



Reference: 385247

December 21, 2021

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Sent via email: abrooks@tasekomines.com; tdickson@jfkllaw.ca

Dear Stuart McDonald and Tim Dickson:

Thank you for your letter dated December 3, 2021, regarding the continuation of the standstill of outstanding litigation and regulatory matters in relation to the proposed Prosperity project (Prosperity) and the dialogue between Taseko Mines Limited (Taseko) and T̓silhqot'in Nation (collectively, the Parties) facilitated by the Province.

In your joint letter, the Parties have requested that the term of Environmental Assessment Certificate #M09-02 (the Certificate) be extended for 12 months from the current expiry date of the Certificate.

The extensions in 2020 and 2021 were only made possible by Exemption Regulation (No. 2), which varies Section 31(4) of the *Environmental Assessment Act* (2018) (the Act). In order 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, would need to be made.

After careful consideration of the information provided by the Parties, the context of the Act in its entirety, and my duty to ensure decisions are rooted in sound public policy, I have decided not to recommend to my cabinet colleagues an amendment to Exemption Regulation (No. 2).

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To allow for a further extension of the Certificate, following the extensions in 2015, 2020 and 2021, through an amendment to Exemption Regulation (No. 2), would in my view run contrary to the purposes of the Act, which draws a balance between economic development and environmental protection in allowing, in the normal course, only a single extension.¹

I have also considered that the Certificate does not authorize a project that would ultimately be constructed and operated, since the Certificate amendment application before the EAO pertains to New Prosperity; the federal government has refused to approve that project; and Taseko's appeals with respect to that refusal have been exhausted. I am not aware of any plans that Taseko has to apply for federal approval of a different project. Any federal approval of that project would therefore not take place for an indefinite period, and certainly after the one year Certificate extension that the Parties sought. Further, the Parties have not provided substantive information to support me in understanding the basis of the request to extend the Certificate. While Taseko has asserted that failing to extend the Certificate would cause it and its management reputational and potentially financial harm, it has not provided any particulars of that potential harm. Given the fact that the Certificate (even if amended through the current amendment process) does not authorize a project that would be constructed and operated, I fail to see how its termination could cause it this harm.

At this time, the Certificate is almost 12 years old, and does not, as I note above, authorize a project that will be built. In addition, the amendment that is currently under consideration does not pertain to a project that will be built, given the federal rejection of New Prosperity. In my view, rather than extending a Certificate that followed an assessment conducted more than a decade ago, it would be appropriate for Taseko to apply, if it wishes to do so, for a new certificate in respect of a project that it does intend to build. While the information gathered during the assessment of the project may remain relevant, that information could be updated and enhanced through a fresh assessment.

I do acknowledge that another purpose of the Act is reconciliation with Indigenous nations, and that facilitating discussion between the Parties is consistent with that purpose. As the Chief Executive Assessment Officer said in her reasons following the 2021 extension, "providing the opportunity for a facilitated dialogue between the Parties is consistent with the reconciliation purposes of the Act". The lack of an extended Certificate does not mean, however, that the discussion between the Parties must come to an end.

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¹ See in this regard *Glacier Resorts Ltd. v. British Columbia (Minister of Environment)*, 2019 BCCA 289 in which Groberman J.A. held that "The [EAA] itself balances proponents' desires to build infrastructure and developments with the broader interests of the public in protecting the environment. It provides for intensive study of projects before a certificate is issued allowing them to go ahead."

Indeed, I acknowledge that the Parties have made progress, through their discussions over the last year, towards an understanding between them about resolving their long-term conflict in respect of the project. I commend them for these efforts. From its December 15, 2021, letter, I understand that Taseko may not withdraw from those discussions in the absence of an extended Certificate. I hope that the Parties do continue their discussions, and that those discussions lead to a better understanding between the Parties that may support the pursuit of a new project that is acceptable to both of them.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Heyman', with a stylized, cursive script.

George Heyman
Minister