

# Ministers' Reasons for Decision

## *Ajax Mine Project*

*Proposed by KGHM Ajax Mining Inc.*

On December 13, 2017 pursuant to Section 17(3)(c) of the *Environmental Assessment Act*, we, the Minister of Environment and Climate Change Strategy and the Minister of Energy, Mines and Petroleum Resources, have not issued an Environmental Assessment Certificate for the Project. This document sets out the reasons for that decision.

**December 13, 2017**



## 1.0 NATURE AND SCOPE OF THE DECISION

The provincial environmental assessment (EA) of the proposed Ajax Mine Project (Ajax), located on the southern boundary of the City of Kamloops, began in 2011. Ajax was subject to a coordinated EA between British Columbia (BC) and Canada, as the Project triggered a federal EA under the former Canadian Environmental Assessment Act. The coordinated EA included the establishment of an intergovernmental advisory working group, consultation with Indigenous groups, extensive engagement with the public and the City of Kamloops, the creation of a community advisory group, and the negotiation of a collaboration agreement with the Stk'emlupsemc te Secwépemc Nation (SSN).

On November 20, 2017, the Environmental Assessment Office (EAO) referred KGHM Ajax Mining Inc.'s (KAM's) Application for an Environmental Assessment Certificate (Application) for the Ajax Mine Project to us for decision. Section 17(3) of the *Environmental Assessment Act* (the Act) sets out that ministers must consider the assessment report and any recommendations accompanying the assessment report, and may consider any other matters that they consider relevant to the public interest in making their decision on the application. Ministers must decide whether to issue an EA Certificate with any conditions they consider necessary, refuse to issue a certificate, or order that further assessment be carried out.

We considered the documents provided by the EAO, including: the Joint Federal Comprehensive Study / Provincial Assessment Report (Joint Report); the Summary Assessment Report; the Recommendations of the Executive Director; the proposed EA Certificate Conditions and Certified Project Description; and the separate submissions by SSN, the City of Kamloops, and KAM.

## 2.0 MINISTERS' CONSIDERATIONS

### 2.1 EAO'S ASSESSMENT

The EAO, in collaboration with the Canadian Environmental Assessment Agency (CEA Agency), and with advice from the advisory working group, reviewed the Proponent's Application and provided its detailed findings in the Joint Report. The EAO also prepared a Summary Assessment Report, which summarized the Project, key issues in the assessment process, the results of the assessment of impacts on valued components, the results of the assessment of impacts to Indigenous groups, and conclusions regarding the EA.

As described in the Joint Report, the EAO worked closely throughout the EA process with provincial and federal ministries and agencies, local governments, and Indigenous groups to identify issues and seek ways to address issues and concerns, including those raised by the public. The EAO provided a proposed Certified Project Description and 41 proposed EA Certificate Conditions for our consideration.

The EAO concluded there would be multiple residual adverse effects to the valued components assessed, across the "five pillars" (environmental, economic, social, heritage, and health) of the Act. The EAO determined that, of the residual effects, there would be significant adverse effects to Indigenous heritage and to the current use of land and resources for traditional purposes. We concur with the EAO's conclusions regarding these significant adverse effects.

The federal EA was led by the CEA Agency, and coordinated with the EAO pursuant to the [Canada-British Columbia Agreement on Environmental Assessment Cooperation](#).

## 2.2 RECOMMENDATIONS OF THE EXECUTIVE DIRECTOR

The EAO's Executive Director considered the Joint Report, the Summary Assessment Report, the proposed EA Certificate Conditions and Project design requirements. He recommended that an EA Certificate not be issued for Ajax.

With regard to the Crown's consultation duties, the EAO's Executive Director advised that he is satisfied that the Crown's duty to appropriately consult Indigenous groups<sup>1</sup> had been discharged for the Project. He is also satisfied that potential impacts to Lower Nicola Indian Band, Ashcroft Indian Band, and Whispering Pines/Clinton Indian Band have been avoided, minimized or otherwise accommodated to an acceptable level. With regard to the SSN, the Executive Director advised that there would be adverse impacts to SSN's asserted Aboriginal rights and title and the EAO was not able to conclude that accommodation for these impacts was adequate.

## 2.3 KEY CONSIDERATIONS

As discussed in the Joint Report, the EAO examined the potential adverse effects of the Project and determined that Ajax would have 53 residual environmental, economic, social, heritage, and health effects. The EAO's Summary Assessment Report describes key issues in the EA including the potential impacts of the mine on air quality and human wellbeing, Jacko Lake and surrounding area, social and economic valued components, grasslands and ecosystems, and public concerns regarding the safety of the tailings storage facility.

We acknowledge the considerable complexity of the Ajax EA, as demonstrated by the large volume of comments from the advisory working group, Indigenous groups, the City of Kamloops, and the public.

### *Interrelated Residual Effects*

Considering the 50 residual effects assessed as not likely to be significant, we note that 21 of them are of medium to high magnitude. Of these, nine of the significance determinations were made with low or low-moderate confidence. In our view, these conclusions are noteworthy because of the location of the Project and its proximity to the City of Kamloops' current and future residential development, sensitive ecosystems, and important SSN cultural and spiritual sites.

We acknowledge that some of the valued components on which residual effects were found to be of medium to high magnitude and for which the significance determination was made with low or low-moderate confidence are, in turn, relevant inputs to the assessments of effects on other social, economic, health, or environmental valued components. This leads to compounding uncertainties about the effects conclusions and about KAM's ability to fully mitigate adverse effects. This included effects to surface water quality in creeks near the Project site, groundwater quantity (e.g. flow changes) near the mine, and air quality.

<sup>1</sup> SSN, Lower Nicola Indian Band, Ashcroft Indian Band, and Whispering Pines/Clinton Indian Band

We note that, during the review of the Application, the EAO made substantial efforts to increase confidence levels in the conclusions by seeking further information and additional assessment, and by proposing EA Certificate Conditions that went beyond the commitments made by KAM.

#### *Air Quality, Health, and Well-being*

The potential effects of Ajax on air quality due to dust, and consequently on human health and well-being, was one of the central issues of the EA due to the proximity to the City of Kamloops and residential neighbourhoods.

In the Joint Report, the EAO and CEA Agency highlighted the uncertainties and technical complexities inherent to air dispersion modelling for Ajax and the uncertainties related to the level of effectiveness of dust mitigation given the arid climate. The Joint Report details that Ajax would increase ground-level concentrations of air contaminants of concern, and result in measurable increases in particulate matter in areas closest to the mine. We note the EAO's conclusion that, over the life of the mine, the closest neighbourhood would likely experience exceedances of BC's 24-hour Ambient Air Quality Objectives for particulate matter (PM<sub>10</sub>) for 7-21 days or more during the winter. We also note that Ajax would result in occasional short-term very high particulate matter levels during dry and windy conditions (i.e. dust storms). The EAO concluded that the Project would have medium-high magnitude effects on air quality, and that the EAO had a low-to-moderate confidence in this assessment.

The results of the air quality assessment were a primary input to the human health risk assessment. The EAO determined there would be a medium magnitude increase in human health risk from inhalation of particulate matter in residential areas closest to Ajax. We note that the EAO has a low level of confidence in the human health assessment based on uncertainties associated with dust mitigation, as well as uncertainties in toxicological information, exposure and sensitive populations.

We acknowledge the commitments made by KAM to a comprehensive dust monitoring and management program. We also note that, in consideration of both technical concerns and the public's interest in air quality effects, the EAO proposed EA Certificate Conditions requiring an air quality management and monitoring program and an independent air quality reviewer. However, given the technical uncertainties inherent in modelling air quality impacts and assessing the effectiveness of dust mitigation, we agree with the Executive Director that there is a reasonable likelihood that residual effects may not be fully mitigated. Further, we are cognizant that the potential impacts of air quality are a consideration in the assessment of risks to human health, and effects to community well-being and property values given the proximity of the Project to residential development.

#### *Valued Components and Significant Adverse Effects related to SSN*

The SSN have communicated that the proposed site for Ajax is in an area known as *Pípsell* (small trout), a place of considerable cultural and spiritual importance, which includes Jacko Lake and the surrounding area. In consideration of the importance of *Pípsell* and SSN's Trout Children Story, the EAO and CEA Agency's assessment concluded that the development of Ajax would result in significant adverse effects to:

- Indigenous heritage; and
- The current use of land and resources for traditional purposes, due to effects on Indigenous fishing and effects on cultural and ceremonial uses at *Pípsell*.

We note that, in response to SSN concerns regarding the Indigenous spring trout fishery at the outlet of

Jacko Lake, KAM redesigned water management structures during the EA to maintain the outflow of Jacko Lake into Peterson Creek and the existence of the spring trout fishery. We also note that the EAO proposed EA Certificate Conditions to ensure continued SSN access to the Project area, and avoidance of Project construction activities during the spring trout fishery.

We have considered KAM's November 17, 2017 submission, wherein they provide their views disagreeing with the EAO and CEAA Agency's conclusions regarding these effects to SSN. We agree with the EAO's conclusions regarding the above-noted significant adverse effects.

#### *Aboriginal Consultation and Impacts to Aboriginal Rights and Title*

We acknowledge that Ajax would be located within the asserted traditional territories of the SSN (comprising the Tk'emlúps Indian Band and Skeetchestn Indian Band), which the EAO assessed as having a strong *prima facie* claim for Aboriginal rights and title in the Project area. The mine site is also in the asserted traditional territories of Ashcroft Indian Band, Lower Nicola Indian Band, and Whispering Pines/Clinton Indian Band.

We agree with the EAO's conclusion that the provincial Crown has fulfilled its obligations for consultation to SSN, Lower Nicola Indian Band, Ashcroft Indian Band, and Whispering Pines/ Clinton Indian Band. As well, we agree with the EAO that the potential for adverse impacts to the Aboriginal Interests for Lower Nicola Indian Band, Ashcroft Indian Band, and Whispering Pines/ Clinton Indian Band have been avoided, minimized, or otherwise accommodated to an acceptable level.

We note that the EAO and SSN signed an EA collaboration agreement to ensure, in addition to SSN's participation in the provincial EA, that SSN's community-based assessment process and the provincial EA process would be fully informed by each other. We have considered the SSN's Decision Package, which was provided in our referral materials. We note that the SSN's information and materials were also considered in the EAO's analysis and conclusions.

We acknowledge the EAO's commitment to ongoing engagement with Indigenous groups, should Ajax proceed. We note the requirements in the majority of the proposed EA Certificate Conditions for consultation with Indigenous groups, demonstration of how Indigenous traditional knowledge and Indigenous traditional use information has been incorporated into management and monitoring plans, and the condition relating to SSN participation in environmental monitoring. The EAO has also proposed a condition requiring an SSN access management plan to the Project area, and conditions requiring KAM to avoid construction activities during SSN's spring trout fishery.

We agree with the EAO's conclusions that Ajax could result in impacts to SSN's asserted Aboriginal rights that include: moderate impacts on the asserted right to hunt and trap, moderate-to-serious impacts on the right to fish and the right to harvest plants, and serious impacts to rights related to the practice of cultural and spiritual customs, ceremonies, and traditions at or near *Pipsell*.

We considered the EAO's conclusions that Ajax would result in adverse impacts to SSN's asserted Aboriginal title, as well as the uncertainty in estimating the level of seriousness of impacts on aspects of SSN's asserted Aboriginal title. We accept the Executive Director's statement that the EAO is unable to conclude regarding the adequacy of accommodation for impacts to SSN's asserted Aboriginal rights and title due to the particular location and nature of Ajax, the results of the EA, and SSN's opposition to Ajax and their statements indicating they do not accept the proposed accommodation measures.

### *Public Consultation*

We are aware that the EAO provided opportunities for the public to submit comments during five formal public comment periods held during the EA, including a final comment period on the Joint Report and the draft provincial Summary Assessment Report and proposed EA Certificate Conditions. We recognize that Ajax has been highly controversial in the Kamloops area and that there has been extensive input provided by the public, including the Ajax community advisory group. We understand that the issues raised by the public, and KAM's responses to those issues, were considered during the EA and reflected in Joint Report, the Summary Assessment Report, and addressed where practicable through the proposed EA Certificate Conditions. We were also provided with a Public Comment Summary Report from the final public comment period, which we have considered.

We are of the view that the issues raised by the public have been appropriately and satisfactorily considered and addressed by the EAO in the Joint Report, Summary Assessment Report and associated materials.

### *Provincial and Community Benefits*

We acknowledge that the Project would provide local, regional, and provincial benefits through employment and taxes.

KAM provided estimates that the total capital cost would be \$1.54 billion and average annual operating expenditures would be \$299 million. KAM estimates overall tax revenue to be \$354 million during the construction phase, with federal tax revenue of \$162 million, provincial revenue of \$115 million, and local/regional government revenue of \$25 million.

KAM predicts that Ajax would generate an average of 1,290 direct full-time equivalent jobs per year during the 2.5 years of construction. During operations, KAM predicts that Ajax would directly create approximately 450 full-time equivalent positions in BC and additional indirect and induced employment. We acknowledge that the Proponent has committed to maximizing local employment and contracting.

We considered the submission dated November 17, 2017 from KAM regarding the predicted benefits of Ajax to the City of Kamloops and to Indigenous communities including SSN, and KAM's efforts to negotiate agreements with these parties.

We are aware SSN has not accepted the Proponent's offer, nor the measures offered by the Province, to address SSN's interests related to economic development, water stewardship, and socio-cultural impacts.

We are generally aware that while KAM and the City of Kamloops have reached an agreement in principle regarding community benefits and municipal services, they have yet to reach a final agreement and the City has indicated that the current agreement is tentative. We have also considered the October 10, 2017 submission from the City of Kamloops Council outlining the reasons for their opposition to Ajax.

We note that KAM committed to the finalization and implementation of agreements, should the Project proceed.

### 3.0 CONCLUSION

In summary, we are of the view that, in light of the multiple residual and cumulative adverse effects of moderate to high magnitude, several of which were determined with low to moderate confidence, and due to the close proximity of Ajax to the Aberdeen neighbourhood - including the Pacific Way Elementary school - and the City, the adverse effects would not likely be mitigated to an acceptable level and would therefore present an unacceptable risk. Furthermore, because of the nature of the Project, its location and the compounding potential of residual effects, we believe increasing confidence levels through further assessment or information would be impractical.

Ajax would result in significant adverse effects to Indigenous heritage and to the current use of lands and resources for traditional purposes. Notwithstanding the mitigation measures and proposed EA Certificate Conditions, Ajax would have adverse impacts on SSN's asserted Aboriginal rights and title, and in many cases, cannot be avoided or minimized. We acknowledge the importance of the area to the culture of SSN and find, in these circumstances, these impacts unacceptable.

We have considered the EAO's Assessment Report, the submissions from the City of Kamloops, SSN and the Proponent, the Certified Project Description and recommended Conditions to the proposed EA Certificate, and the Recommendations of the Executive Director. Now, having regard to our responsibilities under the Act and the Crown's obligations to consult and accommodate Indigenous groups, we are of the view that, taken as a whole, the potential adverse effects of Ajax outweigh the potential benefits. Accordingly, we have made the decision not to issue an EA Certificate for the Project.



Honourable George Heyman  
Minister of Environment and Climate Change  
Strategy



Honourable Michelle Mungall  
Minister of Energy, Mines and Petroleum  
Resources

Signed this December 13, 2017