

# Reasons for Decision of the Chief Executive Assessment Officer

EXTENSION TO THE PROPERITY GOLD-COPPER PROJECT  
ENVIRONMENTAL ASSESSMENT CERTIFICATE

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**EAO**

Environmental  
Assessment Office

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## EXTENSION TO THE PROSPERITY GOLD-COPPER PROJECT ENVIRONMENTAL ASSESSMENT CERTIFICATE

### 1.0 CONTEXT:

Taseko Mines Ltd. (Taseko) proposes to develop the Prosperity Gold-Copper Project (the Project), an open-pit mine with a 20-year operating life and a production capacity of 70,000 tonnes of mineral ore per day, 125 kilometres southwest of Williams Lake.

Provincial ministers issued a provincial Environmental Assessment Certificate (EAC) for the Project on January 14, 2010. As a result of a five-year extension granted in 2015, Taseko had until January 14, 2020 to substantially start the Project, or the EAC would expire. In January 2020, at the request of the company and T̓silhqot'in Nation (T̓silhqot'in), the former Chief Environmental Assessment Officer (CEAO) of the Environmental Assessment Office (EAO) extended the term of the Prosperity EAC for 12 months until January 14, 2021. The purpose of the extension was to allow for a dialogue, facilitated by the Province, between Taseko and T̓silhqot'in aimed at exploring a long-term resolution of the issues between them relating to Prosperity. The former CEO had the authority to order the extension because of an Order in Council (Exemption Regulation (No. 2)) which varied the provision in Section 31(4)(a) of the *Environmental Assessment Act*, S.B.C. 2018, c.51 (the Act) that allows for an EAC extension on "one occasion only."

The Project was also subject to a federal panel review. The federal government rejected the Project in November 2010 and subsequently rejected a revised proposal, the New Prosperity Project, in February 2014, following review by a federal panel. Taseko commenced judicial reviews of the federal panel report and process and the federal rejection of the New Prosperity Project, ultimately filing leave for appeal to the Supreme Court of Canada (SCC) in January, 2020. On May 14, 2020, the SCC declined to hear the appeal. Irrespective of the provincial EAC, the Project as proposed cannot proceed without federal approval under the federal *Impact Assessment Act*, which has not been given.

In December 2020, T̓silhqot'in and Taseko (together the Parties) put forward a joint request for a further extension of the EAC for an additional year so that they may continue their dialogue. An Order in Council was deposited on January 8, 2021 to amend Exemption Regulation No. 2. The amendment allowed me to consider the request, and to make an order extending the EAC for a further year.

### 2.0 THE NATURE OF THE DECISION:

My decision is made pursuant to Section 31(4) of the Act. In making my decision, I have considered a number of factors, including the context of the Act in its entirety, the review process undertaken by the EAO to inform this decision, information received from interested parties, relevant common law, and past EAO practice. The key considerations before me relate to the reasons the Parties provided in making their request and the implications of granting the extension. I note that Section 31(5) of the Act requires that I seek to achieve consensus with Indigenous nations before making a section under Section 31(4).

It is important to note that provincial ministers, in issuing an EAC for a project and applying specific conditions to the EAC, have considered whether a project is in the public interest. Subsequent decisions respecting a project, including a decision to extend an EAC, are made in context of that determination.

## 2.1. Case Law:

In *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 (“*Friends of the Oldman River*”), La Forest J. held:

The basic concepts behind environmental assessment are simply stated: (1) early identification and evaluation of all potential environmental consequences of a proposed undertaking; (2) decision making that both guarantees the adequacy of this process and reconciles, to the greatest extent possible, the proponent's development desires with environmental protection and preservation.

## 2.2. Past Practice:

With respect to past practice, I note that, while the EAO regularly grants extension requests, this is a unique situation because extending the deadline in the EAC is only possible because of a regulation that varies Section 31(4)(a) of the Act. The EAO has only issued an extension following a request such as the one before me on one occasion, in response to the joint request put forward by the Parties in December 2019. As such, in making my decision I have had regard for the unique circumstances of the request. I have also considered that in his reasons for decision, the former CEO contemplated the unique circumstances of this request and placed significant importance upon the fact that the application supported the opportunity for the Parties to “work toward a solution to a longstanding disagreement” and “to be consistent with this government’s direction to advance reconciliation with Indigenous nations through relationship building.”

## 3.0 KEY CONSIDERATIONS:

With respect to the matters relevant to my decision, I agree with the conclusions reached by EAO staff in their report to me linked here:

<https://www.projects.eao.gov.bc.ca/api/public/document/5fff5fded2876600219b0ed6/download/Prosperity%20-%20Certificate%20Extension%20Report%2020210113.pdf>

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.

### 3.1. Permits and Authorizations:

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 a number of permits and authorizations are required before the Project could proceed. In particular, Taseko was not successful in challenging the federal decision of 2014, and therefore the Project cannot proceed as proposed. Should Taseko seek to move forward with the Project, it would need to undergo a new federal review process. Given that there would likely be significant changes to the Project related to any further federal assessment, further assessment under the Act would also be required. While I cannot speculate on whether further amendments to Exemption Regulation No. 2 would be made or requests for extensions would be sought or granted, I do expect that any review process of a new version of the Project would include consideration of potential positive or negative

environmental, economic, social, cultural and health effects as well as an assessment of effects on the interests of Indigenous nations.

As a result, I do not think a further extension of the EAC would be inconsistent with, or at least not contrary to, the environmental protection purpose of the Act that was referenced in *Friends of the Oldman River*, and that is now reflected in the purposes of the EAO set out in Section 2 of the Act.

### 3.2. Standstill Agreement between Taseko and T̄silhqot'in:

The Parties have agreed to a temporary standstill of litigation and other activities in relation to Prosperity at this time. 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 continue to engage in a facilitated discussion but not permit Taseko to conduct any work on the ground, I agree with the view of the EAO that the 12-month extension would not result in any new or additional effects, or allow Taseko to substantially start the Prosperity project in that timeframe. Therefore, as I discuss above with respect to the need for further review before a new version of the Project could be carried out, the existence of the standstill agreement supports a conclusion that an extension would not be inconsistent with the environmental protection purpose of the Act.

### 3.3. Reconciliation Purpose of the Act:

In addition to the environmental protection purpose of the Act, it is clear that another purpose is to contribute to the process of reconciliation with Indigenous nations. This purpose is clear from a reading of the Act in its entirety. In particular, there are several decisions under the Act, including the one I have made in this instance, in respect of which consensus with Indigenous nations must be sought. This purpose is also reflected in the purposes of the EAO, set out in Section 2 of the Act. Section 2(2)(b)(ii) makes explicit reference to reconciliation with Indigenous nations.

In this regard, at my request, the Parties provided additional information on the rationale for their Certificate extension request. In their letter to me dated December 21, 2020 they noted a joint interest in wanting to preserve the status quo that existed at the outset of the standstill to support continued facilitated dialogue aimed at finding long-term resolution of issues related to the project. Additionally, they asserted that extending the Certificate would be consistent with the reconciliation purpose of the Act.

I agree that providing the opportunity for a facilitated dialogue between the Parties is consistent with the reconciliation purposes of the Act and that it also aligns with articles 26 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Call to Action 92 of the Truth and Reconciliation Commission (TRC) report.

In addition to facilitating dialogue between the Parties, I have also considered the reconciliation purpose of the Act, UNDRIP and the TRC as they relate to the interests of other Indigenous nations impacted by the project. Esk'etemc, High Bar First Nation, Stswecem'c Xgat'tem First Nation, Williams Lake First Nation, and Xats'ull First Nation have all been identified as having an interest and most have expressed views relating to the project.

The report prepared by the EAO noted that while Stswecem'c Xgat'tem First Nation did not take a position on the extension request of the parties, it did express its serious concerns about the effects of Prosperity on its territory and rights and requested that Taseko engage in a more meaningful way with the nation.

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, stating that it grants conditional support to the Parties for the extension and to hold Taseko's EAC amendment application, that is currently before the EAO, 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, in a letter to me dated January 6, 2021, 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.

Esk'etemc responded 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. While 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, 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 is 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. Esk'etemc has expressed that 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.

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

I am satisfied that the EAO that its obligations to consult with Indigenous nations has been adequately discharged respecting the extension application based on the consideration of the circumstances.

I would like to thank the Indigenous nations for their submissions, particularly given the short time they had to prepare them following the Parties' request, and the need to prepare them during the holiday season.

In reflecting upon the TRC Call 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, I note that dialogue between Taseko and Indigenous nations beyond T̓silhqot'in Nation supports the reconciliation purpose within this call to action. I note that while the Indigenous nations that provided submissions were not opposed to granting a further EAC extension, they wished to be further engaged with the Parties in discussions concerning the future of the Project. In this regard I strongly encourage Taseko to also move forward with its commitment to engage High Bar First Nation and further, strongly encourage Taseko to engage other impacted Indigenous nations, specifically, Esk'etemc, Stswecem'c Xgat'tem First Nation, Williams Lake First Nation, and Xat̓s̓ll First Nation.

### **3.4. Previous Decisions under the Act:**

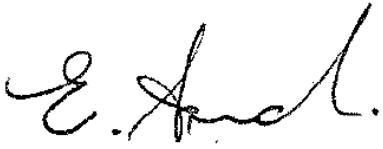
As the CEAO charged with the administration of the Act, I considered the precedent that could be set by issuing a third extension to the EAC. I considered carefully the implications of making a decision that could be used in relation to future requests by this and other Certificate holders.

In this regard, I took note of the decision of the former CEAO in January 2020 in which he extended the EAC for a second time. I also considered the implications of further cementing that precedent by granting a third extension. I balanced those considerations with the reality that this is a unique situation. As noted above, the actions of the Certificate holder in engaging with the T̓silhqot'in Nation support reconciliation. Furthermore, given that the Taseko lacks the necessary federal and provincial authorizations and permits, the project cannot proceed at this time. Additionally, it can reasonably be expected that in order to proceed with the project, the Certificate holder would propose substantial changes to the project and need to undergo a new federal review process. Further assessment under the Act would also be required.

On balance, the uniqueness of this situation (including the existence of a regulation varying a provision of the Act) leads me to conclude that the likelihood of similar future requests coming forward from this holder or other holders for extensions is low.

#### 4.0 CONCLUSION:

Having considered of the EAO's report, the review process undertaken, consultation with Indigenous nations and efforts to seek consensus, the purposes of the Act, including the reconciliation purpose, and the existing overall regulatory regime for the Project, I find it appropriate to issue an order under Section 31(4)(a) to extend the EAC for the Prosperity Gold-Copper Project for one year. The EAC will remain in effect with no additional conditions until January 14, 2022.



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Elenore Arend  
Chief Executive Assessment Officer  
Environmental Assessment Office

Signed this 13<sup>th</sup> day of January, 2021