In the matter of the
ENVIRONMENTAL ASSESSMENT ACT
S.B.C. 2002, c. 43
(Act)

and

in the matter of an
APPLICATION
for an
Environmental Assessment Certificate
(Application)

by

TASEKO MINES LTD.
(Proponent)

for the

PROSPERITY GOLD-COPPER PROJECT
(Proposed Project)

December 17, 2009

Recommendations of the Executive Director

In accordance with the provisions of section 17(2)(b) of the *Environmental Assessment Act*, the Executive Director of the Environmental Assessment Office makes the recommendations contained in this submission, for the reasons indicated, in connection with the application by Taseko Mines Ltd. for an Environmental Assessment Certificate for the proposed Prosperity Gold-Copper Project.

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A. ISSUE

Decision by Ministers on the Application for an Environmental Assessment Certificate by Taseko Mines Ltd. for the proposed Project.

B. BACKGROUND

1. Proponent and Project Description

The Proponent for the proposed Project is Taseko Mines Ltd, a BC-based mineral resource company headquartered in Vancouver, BC. The Proponent's key assets include the Gibraltar Mines Limited copper-molybdenum mine near Williams Lake, the Harmony Gold prospect on the Queen Charlotte Islands, and the Aley Niobium prospect near Williston Lake. The proposed Project is wholly owned by the Proponent.

The Proponent proposes to develop a conventional open-pit mining project that would involve a large open pit gold and copper mine development with a 20-year operating life. The proposed Project would have a production capacity of approximately 70,000 tonnes per day. In addition to the mine and associated tailings and waste rock areas, the proposed Project includes:

- the development of an on-site mill and support infrastructure;
- a 125 km transmission line corridor;
- a 2.8 km mine access road to connect to existing logging roads and highways;
- fish compensation works (involving the dewatering of a lake and the creation of a new one); and,
- the transport of concentrate to the existing Gibraltar Mine Concentrate Load-out Facility near Macalister, 54 km north of Williams Lake.

The proposed Project mine site is 125 km southwest of Williams Lake on the Fraser Plateau in South Central BC. Development of the mine site would occur within a 35 km^2 parcel of Provincial Crown land currently held in the form of 118 mineral claims by the Proponent.

The proposed Project would provide approximately 375 person years of employment annually during construction (2 years) and operations (20 years). During operations, the proposed Project's annual payroll is expected to be approximately $32 million, with $29 million paid locally. Total proposed Project costs (capital and operating) over the life of the proposed project are approximately $5.7 billion.

Total average annual government revenues from the proposed Project would be approximately $26 million in the construction phase, $48 million in the operations phase, and $0.3 million in the closure phase.

The proposed Project was determined to be reviewable under the *Act* pursuant to Part 3 of the Reviewable Project Regulations (B.C. Reg. 370/02) because the proposed Project is a new mine facility that would have a production capacity of greater than 75,000 tonnes per year of mineral ore.

The proposal to undertake the proposed Project also requires an assessment under the *Canadian Environmental Assessment Act* on the basis that Fisheries and Oceans Canada (DFO) may issue an approval under the *Fisheries Act*, Natural Resources Canada (NRCan) may issue an approval under the *Explosives Act*, and Transport Canada (TC) may issue an approval under the *Navigable Waters Protection Act*. On January 19, 2009, the federal Minister of the Environment announced that the proposed Project would undergo an environmental assessment (EA) by a federal review panel.

Should the proposed Project receive a provincial EA Certificate, a *Mines Act* permit, and federal approvals, the Proponent proposes to begin construction in fall of 2010 and operations in the fall of 2012.

2. British Columbia Environmental Assessment Process

The proposed Project entered the provincial EA process in 1995 and the assessment process was initiated under the former *Act*. During the 1990s, the Environmental Assessment Office (EAO) convened technical meetings of a Project Committee to discuss the information needs of government agencies and First Nations. The proposed Project was transitioned into the present *Act* on December 30, 2002.

On February 19, 2007, DFO referred the proposed Project to the federal Minister of the Environment for referral to a federal review panel. During the period May 2007 to June 2008, EAO, the Canadian Environmental Assessment Agency (CEA Agency), and First Nations had discussions regarding the potential use of a joint panel review of the proposed Project. Despite over a year of consultation and discussion of joint panel agreement models by EAO and the CEA Agency, it was not possible to develop a joint

panel agreement that was acceptable to the federal and provincial governments, and supported by First Nations and the Proponent. On June 22, 2008, the provincial Minister of Environment issued an Order pursuant to section 14 of the *Act* ordering that the provincial EA be undertaken by EAO. This is the typical assessment process used by the province under the *Act*. To date, of 199 provincial EAs initiated, only one has proceeded by way of a review panel.

The EAO and the CEA Agency agreed to coordinate the EA processes to the extent possible to provide a single window for public participation and to minimize the potential for duplicate activity. The provincial and federal processes were coordinated for the review of the Application Terms of Reference which resulted in common documentation for both processes: the provincial Application Terms of Reference are the same document as the federal Environmental Impact Statement Guidelines and the Proponent's Application for an EA Certificate is same document as the Environmental Impact Statement for the federal review. Joint public comment periods were held at both stages of the EA.

The Proponent submitted the Application on January 26, 2009 which was evaluated by a Working Group, led by EAO, and comprised of representatives from:

Provincial Agencies

- Ministry of Agriculture and Lands; Ministry of Energy, Mines and Petroleum Resources (MEMPR); Ministry of Environment (MOE); Integrated Land Management Branch; Ministry of Tourism, Culture and the Arts; Interior Health Authority.

First Nations

- Alexis Creek Indian Band; Anaham Indian Band; Alexandria Indian Band; Canoe Creek Indian Band; Esketemc First Nation; High Bar Indian Band; Soda Creek Indian Band; Stone Indian Band; Toosey Indian Band; Tsilhqot'in Nation Government; Ulkatcho Indian Band; Williams Lake Indian Band; Xeni Gwet'in First Nation.

Federal Agencies

- Canadian Environmental Assessment Agency; Fisheries and Oceans Canada; Environment Canada; Health Canada; Natural Resources Canada; Transport Canada.

Local Government

- City of Williams Lake; Cariboo Regional District.

After considering input from the Working Group,[1] as well as its own assessment, EAO advised the Proponent on February 25, 2009, that EAO would not accept the Application for formal review due to deficiencies. This decision was made in compliance with the requirement in section 2 of the Prescribed Time Limits Regulation which requires that a decision be made within 30 days whether to accept an application as submitted. The Proponent submitted a revised Application on March 6, 2009. The EAO evaluated the revised Application and concluded, on March 11, 2009, that the revised Application provided the information necessary for EAO to undertake its assessment.

The assessment of the Application commenced on March 16, 2009. A joint federal-provincial public comment period on the Application was held from March 26, 2009, to May 25, 2009. Open houses were held in 100 Mile House and Williams Lake on March 30 and April 1, 2009.

The assessment of the Application was completed on December 17, 2009, which was within the 180-day time limit mandated under section 3 of the Prescribed Time Limits Regulation. In accordance with section 24(2) of the *Act*, EAO twice suspended the time limit for the review for a total of 97 days pending information from the Proponent:

July 8, 2009 to October 2, 2009 suspension

On July 8, 2009, EAO suspended the review as it required the Proponent to provide additional information including:

- an alternatives assessment that clearly articulates why the proposed Project would require the loss of Fish Lake;
- further analysis of wildlife in a local context and the potential of the proposed Project to impact the exercise of Tsilhqot'in hunting rights;
- a sensitivity analysis for the water balance of Prosperity Lake and the Tailings Storage Facility; and,
- a First Nations Consultation Report.

On October 2, 2009, EAO determined that adequate information had been provided in order to continue the process.

November 5, 2009 to November 16, 2009 suspension

Following a news release issued by the Proponent that the life of the mine would be extended from 20 to 33 years, EAO suspended the review pending information regarding any potential changes to the proposed mine plan as set out in the Application. The Proponent responded, indicating that they were not proposing changes to the mine plan as set out in the Application, and further, that they understand that should an EA

[1] The list above includes all agencies and First Nations invited to participate in the EAO technical working group. Not all members chose to provide input to EAO's decision on whether to accept the Application for formal review.

Certificate be issued it would be for the project as proposed in the Application. The Proponent indicated they issued the news release as part of their required disclosures as a public company and indicated it was not intended to suggest that their mine plan was changing at this time. After considering the information provided in the letter, EAO restarted the 180 day timeline on November 16, 2009.

Any change to any approved mine plan would be considered according to the relevant policy and legislation at that time. The EAO does not consider the potential extension to be sufficiently certain to proceed to require further assessment at this time as part of the EA of the proposed Project. More specifically, such a potential future expansion does not meet EAO's test for consideration as part of the cumulative impacts analysis, given that any such extension is not sufficiently certain to proceed. The EAO recognizes that mining projections are highly dependent on future commodity prices, and other contingencies, and that other mines in BC have been reviewed by both the federal and provincial governments based on the proposal put forward by the Proponent.[2]

Ministers have until January 31, 2010 to make a decision on the Application, unless an extension is ordered in accordance with section 24(4) of the *Act*.

3. Federal Environmental Assessment Process

The proposal to undertake the proposed Project requires an assessment under the *Canadian Environmental Assessment Act* on the basis that DFO may issue an approval under the *Fisheries Act*, NRCan may issue an approval under the *Explosives Act*, and TC may issue an approval under the *Navigable Waters Protection Act*.

Under federal legislation, projects are referred to review panels when there could be significant adverse environmental effects. On February 19, 2007, DFO referred the proposed Project to the federal Minister of the Environment for referral to a review panel.

On January 19, 2009, the federal Minister of the Environment announced that the proposed Project would undergo an environmental assessment by a Federal Review Panel. At the same time, the federal Minister established the three-member panel, and issued the Panel's Terms of Reference and the Environmental Impact Statement Guidelines to the Proponent. The Environmental Impact Statement Guidelines is the same document approved by EAO on January 9, 2009 (and referred to, for provincial purposes, as the Application Terms of Reference).

[2] This includes the recent example of the Mt. Milligan Copper-Gold Project which received a provincial EA Certificate in March 2009 based on a 15 year mine plan as presented in the Application. A potential mine-life extension of seven years was announced by Terrane Metals Corp. in October 2009. The federal Minister of the Environment approved the project, as originally proposed, in December 2009. Federal Responsible Authorities explained that: "The possible change in the period of mine production has no implications for the conclusions of the responsible authorities (RAs) in the comprehensive study report (CSR) which is based on the Environmental Impact Statement (EIS)/EA Application for a project with a 15-year mine life. Should the proponent propose revisions to the current project the federal authorities will assess possible regulatory or environmental assessment requirements at that time."

At the time this Assessment Report is referred to the provincial Ministers for a decision on an EA Certificate, the federal review process is ongoing. The federal panel has not yet scheduled public hearings.

The federal panel will submit its own report to the federal Minister of the Environment and the Responsible Authorities (DFO, NRCan, TC) which will set out the conclusions and recommendations of the federal review panel.

C. DISCUSSION

1. Potentially Significant Adverse Effects, Mitigation Measures and Proponent Commitments

The nature and scale of the proposed Project means that there are important implications for the region and the province in terms of environmental, economic, social, heritage and health considerations. As a result, the assessment process examined issues across a broad range of areas:

- Metal Leaching/Acid Rock Drainage
- Ground and surface water quality
- Fish and fish habitat
- Wildlife and wildlife habitat
- Air quality
- Vegetation
- Economic effects
- Social effects
- Archaeology
- First Nations' interests
- Human health
- Alternatives

Issues and concerns raised during the assessment by the public, First Nations, local governments, and provincial and federal agencies were all considered. As a result of consultation and other facets of the assessment process, a number of potential effects from the proposed Project were identified. These effects are identified below, along with a description of the corresponding mitigation measures and proposed commitments which would be undertaken by the Proponent.

Potential Effect	Examples of Key Proponent Mitigation Measures and Commitments	EAO Analysis
Metal Leaching/Acid Rock Drainage (ML/ARD)		
ML/ARD	• Segregation of potentially acid generating (PAG) material and non-PAG material. • Flooding of PAG material within two years of placement in a secure tailings facility to prevent ARD from occurring. • The Proponent consulted with MEMPR to select from a range of measures, including collection and treatment of runoff, to avoid impacts from low grade ore in the event of premature closure.	MEMPR and NRCan both have confidence in the Proponent's plans to avoid and/or mitigate ML/ARD. No significant adverse effects.

Hydrology and Hydrogeology		
Changes in the flow regime for lower Fish Creek and Beece Creek	• Diversion of a portion of the undisturbed Fish Creek watershed to lower Fish Creek and to Prosperity Lake, to flow on to Beece Creek. • Return to baseline flows at closure.	Impacts to hydrology would be mitigated and, where appropriate, temporary disruption of hydrology is acceptable to ensure containment and management of impacts to water quality and to facilitate fish compensation measures. No significant adverse effects.
Water Quality and Aquatic Ecology		
Poor water quality due to soil disturbance or Project activities	• Construction of clean water diversions around the mine site. • Containment of mine site works and facilities within a single drainage with the pit as the downstream catchment basin.	Impacts to water quality mitigated by the diversion and collection or use of water. No significant adverse effects.
Poor water quality in the pit	• Commitment 8.7 to meet any generic or site-specific Water Quality Guidelines that may be developed during permitting. Following closure water from the pit would be tested and treated if necessary prior to discharge to Lower Fish Creek.	Impacts to water quality would be mitigated. No significant adverse effects.
Seepage of tailings in groundwater	• Incorporating primary seepage control measures including a tailings beach in the design of the west embankment of the Tailings Storage Facility. • Commitment 8.6 to develop and implement a hydrologic and hydrogeologic data collection and monitoring program.	MEMPR has confidence in the Proponent's plans to mitigate seepage. MOE has not indicated the same confidence advising that more studies are required to predict potential seepage losses and plan for effective mitigation. EAO believes sufficient information has been provided to assess the potential for significant adverse effects and that the results of further testing can be incorporated into detailed design and review through the permitting process under the *Mines Act*. No significant adverse effects.
Fish and Fish Habitat		
Loss of fish habitat in Fish Lake and Little Fish Lake	• Creation of a man-made lake, Prosperity Lake, of similar size and depth to be compensatory habitat and development of self-sustaining population of rainbow trout. • Construction of channels and headwater retention pond at the Fish Creek headwaters to provide additional stream habitat and a spawning channel. • Retention of Little Fish Lake until the completion of construction of Prosperity Lake. • Outplanting of Fish Lake trout. • Maintenance of Fish Lake genetic stock through a hatchery.	There would be a significant adverse effect with regard to the loss of Fish Lake and Little Fish Lake. This finding is based on consideration of the magnitude, geographic extent, duration and frequency, reversibility, context, and probability of impacts to fish and fish habitat.

Air Quality		
Impact to Air Quality	• Commitment 17.4 to design an Air Quality and Emissions Monitoring and Management Plan based on a dust management plan proposed by MOE.	Impacts to air quality would be mitigated. No significant adverse effects.
Vegetation		
Impacts to vegetation	• Avoiding vegetation loss through proper project design and mapping. • Habitat compensation would restore some vegetation communities.	Impacts to vegetation would be mitigated. No significant adverse effects.
Wildlife		
Impacts to wildlife	• Commitment 11.1 to develop and implement a plan for achieving compensation for adverse impacts to wetland habitat, the productive capacity of the lake, recreation values, wildlife, wildlife habitat and the critical habitat of species at risk. • Mitigation measures along the proposed transmission line including maximizing the use of previously disturbed areas, conducting additional pre-development wildlife surveys, and adhering to timing windows for construction.	MOE has expressed concern that mitigation may not be adequate to prevent impacts to wildlife and that the commitment to compensate should provide more certainty with respect to scheduling, planning and coordinated delivery of compensation initiatives. EAO believes sufficient information has been provided to assess the potential for significant adverse effects and that the proposed measures will ensure no significant adverse effects. EAO also notes that MOE may require additional measures with respect to any exemptions from the Ungulate Winter Range (*Government Actions Regulation*) and additional surveys as per the *Wildlife Act*. No significant adverse effects.
Economic Issues		
Impacts to tourism	• Discussions with commercial recreation licensees and tourism operators to mitigate effects to noise, atmospheric environment and to proposed Project-related transportation. • Consultation and development of measures to minimize effects to outfitters and game.	Impacts to tourism would be mitigated considering the continued consultation in combination with mitigation measures to address potential impacts to wildlife, air, water and noise. No significant adverse effects.
Social Issues		
Increased traffic	• Design of a traffic management strategy including providing transportation for workers to and from the site, scheduling project traffic to avoid peak periods, and monitoring road conditions.	Impacts to local transportation would be mitigated and would remain well below the carrying capacity of the road networks. No significant adverse effects.
Increased pressures on community services	• The Proponent would encourage employees to live in Williams Lake to minimize localized effects on small rural communities. • Commitment 19.2 to give local	Impacts to community services would be mitigated and offset by substantial benefits to local, regional and provincial revenues. No significant adverse effects.

	candidates preference where all things being equal, two candidates seek employment, and there is only one position available. A local employment candidate shall be defined as someone who lives in the Cariboo-Chilcotin region.	
Archaeological and Heritage Resources		
Impacts to archaeological sites	• Commitment 24 to investigate sites of importance and complete an Archaeological Impact Assessment for the transmission line and 2.8 km of new road.	Impacts to archaeological resources would be mitigated through avoidance, implementation of site protection measures, or systematic recovery. No significant adverse effects.
Human Health		
Impacts to Human Health	• The Proponent would implement a monitoring plan for metal concentrations in soils, local surface water and vegetation throughout the proposed Project.	Impacts to human health would be mitigated. No significant adverse effects.

Based on the analysis in the Assessment Report and having regard to the mitigation measures, compensation and other commitments made by the Proponent (as listed in the Table of Commitments which are consolidated in Schedule B of the draft Certificate found under Tab 6 in this binder), the Assessment Report has concluded that there would be a significant adverse effect arising from the loss of Fish Lake and Little Fish Lake, but there would be no other significant adverse effects, having regard to the commitments and mitigation measures.

Section D of this document provides an analysis of relevant factors that EAO has identified for consideration by Ministers of whether the proposed Project is justified, given the finding of a significant adverse effect.

2. First Nations' Interests

The proposed Project is located within the asserted traditional territories of the following First Nations:

Secwepemc

- Soda Creek Indian Band
- Esketemc First Nation
- High Bar Indian Band
- Canoe Creek Indian Band
- Williams Lake Indian Band

The five Secwepemc (Shuswap) communities with potential interest in the proposed Project are located east of the Fraser River both north and south of Williams Lake.

Esketemc and Canoe Creek communities are located closest to the proposed transmission line route east of the Fraser River.

Tsilhqot'in

- Xeni Gwet'in First Nation
- Stone Indian Band
- Toosey Indian Band
- Alexis Creek Indian Band
- Anaham Indian Band
- Alexandria Indian Band (?Esdilagh)
- Tsilhqot'in people who are members of the Ulkatcho Indian Band

Tsilhqot'in communities are primarily located throughout the Chilcotin Plateau, west of the Fraser River, between Riske Creek and the Coast Mountains, except the Alexandria which is north of Williams Lake on the east side of the Fraser River. The closest Tsilhqot'in community to the proposed Project site is the Xeni Gwet'in. Approximately 200 Xeni Gwet'in members reside on reserves in the Nemiah Valley approximately 25 km from the proposed mine site (40 km by road).

The Proponent began implementing its First Nation Engagement and Consultation Strategy in 1993, with the First Nation communities in closest proximity to the proposed Project mine site, access roads and transmission corridor. These First Nations included the Tsilhoqot'in communities Xeni Gwet'in and Stone and the Secwepemc communities of Esketemc and Canoe Creek. The Proponent has provided the Tsilhqot'in National Government (TNG)[3] with approximately $900,000 to assist in addressing issues of how the proposed Project might impact the Tsilhqot'in including providing funding to hire a mining coordinator, review baseline studies, and retain a socio-economic advisor.

All 12 First Nations were invited to participate in the EAO technical Working Group, were kept fully informed of progress of the EA, and were provided with all the information that was sent to the Working Group. The EAO met with the TNG, Esketemc First Nation, Williams Lake Indian Band, and the Canoe Creek Indian Band, and offered to meet with all others. The EAO provided funding for First Nations' participation with over $42,000 to the TNG, $60,000 to the Esketemc, $165,000 to Canoe Creek, and $25,000 to the Williams Lake Band between 2007 and 2009. The amounts provided were well above the average funding EAO typically provides to participating First Nations for most EAs. The EAO also shared information, views and positions on matters relating to asserted or established aboriginal rights and the potential for impacts on those by the proposed Project and sought feedback from First Nations.

The Esketemc First Nation participated directly in the Application review by providing comments to EAO and attending working group meetings.

[3] The Xeni Gwet'in, Stone, Alexis Creek and Alexandria are, to the best of EAO's knowledge, represented by the Tsilhqot'in National Government (TNG).

Although participating in the EA as late as September 2008, the TNG refused to participate in the provincial process during the Application review stage. The EAO's consideration of TNG interests and concerns was based on the results of the Proponent's consultation dating back to the 1990s, meetings between EAO and the TNG (including a meeting with the Executive Director of the EAO in Williams Lake on February 18, 2008), TNG submissions to the federal review panel, as well as *Tsilhqot'in Nation v. British Columbia* (commonly known as the *William* decision) and the January 9, 2009 statement of claim in *Baptiste et al.*

Canoe Creek participated in the pre-Application phase but did not submit comments or attend any meetings during the Application review stage.

Key issues and concerns raised by First Nations included:

- the loss of Fish Lake (Teztan Biny)
- potential impacts to fish and wildlife
- potential contamination of plants and berries
- increased access to the area (both mine site and along transmission corridor)
- potential impacts on water quality
- potential archaeological impacts
- disturbance of sites of cultural and spiritual importance
- concern that jobs from the proposed Project would not benefit First Nations
- EA process concerns and desire for a tri-partite joint panel review (Federal, Provincial, First Nation)

Concerns raised in the Application review, the Proponent's responses, and EAO's assessment of the adequacy of the responses are contained in the Issues Tracking Tables (appendices to the Assessment Report). In assessing potential impacts on asserted or established aboriginal rights, the consultation and the accommodation measures that have been utilized or that are contemplated, and the reasonableness of the process in the circumstances EAO considered the following:

Secwepemc

The EAO sent letters to the Esketemc, Canoe Creek, Soda Creek, and Williams Lake bands outlining EAO's understanding of the asserted aboriginal rights that may be affected by the proposed Project. The EAO also set out its preliminary assessment in relation to these rights. The EAO requested First Nations' input on whether and how Esketemc, Canoe Creek, Soda Creek, and Williams Lake members exercise Secwepemc asserted and established rights in the area that could be impacted by the proposed Project. No response was received clarifying or correcting EAO's understanding of the asserted aboriginal rights that may be affected by the proposed Project. For the purposes of its assessment, EAO understands Secwepemc members may potentially hunt, harvest timber, fish, and gather plants in the area of the proposed transmission line.

The EAO is of the view that in the case of all of the Secwepemc groups aside from Canoe Creek and Esketemc the required scope of the Province's duty to consult is at the lower end of the spectrum described in the Supreme Court of Canada's *Haida* decision; and that in the case of Canoe Creek and Esketemc the required scope is at a mid-point along that spectrum (see Part C-First Nations Consultation Report of the Assessment Report for EAO's reasoning as to where on the *Haida* spectrum the proper consultative procedure should be located). The content of the consultation and accommodation that took place during the environmental assessment, when coupled with opportunities for government-to-government engagement on issues of aboriginal rights, far exceeded the required scope, and, in EAO's view, was akin to "deep consultation" under the *Haida* test.

In assessing potential interference on the exercise of asserted or established rights EAO considered that minimal impact on wildlife, fish and vegetation would be expected along the proposed Project transmission line. This is primarily because:

- the transmission line would cross large areas that have been previously disturbed by logging, roads, ranch and farm development, and impacts of the mountain pine beetle;
- there would be minimal clearing needed in grasslands areas;
- flexibility in the placement of transmission line poles would be used to avoid sensitive wetland areas; and,
- the Proponent has used information concerning where cut blocks and logging roads currently exist to guide the selection of the right-of-way such that it maximizes the use of existing disturbances and minimizes the need to construct new access or cut timber.

Irrespective of EAO's conclusion of minimal potential effects, specific accommodation measures are proposed, including:

- conducting additional pre-development wildlife surveys;
- avoidance of sensitive wildlife habitat;
- wildlife habitat compensation;
- developing a weed management strategy in consultation with First Nations;
- adhering to timing windows for construction to avoid impacts to wildlife and fish;
- protecting vegetation within 30 m of wetlands or riparian areas; and
- implementing an air quality and emissions management plan (including dust from the tailings beach).

EAO's conclusion as to whether the Crown's duties have been discharged with respect to Secwepemc bands

Based on the EA for the proposed Project, including the consultation process described in the assessment report and the mitigation measures that would be implemented to reduce the risk of direct and indirect impacts to fish, wildlife and other resources in the Project area, EAO believes that any residual effects of the proposed Project on the ability of Secwepemc bands to continue to practice aboriginal rights, whether asserted or proven, and to carry out traditional activities, are not significant.

Tsilhqot'in

Prior to late 2008 the TNG were engaged in extensive discussions with the Proponent regarding potential mining development (including hiring a mining coordinator) and were not unequivocal in their opposition to the proposed Project. The position communicated by then Chief of the Xeni Gwet'in Roger William in a meeting between the TNG, EAO, and the CEA Agency on February 18, 2008, was that the TNG were open to working with the Proponent and government to understand the potential impacts of the proposed Project.

The TNG changed its position with respect to participation in the EA when the Province was not prepared to enter into a tri-partite agreement on a tri-partite review panel (i.e. federal, provincial and TNG). Beginning in October 2008 the TNG communicated its position to not participate in the provincial EA in public statements, to the EAO directly, and in letters to the Minister of Environment. The EAO responded encouraging the TNG to participate in the EA process and offering to meet on a separate government-to-government basis.

The TNG has repeatedly stated that it believes the Minister's decision to not proceed with a joint panel was unfair, inappropriate and in bad faith. The EAO does not share this position. It notes that despite a willingness to explore the potential use of a panel process there was no obligation that the Minister do so. The EAO notes that no order was ever made by the Minister to use a joint panel (as would be required to effect such a process) and that there is no requirement in the *Act* that the province use a panel process in cases where the federal government chooses to do so. To the contrary, EAs are typically undertaken under provincial law by the EAO, which is a statutory entity continued under the *Act* specifically and solely for the purposes of EA responsibilities. To date, the province has used a joint panel process only one time (the proposed Kemess North project) out of 199 EAs initiated. There are presently two EAs being undertaken in BC where the federal government is using a panel process and BC is having its EA completed by the EAO in both of these cases.

The EAO has made it clear to the TNG that EAO believes its process has strengths compared to a panel hearing process in the areas of facilitation, dialogue and consensus building, as well as in respect of consultation with First Nations and the development of Proponent commitments to attempt to accommodate First Nations.

In addition to reviewing information in the Application, including ethnohistorical reports, and TNG submissions to the federal review panel, EAO took note of the *William* decision. Based on the reasons of Mr. Justice Vickers in the *William* decision, EAO understands that:

- the Tsilhqot'in people have an aboriginal right to hunt and trap birds and animals throughout the "Claim Area" defined in the *William* decision, and the proposed mine site is located in the "Claim Area", and
- the court declined to find that the Tsilhqot'in people have aboriginal title to any portion of the "Eastern Trapline Territory" as defined in the *William* decision, and the proposed mine site is located in the "Eastern Trapline Territory".

The parties to the *William* litigation have filed notices of appeal. Appellate proceedings are not yet underway.

On January 6, 2009 Chief Marilyn Baptiste filed a statement of claim on behalf of all members of the Xeni Gwet'in First Nations Government and all members of the Tsilhqot'in Nation in relation to the proposed Project (Baptiste *et al.*). The claim sets out additional asserted rights and identifies concerns regarding potential impacts to established hunting and trapping rights.

Fishing

Baptiste *et al.* assert a site-specific aboriginal right to fish in Fish Lake (referred to by the TNG as "Teztan Biny") for food, social and ceremonial purposes. The statement of claim further asserts that, since the proposed Project would entail the loss of Fish Lake, development of the Project would constitute an extinguishment of the right.

As set out in the April 7, 2009 Statement of Defence, the Province does not agree that members of the Tsilhqot'in Nation have a distinct and separate existing aboriginal fishing right specifically at Fish Lake. The Province further denies that the destruction of fish habitat at Fish Lake, if it should occur, would amount to an "extinguishment" of aboriginal fishing rights.

The EAO understands that Tsilhqot'in Nation members fish for salmon, steelhead, sturgeon and more in the Chilko (Tsilhqox) Lake, Taseko (Dasiqox) Lakes, and the rivers that flow from these lakes including, but not limited to, the Taseko River. The EAO further understands that there are more than 20 lakes bearing trout, salmon or other game fish within the "Claim Area" (not including Fish Lake and Little Fish Lake). The EAO is satisfied that commitments to implement a comprehensive fisheries compensation plan would ensure that any impact on the admitted Tsilhqot'in Nation right to fish would be minimized and that significant such opportunities would remain.

The proposed Project would interfere with accepted aboriginal fishing rights. However, given:

- that the potential interference is minimal such that the rights are still meaningful notwithstanding the loss of Fish Lake;
- the meaningful process of, and opportunities for, consultation and accommodation to date, including measures to mitigate the loss of the lake; and,
- the regional and provincial importance of the proposed Project;

the interference is considered justifiable.

Hunting

Potential impacts to wildlife were presented in the Application and no significant impacts were found at the spatial scales presented. Further assessment was required by EAO – leading to a suspension of the time limit for the EA – in order to gain a more fulsome understanding of potential impacts at a scale of particular relevance to the exercise of Tsilhqot'in hunting and trapping rights.

This supplementary assessment focusing on habitat availability within the "Claim Area" complemented the findings for wildlife species of no significant adverse effects presented in the Application. Less than 3% of the relevant habitat available in the "Claim Area" would be potentially impacted by the proposed Project. Irrespective of EAO's conclusion of no significant adverse effects to wildlife, specific accommodation measures are proposed including the Proponent's commitment to develop and implement a plan for achieving compensation for adverse impacts to wildlife, wildlife habitat and the critical habitat of species at risk. The Proponent has proposed a joint undertaking with BC Ministry of Environment and Canadian Wildlife Service, with additional possible partners including First Nations.

Consequently, no significant adverse impact on the right to hunt and trap is anticipated. As well, given:

- EAO's assessment that the right would still be meaningful notwithstanding the loss of the proposed Project area and the impact of the proposed Project;
- the meaningful process of, and opportunities for, consultation and accommodation to date; and,
- the regional and provincial importance of the proposed Project;

any potential interference with the right is considered justifiable.

EAO's conclusion as to whether the Crown's duties have been discharged with respect to the Tsilhqot'in Nation

Having regard for all of the above, including the conclusions made by EAO in relation to the Tsilhqot'in Nation's established, admitted and asserted aboriginal rights, EAO concludes that the process of consultation has been appropriate and reasonable, that it has been carried out in good faith and with the intention of substantially addressing concerns expressed by the Tsilhqot'in Nation or understood by EAO from available sources, and that any impacts on established and admitted rights are justifiable. EAO,

on behalf of the Crown, has made reasonable efforts to inform itself of the impacts the proposed Project may have on the Tsilhqot'in Nation and by way of both draft and final copies of this report, it is communicating its findings to the First Nations.

In balancing the potential impact of the proposed Project on asserted and established rights with other societal interests, EAO is particularly mindful that:

- by virtue of the location of the mineral resource, the proposed Project is not technically and economically viable without the loss or disruption of Fish Lake;
- the proposed Project is important to the regional and provincial economies and is proposed in one of the most forest product dependent regions of the province where impacts of the mountain pine beetle have been severe;
- the proposed Project would provide approximately 375 person years of employment annually during construction and operation; and,
- considering the current high levels of on-reserve population unemployment, the proposed Project would potentially bring employment and training opportunities to First Nations' communities.

3. Position of Federal Agencies

The federal government has not expressed a view as to whether the issues examined by its agencies have been sufficiently addressed through project design changes, mitigation measures and other commitments agreed to by the Proponent. In particular, DFO has not yet given an indication as to what it would consider appropriate as fisheries compensation for the loss of Fish Lake and Little Fish Lake.

The federal review panel process is ongoing and public hearings have not been scheduled. It is expected that federal agencies will provide their conclusions to the review panel. The EAO circulated the draft Assessment Report for review and comment and the Responsible Authorities (DFO, NRCan, TC) have raised no objections to the conclusions contained therein.

4. Position of Local Governments

Both the City of Williams Lake and the Cariboo Regional District expressed strong support for the proposed Project. Both local governments cited the benefit of diversifying the economy and, in the context of the mountain pine beetle, offsetting the impacts of the downturn in the forest industry. Specifically, a submission from the City of Williams Lake stated:

- the proposed Project would be a huge economic generator on its own but can also result in expansion of existing business, attraction of new investment and business to serve the proposed Project;

- another mine in close proximity to the City expands opportunities to make Williams Lake more of a service centre to the mining industry;
- the job potential is significant and could serve to expand the population base and/or offset downsizing in other industry sectors; and,
- the proposed Project would provide the City with a greater ability to maintain its infrastructure and service delivery to its population.

Neither the City of Williams Lake nor the Cariboo Regional District raised concerns about potential adverse effects of the proposed Project.

5. Public Consultation

The Proponent carried out a program of public consultation during both the pre-Application and Application review stages in local communities that met the requirements of EAO.

A joint federal-provincial 60-day public comment period on the Application was held from March 26, 2009, to May 25, 2009. A total of 1,218 comments were received on the Application; 938 comments were of general support and 204 comments were of general opposition. The remaining 76 comments were related to various specific issues of interest or concern.

Open houses were held in 100 Mile House and Williams Lake on March 30 and April 1, 2009. A third public open house planned, for April 2, 2009 in Alexis Creek, was cancelled on the advice of the RCMP due to protest by First Nations at the venue. Discussion occurred in the parking lot, and people were encouraged to write to the EAO. A further advertisement was placed following the cancelled open house to remind the public that EAO was seeking written submissions by May 25 and that, in addition to the viewing locations previously identified, the Application was available at the Ministry of Forests and Range office in Alexis Creek.

The open houses provided information about the proposed Project and allowed the public an opportunity to ask questions and express support for or raise concerns about the proposed Project. Representatives of EAO and the Proponent made presentations at the open houses. Approximately 600 people attended the open houses: 500 in Williams Lake and 100 in 100 Mile House. Comments from the public generally related to:

- Support for the proposed Project and employment opportunities
- Protection of groundwater and water quality
- Alternatives to the destruction of Fish Lake
- First Nations' interests and how they will be addressed
- Long-term environmental liability and reclamation needs

- Concern over how long the proposed Project has been under review and the need for timely decisions

Three public technical workshops were held by the Proponent in Williams Lake on April 3 and 4, 2009 on Fish, Fish Habitat and Compensation; Hydrology, Hydrogeology, Water Quality and Aquatic Biology; and Terrestrial Ecosystems. The Proponent also consulted with and gave presentations to local government officials, regional community representatives and other stakeholders on a number of occasions.

D. SIGNIFICANT ADVERSE EFFECT: JUSTIFICATION ANALYSIS

After considering the various mitigation measures and commitments developed through the EA, EAO is often able to conclude that a proposed project would not likely result in a significant adverse effect. In this case, however, EAO has made a determination that the proposed Project would result in a significant adverse effect with respect to fish and fish habitat.

Given the above findings, EAO has recommended that Ministers consider the following factors to assess whether or not the finding of a significant adverse effect can be justified in the circumstances:

1. Number, type, and extent of significant adverse effects

The loss of Fish Lake and Little Fish Lake is a one-time, permanent event with a significant adverse effect on fish and fish habitat at that location.

2. Consideration of Alternatives

The Proponent presented 3 main alternative mine plans: Tete Angela (option 1), Fish Creek South (option 2), and Fish Creek North (option 3 – the proposed mine plan). The Proponent concluded, in both the Application and supplemental report on alternatives, that due to increased costs of options 1 and 2 ($440 and $340 million respectively) both alternatives were "fatally flawed", resulting, in the Proponent's view, in a project of excessive economic risk.[4]

[4] The information that the Proponent provides in support of its preferred option relies to a significant extent on what it considers to be unacceptable economic costs with the other two options. In this regard, it is worth noting that the Proponent's conclusions regarding the economic non-viability of options 1 and 2 does not benefit from the same clarity of criteria and analysis that the proponent used to narrow down from 15 to 3 options. At the same time, the Proponent's submissions regarding additional costs of those options (in the $400 million range) appear reasonable in the circumstances, and the amount of information the proponent has provided to date, particularly in response to requests for supplemental information on alternatives, exceeds that which is typically required in an EA of a proposed mine.

Irrespective of financial considerations, options 1 and 2 present some degree of environmental risk as well. Specifically, there is a reasonable likelihood that Fish Lake (and the recreational use of it) would be adversely affected by virtue of the pit being located approximately 500 m downstream.

Option 1 also raises an additional environmental consideration by introducing impacts into a second watershed. This is to be contrasted with option 3 (as reflected in the Proponent's mining plan) which limits activities to one watershed. It does this by working with natural hydrology so that much of the anticipated seepage and contaminated surface water would report to the pit at mine closure. At this contained collection point, water would be tested and water treatment decisions made prior to any discharge.

The additional alternative (a modified option 3) of moving the waste rock storage away from Fish Lake and maintaining the Tailings Storage Facility (TSF) in its current design location would not result in the preservation of Fish Lake. Such a design would not provide enough distance between the Lake and the TSF for effective mitigation. As a result, tailings seepage would be expected to deteriorate the water quality of Fish Lake to that of seepage pond water quality.

3. Economic Benefits

Economic benefits of the proposed Project would include the following:

- an average of approximately 375 person years of employment annually during construction (2 years) and operations (20 years);
- jobs provided by the Proponent would be high-paying, averaging over $90,000 per year plus benefits;
- during operations, the proposed Project's annual payroll is expected to be approximately $32 million, with $29 million paid locally;
- indirect employment and incomes increases as a result of the procurement of goods and services for the proposed Project from local and regional suppliers;
- total average annual government revenues from the proposed Project would be approximately $26 million in the construction phase, $48 million in the operations phase;
- the proposed Project is estimated to generate approximately $340 million in GDP annually; and,
- spending benefits over the life of the project.

4. Contribution to Community Development

This economic activity would benefit a region that has above-average unemployment relative to the rest of the province (as of November 2009 unemployment in the Cariboo-Chilcotin Region was 12% compared to 7.4% provincially). The Cariboo-Chilcotin Region is one of the most forest product dependent regions of the province and impacts of the mountain pine beetle have been severe. The proposed Project would help diversify the economic base and create new opportunities for contractors and suppliers, including a potential demand for new housing units and improved infrastructure (and associated construction opportunities). Both the City of Williams Lake and the Cariboo Regional District have expressed strong support for the proposed Project.

5. Value of Fish Habitat Compensation

A comprehensive Fisheries Compensation Plan has been proposed to offset the loss of Fish Lake and related habitat. While in EAO's view this does not negate the significance of the adverse effect on fish and fish habitat, the comprehensiveness of the proposed plan should be considered in assessing whether the proposed Project is justifiable.

The Proponent's Fisheries Compensation Plan includes a hatchery to maintain genetic integrity, outplanting to lakes in the region, and the creation of a new lake and spawning channels. MOE supports the proposed compensation plan and has indicated that it will adequately address the relevant policy goals (articulated in MOE's August 2008 Benchmark Statement) by ensuring:

- maintenance of the genetic line exhibited in the trout population of the Fish Lake system;
- lake and stream environments of similar or better productive capacity for trout as provided by the Fish Lake system now;
- a healthy sustaining trout population; and,
- a trout fishery for First Nations and the public of at least similar character to what is supported by Fish Lake under current conditions (in terms of number and size of fish, accessibility, and use).

6. Allocation of Costs and Benefits

The costs of the proposed Project would be borne both by the present and future generations with the loss of Fish Lake and Little Fish Lake. Should Prosperity Lake become successful viable fish habitat as anticipated, the relative costs to future generations would be reduced.

The economic and social benefits from the proposed Project are related to employment, contracting opportunities and to government financing and would accrue to the present

and next generations. Presently, direct benefits would flow to different communities within the region and provincially for an anticipated 22 years. Benefits would also accrue to the future generation as a consequence of community development.

Therefore, there is no expected cost to future generations, except the loss of Fish Lake and Little Fish Lake. These may be offset, either wholly or partially, by the compensatory values of Prosperity Lake.

Analysis

Having considered the above six factors, it is necessary to determine whether the proposed Project should be considered justified despite the finding of a significant adverse effect. In my view, the project should be considered justified in the circumstances, for the following reasons:

- There is only one significant adverse effect and it is limited to a discrete location.
- The proponent has sufficiently considered mine plan alternatives and there are adequate reasons to conclude that the option involving the loss of Fish Lake is the most appropriate in the circumstances, having regard to both the economic and environmental costs associated with other options.
- The project would provide very significant employment and economic benefits to a region that has been heavily dependent on forestry and has been severely affected by declines in the forest industry as well as the mountain pine beetle infestation. This would result in a major contribution to community development in the region and would be strongly supported by the local governments.
- The Proponent's Fish Habitat Compensation Program would go a significant way to addressing impacts to the loss of Fish Lake.
- Costs and benefits would be shared among present and future generations in a reasonably equitable manner. Most direct benefits would accrue to the present generation, which would also experience the loss of Fish Lake with an approximate seven year period during which Prosperity Lake would not yet be established. Future generations would benefit generally from the longer term economic and community development the project would provide in the region, and though they will not have the benefit of Fish Lake, Prosperity Lake would have been established by that time.

E. CONCLUSIONS

In considering all relevant information contained in this document and elsewhere, including the Assessment Report and the draft EA Certificate (including Proponent commitments), I am satisfied that:

- public consultation, and the distribution of information about the proposed Project, has been adequately carried out by the Proponent;

- the EA has adequately identified and addressed all potential adverse environmental, economic, social, heritage and health effects of the proposed Project and concluded there are likely no significant adverse effect except with respect to fish and fish habitat;

- despite a significant adverse effect related to fish and fish habitat, the proposed Project should be considered justified; and

- the Crown has fulfilled its obligations for consultation and accommodation to First Nations relating to the issuance of an EA Certificate for the proposed Project. EAO believes that any residual effects of the proposed Project on the ability of First Nations to continue to practice aboriginal rights, and to carry out traditional activities, are not significant, and that any impacts on established and admitted rights are justifiable.

RECOMMENDATION:

The Executive Director recommends that an Environmental Assessment Certificate be issued to Taseko Mines Ltd. in connection with its proposal for the Prosperity Gold-Copper Project. The recommendation to issue a Certificate is contingent on inclusion of the Proponent's written commitment to comply with all design and mitigation commitments set out in the attachments to the proposed Certificate.

Submitted by:

Robin Junger
Associate Deputy Minister and
Executive Director
Environmental Assessment Office