedings until July 2026, while the federal Minister of Environment and Climate Change Canada engaged in the consultations with First Nations required by the initial federal court decision, noting the outcome of the consultations may make the appeal moot (see [Federal Court of Appeal registry](#), File A-98-24).

Grassy Mountain Coal 2 (GM.2)?

Northback's litigation is nearing an end. Without a success at the provincial level, the coal mine envisaged by GM.1 cannot go ahead. Success, however unlikely, in any federal litigation cannot reverse the outcome of the JRP decision.

In May 2025, following a hearing on the issue, the AER approved an application from Northback to conduct a new coal exploration program at Grassy Mountain ([2025 ABAER 006](#)). The only reason to conduct new exploration would be to prepare for a new mine application. Although as of yet there is no new application from Northback on the AER website, Northback began [promoting a new mine application to journalists](#) in September 2025. Having run out of options for litigation relating to the initial permit denials, Northback seems to be preparing to file a new application for a redesigned mine at Grassy Mountain.

Other Canadian Coal News

The Coal Industry Modernization Initiative

The Alberta government promised new coal legislation and launched the [Coal Industry Modernization Initiative \(CIMI\)](#) in December 2024. That legislation was scheduled for the fall 2025 sitting, but there are now rumours it may not arrive until Spring 2026. The Department's Annual Report contains an update on CIMI [here](#) (at 61 – 62). We note that the GoA's most recent [press release \(October 20, 2025\)](#) advising of anticipated legislation to be introduced in the fall sitting made no mention of new coal legislation.

Coal Compensation Settlements

The Atrum Settlement

On [April 29, 2025](#), Atrum Coal Limited announced that it had reached an agreement-in-principle with the Government of Alberta with respect to what it alleged to be the constructive taking (de facto expropriation) of its Elan Coal Project assets. Atrum followed this up with an additional announcement on [June 14, 2025](#), to the effect that it had reached a definitive settlement, and a later announcement on [July 17, 2025](#) indicating that the settlement was worth \$142.8 million of which \$6 million would be retained by the Government of Alberta as security against the completion of reclamation work. The same press release also indicated that Atrum had agreed to surrender its Crown coal leases for the Elan property as part of the settlement.

Unlike some of the compensation cases commenced by other coal companies (and for a summary of those lawsuits, see this [post](#)), Atrum's litigation only involved Crown leases. There are no freehold coal rights involved. This is crystal clear from Atrum's amended statement of claim (March 10, 2025) which Atrum has provided on its website [here](#) (see para 17 and note 1). This distinction is significant because under s 8(1)(c) of the *Mines and Minerals Act*, [RSA 2000, c M-17 \(MMA\)](#) and the *Mineral Rights Compensation Regulation*, [Alta Reg 317/2003](#) Alberta already has in place a scheme for compensating the holders of Crown agreements (leases) where (MMA, s 8(1)(c)) "the [Minister](#) is of the opinion that any or any further exploration for or development of the mineral to which the agreement relates within that location or part of it is not in the public interest,..." That scheme is cost-based in the sense that it aims to allow the lessee to recover the costs that it has incurred in developing the property including an allowance for the cost of capital. It does not however provide any compensation for the claimed market value of the resource should it be exploited.

While it may ordinarily be difficult for members of the public to understand how much a company has expended on exploration, in this case Atrum's amended statement of claim (ASOC) provides that information (and one can assume that Atrum would not have been shy about including cost items). Paragraph 40 of Atrum's ASOC states that Atrum, by that time, had spent "\$25,823,228 on various exploration programs, fieldwork, studies and other development activities." Later (at para 79) Atrum restates its costs as \$5.3 million to acquire the leases and explorations costs of approximately \$41 million, plus exposure to some future remediations costs. The same paragraph also claims \$3.53 billion of losses based on the alleged market value of the property but for present

purposes we emphasise that Atrum’s development cost-based claim is for \$46.3 million plus remediation costs.

We understand that the settlement agreement has likely not been entered into under the terms of the *Mineral Rights Compensation Regulation* but our point is that the cost-based scheme in the Regulation would have limited the financial exposure of the Crown had the Minister decided to proceed under s 8(1)(c) of the *MMA*. This suggests that the Crown has compensated Atrum by nearly an additional \$100 million more than it needed to. The difference between Atrum’s untested costs-based claim and the amount of the settlement is striking and calls for justification. If there are other factors, of which the public is unaware, that led the Alberta government to offer what seems to be such a large additional payment, Alberta taxpayers deserve to know. Did the Alberta government, for example, make promises to Atrum of which we are not aware?

Finally, we note that all the information that we have about the settlement has been provided by Atrum as part of a series of press releases - no doubt in order to comply with Australian securities law disclosure requirements. There are rumours of settlements with other mining companies, but we are not in any position to confirm those rumours (apart from breaking news of second settlement addressed in the next subsection) and the Government of Alberta has made no public announcements about the contents of any such settlements. That said, the Department of Energy and Mineral’s [2024-2025 annual report](#) does include a cryptic reference to an “encumbrance” of more than \$300 million “for settlement of litigation claims.” (at 179) It is not clear whether this is a reference to coal litigation or other possible claims. Given the significant amounts of public monies at issue this level of disclosure is inadequate.

The Montem Settlement

As we were finalizing this post for publication, we became aware of information with respect to a second settlement, this one between Montem Resources and the Crown in relation to Montem’s Chinook project and three “greenfield” properties. Details of the agreement were posted by Montem’s Australian parent company, [Evolve Power on 17 October 2025](#) (Evolve Power Company Update). Once again, there has been no press release or other public communication from the Government of Alberta with respect to this settlement. The company’s update acknowledges that in this case the settlement covers both Crown coal leases and freehold coal rights (but only with respect to the Chinook property) - but excludes the rights associated with the Tent Mountain Project (we may address this exclusion in a separate post but for now see [here](#) on current status of Tent as a pumped storage project):

Pursuant to the Definitive Agreement, [the Crown] will pay Montem CAD\$95,000,000, and the Company will surrender the Chinook and Greenfield Coal leases to the Government of Alberta, as well as transfer the Chinook Freehold Mineral Rights and all surface rights related to those projects to the Government of Alberta. The Chinook and Greenfield Coal leases and Freehold Mineral Rights to be transferred to Alberta represent all of Montem’s Alberta coal assets, save and except for its Tent Mountain Project. (Evolve Power Company Update, at 1)

The Montem [Statement of Claim](#) (SOC) of February 8, 2023 reveals that the Chinook project covers 3,421 ha of freehold coal rights and 6,349 ha of Crown lease rights. The three greenfield properties (4-Stack, Oldman, and Isola) are exclusively Crown coal lease properties (SOC at paras 23 – 24).

As with the Atrum ASOC, the Montem SOC made claims based both on its exploration costs (\$15 million, see paras 38 and 73(b) of the SOC) as well as expectations as to the value of future production (\$1.76 billion). While the compulsory acquisition of fee simple rights might be based on market value rather than costs incurred, and while in this case it is hard for us to separate out the claims in relation to Crown leases from the claims in relation to the freehold or fee simple coal rights, it still seems obvious that the public deserves an explanation of why the Crown settled Montem’s claims in the amount of \$95 million as opposed to a cost-based claim for \$15 million.

Summit Coal Mine

As previously noted on [ABlawg](#), the AER’s Chief Executive Officer took the extraordinary step (August 21, 2025) of [overturning a decision](#) of appointed hearing commissioners to continue with a hearing of an application by Summit to expand its current operations. The CEO’s reversal meant that Summit’s applications could be processed as ordinary regulatory applications. The Canadian Parks and Wilderness Society, Northern Alberta (CPAWS (NAB)) and the Alberta Wilderness Association (AWA) have applied to the Court of Appeal for permission to appeal the AER’s CEO’s decision. The applicants have stated three grounds:

- a. Whether the AER’s CEO erred in law in interpreting *Responsible Energy Development Act (REDA)* as authorizing him to intercede in an ongoing proceeding before a panel of the AER’s hearing commissioners and reconsider a procedural decision of the panel in a manner that ended the proceeding and dismissed the panel.
- b. Whether the AER’s CEO breached his statutory authority, including sections 11(3) and 12(1)(c) of *REDA*, by conducting a written hearing in respect of a reconsideration request under section 42.
- c. Whether the AER’s CEO erred in law or acted unreasonably by misinterpreting and misapplying the AER’s reconsideration test and departing from the AER’s established interpretation and application of section 42 of *REDA* without justification.

The application is scheduled to be heard on November 6, 2025. [CPAWS-NAB’s website](#) reports that in the interim the AER has granted Summit’s approvals in the ordinary course.

Judicial Review of the Decision to Lift the Moratorium

Our June 27 Update post (above) noted that the Blood Tribe (Kainai Nation) had filed an [application for judicial review in the Court of King’s Bench](#) seeking to quash Minister Jean’s January 15, 2025 decision to lift the moratorium on coal exploration and development on the Eastern Slopes. The Siksika Nation followed suit and filed its own application on July 2, 2025. See the announcement [here](#), the filed application [here](#) and short commentary [here](#).

Coal Mining Effluent Regulations and Enforcement

The federal government, after a long silence, is planning to restart the consultation process on the [Proposed Coal Mining Effluent Regulations](#) (see the discussion in [this post from March 2021](#)). The coal mines in B.C.'s Elk Valley, now owned by Elk Valley Resources Operations Limited, was recently [fined millions of dollars](#) for failure to control effluent from their mining operations. [ABlawg has also posted](#) on the Government of Alberta's apparent commitment to a zero-discharge selenium standard as a precondition to any new approvals. If the government is serious about this ambitious standard, then Alberta needs to participate actively in this consultation.

This post may be cited as: Nigel Banks & Drew Yewchuk, "Taking Stock of the Grassy Mountain Project and Other Coal Matters: Update 4, October 2025" (23 October 2025), online: ABlawg, http://ablawg.ca/wp-content/uploads/2025/10/Blog_NB&DY_GrassyMountain4.pdf

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