

**RE: Outstanding concerns or issues associated with the Ajax Mine Project: Joint Federal/Provincial Assessment Report**

In response to your request to review the *Ajax Mine Project Joint Federal Comprehensive Study/Provincial Assessment Report* (the Report), Métis Nation BC has identified some outstanding issues. Each is presented in the table below, with the applicable section and page number.

Section	Page	Concern/Comment	Recommendation
	v	The Crown has a duty to consult Section 35 aboriginal people which includes Métis. Further, the law is misstated. The SCC in <i>Haida</i> uses the language “potential existence”, and notes that “[c]onsultation and accommodation before final claims resolution preserve the Aboriginal interest and are an essential corollary to the honourable process of reconciliation that s.35 of the <i>Constitution Act, 1982</i> demands”. Further, under s. 35 there is no hierarchy of Aboriginal rights. Lastly, to use “Aboriginal interests” for each aboriginal group exclusive of MNBC and use “impacts” with reference to MNBC is disrespectful to our citizens, and fails to acknowledge our Nation to Nation relationship with the Federal Crown under the <i>Canada-Métis Nation Accord</i> signed on April 13, 2017.	
2.2.1	34	The existing water quality levels indicate exceedances throughout the year. Open pit mining is likely to increase some of these levels further causing a compounding cumulative impact.	KAM should be held accountable to support a water stewardship study for the Kamloops Lake watershed. An offer of support is non-binding and non-specific. A commitment to do support as part of a compensatory measure for the Far Future impacts to water quality should be clarified. Although not part of the joint panel review, there should at some later date be a
2.2.3		This is poorly addressed in their cumulative impacts, but these materials will settle in soils and affect soil chemistry away from the site and may have long-term residual effects to water quality. The agencies have deemed this a non-significant impact, but the bioaccumulation of selenium and the consequences to fish have been well documented. These watercourses, though not quality fish habitat themselves, support invertebrate populations that will contribute to	
2.2.6			

Section	Page	Concern/Comment	Recommendation
		downstream fish communities.	clarification of the duration, involvement and objectives of the water stewardship effort.
3		As above.	As above.
4.3.4	84	Water circulation and dissolved oxygen are a present concern, but the KAM recommended fix appears adequate. However, solar exposure from the west is currently impeded by local topography and vegetation cover. With a 2.66 ha expansion into that slope and vegetation, solar exposure may cause a shallow lake to increase in temperature on the west side of the waterbody. Further, depending on the DO limitations, warmer water may present a significant risk to fish.	<p>A study using radio-tagged fish, to monitor daily and seasonal lake usage, should be carried out to clarify whether the solar exposure presents an issue.</p> <p>Also, DFO has accepted the current offsetting for the purposes of the EA, but ensuring that remote compensation occurs at a greater than 1:1 ratio remains paramount. These permitting and authorization approvals should be subject to public scrutiny if the compensation will not be wholly dealt with in the EA.</p>
6.4.6.1	130	Finding of no significant effect pertains to self-sustaining populations of the American badger, however, the local populations are in decline. This is a misleading conclusion by the agencies and should be clarified. Appendix A outlines that support badger management will be required because this finding is of SOME significance.	Clarify in text that there is some impact anticipated and may have significant implications for the American badger. Further details can be expressed in Appendix A or in the EA certification.
6.4.7	133	Amphibian habitat loss is significant within the project footprint, and the time frame for compensation wetlands to be operational is unknown. Given that some of the amphibian species present within the regional and local study areas are ecologically sensitive, and sensitivity to chemical and environmental changes, these impacts may well be significant.	<p>Additional studies may be required to round out the empirical quantitative data for these species so that the full scope of impact may be assessed.</p> <p>Further assessment of cumulative impacts may be required.</p>

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23.1	262	<p>Footnote 68 echos our concerns on page v above. As stated, “The Province of British Columbia does not recognize a legal obligation to consult with Métis people, as the Province is of the view that no Métis community is capable of successfully asserting site specific section 35 rights in BC.” The duty to consult is a pre proof legal remedy, and does not require the successful proof of section 35 rights to be required, as stated by the SCC.</p> <p>The broad purpose of the duty to consult and accommodate is to advance the objective of reconciliation of pre-existing Aboriginal societies with the assertion of Crown Sovereignty. This duty flows from the honour of the Crown and its fiduciary duty to Indigenous peoples. The obligation to provide consultation and a decision-making process that is compatible with the honour of the Crown is embedded in Section 35 of the <i>Constitution Act, 1982</i>.</p> <p>Crown’s responsibility to act honourably in its dealings with Aboriginal people is a legally-enforceable duty. Acting honourably is essential for the Crown in all its dealings with Aboriginal peoples and the implementation of the honour of the Crown must not be interpreted narrowly or technically. Section 35 is to be interpreted using the “purposive approach” set out by the SCC which also supports the application of the Crown’s duty to consult Aboriginal peoples to Métis peoples.</p> <p>As Thomas Isaac notes on page 31 of his report, “[a]ny process aimed at achieving reconciliation with Métis must expressly deal with the principle of the honour of the Crown which, in part, manifests itself in the Crown’s duty to consult Aboriginal peoples.</p> <p><i>Haida</i> contemplates different strength’s of claim,</p>	

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but outright denial of the duty to consult is not honourable, nor is it consistent with the approach taken by the federal government, nor is it supported in law.

Yours truly,



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Métis Nation BC