



**Canadian
Environmental Law
Association**
EQUITY. JUSTICE. HEALTH.



October 4, 2021

Impact Assessment Agency of Canada
160 Elgin Street, 22nd floor
Ottawa, Ontario
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Via email UpperBeaver@iaac-aeic.gc.ca

**Re: Comments on Initial Project Description and Request for an Impact Assessment
Upper Beaver Gold Project (Reference No. 82960)**

The Canadian Environmental Law Association, Ontario Nature and MiningWatch Canada provide the following comments in response to the Impact Assessment Agency of Canada's (IAAC) notice inviting comments on the initial project description for the proposed Upper Beaver Gold project and whether an impact assessment should be required.

CELA, Ontario Nature and MiningWatch Canada request the IAAC conduct an impact assessment (IA) for the Upper Beaver gold mine given the potential for significant, adverse effects to Canada's ability to meet its climate targets and uphold environmental obligations. As public interest organizations, we are also deeply concerned that without an IA, there would *not* be a forum for individuals, citizens groups and Indigenous communities to exercise their rights to participate in environmental decision-making for projects which may adversely affect their air, lands, and water.

About Us

The Canadian Environmental Law Association (CELA) is a public interest law group founded in 1970 for the purposes of using and enhancing environmental laws to protect the environment and safeguard human health. Funded as a specialty legal aid clinic, CELA lawyers represent low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental and public health issues.

Ontario Nature is a conservation organization that protects wild species and spaces through conservation, education and public engagement. A registered charity, Ontario Nature represents more than 30,000 members and supporters, and more than 150 member groups from across Ontario. Since it was established

Canadian Environmental Law Association

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as the Federation of Ontario Naturalists in 1931, Ontario Nature has been a champion for nature. Our vision is simple: An Ontario where nature inspires and sustains us for generations to come.

MiningWatch Canada is a non-profit organisation that provides a co-ordinated public interest response to the threats to public health, water and air quality, fish and wildlife habitat, and community interests posed by irresponsible mineral policies and practices in Canada and around the world. We are supported by twenty-five Canadian environmental, social justice, Indigenous, and labour organisations.

I. COMMENTS ON THE INITIAL PROJECT DESCRIPTION

i. Contribution to Climate Change

In reviewing a project, the IAAC is tasked with considering whether the project may hinder or contribute to Canada's ability to meet climate commitments.¹ CELA, Ontario Nature and MiningWatch Canada find Agnico Eagle's preliminary review of climate effects, as contained in their initial project description, to be dismissive and insufficient. As drafted, an assessment of climate effects as required by the *IAA* remains unfulfilled.

On the issue of greenhouse gas reporting, Agnico Eagle's initial project description does not detail which greenhouse gases will be measured and publicly reported, should the project proceed. As written, the initial project description only provides bulk CO₂ equivalent estimates. We are also concerned by Agnico Eagle's framing that "as with virtually all industrial operations, greenhouse gases will be emitted during all phases of the project."² At this stage, generalizations are not helpful when instead, a proponent should demonstrate how, and with what degree of rigour, they will measure and study climate impacts and resulting emissions.

Regarding the impact of climate change events on the proposed project, the initial project description is altogether silent. What ought to have been included is a preliminary analysis of climate impacts on the integrity of project components. Mining infrastructure – including tailings ponds and waste management areas – have been designed on the assumption that the climate is *stable*.³ Therefore, the risk of structural failure due to the forces of climatic changes in all stages from construction, operations, and post-closure, is of great concern.⁴

Extreme rainfall, rain, snow and rapid melting events pose specific risks to mine sites because they can overwhelm site drainage and diversion structures, thereby causing excess runoff to tailings impoundment areas.⁵ This in turn can lead to erosion, slope instability and the rapid increase of water levels and threaten releases of acid rock drainage and other contaminants into the environment. Changes in temperatures can also affect mine sites, by altering the availability of water (ie. due to prolonged droughts) and triggering

¹ *Impact Assessment Act*, (SC 2019, c 28 s 1) Preamble, s 22(i) [*IAA*]

² Agnico Eagle, Initial Project Description, s 6.4

³ T Pearce et al. "Climate change and mining in Canada" (Mitigation and Adaptation Strategies for Global Change, 2011), p 12 [Pearce, 2011]

⁴ Pearce, 2011, p 13

⁵ Pearce, 2011, p 15

increased evaporation from tailings ponds and potentially exposing or re-exposing metals and contaminants below.⁶ A summary of such climate events and their impacts, in response to the project's specific infrastructure and location, ought to have been included.

ii. Fostering Sustainability

Among the purposes of the *IAA* is fostering sustainability. Unfortunately, there are no references to sustainability within Agnico Eagle's initial project description. There are a number of ways this could have been raised and addressed at this stage. For instance, the following questions assist in determining whether a project is aligned with sustainability:

- Does the project cause, induce, or exacerbate extreme weather events or slow onset events?
- Does it irreversibly alter an ecosystem?
- Does it make a community less resilient?
- Does it affect its life support systems?
- Does it sustain nature, life support systems and the community?⁷

Agnico Eagle had an opportunity at this stage to demonstrate how it would undertake a sustainability assessment of the project. Instead, the initial project description provides too little information and a lack of analysis to indicate the purposes of the *IAA* have been duly considered and factored into early decision-making and planning.

II. NEED FOR AN IMPACT ASSESSMENT

The *IAA* regime establishes an evidence-based, participatory and precautionary assessment process that anticipates and prevents adverse effects of proposed projects, prior to their construction or development. Done right, IAs provide a “look before you leap” approach to decision making.

CELA, Ontario Nature and MiningWatch Canada strongly support the application of the *IAA* to this project given the potential for impacts on Canada's ability to meet climate targets and uphold environmental obligations.

As public interest organizations, we are also deeply concerned that without an IA, there would *not* be a forum for individuals, citizens groups and Indigenous communities to exercise their rights to participate in environmental decision-making for projects which may adversely affect their air, lands, and water.

In undertaking an IA, the federal government must also recognize Indigenous jurisdiction when information-gathering and decision-making occurs. This is a power expressly provided for under section 114 of the *IAA*, which enables the Minister to enter into agreements with Indigenous governments so they can exercise certain powers and functions during the assessment process. Enacting an Indigenous jurisdiction regulation under the *IAA* would further Canada's accountability to upholding the principles

⁶ Pearce, 2011, p 16

⁷ A Majekolagbe, “Impact Assessment, Sustainability, and Climate Change: Lessons from Lower Churchill” (2021) *Dalhousie Law Journal*, p 84

within the *United Nations Declaration on the Rights of Indigenous People* and providing greater protection for Indigenous rights and interests.

Thank you for this opportunity to comment.

Sincerely,



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