

Taseko

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MINISTRY OF NATURAL GAS DEVELOPMENT	
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MAY 20 2016	
REMARKS	

Taseko Mines Limited
1505 Flack, 1040 West Georgia St
Vancouver, BC V6E 4H1
Tel: 6078-373-4533
Fax: 6078-373-4534
taseko@taseko.com

May 13, 2016

The Honourable Christy Clark
Premier of British Columbia
Box 9041
Station Prov. Govt.
Victoria, BC V8W 9E1

WITHOUT PREJUDICE

Dear Premier Clark:

As you undoubtedly are aware my Company continues with its efforts to advance our New Prosperity Project and we are actively pursuing the matter through the Courts, with the goal of requiring the Federal Government to revisit the position it took under the Canadian Environmental Assessment Act, 2012 in not granting three authorizations to advance the project tied to fish habitat, navigable waters and explosives.

I firmly believe that the courts will find in our favour once the true facts of the Federal process are unveiled.

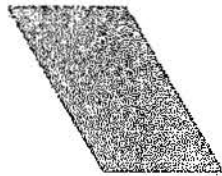
I have personally been involved in mineral development around the world and have experienced subversive undermining by government employees of important projects. I cannot believe, as a Canadian that the same could hold true in Canada in terms of what transpired through the Federal Panel Process as it relates to our New Prosperity Project.

It indeed though happens, everyone in this Province should remember Carrier Lumber, one of the more egregious efforts of the state and bureaucracy to destroy a business.

To bring you up-to-date on our findings, Federal elected representatives and senior deputy ministers met secretly with opponents of our Project, these opponents were not just First Nations representatives, but private citizens and NGO groups who had many meetings, after the Panel hearings had closed. As well, a 56 page submission in opposition to our Project was presented to the then Environmental Minister "after the Panel Report had been rendered" – all of which was not part of the process nor disclosed to my Company, and we were never given an opportunity to respond to it before Cabinet made its decision. All of this is contrary to the Federal decision-making process and likely contrary to law.

The British Columbian government should be very disturbed by this because constitutionally mineral assets are owned by the Province and their development is the Provinces' responsibility, not Ottawa's. With the BC government approving our Project and the Federal government torpedoing it by not following their own process is something that needs to be addressed by your administration.

Respectfully,
Russell Hallbauer, President (CEO)



We have recently though obtained through access to information requests, information regarding a submission from British Columbia Ministry of Energy and Mines personnel made to the Federal Review Panel – this submission downplayed a variety of supportive technical information from the BC Government's own consultants on water quality that, had these reports been presented to the Panel on behalf of the BC Government could have potentially affected the Panel's ultimate conclusions.

In a nutshell, Premier, BC Government employees were actively working to discredit our new plan with the Panel on the water quality issue around Fish Lake.

Even knowing all of this we have continued our efforts to move forward through the provincial regulatory processes, but have experienced intense resistance and delays from the British Columbia Environmental Assessment Office (EAO) which begs the question "why". As you know, our original Prosperity project was approved by two provincial ministers in 2010, and we applied to amend our environmental assessment certificate in June 2011 to reflect the modified New Prosperity design (which would avoid the draining of Fish Lake). It is incomprehensible to us that a decision on the amendment application remains outstanding nearly 5 years after it was filed. This is in fact an extremely simple amendment application to grant, given that the revised project will have less environmental impact and more economic benefits. Yet despite all the above, and various letters sent to EAO, the EAO continues to sit on its hands on this project, perhaps in the hope that Taseko will simply go away.

I must, however, assure you that is not going to happen.

My concern about the maladministration by the EAO has been heightened in recent months, with the signing of the Nenqay Deni Accord - without any prior consultation with our Company and I might add many other land owners and citizens of the Cariboo. This Accord makes clear that all lands within the Tsilhqot'in traditional territory (other than the title lands and Indian reserves) will either become category A lands or category B lands. Under the terms of the agreement, either categorization of our project will have material adverse impacts on our project and our economic interests. In June 2011 I sent both yourself and Minister Coleman then Minister of EMPR a letter regarding the Tsilhqot'in Framework Agreement and how we viewed such with respect to our project. Nearly 5 years later the situation continues to deteriorate.

In the circumstances where we find ourselves there are several possible scenarios as to how I would see the matter proceeding:

OPTION 1. The province:

- (a) proceeds with the timely completion of the Environmental Assessment Certificate amendment application;
- (b) provides written notice to our Company and the TNG that the lands over which our mineral tenures exist will not be on the table for negotiation as category A lands; and
- (c) commits to compensating our Company for any additional costs or adverse implications that arise in future as a result of any changes to the resource management regulatory regime and land use planning that will be applied to category B lands.



OPTION 2: The province immediately enters into negotiations with our Company to sell our existing tenures, permits and engineering reports to a private company owned by the province, and the province could in turn transfer ownership of that company to the TNG or any other party it deems appropriate. In order to achieve such an agreement, our Company would expect to be compensated for its substantial investment to date in the project, and be provided a significant Net Smelter Royalty in the event the deposit is ever mined by any other party, including any First Nation group.

OPTION 3: Taseko initiates legal proceedings against the province. This could include an application for an order in the nature of mandamus, directing the EAO / Minister of Environment to complete the certificate amendment application. Or we could include a civil suit for damages based upon a claim of *de facto* expropriation, among other things.

Premier— I hope it is clear that this Company and its shareholders cannot simply sit back and allow our project to be placed on ice by regulators, or to be unfairly treated by agreements with First Nations that affect our interests without any consultation with us. We would, of course, like nothing more than to find a way to develop this project that is in the mutual interests of ourselves, the citizens of the Cariboo, and the Tsilhqot'in and we will continue to work towards that goal. But please understand that in the absence of any such agreement we are not able to simply stand down and watch this substantial asset become sterilized to the detriment of our shareholders.

It is doubly disturbing to myself and my Board of Directors that there exists such a double standard with respect to Government projects, ie Site C and the interaction with aboriginal interests versus public companies trying to develop their assets in terms of "veto", contrary to the Supreme Court decisions on these matters. There have been seven First Nations groups taking the Government to court on Site C and you have won all challenges, yet our Project stands isolated against a perceived backdrop of First Nation pushback.

I am prepared to meet with the appropriate spokesperson you assign to this in the coming weeks to discuss these options for the government.

Sincerely,

Russell E. Hallbauer, P.Eng.
President & CEO

cc. Honourable Bill Bennett, Minister of Energy and Mines
Honourable Mary Polak, Minister of Environment
Honourable John Rustad, Minister of Aboriginal Relations and Reconciliation
Donna Barnett, MLA
Kim Henderson, Deputy Minister to the Premier
Elaine McKnight, Deputy Minister
Doug Caul, Deputy Minister
Kevin Jardine, Associate Deputy Minister



TŚILHQOT'IN NATIONAL GOVERNMENT

253 – 4th Avenue North • Williams Lake, BC V2G 4T4 • Phone (250) 392-3918 • Fax (250) 398-5798

June 10, 2016

Environmental Assessment Office
PO BOX 9426 STN PROV GOVT
VICTORIA BC
V8W9V1
CANADA

Attn: Kevin Jardine
Associate Deputy Minister

Michelle Carr
Assistant Deputy Minister

via email: Kevin.Jardine@gov.bc.ca

via email: Michelle.Carr@gov.bc.ca

Dear Mr. Jardine and Ms. Carr:

I write further to our phone call on June 8, 2016, when you advised that the Environmental Assessment Office (EAO) has decided to proceed with Taseko Mines Limited's (TML) application to amend its Environmental Assessment (EA) Certificate for the Prosperity Mine proposal.

Mr. Jardine stated that the EAO considered itself "legally obligated" to proceed with this amendment application because of a request by TML in a recent letter to the Premier. He stated that the EAO had no statutory authority to decline to proceed with the application in the face of TML's request.

We have not seen a copy of TML's letter to the Premier and we ask that you provide us with a copy at your earliest convenience.

I wish to reiterate the position expressed to you on our call, namely:

1. the EAO's decision to proceed with the amendment application is a complete reversal of the principled position that the EAO has maintained for almost two years;
2. as the EAO itself has made clear, it is *not* "legally obligated" to complete the amendment application simply because TML has made that request;
3. there is no legal or practical reason to consider an amendment application at this time, when the Project *cannot proceed* (in the face of its rejection by the

Federal Government) and the record that is central to the amendment decision is under legal challenge by the proponent;

4. The EAO can and should defer the amendment application until such time (if ever) that there is actually a project to review (*i.e.* in the unlikely event that the Federal Government reconsiders the rejection of New Prosperity).

I also write to request that the EAO take no further steps and suspend all decisions until a high-level meeting between Tsilhqot'in leadership and Provincial Ministers is convened and a discussion can occur in person.

Reversal of the EAO's Position

The EAO decided to review the New Prosperity proposal as a certificate *amendment* (rather than require a new EA). At that time, the EAO was clear that it would rely primarily—perhaps exclusively—on the information and findings of the federal panel process, *e.g.*:

[EAO] will rely principally on the federal review Panel environmental assessment of the proposed New Prosperity Gold Copper-Mine Project for the information needed for EAO's assessment of the requested amendment.

EAO considers that through the course of the Panel process sufficient information for the provincial review of the requested amendment will likely be available ...¹

The EAO's procedures for the amendment application rely on the Panel Report as a central component of the review and as one of the key documents for the decision-making package (along with the Federal Decision Note).

To be clear, TNG objected to the EAO process, and still does; however, this is the process that the EAO itself imposed.

The Federal Panel issued its scathing report for New Prosperity on October 31, 2013, identifying a host of significant environmental and cultural impacts, particularly for the Tsilhqot'in people, and concluded that TML had failed to show even "proof of concept".² The Federal Government rejected the project (again) on February 26, 2014.

When TML requested an extension of its EA Certificate for Prosperity in June 2014, the company also demanded that the EAO complete the amendment application.³ Notably, the EAO refused to proceed with the amendment application because it was not "appropriate" or "practical" at that time; in particular:

¹ EAO, *Procedures for assessment of the proposed amendment to the Environmental Assessment Certificate for the Prosperity Gold-Copper Project* [underscore added].

² *Report of the Federal Review Panel - New Prosperity Gold-Copper Mine Project* (October 31, 2013), p. 87 ["Panel Report"].

³ Letter, J. McManus to D. Caul (June 11, 2014).

- “TML has legal challenges underway challenging the procedural fairness, correctness and legitimacy of the information on which EAO had intended to rely for its review ...”;
- “Accordingly, EAO would likely need to reassess and potentially revise its application review procedures in order to continue with the review”;
- “In addition, federal agencies, TML and First Nations may be limited in the information and attention that they could provide to the review given the court proceedings”;
- “TML could not pursue the Project, as proposed to be amended, unless TML is successful in its court challenges and any subsequent federal consideration of the proposed project”; and
- “The priority for EAO staff over the next several months will be considering TML’s extension request”,⁴

What this makes clear is that, in July 2014, the EAO did not consider itself “legally obligated” to complete the amendment review simply because TML had demanded it.

Instead, the EAO considered a number of factors, exercised its discretion, and decided that it was not “practical” to proceed at that time with the amendment request.

In fact, the EAO maintained this position in the face of TML’s explicit complaints that the EAO had no legal basis to refuse to proceed.⁵ The EAO confirmed that its approach was “appropriate and would not result in significant prejudice” to TML, stating:

... EAO “chose to coordinate its approach with the federal panel review process”. Taseko did not disagree with this approach ...

... If Taseko were successful in the judicial review of the panel recommendation, I assume that a declaration of a breach of natural justice would render the Panel report and the conclusions void. I do not see how the EAO can make use of a report that may be considered a nullity, or at least is alleged to contain serious factual errors ...

...

⁴ Letter, S. Murphy to J. McManus (July 14, 2014), pp. 3-4.

⁵ Letter, J. McManus to D. Caul (July 30, 2014) [“... we do not believe there is any legitimate legal basis to further delay its decision on our amendment application ... there is no basis for EAO to refuse to proceed with the application ... we strongly encourage you to consult your legal counsel on this matter ...”].

If EAO were to proceed with its assessment of the amendment now, in light of the allegations regarding the Panel process and subsequent report, EAO would need to set out new procedures for the provincial amendment review that do not rely on the federal process. To confirm, EAO would need to design a process that wasn't potentially relying on a report that could be considered a nullity, or a process that was found to be procedurally unfair.⁶

Note that the EAO declined, again, to complete the amendment request at that time—for reasons that are equally valid today. The EAO didn't proceed to design a new process that would avoid it having to “make use of” or “rely” on something as critical as the Panel Report.

In January 2015, the Province extended TML's Certificate for Prosperity (over TNG's objections). In its report, the EAO made it very clear that it declined to complete TML's amendment application, not only because the extension request was a priority, but also for other reasons that are equally true today:

... EAO also noted that it would not be practical to actively review the application for an amendment at this time because TML has legal challenges underway questioning the procedural fairness, correctness and legitimacy of the information on which EAO had intended to rely for its review of the proposed amendment, and TML could not pursue the Project as proposed to be amended, unless it is successful in its court challenges and any subsequent federal reconsideration of New Prosperity.⁷

These same factors make it no more “practical to actively review the application” *today* than it was in January 2015.

Now, in June 2016, the EAO takes the position that it is “legally obligated” to complete the review, simply because TML has demanded it. This new position marks a complete reversal from:

- the EAO's rejection of this exact argument in 2014, when TML argued that the EAO had “no legitimate legal basis”⁸ to refuse to complete the amendment review at that time;
- the EAO's position in 2014 that “it would not be practical to actively review the application for an amendment at this time because TML has legal challenges underway questioning the procedural fairness, correctness and legitimacy of the information on which EAO had intended to rely for its review ...”;⁹ and

⁶ Letter, S. Murphy to J. McManus (October 15, 2014), pp. 2-3 [underscore added].

⁷ *Certificate Extension Report* (December 3, 2014), pp. 4-5 [underscore added].

⁸ Letter, J. McManus to D. Caul (July 30, 2014).

⁹ *Certificate Extension Report* (December 3, 2014), pp. 4-5.

- the EAO's position that it cannot not "make use of" or "rely on"¹⁰ the Panel Report and other critical information while the validity and accuracy of this information is before the courts.

On the call, you said that the EAO intends to design a new process for the amendment review. This in itself marks contradicts the EAO's original position that:

- "[EAO] will rely principally on the federal review Panel environmental assessment ... for the information needed for EAO's assessment of the requested amendment";¹¹ and
- "... in light of the allegations regarding the Panel process and subsequent report, EAO would need to set out new procedures for the provincial amendment review that do not rely on the federal process".¹²

The EAO established a procedure for the amendment review that relies principally on the Panel review. TML did not object at that time. The Tsilhqot'in Nation participated fully in the federal review and it resulted in a Panel Report that confirmed the profound environmental and cultural impacts of concern to the Tsilhqot'in people, and resulted in rejection by the Federal Government.

It would be an affront to justice and fairness for the EAO to now design a *new* process, over *two years* after the rejection, that does not "rely on the federal process" or "make use of" of the Panel Report. There is simply no principled justification for such an extreme reversal of position and total disregard for exactly the information that the EAO previously identified as central and critical for the amendment determination.

The EAO is not "legally obligated" to complete the amendment process

We disagree with the EAO's position that it is "legally obligated" to proceed with the amendment request in light of TML's demands. As noted, the EAO *itself* disagreed with that position in 2014, and chose instead to exercise its discretion to defer the amendment review, based on practical concerns that are equally valid today.

No practical reason to proceed at this time

As reviewed above, there is no practical reason to proceed with the amendment application at this time; instead, there are compelling reasons to defer further steps in this process. As the EAO itself stated in December 2014:

¹⁰ Letter, S. Murphy to J. McManus (October 15, 2014), pp. 2-3.

¹¹ EAO, *Procedures for assessment of the proposed amendment to the Environmental Assessment Certificate for the Prosperity Gold-Copper Project*.

¹² Letter, S. Murphy to J. McManus (October 15, 2014), pp. 2-3.

... EAO also noted that it would not be practical to actively review the application for an amendment at this time because TML has legal challenges underway questioning the procedural fairness, correctness and legitimacy of the information on which EAO had intended to rely for its review of the proposed amendment, and TML could not pursue the Project, as proposed to be amended, unless it is successful in its court challenges and any subsequent federal reconsideration of New Prosperity.¹³

EAO should defer further steps in the amendment process

The EAO can and should defer further steps in the amendment process until the central record for this amendment review is certain (*i.e.* no longer subject to legal challenge) and it is known whether there is even a Project to review, in light of the federal rejection.

We are not asking the EAO to *refuse* to exercise its statutory responsibilities. We are asking the EAO to maintain its principled position since 2014 and exercise its statutory responsibilities in a manner that supports fair, efficient and informed decision-making.

The EAO should continue to defer further steps in the amendment review until:

- TML's legal challenges are complete;
- the fairness and accuracy of the record that the EAO intends to rely on is established (one way or the other); and
- it is known whether New Prosperity can even proceed, in light of the federal rejection,

Deferring further steps in the amendment process is not a *refusal* to exercise the EAO's statutory mandate—it is the only *responsible* and *reasonable* exercise of that mandate in the circumstances.

Concluding Remarks

As you know, the EAO has a troubled history with the Tsilhqot'in Nation. In some ways, this latest EAO decision is history repeating itself.

When the EAO assessed the original Prosperity Mine, it originally said that it would "harmonize" its process with the Federal Panel Review, including the hearings in Tsilhqot'in communities, and use that record to inform the EAO assessment.

Instead, in the months leading up to the Federal Panel hearings, the Province changed its process and rushed to approve the Prosperity Mine. The EAO Report dismissed the concerns raised by the Tsilhqot'in and concluded that the Project's impacts on them would be *insignificant*. There was no discernable reason for the Province to rush to an approval

¹³ *Certificate Extension Report* (December 3, 2014), pp. 4-5 [underscore added].

before the Panel hearings had even started—the Project could not move forward before a federal decision. There appeared to be no other reason than a transparent effort by the EAO and the Province to influence or undermine the Panel Review process.

The EAO got it *wrong*—as two independent Panels have now confirmed beyond any doubt. Each Panel concluded, in no uncertain terms, that the Project would have profound, long-term and immitigable impacts on the Tsilhqot'in people, by depriving them of a deep connection to a place that is of “unique and special significance” to their people and way of life. Indeed, the Panel concluded that New Prosperity would “endanger their ability to sustain their way of life and cultural identity”.¹⁴

The Prosperity Panel explained that it had reached different conclusions from the EAO, in part, because the Panel had taken the time to hear the abundant evidence delivered by Tsilhqot'in people in the community hearings—crucial evidence that the EAO had missed in its rush to decision.¹⁵

The EAO has never accepted, acknowledged or apologized for how it failed the Tsilhqot'in people in the Prosperity review. Rather than learn from that history, the EAO now seems intent, under pressure from the company, to reverse its position since 2014, and now proceed with the amendment review while the critical record for this process is under legal challenge.

Remarkably, the EAO intends to review an amendment for a Project that was *rejected* over two years ago and cannot proceed. And eighteen months into an amendment process that the EAO directed would “rely principally on the federal review Panel environmental assessment”, the EAO is now preparing to redesign that process, all to accommodate the proponent.

The Tsilhqot'in Nation participated in *two* EA processes for this Project, at a tremendous toll. To be told now that the EAO intends to proceed with the amendment process for this Project (notwithstanding the Project has been rejected) and that the EAO intends to redesign the process (a process that currently relies on the record from the federal review that vindicates the position of the Tsilhqot'in people) can only further destroy the integrity and credibility of the EAO in the eyes of the Tsilhqot'in and the general public.

We reiterate our request that the EAO reconsider its decision. As noted, we also ask that the EAO and Province take no further steps and suspend all further decisions until such time as a high-level meeting between Tsilhqot'in Chiefs and Minsters is held.

¹⁴ Panel Report, p. x.

¹⁵ Report of the Federal Review Panel established by the Minister Of The Environment[.] Taseko Mines Limited's Prosperity Gold-Copper Mine Project (July 2, 2010), p. ii [“... the Panel notes that the Province was not able to consider the final comments from federal departments nor was it able to take advantage of information received during the public hearing from First Nations on the current use of lands and resources for traditional purposes and effects on cultural heritage. The Panel notes that the public hearing was instrumental in gathering information from First Nations on these matters”].

Sincerely,



J.P. Laplante

TNG Mining, Oil and Gas Manager

cc. *Tsilhqot'in Chiefs*
 Crystal Verhaeghe (TNG Lead Negotiator and Special Advisor)
 Shelley Murphy (EAO Executive Project Director)

Loiacono, Sabrina EAO:EX

From: Jardine, Kevin EAO:EX
Sent: Monday, June 27, 2016 2:01 PM
To: Crebo, David GCPE:EX; Kapac de Frias, Martina E ENV:EX
Cc: Craven, Paul EAO:EX; Murphy, Shelley EAO:EX
Subject: Taseko
Attachments: 2016 06 10 JP Laplante to EAO re Prosperity Amendment Final.pdf; 95255 Hallbauer to Premier May 13, 2016 - New Prosperity.pdf; Response_13May2016 Taseko letter_23June2016_FINAL.docx; TNG_24June2016_Response_FINAL.doc

Further to our quick discussion last week, we are preparing to send out our responses to TNG and Taseko's incoming correspondence tomorrow or Wednesday. We've been coordinating our efforts with MARR, who will give TNG a quick heads-up as early as today. This might see them react immediately with a NR or similar. Although we have no information to that effect, this is an emotional issue of real concern in their community.

We are just now finalising the letter for transmittal and pulling together an updated IR. If you can, Dave, it would be great if you could connect with your counterpart at MARR to coordinate messaging.

Martina: MJR was briefed last week and staff are going to let him know that the letters are proceeding tomorrow.

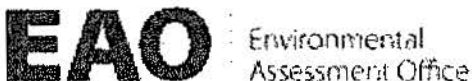
Let me know if you need anything further at this point.

Rgds,

K.

Kevin Jardine

Associate Deputy Minister
Environmental Assessment Office
Ministry of Environment
Government of British Columbia
TEL: 250-356-7478
MOB & TXT: 250-361-6753



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File: 30200-25/PROS-19

Reference: 300971

June 29, 2016

SENT VIA EMAIL

Russell E. Hallbauer
President & CEO
Taseko Mines Limited
15th Floor, 1040 West Georgia Street
Vancouver BC V6E 4H1
RHallbauer@TasekoMines.com

Dear Mr. Hallbauer:

I have been asked to respond directly to the matters in your May 13, 2016, letter to the Honourable Christy Clark, Premier, relating to the Environmental Assessment Office (EAO). I understand that the Ministry of Justice has responded to the other matters you raise in that letter.

In your letter you raise concerns about the amount of time taken for EAO to review Taseko Mines Limited's (Taseko) application to amend its Environmental Assessment Certificate (Certificate) for the Prosperity Gold-Copper Project (Prosperity) and you express Taseko's desire that EAO complete its review of Taseko's application.

As you may be aware, after considerable consultation with Taseko and the Tsilhqot'in National Government (TNG), EAO established procedures for the review of the proposed amendment in November 2012. Under those procedures, EAO would rely principally on the information from the federal review panel process for EAO's review of the proposed amendment. The review of the amendment would, therefore, not be completed until after the federal decision in February 2014.

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**Environmental
Assessment
Office**

Mailing Address:
PO Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Location:
1st & 2nd Fl – 836 Yates Street
Victoria BC V8W 1L8

Following the federal decision, EAO did not hear from Taseko until early April 2014, when we were advised that Taseko was "still regrouping" on the new Prosperity project and that Taseko would be in touch with EAO when Taseko was "a bit more organized".

To my knowledge, EAO did not hear further from Taseko until a letter dated June 11, 2014. That letter was in response to EAO's letter of June 6, 2014, advising Taseko of the upcoming January 14, 2015, expiry date of its Certificate and reminding Taseko of the opportunity to apply for an extension to its Certificate. In the June 11, 2014, letter, Taseko requested a five-year extension to its Certificate and also requested EAO complete its review of the amendment application.

EAO responded in its correspondence dated July 14, 2014, and October 15, 2014, that EAO would not review the proposed amendment at that time, for reasons clearly articulated in those letters. EAO stated that if and when the Certificate extension is granted, EAO would be willing to consider the factors relevant at that time to determine the appropriate next steps with respect to the assessment of the proposed amendment.

Following the extension being granted on January 13, 2015, EAO did not receive any communication from Taseko from the date the extension was granted until your letter of May 13, 2016. Given the environmental assessment process is proponent-driven, I interpreted the absence of communications on this matter as indicating that Taseko was not pursuing the amendment at this time. On May 5, 2016, I telephoned Ms. Katherine Gizikoff, Director, Environment and Governmental Affairs for Taseko, to get an update on the status of Taseko's projects in the environmental assessment process (the proposed Aley Niobium Project and the Prosperity amendment application). She indicated she was no longer working on Prosperity and could not advise on its status.

In light of your recent letter, EAO is prepared to proceed with the amendment process. Consistent with my letter dated July 14, 2014, EAO will now reassess the factors EAO noted in that correspondence, as well as other relevant factors to determine the appropriate next steps for the review of this application.

On initial review, EAO will need to consider amending its procedures to address the following matters:

- As noted in my letters of July 14, 2014, and October 15, 2014, EAO will need to reconsider its procedures and any additional information EAO might require in light of Taseko's outstanding legal challenge in federal court regarding the federal panel process.

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- As noted in EAO's Certificate Extension Report of December 2014, and the Reasons for Minister's Decision dated January 13, 2015, EAO's review of the proposed amendment will also need to consider whether to recommend to the Minister potential changes to, or new, Certificate conditions to address the new information or material changes since the Certificate was issued.
- The amendment review will need to address EAO's requirement that all proponents for all projects proposing new tailings dams conduct a tailings alternatives assessment that considers technology, siting and water balance. I understand Taseko currently is working on this assessment.
- The Province's commitment in section 12.42 of the Nengay Deni Accord relating to environmental assessments.

To set out the appropriate next steps, as well as help identifying any additional information needs, EAO requires the following information from Taseko:

- A description of the status of the federal court process and anticipated timing for a decision from the federal court. If a federal court decision is expected soon, it may be prudent to wait on setting new procedures until the judgement is rendered and Taseko has determined how it accordingly wants to proceed.
- Taseko's perspective on whether and what limitations there may be on the use of the information and materials from the federal panel process in light of Taseko's challenge in federal court related to the federal panel report and process. Please note that I may canvass the views of other parties on this question as well.
- An overview of Taseko's approach, the options being considered, and the status and timing for Taseko's tailings alternatives assessment. Taseko's February 2016 financial report notes that Taseko is evaluating its current project design and alternatives, and that the assessment will be consistent with the province's requirements (which are available at: http://www.eao.gov.bc.ca/files/guidance/Proponent_Guidance-Tailings_Management.pdf); and
- A description of any other studies or assessments that may be relevant to the review of the proposed amendment that have been undertaken or are underway since the federal panel concluded its review. For example, I note that in the February 2016 financial report, Taseko states that it has ongoing monitoring of key groundwater baseline conditions. Will that information be available for or helpful to the amendment review?

I also wanted to take this opportunity to make you aware of discussions EAO has had with TNG regarding Taseko's request to proceed with the review of the amendment application. EAO has made TNG aware Taseko's request, and discussed EAO's views

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on its obligations to review the amendment application on June 8 and June 16, 2016. TNG set out its concerns in writing in a letter dated June 10, 2016, which is attached for your reference. I will also forward to you EAO's response to that letter once it is provided to TNG. EAO has shared with TNG Taseko's letter dated May 13, 2016, and the June 14, 2016, response from the office of the Assistant Deputy Attorney General at the Ministry of Justice. EAO will also provide this letter to TNG.

In closing, I want to speak to your comment that this is an "extremely simple amendment to grant", because in Taseko's view the revised project design reduces environmental impacts and increases economic benefits. I appreciate that Taseko holds this view. However, EAO conducts reviews of proposed amendments so that it can form its own view of the potential effects of the proposed changes. In doing so, EAO needs to obtain the appropriate information, seek technical advice, and fulfil the Crown's constitutional obligation to meaningfully consult and accommodate, as appropriate, potentially affected Aboriginal Groups.

I look forward to working with your assigned company representative, to ensure that EAO has the information it requires for the review of the amendment application. Please let me know at your earliest convenience who you have assigned to be EAO's main contact at Taseko for the review. I can be reached at 250 387-1447 or by email at Shelley.Murphy@gov.bc.ca. Alternatively, you can contact Steve McNaughton, Project Assessment Officer, at 250 387-5838 or by email at Steve.McNaughton@gov.bc.ca.

Yours truly,



Shelley Murphy
Executive Project Director

Enclosure

cc: Honourable Bill Bennett, Minister of Energy & Mines
Bill.Bennett@gov.bc.ca

Honourable Mary Polak, Minister of Environment
Mary.Polak@gov.bc.ca

Honourable John Rustad, Minister of Aboriginal Relations and Reconciliation
John.Rustad@gov.bc.ca

Donna Barnett, MLA, Cariboo-Chilcotin
donna.barnett.mla@leg.bc.ca

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Kim Henderson, Deputy Minister to the Premier
Kim.Henderson@gov.bc.ca

Elaine McKnight, Deputy Minister, Ministry of Energy & Mines
Elaine.McKnight@gov.bc.ca

Doug Caul, Deputy Minister, Ministry of Aboriginal Relations and Reconciliation
Doug.Caul@gov.bc.ca

Kevin Jardine, Associate Deputy Minister, Environmental Assessment Office
Kevin.Jardine@gov.bc.ca



File: 30200-25/PROS-19

Reference: 301630

June 28, 2016

J.P. Laplante
TNG Mining, Oil and Gas Manager
253-4th Avenue North
Williams Lake BC V2G 4T4
jlaplante@tsilhqotin.ca

Dear Mr. Laplante:

I am writing to follow up on the issues you raise in your letter, dated June 10, 2016, our discussions on June 8 and June 16, 2016, and the questions and requests in your letter of June 10, 2016 and in the email of June 23, 2016. I wish also to confirm the Environmental Assessment Office's (EAO) response to the requests from Taseko Mines Ltd (Taseko).

In recognition of the Province's reconciliation initiative with the Tsilhqot'in National Government (TNG), and as a part of EAO's efforts to enhance our engagement with Aboriginal Groups in our environmental assessment (EA) process, EAO reached out to TNG to make it aware of the request from Taseko to complete EAO's work to review Taseko's request to amend its Environmental Assessment Certificate (EAC) for the Prosperity Gold-Copper project.

First, I would like to confirm that on June 22, 2016, we provided to TNG by email both the May 13, 2016 letter that contains Taseko's request to complete the review of the amendment application, as per your request and the June 14, 2016 response from the office of the Assistant Deputy Attorney General at the Ministry of Justice. Attached also you will find a copy of EAO's response to Taseko.

I appreciate you sharing with me TNG's significant concerns about EAO reviewing Taseko's amendment application. It is important for us to hear from you regarding the negative impact you believe it will have on Tsilhqot'in Nation communities. I recognise also TNG's views on EAO's obligation to review the amendment and EAO's past statements in this regard.

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**Environmental
Assessment
Office**

Office of the
Associate
Deputy Minister

Mailing Address:
PO Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Location:
2nd Fl – 836 Yates St
Victoria BC V8W 1L8

I note that you specifically ask that EAO suspend its decision on whether to review the amendment application until TNG Chiefs and provincial Ministers have had the opportunity to discuss this matter at a leadership table. However, as I noted in our discussions, the provincial Ministers do not have the statutory authority to make this determination. That authority rests with me, as Executive Director under the *Environmental Assessment Act* (the Act), or my delegates.

Further, I note that your email of June 23, 2016 asks that EAO delay its decision on this matter to allow the relevant parties to explore the suggestion in the June 16, 2016 letter from Chief Alphonse and Chief William that the Province should “transfer control of these lands and waters over to Xeni Gwet’in and the Tsilhqot’in Nation”, which you believe is consistent with Taseko’s second option in its May 13, 2016 letter. While I appreciate your interest in exploring this option, this proposal lies well outside of the statutory mandate of EAO, and I do not consider this to change EAO’s obligation to review Taseko’s amendment application as per their May 13, 2016 letter.

I want to be clear that I acknowledge the concerns of TNG and take them very seriously. As per my commitment in our discussions, I have taken time to consider the TNG’s views and concerns, and further explored EAO’s powers and duties under the Act, and the requirements of administrative law, as they pertain to Taseko’s request to proceed with their amendment application.

It is my conclusion that EAO is obligated to proceed to review Taseko’s request for an amendment to its EAC at this time. That said, EAO does quite clearly have the discretion to consider the procedures and information needs necessary to ensure a comprehensive review of that application. We cannot, however, delay setting out the appropriate next steps in the review of this application. As noted below, EAO’s first step before it can turn its mind to the proposing of a new procedure is to obtain responses from Taseko (and TNG, if it wishes to provide its views, as well as possibly other parties) to the items noted below.

In consideration of TNG’s concern that EAO’s decision to review Taseko’s amendment application would represent a complete reversal of the position EAO took in 2014, I have reviewed the correspondence between EAO and Taseko on this matter. It is my view that my decision to proceed with the amendment review is entirely consistent with the position EAO took in 2014. Specifically, I note:

- EAO was very clear in both its July 14, 2014 and its October 15, 2014 correspondence that “... if and when the EAC extension is granted, EAO would be willing to consider the factors relevant at that time to determine the appropriate next steps with respect to the assessment of the proposed amendment”. I note that EAO did not state that it would consider “whether” to

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review the amendment, but would consider "appropriate next steps". Given the extension was granted, EAO is now considering the appropriate next steps.

- In its October 2014 letter, in response to a concern from Taseko that EAO was delaying its decision on the amendment application pending the completion of the ongoing litigation in federal court, EAO responded that: "Your letter incorrectly states that EAO will not consider the amendment request until after the Federal Court litigation has completed". That is, EAO was not intending to delay the review of the amendment indefinitely for the proceedings of the federal court to conclude.
- In its July 30, 2014 letter Taseko asserts that EAO could proceed with an amendment decision quickly as it "had the information it requires, can consider the panel report, Taseko's responses to it ... and all relevant factors in rendering a decision". EAO responded in return correspondence dated October 2014 that it did not have the information it needed, given the legal challenges on the panel report and process, and that "EAO would need to design a new process that wasn't potentially relying on a report that could be considered a nullity or a process that was found to be procedurally unfair". Thus EAO was not declining to set up a new process at some point following the decision on the proposed EAC extension.
- Finally, in relation to EAO's comments that a reason for delaying the review of the amendment application was the fact that the project could not proceed without the federal approvals, EAO was in fact referencing the delay until after the extension decision had been taken, when EAO would determine appropriate next steps.

I note that in your letter you state that EAO's decision in 2014 to delay the review of the amendment application is evidence that EAO is not obligated to complete the review of the amendment application simply because Taseko has made the request. You also state that there is no reason to consider the amendment application because the Project cannot proceed without federal approval. In response, I offer the following:

- EAO has considered its obligations to review the amendment. The Act specifically requires that EAO must consider any amendment application made, and the general principles of administrative law would require EAO to review that application in a reasonable time. While EAO did exercise some discretion on the timing for review when the EAC extension request was under review (as in the absence of an extension, there would be no EAC to amend), it is my view that it would not be consistent with EAO's obligations to defer this review indefinitely.
- The fact that a project may have barriers, whether big or small, to overcome before it can be built does not allow EAO to decline to review an application or indefinitely defer review of an application until those barriers are addressed.

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Many major projects in British Columbia are subject to both provincial and federal approvals, each with its own constitutionally valid statutory and regulatory regime, not subject to paramountcy. In other words, provincial approvals do not depend on or require federal approvals to be valid.

As I note above, in light of the Minister of Environment's decision to extend the EAC until January 14, 2020, EAO is now considering the factors currently relevant to determining the appropriate next steps in the review of this amendment application. Some factors EAO has currently identified are:

- Nenqay Deni Accord: Commitments under section 12.42 of the Accord respecting improvements to the EA process.
- Timing of Taseko's ongoing litigation related to the federal panel report and process: EAO will be asking Taseko for a better understanding of when the federal court may rule on Taseko's petition. Should a decision be expected in the very near future, this may affect EAO's timing of the review.
- Nature of Taseko's challenge of the federal process: EAO would like to understand the extent to which documents or testimony that fed into the panel review may be impugned by the ongoing court proceedings, what information may still be used, and what new information will be required.
- Tailings Alternatives Assessment: Since Taseko's application for an amendment, EAO has established new requirements for all applications for conventional tailings storage facilities. This assessment will be required for EAO's assessment of the proposed amendment.
- Potential recommendations for new or amended EAC conditions under section 37 of the Act, as identified in the review of and decision on Taseko's EAC extension request.

As is evident in the attached letter, EAO has written to Taseko seeking additional information on the second to fourth bullets above, as well as seeking information on any additional work Taseko may have undertaken relevant to the amendment since the panel process concluded. EAO would welcome TNG's comments on any of these matters, or any other factors that the TNG considers may be relevant to setting out appropriate next steps.

I recognise that TNG is fundamentally opposed to EAO considering Taseko's amendment application, and has considerable concerns about the impact on the Tsilhqot'in Nation communities in participating in another assessment process for the Prosperity mine. I also recognize that EAO must fulfill the Crown's constitutional obligation to meaningfully consult and accommodate in relation to potential adverse effects of the proposed amendment, including addressing potential effects to Tsilhqot'in Nation's proven Aboriginal rights in this area. EAO is committed to meeting that obligation.

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Furthermore, EAO is also committed to fulfilling the Province's commitment in the Accord. I wish to extend my most sincere offer to sit down with TNG to discuss options for setting out the appropriate process that, to the extent possible, recognizes and respects the past input TNG has provided, and is mindful of the burden another review places on the TNG and the community.

Please note that, in the interest of transparency, EAO will be sharing with Taseko our correspondence on this matter, as well as informing them of our discussion. At this time EAO has not yet had discussions with Taseko on this matter.

Please feel free to contact me at 250 356-7475, or Shelley Murphy, Executive Project Director by email at Shelley.Murphy@gov.bc.ca or by phone at 250 387-1447 if you wish to further discuss matters noted in this letter.

With very best regards,

Kevin Jardine
Associate Deputy Minister

Enclosure

cc: Chief Joe Alphonse, Tl'etinqox Tribal Chairman
Tsilhqot'in National Government
ChiefJoe@tletinqoxtin.ca

Chief Roger William, Xeni Gwet'in Vice Chair
Tsilhqot'in National Government
chief@xenigwetin.ca

Chief Ervin Charleyboy, Tsi Deldel Secretary
Tsilhqot'in National Government
ervin@tsideldel.org

Chief Bernie Mack, ?Esdilagh Treasurer
Tsilhqot'in National Government
tsilhqotin.seniya@gmail.com

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Chief Russell Ross, Yunetsit'in Government
Tsilhqot'in National Government
rmyersross@gmail.com

Crystal Verhaeghe, TNG Lead Negotiator and Special Advisor
Tsilhqot'in National Government
tng-director@tsilhqotin.ca

Michelle Carr, Assistant Deputy Minister
Environmental Assessment Office
Michelle.Carr@gov.bc.ca

Shelley Murphy, Executive Project Director
Environmental Assessment Office
Shelley.Murphy@gov.bc.ca