

# The EAO's Report on the Review of an Application for Extension of an Environmental Assessment Certificate

PROSPERITY GOLD-COPPER PROJECT

JANUARY 13, 2021

Pursuant to Section 31 (2) of the Environmental Assessment Act, S.B.C. 2018, c.51.



**EAO**

Environmental  
Assessment Office

## 1.0 BACKGROUND

On January 14, 2010, provincial Ministers issued Environmental Assessment Certificate #M09 02 (Certificate) for the Prosperity Gold-Copper Project (Prosperity), a large open pit gold-copper mine located 125 kilometres (km) southwest of Williams Lake in South Central British Columbia. The Certificate specified that Prosperity had to be substantially started by January 14, 2015, failing which the Certificate would expire. An extension Order was issued under Section 18 of the *Environmental Assessment Act, 2002* (the former Act), extending the deadline for substantial start of Prosperity to January 14, 2020, which was the maximum time that a certificate could be extended under the former Act.

On December 12, 2019, the Environmental Assessment Office (EAO) received a joint letter from the Certificate Holder, Taseko Mines Ltd. (Taseko) and T̓silhqot'in Nation (collectively, the Parties) stating the Parties have agreed to a temporary standstill of outstanding litigation and other activities in relation to Prosperity in order to engage in a facilitated process aimed at exploring a long-term resolution of the issues between the Parties relating to Prosperity, acknowledging Taseko's commercial interest and T̓silhqot'in opposition to Prosperity. In the joint letter, the Parties requested that the EAO extend the term of the Certificate for 12 months from its currently expiry date.

The *Environmental Assessment Act, 2018* (the Act), allows for the holder of an environmental assessment certificate to apply for an extension of the deadline specified in the environmental assessment certificate under Section 31(2). However, in the Act, Section 31(4) does not allow for more than one extension of the deadline in an environmental assessment certificate, and the Certificate for Prosperity had already been extended once.

In order to provide the Chief Executive Assessment Officer (CEAO) with the authority to consider, and potentially grant, a further extension to the Certificate, a regulation under Section 77(2)(h) of the Act was deposited on December 19, 2019 (Exemption Regulation No. 2) specifying that the provision of the Act that limits extensions to "one occasion only" does not apply to the Certificate if the deadline is not extended beyond January 14, 2021. That is, this regulation enabled the CEAO under the Act to decide whether to extend the duration of the Certificate as requested by the Parties, for a period of up to 12 months.

After considering the unique circumstance of the request and being of the view that it would be consistent with the government's goal of advancing reconciliation with Indigenous nations through relationship building, and the fact that the 12-month extension would not result in any new or additional effects, the CEAO issued the extension on January 13, 2020, making the new Certificate expiry date January 14, 2021.

Taseko requires both federal and provincial environmental assessment (EA) approvals in order to proceed and construct Prosperity. Taseko does not have federal EA approval for Prosperity. The original design (Prosperity) and the redesign (New Prosperity) were subject to federal Panel reviews and were rejected by the federal government in 2010 and 2014, respectively.

The Project, as proposed, cannot be built given the federal rejection. Since the decision to allow the second Certificate extension, Taseko has exhausted all legal avenues to appeal the federal rejection. Taseko unsuccessfully challenged the federal government's 2014 decision through the courts, ending with the Supreme Court of Canada decision on May 14, 2020, in which it declined to hear Taseko's appeal.

## 2.0 CURRENT CERTIFICATE EXTENSION REQUEST

### 2.1. Overview

On December 9, 2020 the EAO received a joint letter from the Parties (available on EAO's website [here](#)) stating that the Parties have agreed to extend the temporary standstill described in [Section 1.0](#) above for a further year so they can continue their dialogue regarding Prosperity. The Parties noted that the COVID-19 pandemic delayed the commencement of the dialogue for several months, but they have made progress in establishing a constructive dialogue.

In the joint letter, the Parties requested that the EAO:

- Extend the term of Environmental Assessment Certificate #M09-02 (Certificate) for 12 months from the current expiry date of the Certificate, without penalty to Taseko; and
- Hold in abeyance Taseko's application to amend its Certificate<sup>1</sup>, until further notice from Taseko and, in any event, until December 5, 2021 at the earliest.

As with the Parties' 2019 request associated with the commencement of the standstill, the EAO agreed to consider this request given this unique circumstance, where Parties who have long been at odds in relation to Prosperity and have agreed to seek resolution to their differences outside of litigation. This is consistent with this government's goal of advancing reconciliation with Indigenous nations through relationship-building and consensus-seeking processes rather than adversarial processes or reliance on the courts to settle disagreements.

With respect to the request from Taseko regarding the proposed amendment to its Certificate, the EAO agreed to continue to hold the proposed amendment in abeyance.

In order to provide the CEAO with the authority to consider and potentially grant a further extension to the Certificate, an amendment to Exemption Regulation (No. 2) enacted in December 2019 under Section 77(2)(h) of the Act was made on January 8, 2021. This amendment to the regulation enables the CEAO to make a decision under the Act on whether to extend the duration of the Certificate as requested by the Parties, for a period of up to one year to January 14, 2022.

## 2.2. Review Process

The EAO engaged Indigenous nations on both the proposed amendment to the regulation under Section 77(2)(h) of the Act and the requested one-year extension of the duration of the Certificate. This engagement is described further in [Section 4](#).

As part of the review, the Parties were also asked to provide any additional information to support the CEAO in understanding the basis of the request to extend the Certificate, including how the request is consistent with the purposes of the Act, which are now substantially reflected in the purposes of the EAO listed in Section 2 of the Act. The information received is summarized in [Section 3](#).

The EAO's standard practice for developing assessment reports includes sharing a draft with the Proponent/Holder and Indigenous nations to allow them to review how information they submitted has been reflected in the report. In this case, this step was not completed due to the extremely short time frame for the extension review.

## 3.0 INFORMATION PROVIDED BY THE PARTIES

The EAO received a letter from the Parties on December 21, 2020 in response to the request from the CEAO for additional information. In this letter, the Parties identified that the basis for the request remains the same as the initial request made in December 2019. They noted that the purpose of that standstill was, and remains, to provide a "space" for the T̓silhqot'in Nation and Taseko to engage in a facilitated dialogue to explore a long-term resolution of the issues relating to Prosperity, acknowledging both Taseko's commercial interests and the T̓silhqot'in's opposition to the project. The Parties stated that the standstill provides the foundation and rationale for both the original and the current joint requests to extend the Certificate. The intent of the standstill is to "pause" ongoing disputes between Taseko and the T̓silhqot'in and the activities relating to the project in a manner that ensures that neither party is prejudiced or gives up any of its existing rights during the course of the standstill. As such, the Parties consider it to be important that the Certificate, among other things, is extended to mirror the duration of the standstill, thereby preserving the status quo that existed at the outset of

---

<sup>1</sup> Taseko applied in 2011 to the EAO to amend its Certificate to accommodate proposed changes to its mine plan, consistent with the New Prosperity project proposal that was ultimately rejected by the federal government in 2014.

the standstill for the duration of the standstill. In the view of the Parties, extending the Certificate would be consistent with the reconciliation purpose of the Act, as it would support a process aimed at finding a long-term resolution of the issues relating to Prosperity. They noted that the Province is participating in this dialogue as a full party, in light of its role and interests in the complex issues being discussed and its interest in resolving them.

## 4.0 INDIGENOUS NATION ENGAGEMENT

Under Section 31(5) of the Act, the Chief Executive Assessment Officer must seek to achieve consensus with participating Indigenous nations with respect to the extension request before making a decision under Section 31(4). While there are no “participating Indigenous nations” defined under the 2002 Act, the EAO has taken the approach of seeking to achieve consensus with all Indigenous nations being consulted on Prosperity. As noted above, the request for a 12-month extension was made, in part, by T̓silhqot̓in Nation.

On December 14, 2020, the EAO wrote to Indigenous nations that could be impacted by the requested extension, including:

- T̓silhqot̓in Nation including:
  - Alexis Creek First Nation | T̓sideldel;
  - ̓Esdilagh First Nation;
  - Tl̓'etinqox Government;
  - Tl̓'esqox | Toosey First Nation;
  - Xeni Gwet̓in First Nations Government;
  - Yunesit̓in Government;
- Esk'etemc;
- High Bar First Nation;
- Stswecem'c Xgat'tem First Nation;
- Williams Lake First Nation; and
- Xat̓s̓ull First Nation.

The EAO informed the Indigenous nations of the request and invited feedback on the proposed one-year extension of the duration of the Certificate by December 29, 2020. The EAO also reached out to the potentially affected Nations that are not part of the T̓silhqot̓in Nation by phone to discuss the process and any questions, in particular: Esk'etemc, High Bar First Nation, Stswecem'c Xgat'tem First Nation, Williams Lake First Nation and Xat̓s̓ull First Nation. The EAO subsequently offered capacity funding to these Nations and an extension to January 5, 2021 to those Nations that requested more time to provide comments.

Stswecem'c Xgat'tem First Nation responded on December 18 and December 22, 2020 expressing its serious concerns about the effects of Prosperity on its territory and rights as well as concerns about the timelines of the review process and the amount of capacity funding. Stswecem'c Xgat'tem First Nation requested that Taseko engage in a more meaningful way and provide funding for the cost of preparing Stswecem'c Xgat'tem First Nation's response. Stswecem'c Xgat'tem First Nation noted that the proposed transmission route would run directly through its territory and have significant, longstanding impacts on lands and waters relied on by the Nation for fishing, medicine gathering and cultural and spiritual purposes. Stswecem'c Xgat'tem First Nation is of the view that Taseko has taken no meaningful steps to address its concerns. Stswecem'c Xgat'tem First Nation noted that Prosperity cannot proceed in its current form regardless of whether the Certificate is extended due to the lack of federal approval or further legal avenues available to Taseko to appeal the decision. In consideration of this status, Stswecem'c Xgat'tem First Nation did not take a position on the extension request of the Parties.

In response to concerns raised regarding the timeline, the EAO extended the deadline for comments to January 5, 2021 as mentioned above; however the EAO also acknowledged that timelines are very tight for the process as a result of the date the extension request was received from the Parties and the Certificate expiry date. Regarding capacity funding, the EAO noted it does not typically offer funding for the review of certificate extensions but did in this case due to the uniqueness of the request that included commenting on the potential amendment to Exemption Regulation (No. 2), and the burden being created by the short timelines for Nations to review and provide comments, which overlapped with the winter holiday. The EAO communicated Stswecem'c Xgat'tem First Nation's concern that this amount was inadequate for the scope of the review to Taseko. Taseko was of the view that the EAO's funding was sufficient for the circumstances.

Williams Lake First Nation responded on December 29, 2020 stating that it did not oppose the extension but retains the right to review any future permits or extension requests.

High Bar First Nation responded on December 30, 2020 stating that it grants conditional support to the Parties for the extension and to hold the proposed amendment in abeyance provided that Taseko meet with High Bar First Nation in January 2021 to discuss High Bar First Nation's concerns with the plans for New Prosperity. In response to this comment, the Parties stated that Taseko was willing to meet with representatives of High Bar at a mutually convenient time, but further noted that any discussions at that meeting will be constrained by the communication restrictions and protocols within the standstill agreement governing the ongoing discussions between the Parties. The EAO views this to be a reasonable approach.

Esk'etemc responded on January 4, 2021 noting that its significant concerns regarding the transmission line impacts of Prosperity on lands and waters and Esk'etemc rights and title remains outstanding and unresolved but that they do not object to the extension. This position is subject to the condition that, if the extension is granted, Esk'etemc is provided with the opportunity to participate directly in the dialogue regarding the project and its impacts on Esk'etemc territory, including territory shared with the T̓silhqot'in Nation. The Parties responded that Prosperity and any related development are subject to the standstill agreement between the Parties, which places restrictions on the Parties' ability to discuss the ongoing discussions among them and the Province. Subject to the communication restrictions within the standstill agreement, however, they are willing to commit to providing Esk'etemc, and other interested parties, with an update on the status of those discussions if and when there has been a material development in them.

Esk'etemc was of the view that the standstill agreement should not be used as a basis to exclude it from participating in discussions in order to protect its rights and fulfill its stewardship responsibilities. In the view of Esk'etemc, the terms of the agreement should be amended to enable to Esk'etemc to participate directly in any discussions which relate to or which could affect its rights and territory. While the EAO notes that the Parties have not fully agreed to Esk'etemc's request, the EAO considers the response to be reasonable under the circumstances (i.e., in light of the restrictions of the standstill agreement). Given the Parties' commitment to provide Esk'etemc with an update if and when there is a material development in their discussions, Esk'etemc will know when there are developments in the discussion that may affect its interests and can raise such concerns with the Province. As the Province is also participating in the facilitated discussions, the Province will know when discussions are advancing in a way that potentially affects other Indigenous nations' interests and could encourage and potentially support further engagement processes between the Parties and other Indigenous nations.

The EAO notes that no response was received from Xat̓sūll First Nation.

Those potentially affected Indigenous nations that provided comments stated they did not object to issuing a 12-month Certificate extension or did not object provided certain conditions were met for some Nations. In all the circumstances, the EAO is satisfied that its obligations to consult with Indigenous nations has been adequately discharged respecting the extension application based on the consideration of the circumstances and the fact that, if the extension is granted, no work can take place on the project.

## 5.0 CONSIDERATIONS

In addition to seeking the views of Indigenous nations on the requested extension and requesting further information from the Parties, the EAO considered the potential effects of the extension and other contextual factors about the project.

As was the case in the last extension, the EAO notes that the Certificate extension would not, by itself, authorize any activity to occur and Prosperity remains subject to applicable permits and authorizations that are required before the project could proceed. In addition, the Parties have agreed to a temporary standstill of litigation and other activities in relation to Prosperity during this time period. The EAO understands this to effectively remove the possibility of any activities taking place on the ground during the standstill. Considering that the additional 12-month period on the Certificate would allow time for the Parties to engage in a facilitated discussion but not permit Taseko to conduct any work on the ground, the EAO is of the view that the 12-month extension would not result in any new or additional effects, or allow Taseko to substantially start the Prosperity in that timeframe. For these reasons, the EAO considered it unnecessary to undergo the detailed assessment set out in the EAO's April 2020 guidance for extension requests, or to engage government technical reviewers in assessing the request.

Should the decision be made to grant the requested extension, it is possible that project or process changes may result from negotiations between the Parties during the standstill period. As the Certificate will expire after the standstill period is completed, any new reviewable proposal would need to undergo a new EA under the Act as the Act does not allow further extensions unless further amendments to the exemption regulation are made. The EAO cannot speculate on whether further amendments to the regulation and requests for extensions would be sought or granted; however any review process for a new proposal would include consideration of potential positive or negative environmental, economic, social, cultural and health effects as well as assessment of effects to Indigenous nations and their rights.

The EAO notes that certain facts about Prosperity have changed since the last extension request. The federal government has refused to approve that project, as was the status previously; however, Taseko's appeals with respect to that refusal have now been exhausted. In this regard, the EAO notes that the Certificate does not authorize a project that could ultimately be constructed and operated, which is also true for the project that is proposed pursuant to Taseko's amendment application.

The Parties provided additional information on the rationale for the Certificate extension, as described in [Section 3](#), including wanting to preserve the status quo that existed at the outset of the standstill for the duration of the standstill and their view that extending the Certificate would be consistent with the reconciliation purpose of the Act, because it would support a process aimed at finding a long-term resolution of the issues relating to Prosperity.

Regarding the reconciliation purpose of the Act, the EAO also notes that a Certificate extension could be viewed as supporting the right of the T̓silhqot̓in Nation to determine and develop strategies for development of resources within their territory that is consistent with articles 26 and 32 of the [United Nations Declaration on the Rights of Indigenous Peoples](#), which relate to rights to determine strategies and purposes for their lands, territories and other resources. A Certificate extension could also be consistent with this government's objective of advancing reconciliation with Indigenous nations through relationship building. The EAO also notes that this approach is also consistent with the Truth and Reconciliation Commission Calls to Action 92, that calls on the corporate sector to commit to building respectful relationships and obtaining free, prior, and informed consent of Indigenous peoples before proceeding with economic development.

The EAO acknowledges Taseko's willingness to meet with High Bar First Nation and the Parties' commitment to providing Esk'etemc, and other interested parties, with an update on the status of their discussions, if and when there has been a material development in those discussions. Information sharing between the Parties and the potentially affected

Indigenous nations including where the Parties' discussions could result in adverse effects on Indigenous nations could support reconciliation with Indigenous nations beyond Tšilhqot'in Nation on the project.

Based on the above considerations, including the views received from Indigenous nations, the EAO presents the following **Options** for consideration by the Chief Executive Assessment Officer:

*Option 1 – Extend the Certificate*

The Chief Executive Assessment Officer of the Environmental Assessment Office issues an Order under Section 31(4) of the Act (2018) to extend the Certificate for Prosperity for 12 months, noting that all other conditions and requirements arising from the original Certificate remain in effect for the duration of the Certificate.

With the extension, the Certificate expiry date would become January 14, 2022.

*Option 2 – Do not extend the Certificate*

The Certificate is set to expire on January 14, 2021. Under this option the Certificate Holder would have to reapply for and obtain an environmental assessment certificate in order to proceed with a redesigned version of the project. Under the Act, options could be considered to utilize existing information from the previous environmental assessment as appropriate.

With a new certificate, if issued, the Certificate Holder would have up to ten years from the time the new certificate is issued to substantially start the project. If the Certificate Holder has not substantially started the project after this time, an application for an extension to the new certificate of up to another five years is available.