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“No Coal” Legislation for Alberta’s Eastern Slopes

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Matter Commented On: A Proposal for “No Coal” Legislation: introducing *An Act to Protect the Eastern Slopes of the Rocky Mountains from Coal Exploration and Development*.

As readers of ABlawg will know, we have consistently provided coverage of coal law and policy issues in Alberta since the Government of Alberta revoked Peter Lougheed’s 1976 [Coal Development Policy for Alberta](#) in May 2020. Our coverage includes a collection of posts [here](#).

This post takes a different, more proactive approach. Rather than commenting on Government of Alberta policy or proposed coal industry development, we present draft legislation designed to protect the Eastern Slopes of the Rocky Mountains from such development. Our objective is to safeguard, for present and future generations, essential sources of clean water in the region for drinking and food production as well as the provision of other broader ecosystem values and services.

The draft legislation responds to the many issues and concerns expressed by Albertans over the last six years; concerns that the Government appears intent on ignoring as it rolls out its [Coal Industry Modernization Initiative](#) (CIMI) to allow future coal exploration and development in the Eastern Slopes. The Government of Alberta advances CIMI in spite of the fact that it has not: (a) implemented the [Coal Policy Committee](#) recommendations approved by Cabinet in February 2022, (b) established a provincial, numerical, regulatory enforceable discharge standard for selenium in coal mine wastewater, or (c) included selenium in the [Alberta Energy Regulator's Coal Mining Wastewater Guidelines](#).

In contrast, the draft legislation prioritizes the conservation of the Eastern Slopes for ecological, cultural, recreational, tourism and agricultural values rather than for coal exploration and development. As such, the draft legislation will serve as a clear benchmark against which to measure the Government’s own commitments to these values and to the Government’s stated commitment to prevent selenium from entering Alberta’s waterways downstream of coal mine operations (see ABlawg post [here](#)).

Although we believe the draft legislation provides the basis for achieving the vision of the Eastern Slopes that Albertans have continually expressed, we are under no illusions that it will be adopted by the Government. But that is not the only measure of its value. With the Legislative Assembly now sitting, the draft legislation can help prompt a serious public discussion among MLAs about the future of the Eastern Slopes - a discussion that must involve First Nations and Métis communities.

While we assume responsibility for the draft legislation and the accompanying annotation, we acknowledge that we have built on the work of others, including those engaged in developing the citizen-led [*Coal Policy for Alberta, 2022 and Beyond*](#) and the work of Ms. Rachael Notley and other members of her caucus in bringing forward [*Bill 214, the Eastern Slopes Protection Act*](#) in the second session of the 30th Legislature, first reading April 7, 2021. Our work is also informed by Corb Lund's [*Water Not Coal Campaign*](#) and his citizen initiative [*petition*](#).

Appendix I: Draft legislation. *An Act to Protect the Eastern Slopes of the Rocky Mountains from Coal Exploration and Development*

Appendix II: An Annotation

Appendix I

An Act to Protect the Eastern Slopes of the Rocky Mountains from Coal Exploration and Development

Preamble

WHEREAS the Eastern Slopes of the Rocky Mountains ("Eastern Slopes") have been used, honoured and sustainably occupied by Indigenous peoples and their communities since time immemorial and continue to serve as a place of gathering, harvesting and ceremony;

WHEREAS the Eastern Slopes represent an area of nationally and internationally significant ecosystems, watersheds and landscapes that are essential sources of clean water for drinking and food production and the provision of other ecosystem services;

WHEREAS coal mining and coal exploration activity in the Eastern Slopes jeopardize the ecological integrity of those areas and water sources;

WHEREAS civil society has developed a vision for the protection of the Eastern Slopes and the end of coal development in Alberta ("A Coal Policy for Alberta – 2022 and Beyond");

THEREFORE HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "approval" means "approval" as defined in the *Responsible Energy Development Act* and includes any approval granted under the *Coal Conservation Act*, the *Public Lands Act*, the *Water Act* and the *Environmental Protection and Enhancement Act*;

(b) "coal activity or project" means an activity or project related to coal exploration, development or mining that requires an approval to be lawfully carried out, but does not include coal-related reclamation or abandonment;

(c) "coal lease" means a coal lease issued under the *Mines and Minerals Act* or any former Act;

(d) "coal processing plant" means "coal processing plant" as defined in the *Coal Conservation Act*;

(e) "Eastern Slopes" means the area shown on Map 1 (page vi) and described in *A Policy for Resource Management of the Eastern Slopes*, 1977 (revised 1984 and 2023);

(f) "existing operating coal project" means a mine site for which there is a valid approval under the *Coal Conservation Act* for a coal processing plant or coal mine that is actively operating on the property and that was in actual production on October 1, 2026 and for greater certainty does

not include Northback Holdings' Grassy Mountain Project, Valory Resources' Blackstone Project, or any project to expand an existing mine;

(g) "mine" means "mine" as defined in the *Coal Conservation Act*;

(h) "mine site" means "mine site" as defined in the *Coal Conservation Act*;

(i) "Minister" means the Minister responsible for the *Mines and Minerals Act*; and,

(j) "Regulator" means the Alberta Energy Regulator established under the *Responsible Energy Development Act* and includes a person acting on behalf of the Regulator.

Purposes

2 The purposes of this Act are

- (a) to respect and uphold Indigenous treaty rights and other Indigenous rights and title, and Indigenous traditional activities within the Eastern Slopes,
- (b) to protect the ecosystems, watersheds and landscapes of the Eastern Slopes from coal exploration, development and mining,
- (c) to preserve the Eastern Slopes for the benefit of current and future generations for ecological, cultural, recreational, tourism and agricultural values and uses, and
- (d) to prohibit all new coal mining exploration and production activities within the Eastern Slopes while allowing existing operating coal projects to reach the end of their economic lives.

Paramountcy

3 Except where this *Act* or the regulations provide otherwise, the provisions of this *Act* and the regulations under this *Act* prevail to the extent of any inconsistency or conflict with one or more provisions of any other enactment, and for greater certainty, this *Act* applies despite any provision of the *Expropriation Act* and clauses (a.1) and (a.2) of section 1(1) of the *Alberta Bill of Rights*.

Prohibition

4(1) Despite any provision in the *Mines and Minerals Act*, the Minister shall not grant a lease or other agreement for coal rights within the Eastern Slopes for coal rights that are the property of the Crown in Right of Alberta.

(2) Notwithstanding subsection (1), the Minister may grant a renewal of a coal lease within the boundaries of an existing operating coal project.

(3) Despite any power, duty or function conferred on or provided to the Regulator under any enactment the Regulator shall not exercise, nor attempt to exercise, that power nor perform that duty or function if doing so would enable, directly or indirectly, a person to carry out a coal activity or project within the Eastern Slopes other than in relation to an existing operating coal project.

(4) For greater certainty, subsection (3) also applies to those titled tracts within the Eastern Slopes where the fee simple title to coal is held by the Crown or a person other than the Crown in right of Alberta.

Cancellation of certain leases

5 (1) Subject to subsection (2) all coal leases issued within the Eastern Slopes are cancelled.

(2) Subsection (1) does not apply to a coal lease located within the boundaries of an existing operating coal project.

(3) Cancellation of a coal lease under this section shall have the same legal effect as cancellation of an agreement under section 8(1)(c) of the *Mines and Minerals Act*.

Cancellation of certain approvals

6 (1) Subject to subsection (2) and section 7, all approvals in relation to a coal activity or project are cancelled.

(2) Subsection (1) does not apply to an approval for an existing operating coal project.

Abandonment, reclamation and remediation activities

7 Nothing in this *Act* relieves a person from any responsibility that a person has or may have in relation to abandonment, reclamation and remediation with respect to any activities covered by an approval, or any other responsibilities that a person has or may have as an owner, operator or otherwise under the *Coal Conservation Act*, the *Environmental Protection and Enhancement Act*, the *Public Lands Act*, the *Water Act* or other law of general application.

No cause of action due to cancellation of approvals or leases

8 (1) Subject to subsections (2) and (3) no person has a right of action and no person shall commence or maintain proceedings

(a) to claim damages or compensation of any kind, including, without limitation, damages or compensation for injurious affection, misfeasance in public office, or interference with economic relations, from the Crown, the Regulator, or any other person, or

(b) to obtain a declaration that the damages or compensation referred to in clause (a) is payable by the Crown, the Regulator, or any other person,

as a result of this enactment.

(2) Where a coal lease is cancelled under section 5, the lessee may apply for, or be granted, compensation under the *Mineral Rights Compensation Regulation* (Alta Reg 317/2003).

(3) Where the Minister is of the opinion that sections 4 (3) and (4) operate to deprive the owner of a fee simple estate to coal of all reasonable uses of that estate, the Minister may pay compensation to the owner of that estate and those who may hold the equivalent of a coal lease from such an

owner, but only on a basis that is consistent with the terms of the *Mineral Rights Compensation Regulation* (Alta Reg 317/2003) and in return for a surrender of the fee simple interest.

Regulations

9 The Lieutenant Governor in Council may make regulations to give effect to section 8(3).

Appendix II

Annotation for An Act to Protect the Eastern Slopes of the Rocky Mountains from Coal Exploration and Development

Background

In May 2020, the Minister of Energy shocked Albertans with the announcement that the Government of Alberta had rescinded Alberta's [1976 Coal Development Policy](#). Since its adoption, that Policy had served to protect large areas of the Eastern Slopes of the Rocky Mountains from coal exploration and development. With the rescission of the policy large areas of the Eastern Slopes were thrown open for coal exploration and leasing; and, while Albertans were taken by surprise, coal companies were not.

The coal companies had advance notice of the coming policy change and immediately seized the opportunity to acquire new leases and exploration permits, and to begin exploration activities. These developments are well documented on the coal website pages of Canadian Parks and Wilderness Society – Southern Alberta Chapter ([CPAWS-SAB](#)), Canadian Parks and Wilderness Society – Northern Alberta Chapter ([CPAWS-NAB](#)) and the Alberta Wilderness Association ([AWA](#)), as well as in a series of “coal law and policy” posts on ABlawg and available as a collection [here](#).

Shock turned to anger for many Albertans who were outraged by this policy reversal and the ensuing damage to hitherto protected ecosystems, landscapes and watersheds from exploration and its associated access activities such road building. As this anger built, the government was forced to backtrack, restoring the 1976 policy and ultimately imposing a moratorium on further permitting and leasing activity in [April 2021](#). The government also appointed a [Coal Policy Committee](#) to [gather the views of Albertans](#) and to make recommendations. The Committee [reported out in December 2021](#), but the government has continued to vacillate. Far from protecting the Eastern Slopes from all new coal mining the government chose instead to announce a new Coal Industry Modernization Initiative in [December 2024](#) and revoked the moratorium in [January 2025](#).

Civil society has responded to the continuing threat to the Eastern Slopes in a number of ways including demonstrations against the Grassy Mountain coal project, rejected by a Joint Review Panel in 2021. In addition, various organizations collaborated on a citizen-led [Coal Policy for Alberta, 2022 and Beyond](#), and, most recently, many Albertans signed a [citizen initiative petition](#) demanding legislation to prohibit new coal mines and coal exploration on the Eastern Slopes.

This brings us to the present, and this proposal for legislation to prohibit new mining activities on the Eastern Slopes. We acknowledge that this is not the first effort to develop such legislation. As early as May 2021, Ms. Rachel Notley, the then leader of the Official Opposition in Alberta's Legislative Assembly, introduced [Bill 214, the Eastern Slopes Protection Act](#) and subsequently reintroduced the Bill in [May 2024](#). Our proposed draft legislation builds on that effort. What follows is an annotation of the draft legislation with a view to explaining the text and some of the choices that we made. As noted in the covering note for this ABlawg, we offer this draft legislation,

not as the last word on “no coal” legislation but as a means of starting an ongoing discussion, a discussion that must involve First Nations and Métis communities.

Title

We chose a different title than that offered by Bill 214, *Eastern Slopes Protection Act*, on the basis that the draft legislation is specifically directed at protecting the Eastern Slopes from coal activities. Our draft legislation does not address other resource activities that threaten the ecological integrity of the Eastern Slopes. Further actions will be needed to fully protect the Eastern Slopes from other land use activities. See Appendix A of [A Coal Policy for Alberta, 2022 and Beyond](#).

Preamble

The purpose of a preamble in a statute is to lay out the premises that underly the need for the legislation. In other words, a preamble tells a story and provides a logic chain. We consider that the subject matter of this proposed legislation is so important to many Albertans that it merits a preamble to serve as a reminder of why we need this protective legislation. Other examples of provincial statutes that contain a preamble include: the *Emissions Management and Climate Resilience Act*, [SA 2003, c E-7.8](#), the *Alberta Taxpayer Protection Act*, [RSA 2000, c A-36](#), the *Alberta Bill of Rights*, [RSA 2000, c A-14](#), the *Red Tape Reduction Act*, [SA 2019, c R-8.2](#), and the *Alberta Sovereignty within a United Canada Act*, [SA 2022, c A-33.8](#).

Definitions, s 1

As with the Preamble, our comments on the definitions are selective. We chose to highlight the definition of an “existing operating coal project”. The overall purpose of the proposed legislation is to prevent new coal exploration and new coal mines within the area defined as the Eastern Slopes. The proposed legislation does not propose to shut down existing operating mines within the Eastern Slopes. These existing mines (Cheviot (Cardinal River), Coal Valley, Grande Cache and Vista coal mines in the Hinton/Grande Cache areas), covered by the first part of the definition of “existing coal project”, will be allowed to reach the end of their physical and economic lives, provided that they continue to comply with all applicable regulatory requirements. The cutoff date for the grandparenting is set at October 1, 2026.

At the same time, the definition of an “existing operating coal project” clarifies for greater certainty that this grandparenting does not include Northback Holdings’ Grassy Mountain Project, Valory Resources’ Blackstone Project, or any project to expand an existing mine. An alternative approach would be to provide a list of all existing approvals and property descriptions for existing mines. While such an approach might provide additional certainty, we lack the resources to engage in such an exercise.

“Approval” adopts the definition of that term from the *Responsible Energy Development Act* [SA 2012, R-17.3](#) where it is defined as “a permit, licence, registration, authorization, disposition, certificate, allocation, declaration or other instrument or form of approval, consent or relief under an energy resource enactment or a specified enactment.” The reference to energy resource

enactments and specified enactments acknowledges that the Alberta Energy Regulator (AER) issues approvals under a variety of land, water and resource statutes.

Purposes, s 2

While a preamble provides the background as to why the statute is required, a statement of purposes in a statute lays out what the proponents of the statute expect the statute to achieve. In this case, the purpose clause, amongst other things, recognizes the duty to respect and uphold Indigenous treaty rights and other Indigenous rights and title and emphasises the intergenerational importance of the Eastern Slopes.

Many important Alberta statutes contain “purposes” provisions including the *Oil and Gas Conservation Act*, [RSA 2000, c O-6](#), and the *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#).

Paramountcy, s 3

The draft legislation deals with many issues that are also covered in other statutes of general application such as those listed in s 7, and accordingly s 3 is designed to ensure that the specific provisions of this draft legislation prevail over the more general provincial resource management, and regulatory statutes. The language of the first part of s 3 draws upon similar provisions in other statutes such as the *Alberta Public Agencies Governance Act*, [SA 2009, c A-31.5](#), s 2) and the *Real Property Governance Act*, [SA 2024, c R-5.3](#), s 4).

Since the draft legislation provides its own compensation rules for affected interests it is also important to stipulate that it operates notwithstanding the property rights provisions of the *Alberta Bill of Rights*, [RSA 2000, c A-14](#), in particular the new definition of the “taking of property” and related amendments introduced in that *Act* in 2024 by [SA 2024, c 12](#). We also reference the *Expropriation Act*, [RSA 2000, c E-13](#) to resolve any inconsistency that there may be between this draft legislation and an existing provision in the *Mines and Minerals Act*, [RSA 2000, c M-17](#) (s 8(1)(b)) which authorizes the Minister to acquire freehold mineral rights by way of expropriation. The intent is that this *Act* provides a complete code of compensation rules for any person affected by the operation of this *Act*.

Prohibition, s 4

The prohibition and cancellation provisions (ss 4, 5 and 6) represent the heart of the draft legislation. Section 4 seeks to do three main things. First, it makes it unlawful for the province to grant leases for additional publicly owned coal rights within the Eastern Slopes, except for existing operating coal projects (grandparented projects) as defined in the definition section. Second, it makes it unlawful for the AER to grant any new regulatory approvals for coal exploration, production or processing activities except in relation to grandparented projects. And third, it makes it clear that the prohibition on new regulatory approvals extends to privately owned coal rights (freehold or fee simple coal rights) as well as activities on Crown leases.

For another example of a statute containing comprehensive resource development prohibitions to achieve a conservation goal see British Columbia's *Flathead Watershed Area Conservation Act*, [SBC 2011, c 20](#).

Cancellation of certain leases, s 5

In addition to prohibiting new leases and approvals, it is also important to cancel existing Crown leases. It is well documented that many of these leases were granted in the months immediately following the revocation of the 1976 Coal Development Policy in May 2020: see the coal webpages of the AWA, CPAWS-NAB and CPAWS-SAB referenced in the introduction. Section 5 gives effect to this cancellation while grandparenting existing operating coal projects. The original 1976 Coal Development Policy (at 19, footnote) made an exception for pre-1930 leases granted by Canada, likely because of the terms of s 2 of the *Natural Resources Transfer Agreement*. We are not aware of whether there are still pre-1930 coal leases in good standing.

Cancellation of certain approvals, s 6

Section 6 applies the same cancellation policy to existing regulatory permits with the same grandparenting exceptions.

Abandonment, reclamation and remediation activities, s 7

Section 7 is designed to ensure that, although an approval may have been cancelled, the person holding the approval, or any person with reclamation-related obligations, is still responsible for abandonment, reclamation and remediation activities both under the terms of its approval, under the terms of any other related legislation such as the *Coal Conservation Act*, [RSA 2000, c C-17](#) and the *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12](#).

No cause of action due to cancellation of approvals leases, s 8

This complicated section is designed to provide limited compensation to the holders of coal interests in recognition of the fact that they have been adversely affected by inconsistent government decision-making. There are three main elements to this package.

First, subsection (1) is designed to remove any claim to compensation under the general law that the holder of coal lease or an approval might have. The Supreme Court of Canada confirmed in *Annapolis Group Inc. v Halifax Regional Municipality*, [2022 SCC 36 \(CanLII\)](#), [2022] 2 SCR 772, that a provincial legislature can lawfully make such a decision:

... we reiterate that provincial legislatures remain free, as they always have been, to “alter the common law” in respect of constructive takings ... by immunizing [the government] by statute from the obligation to pay compensation for taking private property in the public interest. (at para 78)

The drafting in subsection (1) is based on section 15.1(5) of the *Mines and Minerals Act*, [RSA 2000, c M-17](#) although it is broader insofar as it seeks to protect not just the Crown and the

Regulator but also, for greater certainty, any persons who might, for example, have advocated for adoption of this sort of “no coal” legislation.

The second step is to confirm in subsection (2) that Crown lessees whose leases are cancelled will still have the opportunity to claim compensation under the terms of the *Mineral Rights Compensation Regulation*, [Alta Reg 317/2003](#). This *Regulation* allows the holder of a Crown agreement, including a coal lease, to recover its sunk costs in the event of cancellation. This is a cost-based compensation scheme rather than a market value compensation scheme.

The third step is to provide an opportunity in subsection 4 for the owner of fee simple coal rights, and any person holding a coal lease of such rights, to seek compensation from the Government of Alberta on the same cost-based scheme as the compensation available to the holder of Crown agreements under the Mineral Rights Compensation Regulation. The draft legislation does not directly expropriate fee simple coal rights, but we recognize that some may argue that the effect of cancelling existing approvals and prohibiting the AER from granting new approvals is a *de facto* expropriation or constructive taking as understood by the Supreme Court of Canada in the *Annapolis* case (*supra* and see para 44 for a summary).

The decision to compensate the owner of fee simple coal rights and any person holding a coal lease of such rights is consistent with the terms of the original 1976 [Coal Development Policy](#).

Where the Government buys back Crown leases in Categories 1, 2 or 3 it will do so on the basis of approved expenditures adjusted to a current dollar basis, plus interest.

Where freehold rights to coal and leases of such rights are affected by the restrictions on exploration and development imposed by Categories 1, 2 and 3, the Government is prepared to purchase the lessor rights at fair value determined by agreement or arbitration, and to acquire any lessee rights on the same basis as for lessees of Crown rights. (at 19)

The draft legislation makes two changes from the 1976 Coal Development Policy. First, it will apply to all four coal categories. Second, it applies the same compensation metric (sunk costs) of the *Regulation* to both the owners of freehold rights and their lessees. Since it may be necessary to work out the details of what this might look like, we have provided a regulation-making power in s 9 to fully operationalize this provision.

We did consider whether the Grassy Mountain Project should be denied compensation. This project was rejected by the Joint Review Panel in 2021. There is therefore a strong argument that the properties covered by this project cannot support a claim for compensation. The rationale is simple. A project proponent always takes the risk that it will be unable to secure regulatory approval for its project if it is unable to meet the requirements imposed by the relevant legislation. Government never has a duty to compensate a resource proponent in such circumstances. However, in this case, the Government of Alberta has continued to encourage the owners of this project, Benga and now Northback, to pursue a revised project application. Accordingly, we have conceded that the project should be treated in the same manner as other projects subject to cancellation. Alternatively, it would be possible to draft a provision limiting Benga/Northback’s claims to any incremental qualifying expenditures (within the meaning of the regulation) incurred

as part of Northback’s continuing assessment of the property post the JRP decision. Such a provision might look like this (with the addition of “Subject to subsection (4)” in each of subsections (2) and (3):

8(4) In the case of coal leases and fee simple estate lands within the boundaries of the Grassy Mountain Coal Project as described in Figure 1-2 of the Report of the Joint Review Panel, Benga Mining Limited, Grassy Mountain Coal Project, Crowsnest Pass June 17, 2021, 2021 ABAER 010 CEAA Reference No. 80101, compensation is not payable in respect of any costs or expenses incurred prior to June 17, 2021.

We invite discussion as to how best to treat the Grassy Mountain Project.

The provisions of s 8 will also serve to settle any remaining regulatory takings litigation launched by a number of coal companies (see: “[Coal Law and Policy Part Nine: Coal Moratoriums, They Come and Go](#)” and some discussion of settlements with some of the companies here: “[Taking Stock of the Grassy Mountain Project and Other Coal Matters: Update 4, October 2025](#)”) While it may be unusual for a government to effectively legislate a settlement of ongoing litigation, it is not unprecedented. For example, the Government of Alberta added s 10.1 to the *Mines and Minerals Act* in 2010 to resolve ongoing litigation dealing with the conflicting claims of coal owners and natural gas owners to coalbed methane: see *Encana Corporation v. Devon Canada Corporation*, [2012 ABCA 271 \(CanLII\)](#).

Regulations, s 9

As already noted, s 9 permits Cabinet to make regulations to further implement s 8(3).

This post may be cited as: Nigel Bankes, Shaun Fluker, David Luff and Drew Yewchuk, ““No Coal” Legislation for Alberta’s Eastern Slopes” (28 October 2026), online: ABlawg, http://ablawg.ca/wp-content/uploads/2026/10/Blog_NB_Coal_Legislation.pdf

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