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## **Benga Applies for Federal Judicial Review of Decision Statement by Minister of Environment and Climate Change**

CROWSNEST PASS, AB, August 13, 2021 /CNW/ - Benga Mining Limited (**Benga**) today announced that it has applied to the Federal Court of Canada for a judicial review of decisions against the Grassy Mountain Steelmaking Coal Project (**Project**) by the Minister of Environment and Climate Change, Jonathan Wilkinson, and the Cabinet, on the grounds that those decisions were unlawful, incorrect, unreasonable and/or unconstitutional.

Benga has applied for an order that quashes or sets aside the Minister's decision of August 6, 2021, that the Project, "is likely to cause significant adverse environmental effects" and which referred the Project to the Cabinet (**Referral Decision**). Benga is also seeking to quash the Cabinet's decision that the, "significant adverse environmental effects" that the Project, "is likely to cause are not justified in the circumstances." The full court filing can be found [here](#).

The Minister's determination was based on a decision by the Joint Review Panel (**JRP**) on June 17, 2021, to deny the Project, and was made despite applications being filed with the Court of Appeal of Alberta on July 16 and 19, 2021, by Benga and two separate First Nations, the Piikani Nation and the Stoney Nakoda Nations. The applications challenge the JRP's decision on the grounds that it made a number of errors in law and contraventions of procedural fairness and that the JRP's report was fundamentally and fatally flawed.

Benga's legal counsel wrote to the Minister on June 26, 2021, formally requesting that he take no action at this time, in order to allow Benga to pursue its legitimate legal avenues on appeal. The Minister did not respond.

Benga then wrote to the Impact Assessment Agency of Canada on July 6, 2021, advising that failure by the Minister to hold the federal process in abeyance pending resolution of Benga's legal challenges in the Court of Appeal of Alberta would seriously prejudice Benga and potentially those Indigenous groups that may benefit from the Project. The Agency did not respond.

"We are dismayed that Canada's Minister of Environment could render a decision so hastily, and based on a report that is facing multiple legal challenges," said John Wallington, CEO of Benga. "Not only were the Minister's and Cabinet's decisions premature and ill-informed, they were also made without adequate consultation with the relevant First Nations, something that is unconscionable within the rigours of a modern regulatory approval process."

The judicial review in the Federal Court of Canada is being sought on grounds that:

- The Minister improperly failed to consider Benga's request to hold a decision statement in abeyance while the Alberta Court of Appeal considered the JRP's decision;
- The Minister improperly relied on a fundamentally flawed JRP report to reach his decision;
- The Minister reached a decision prematurely, knowing that if the JRP report was quashed or sent back for reconsideration, then the Minister's decision would be invalidated.
- The Minister unreasonably found that the Project is likely to cause significant adverse environmental effects; and
- Prior to the Minister's Referral Decision, the Federal Crown failed to consult, or failed to adequately consult, with Indigenous groups.

Further, Benga is seeking a judicial review on the grounds that the Cabinet's decision incorrectly or unreasonably relied on the Minister's fundamentally flawed Referral Decision. If the Referral Decision is quashed or set aside, the Cabinet's decision must also be quashed or set aside.

"Throughout the years-long application process which Benga has diligently followed, Benga and its First Nations partners have respected and adhered to the rules," Wallington said. "Benga's parent company has to date outlaid in excess of \$700 million in acquiring the Project and in pursuing the necessary regulatory approvals. At the time of acquiring the Project, we were warmly welcomed and made to feel that Canada was very much open for business and intent upon attracting international investment and capital for the development of large-scale projects that would stimulate the economy and provide employment opportunities and jobs. We were acutely aware of Canada's international reputation as a destination of choice for mining projects that could be developed without political interference within an open, transparent and fair regulatory regime. However, the Minister's and Cabinet's decisions that we are now seeking to review raise serious questions about sovereign risk and just how open, transparent and fair the regulatory regime actually is."

The Project is a proposed steelmaking coal mine in Crowsnest Pass, Alberta. Metallurgical coal is vital for the production of steel as there is no proven commercially or economically viable substitute for that in the steelmaking process. The Project holds a Category 4 land use classification (being land on which surface or underground mining may be considered); nearly 25% of the Project sits on previously mined (legacy) land, which was mined over 60 years ago and never properly restored at the time, but will be restored if the Project proceeds.

The capital expenditure for the proposed Project is approximately \$800 million, and approximately 500 jobs would be created during construction and 385 full-time positions at full production, plus further benefits to many people indirectly employed. Over the life of the mine, the Project would be expected to generate \$1.7 billion in provincial and federal income taxes and royalties.