



July 17, 2017

File: 16475-20/0300150

## **Reasons For Decision**

**Mines Act Permit:** MX-3-131  
**Permittee:** Taseko Mines Limited  
**Project:** New Prosperity Site Investigation Program  
**Notice of Work #:** 0300150201601

The purpose of this letter is to provide notification of my decision regarding Taseko Mines Limited's (TML) Notice of Work Application #0300150201601 (the Application) for the New Prosperity Site Investigation Program in the vicinity of Teztan Biny (Fish Lake), Yanah Biny (Little Fish Lake), and the surrounding Nabas area.

This letter provides a summary of my considerations, including Tsilhqot'in National Government (TNG) concerns raised during consultation, any opportunities for mitigation or accommodation of impacts, and my decision to issue the *Mines Act* permit. My considerations and rationale are limited to the authorization issued under the *Mines Act*. I do not speak to activities associated with the Ministry of Forests, Lands and Natural Resource Operations consideration of the Occupant Licence to Cut (OLTC) application, nor to any other authorizations which may be required by TML.

This letter does not by any means capture all information I have reviewed, nor all considerations I have contemplated, but is a summary of them.

### **LEGISLATIVE AUTHORITY**

Under Section 10 of the *Mines Act*, R.S.B.C. 1996, c. 293 before any mining activity can commence the proponent of the activity must have an approved authorization under a *Mines Act* permit unless exempted in writing by the Chief Inspector of Mines. In order to undertake the proposed activities, the Permittee Taseko Mines Limited (TML) requires, and applied for, an amendment to its *Mines Act* exploration permit, MX-3-131, through the submission of Notice of Work application #0300150201601 (the Application), for the New Prosperity Site Investigation Program.

I am an Inspector of Mines appointed pursuant to Section 5 of the *Mines Act* with delegated authority under the Chief Inspector of Mines at level 6 in accordance with the delegation matrix dated November 2, 2007. I have the delegated authority of the Chief Inspector of Mines to make *Mines Act* permit decisions for applications within prescribed thresholds of exploration and mining activity. (See **Appendix 1**, Delegation of Chief Inspector's Authority under the *Mines Act* – Section 10). The level of proposed activity in the Application is within my delegated authority.

As an employee of the BC Ministry of Energy and Mines (MEM), I am guided by the Purpose, Vision and Mission of the Ministry which states:

**Purpose:** *The Ministry of Energy and Mines is responsible for British Columbia's electricity, alternative energy, mining and mineral exploration sectors. These sectors are made up of diverse interests that explore for and produce coal and other valuable minerals and that develop electricity, clean or renewable energy sources, including biomass, biogas, geothermal, hydro, solar, ocean, wind and low-carbon transportation fuels. Through teamwork and positive working relationships with its clients and stakeholders, the Ministry facilitates thriving, safe, environmentally responsible and competitive energy and mining sectors in order to create jobs and economic growth in communities across the province. In fulfilling its mandate, the Ministry consults with other ministries and levels of government, energy developers and marketers, mineral exploration and mining companies, First Nations, communities, environmental and industry organizations, and the public.*

**Vision:** *We envision thriving, safe, environmentally responsible and competitive energy, mining and petroleum resource sectors, which contribute to the economic growth and development of communities throughout British Columbia.*

**Mission:** *We facilitate a positive climate for the economic, environmental and socially responsible development of British Columbia's energy, mining and petroleum resources for the benefit of British Columbians.*

MEM administrative staff corresponded with TML staff from October 17, 2016 through November 8, 2017 to ensure the Application met MEM's content requirements. MEM administrative staff accepted the Application as complete on November 8, 2016. As MEM Inspector, I completed my technical review of the Application on November 18, 2016, accepted the Application, notified TML that an additional reclamation security of \$105,500 must be provided, initiated referrals of the Application to government review agencies, and requested Ministry of Forests, Lands, and Natural Resource Operations First Nations Relations staff (MFLNRO FNR) initiate the consultation process with affected First Nations regarding the Application.

I have reviewed the Application and am satisfied that the Application and supplementary attachments have been prepared and submitted in accordance with Section 10 of the *Mines Act* and with the *Health, Safety and Reclamation Code for Mines in British Columbia* (the Code), Part 9.1.1 and 9.2.1 (1). The Application meets the content requirements and is acceptable from a technical point of view.

## **OVERVIEW OF THE APPLICATION**

### **Location**

The Application area is located in the Cariboo-Chilcotin region in central British Columbia, about 125 kilometres southwest of Williams Lake. Access to the exploration area is 20 km west of Williams Lake on Hwy 20 to Lee's Corner (Hanceville), then south southwest 64 km on the Chilko Lake – Nemiah Valley Gravel Road to the Vicks Lake Road Junction, then approximately 21 km on the 4500 Road to the site.

### **First Nations**

The Application area is located within the asserted traditional territories of the Tsilhqot'in Nation and Esketemc. The Application area is located largely within the Tsilhqot'in Nation's Proven Rights Area, which was that portion of the Claim Area in *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700, where Justice Vickers found: the Tsilhqot'in people have an Aboriginal right to hunt and trap birds and animals for the purposes of securing animals for work and transportation, food, clothing, shelter, mats, blankets and crafts, as well as for spiritual, ceremonial, and cultural uses; inclusive of a right to capture and use horses for transportation and work; and Tsilhqot'in people have an Aboriginal right to trade in

skins and pelts as a means of securing a moderate livelihood, but which is located outside of the declared Aboriginal Title Area in *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44.

### **Activities**

TML submitted the Application for an amendment to their *Mines Act* permit MX-3-131 on October 17, 2016. The Application involves a site investigation program consisting of: establishment of a 50 person camp of 11 mobile trailer units; a temporary core shed to store drill core; a base camp staging area; a fuel storage site for up to 10,000 litres of fuel; 20 km of brushed cut lines; construction of 367 test pits; 122 geotechnical drill sites; 48 km of new exploration trails; modification of 28 km of existing access trails; and 7 water intake points.

### **Disturbance**

The Application proposes 47.2 ha of total disturbance (16 ha of which is located on previously disturbed and/or reclaimed areas) and cutting of 1084 m<sup>3</sup> of timber. The Application proposes construction of exploration trails and creation of small openings for drill sites and test pits dispersed throughout a polygon of approximately 3067 ha in area. The Application disturbance of 47.2 ha would result in a physical disturbance of about 1.5% of that polygon area.

### **Term**

The Application is for a 3 year, multi-year, area-based approval to conduct work from January 1, 2017 to December 31, 2019. TML indicates they wish to conduct the majority of their work within a period of 6 months within the first year, but wish to maintain some flexibility in site locations, and/or conduct some of the work in Years 2 and 3, depending on the findings of their initial site investigation work.

### **Supplementary Materials**

TML included supplementary materials as part of the Application, including:

- Maps – showing location, areas for multi-year area-based work, proposed Year 1 work, tenures, topography, existing disturbance and archaeological sites;
- New Prosperity Description of Work Program – providing greater details on the Site Investigation Program;
- Table of Engagement and Consultation – New Prosperity NOW – documenting 33 letters, emails, phone calls and meetings between TML and First Nations (21 with TNG, 4 with Esketemc, 3 with Canoe Creek, 2 with Ulkatcho, 2 with Williams Lake Indian Band, and 1 with Xat'sull) prior to TML submitting their Application;
- Appendix C Emergency Response Plan – required to meet environmental protection and worker health and safety requirements of MEM; and
- Appendix D Archaeological Management Plan – stating that the planning of activities will take into consideration the location of known archaeological and heritage resources as defined by Terra Archaeology in the July 2008 *Taseko Mines Ltd. Proposed Prosperity Gold –Copper Mine Located at Fish Lake, British Columbia Archaeology Survey Unit Report*. Also stating activities will be planned to avoid these sites, and activities in areas not yet assessed for archaeological and heritage resources are strictly prohibited until such time as a Preliminary Field Reconnaissance or Archaeological Impact Assessment has been completed. Additionally, the Archaeological Management Plan included: Appendix 1 Archaeology and Heritage Resources Protection Procedure for Exploration at New Prosperity Gold-Copper Project, and Appendix 2 Chance Find Protocol for Archaeological Sites New Prosperity Gold-

Further details of the Application were included in Notice of Work Application #0300150201601.

## **Project History**

### Exploration History

Prospected since the 1930s, the Prosperity/New Prosperity ore body was discovered in the late 1960s and has seen extensive exploration work to define an ore body in anticipation of a metal price regime that would support mine development. TML has held mineral tenures over the project area for 48 years - since at least 1969, and has sought to advance the project through numerous Notice of Work applications for mineral exploration activities since at least 1979 and up to the most recent Application submitted on October 17, 2016.

### Major Mine Project History

TML submitted the Prosperity Gold-Copper Project to the provincial environmental assessment process in 1995. TML submitted an environmental impact statement/application for the Prosperity Project mine development after the completion of an updated feasibility study in 2007. The environmental impact statement/application was subject to reviews under British Columbia's *Environmental Assessment Act* and the *Canadian Environmental Assessment Act* from 2009 through 2010. The province granted the Prosperity Project an Environmental Assessment Certificate on January 14, 2010. The federal government announced on November 2, 2010 that federal approval was not granted for the Prosperity Project as was then proposed.

TML submitted the New Prosperity project description dated August 2011 to the provincial Environmental Assessment Office (EAO) requesting an amendment to their Environmental Assessment Certificate, and to the Canadian Environmental Assessment Agency for a federal review. TML stated the New Prosperity project description was designed to address the deficiencies identified in the federal review process of the Prosperity Project. TML also requested a 5 year extension to their existing provincial environmental assessment certificate.

The federal Minister of Environment announced a decision on February 25, 2014, stating the Governor in Council had decided that the significant adverse environmental effects the New Prosperity Project is likely to cause are not justified in the circumstances.

The province granted a 5 year Environmental Assessment Certificate extension on January 13, 2015. The application to amend the provincial Environmental Assessment Certificate remains under review and pending a decision.

## **CONSULTATION WITH TSILHQOT'IN NATIONAL GOVERNMENT**

The province has a duty to consult and, if appropriate, accommodate First Nations with respect to decisions that could adversely impact asserted or established Aboriginal or treaty rights and title. The content of the duty to consult varies with the circumstances.

While the province does not generally provide capacity funding for consultation on individual Notice of Work applications, the province provided the TNG with \$18,000 in capacity funding to review the Application, given the particular circumstances regarding the proposed mining activity in this particular area.

Consultation with the TNG at the deep end of the consultation spectrum was initiated by the MFLNRO First Nations' Relations staff on November 22, 2016. The province submitted an Initial Impacts Assessment to the TNG for review and comment. The TNG provided their response and the province incorporated their input into a Revised Impacts Assessment and provided it to the TNG for their review and comment. During this time, all relevant information regarding the proposed activity was shared

with the TNG with opportunities for discussion of potential impacts on their Aboriginal Interests, and proposals about how those impacts could be avoided, mitigated or otherwise addressed.

During the consultation process, the province requested that TNG provide any further additional information about TNG's interests in and around the project area. The province acknowledged that within the Proven Rights Area (which includes most of the Application area), the Tsilhqot'in have Aboriginal rights to hunt and trap birds and animals for the purposes of securing animals for work and transportation, food, clothing, shelter, mats, blankets and crafts, as well as for spiritual, ceremonial, and cultural uses. This right is inclusive of a right to capture and use horses for transportation and work. Tsilhqot'in people have an Aboriginal right to trade in skins and pelts as a means of securing a moderate livelihood. The Province has previously admitted the Xeni Gwet'in have an aboriginal right to fish throughout their traditional territory, which includes the area of the Application. The TNG also asserts Aboriginal rights to gather and participate in spiritual/cultural activities in the Application area.

I acknowledge that the TNG has made a very substantive effort to effectively portray and communicate their Aboriginal rights and interests in, and deep and special connection to, the Teztan Biny (Fish Lake), Yanah Biny (Little Fish Lake), and surrounding Nabas area. Documentation and additional cited references provided by the TNG for my review and consideration number well over 10,000 pages. Despite that being an extraordinary volume of information for consideration relative to most other Notice of Work applications, I have read and considered in my decision all of the documentation provided by the TNG throughout the consultation process on the Application.

I have also considered correspondence I was copied on between the TNG and TML regarding the anticipated Application both prior to, and subsequent to, submission of the Application to MEM. I have also considered all key correspondence between the province and both the TNG and TML relevant to the Application, which in the interest of transparency the province shared with the TNG and TML where appropriate.

Where information received represents dissenting views and positions of the TML and TNG, I have conducted my own due diligence to allow me to make an informed assessment and determination as required of a Statutory Decision Maker. Any third party reports or assessments I have relied upon to assist me in that regard, have been provided to the TNG and TML.

The TNG raised a number of specific issues during the consultation process concerning the potential impacts from the Application on their Aboriginal Interests, which I have considered and attempted to mitigate in making my decision to approve the Application.

The TNG has provided information with respect to: court proceedings specific to the project, their rights, interests and activities to the Application area, and surrounding area; federal environmental assessment reviews of the New Prosperity and Prosperity major mine project proposals; cultural heritage studies; wildlife studies and impact assessments including landscape level issues; their tribal park declaration; and numerous other matters. I have given my full consideration to these matters and made my own independent determinations as to the significance and appropriate weighting of each in making my decision.

Prior to proceeding to a decision, MFLNRO First Nations Relations' staff provided a recommendation to me in late May 2017 that the consultation process which had been undertaken was sufficient for me to proceed to determination. I accepted this recommendation. However, I have also reviewed and considered all further comments submitted by the TNG up until the date of my decision, as well as relevant correspondence between the Ministry of Aboriginal Relations and Reconciliation and TNG, which I will discuss below. I am satisfied that the consultation process with the TNG was reasonable and appropriate to allow me to proceed with my decision on the Application. I have considered the information assessed and provided throughout the consultation process and have also considered the

measures taken to mitigate impacts from the Application on the exercise by TNG of their rights to be adequate and appropriate to accommodate for the activities under the NOW. A partial listing of documents I have considered in making my decision is included in **Appendix 2**.

## **BROADER CONSIDERATIONS IN MY DECISION**

I am aware that the Application presented to me for consideration is the latest in a long series of mineral exploration applications, and related provincial and federal reviews of major mine project applications, for a mine project in this area. I am also aware of the following background and context for my current determination including land use planning initiatives for the area of the Application, land use designations including protected areas, federal and provincial environmental assessment processes, the Supreme Court of Canada decision of *Tsilhqot'in Nation v. British Columbia* (and findings of the trial court), the decision in *Taseko Mines Limited v. Phillips*, (2011 BCSC 1675) and the Province's reconciliation initiatives with the Tsilhqot'in Nation, including the Nenqay Deni Accord and Tsilhqot'in Stewardship Agreement.

### ***1. Land Use Planning Initiatives and Designations***

The Tsilhqot'in assert that approval of the activities in the Application will result in an unjustifiable infringement of their Aboriginal rights and have made reference to their declaration of the Dasiqox Tribal Park, the Nenqay Deni Accord, Justice Vickers' findings in his 2007 decision of *Tsilhqot'in Nation v. BC*, *Taseko Mines Limited v. Phillips*. This has led me to consider the above mentioned items specifically, and within a broader context for further understanding.

I have considered the location of the Application in relation to: the asserted Tsilhqot'in Traditional Territory of ~62,142 square km; the Claim Area in *Tsilhqot'in v. British Columbia* of ~4,380 square km; proximity to the declared Aboriginal Title Area of ~1,750 square km, and the Application's location largely within the Proven Rights Area, as defined earlier, of an estimated ~2,500 square km.

The Application area has been included in a number of land use planning processes including the 1993 Chilko Lake Study and the Cariboo Chilcotin Land Use Plan. Prior to the formation of the Chilko Lake Study Team, the area had been the focus of debate for many years over appropriate land uses. The area had been set aside as a Deferred Planning Area due to ongoing land use conflicts.

The Chilko Lake Study Team produced the Consensus Report of the Chilko Lake Study Team in September 1993. It was the outcome of a consensus-based process co-chaired by Chief Roger William, Nemiah Valley Indian Band (former name of the Xenigwet'in First Nation). The report recommended establishing a 230,000 ha protected area for Zone 1: Chilko Lake, Tchaikazan Valley, Yohetta, and Long Valleys, as a Class A Provincial Park to be jointly managed between the province and the Nemiah Valley Indian Band. Most of this area was subsequently designated as Ts'il?os Provincial Park. The report also made detailed recommendations for activities in Zone 2: the Taseko Management Zone, including the Taseko Lakes Area, Lower Lord and Tchaikazan River Valleys and Gunn Valley, as a special management zone, and a transition zone between Ts'il?os Provincial Park and the general forest management lands to the east. The report made less detailed recommendations for Zone 3 – where the Application is located- as general resource management zone, and made similar recommendations for other peripheral zones.

Together, these planning processes resulted in the Province creating four Class A Parks near the Application area, including: Ts'il?os Provincial Park – within 10 km (2332 square km); Nunsti Provincial Park – within 30 km (209 square km); Big Creek Provincial Park – within 15 km (679 square km); and Bishop River Provincial Park abutting Ts'il?os (199 square km). Later, the South Chilcotin Mountains Provincial Park (568 square km) was created abutting Big Creek Provincial Park to the south. Provincial Park designations do not preclude the exercise of Aboriginal rights, including hunting, trapping, fishing, gathering, and cultural/spiritual activities.

These Class A Provincial Parks provide 3,987 square km of pristine, un-roded or largely un-roded areas, with significant wildlife values for a variety of species, and are located within proximity to the Application area. Nunsti Provincial Park specifically protects valuable moose habitat of wetlands and small lakes. These Provincial Park descriptions all note a history of occupation and cultural use by the Tsilhqot'in for hunting, trapping, fishing, food gathering, and medicinal plant gathering, with some significant spiritual values mentioned as well.

## ***2. Tsilhqot'in Declarations***

On August 23, 1989, the Nemiah Valley Indian Band declared an area including and surrounding the Application area to be the Nemiah Aboriginal Wilderness Preserve under the Nenduwh Jid Guzitin Declaration (Nemiah Declaration).

The 6 Tsilhqot'in Bands signed an Affirmation of the Nemiah Declaration on March 29, 2015 which affirmed the Nemiah Declaration as their law governing both the Declared Title and Rights Area granted by the Supreme Court of Canada in *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 and the declaration of Aboriginal rights affirmed by the British Columbia Court of Appeal in *William v British Columbia*, 2012 BCCA 285. The Nemiah Declaration states, amongst other things, that all activities and development in the Declared Title and Rights Area must be consistent with the terms of the Nemiah Declaration, which states: no commercial logging - only local cutting of trees for their own needs: i.e. firewood, housing, fencing, native uses; no mining or mineral exploration; and no commercial road building.

The TNG issued a press release on October 3, 2014, stating the Xenigwet'in and Yunesit'in Government, with the support of the Tsilhqot'in National Government, would announce the creation of the Dasiqox Tribal Park on October 4, 2014. The Application area is located within the 3,000 square km area which the Tsilhqot'in declared is Dasiqox Tribal Park. This 3,000 square km area encompasses roughly all of the land between: Ts'il?os and Bishop River Provincial Parks, and the Aboriginal Title Lands to the west, Big Creek and South Chilcotin Mountains Provincial Parks to the east, and Nunsti and Eleven Sisters Provincial Parks to the north, and then extends beyond those to the Chilko River to the northwest. The Yunesit'in and Xenigwet'in First Nations later informally declared the Dasiqox Tribal Park in July 2015.

The province has communicated to the TNG that the province does not support their unilateral declaration of the tribal park, and that those TNG interests are best brought to negotiating table of the Nenqay Deni Accord as part of the broader reconciliation discussions between the TNG and the province.

### ***3. Current State of the Landscape: Forest Cover, Natural Disturbance Patterns, Human-Caused Disturbances and Wildlife Habitat***

The TNG state in their responses to the Application that Nabas, Teztan Biny and Yanah Biny area is a relatively pristine area, but has been impacted by mineral exploration activities and this is the third mineral exploration application in 8 years. TML states in the Application, and in their responses to the TNG comments, that the Fish Creek watershed has experienced a diversity of uses including logging, recreation, hunting, fishing and commercial cattle grazing. After my review of MEM files for this project, forest cover maps, aerial images, natural disturbance history including forest fires and insect infestations, road density review provided by S. Senger, and cumulative effects and impacts assessments provided by R. Hoffos (2010, 2017), and C. Williston (2016), I find that both statements can be supported in describing the Application area.

Historically, the South Chilcotin landscape has been a fire driven ecosystem. Fire history records since the early 1900s show numerous large fires have occurred throughout the Tete Angela Landscape Unit, which contains the Application area, including two recent large wildfires in 2009 and 2010. Approximately 40% of the Application area has lodgepole pine leading stands of 61-80 years old, and approximately 34% of the Application area has mixed species old growth forest stands of 141-250 years old. Numerous natural grassy meadow and wetland openings are interspersed amongst the standing timber in the Application area. Unlike the landscape to the east, the Application area has not been subjected to epidemic mountain pine beetle infestations followed by extensive clear cut logging to salvage economic values from the dead timber. The Application area, however, has been subject to endemic mountain pine beetle infestations from 2003 through 2007 resulting in the death of many of the mature lodgepole pine trees.

The Application area has a history of clearing of small, dispersed areas for the construction of exploration trails, drill pads and test pits for mineral exploration activities from numerous applications dating back to at least 1979. The most intensive areas of human-caused disturbance in the Application area are north of Teztan Biny (Fish Lake) in the area where the open pit is proposed, and between Teztan Biny (Fish Lake) and the proposed open pit. These areas are reported to have been reclaimed to the standard of the day, and have been re-vegetated to control erosion and noxious weeds.

Activity reports, reclamation monitoring reports and photos, and reclamation reports and photos provided by the TNG and TML, provide written and visual indications of the conditions which existed prior to the 2012 exploration program, the reclamation activities undertaken, and the conditions which existed after reclamation work was completed in the fall of 2012. The reports document a number of mitigation and accommodation measures incorporated into both the exploration and reclamation activities. Reclamation activities include, but are not limited to: controlling noxious weeds and erosion, restoring natural drainage patterns, blocking vehicle and ATV access, preserving topsoil, and seeding, planting and natural ingress of vegetation to establish early seral stage herbaceous and woody forage species for wildlife, followed by re-establishment of coniferous trees.

The TNG has provided their views on the impact of the Application on wildlife, wildlife habitat, and their ability to exercise their Aboriginal rights in: their responses to the Province's impact assessments; elder's statements; photographs and descriptions of TNG members conducting traditional activities; and numerous supporting documents and reports. Some of the traditional activities are shown to be conducted in standing timber, while others such as collecting medicinal plants and food plants, gatherings, and construction of log cabins are shown to be conducted in logged areas and/or natural forest openings.



TML has responded with information showing their recent records of various species of wildlife continuing to use the Gibraltar Mine site at least to some degree, wildlife usage by a variety of species at other operating major mines in BC, and references to reclamation awards to mine properties for their reclamation efforts resulting in improved wildlife diversity and forage production as compared to the pre-mining condition.

In determining the impacts on wildlife and wildlife habitat, and any opportunities for mitigation of those impacts, I have relied upon; the impacts and cumulative effects assessments provided by R. Hoffos (2010, 2017), and C. Williston (2016);, the road density review by S. Senger provided by the TNG, and the information referenced; and the reports of the two CEAA review processes and the BC environmental assessment process regarding the Prosperity project proposal, where those reports are applicable to the Application. I have also relied on mitigation opportunities identified in these reports as considerations for permit conditions to mitigate the impacts of the Application.

A number of wildlife species are noted to benefit from early seral stage forage habitat located in close proximity to mature timber providing thermal and hiding cover. Early seral stage forage habitat can be either dynamic (resulting from fire or timber harvesting putting forested sites back to an earlier, shrubby successional stage that lasts a relatively short period of time at a specific location and then may be created at a different location by further disturbance) or static (including wetlands, riparian areas and self-sustaining deciduous forests, which are not created by disturbance and do not move around the landscape). For other species dependent on mature timber as their preferred habitat, those species and their prey will still make use of openings in the forest provided suitable habitat elements are provided within those openings. The greatest impacts from human-caused disturbances on many of the wildlife species results from increases in road densities and human use of those roads which can disturb and displace wildlife, increase vehicle collision mortality, and improve access for hunters and illegal poachers.

I acknowledge mature trees will be cut to create the openings for the trails, drill sites and test pits and these mature trees cannot be immediately replaced. However, opportunities exist through the reclamation and restoration program to mitigate and ensure any openings created provide valuable, early seral forage plants for wildlife, and that exploration trails are deactivated and reclaimed in a manner to address the road density concerns, prevent or deter vehicle, ATV, and hunter use, and provide habitat components for wildlife.

#### ***4. Strategic and Reconciliation Discussions and Agreements***

I have considered strategic and reconciliation discussions and agreements between the province and the TNG, including:

- September 10, 2014 *Letter of Understanding between Her Majesty the Queen in Right of the Province of British Columbia and the Xeni Gwet'in First Nations Government, Tsilhqot'in National Government, on behalf of the Tsilhqot'in Nation*, committing to strengthen their government-to-government relationship and to undertake negotiations in good faith towards a lasting reconciliation between the Tsilhqot'in people and the Province of British Columbia.
- September 24, 2015 *Letter of Intent between Her Majesty the Queen in Right of the Province of British Columbia and the Tsilhqot'in Nation*, referencing the Letter of Understanding signed on September 10, 2014, committing to strengthen their government-to-government relationship and to undertake negotiations in good faith towards a lasting reconciliation between the Tsilhqot'in people and the Province of British Columbia.

- February 11, 2016 *Nenqay Deni Accord, The People's Accord, between Her Majesty the Queen in the Right of the Province of British Columbia and the Tsilhqot'in Nation* to establish a shared vision, principles and structures for the Parties to negotiate one or more agreements to effect a comprehensive and lasting reconciliation between the Tsilhqot'in Nation and British Columbia.
- March 31, 2017 *Tsilhqot'in Stewardship Agreement Between Her Majesty the Queen in the Right of the Province of British Columbia and Tsilhqot'in Nation and Tsilhqot'in National Government, A Strategic Engagement Agreement for Shared Decision-Making Respecting Land and Resource Management, 2017-2020 Agreement Renewal, Amended March 31, 2017.*
- April 1, 2017 Revenue-Sharing for Forest Harvesting within Tsilhqot'in Territory (FY2017-2018).

Despite the above reconciliation and accommodation initiatives and agreements between the Province and the TNG, mining activities in this location remain a subject of longstanding discussion and disagreement between the TNG and TML. Further, there have been and continue to be discussions between TNG and the Province in relation to previous exploration programs, and proposed mining projects. At the core of this issue is a lack of agreement on acceptable land uses in the area of the Application – which remains unresolved. I understand that the Tsilhqot'in do not consider commercial logging, mining or industrial road construction to be compatible uses in this area. The Tsilhqot'in state they have plans for a backcountry tourism economy for the area. Amidst this, TML seeks to provide value for its shareholders, and to advance its mining project to a producing mine, on mineral tenures that it has legally acquired and maintained for decades.

The TNG signalled early in the consultation process their intent to litigate if a positive permit decision is made. The TNG have stated that this is not a typical application, and they are unwilling to discuss mitigation or accommodation measures under the circumstances, other than the specific proposals which follow. The TNG maintains that due to: the impacts on their interests and Aboriginal rights; their deep connection to this special place; their proven Aboriginal rights; and the rejection of two major mine proposals by federal review panels, the only appropriate decisions for me to consider are: reject the Application; defer a decision on the Application until the federal government's position on the major mine project changes; or provide an approval with conditions that TML cannot exercise the Approval until the necessary environmental approvals have been obtained on this major mine project. The TNG maintains any other decision would not uphold the honour of the Crown.

TML has stated they are willing to engage collaboratively with the TNG, but that they cannot engage in a meaningful way if the only position taken by the TNG is that TML must drop the project or put the work on hold until other environmental approvals are first acquired. TML has stated that they are willing to offer further accommodations, but cannot offer any specific additional accommodations unless the TNG will engage with them, as speculative offers could be perceived as an affront by the TNG. TML has stated it is imperative that they undertake the work program in the Application to allow them to file a provincial *Mines Act* permit application, and achieve commencement of construction of their mine project by January 2020 as required under their Provincial EA certificate. TML maintains that failure to achieve commencement of construction by January 2020, with no possibility of further extension, would necessitate a new provincial EA application at an estimated cost of \$10 to \$15 million. TML has initiated legal challenges of the federal government's review process

and negative decision on New Prosperity, and the federal government's constitutional authority. TML maintains they have a legal right to develop their project, and that they will take all necessary action to defend that right, including litigation, if a decision is made to reject the Application.

### ***5. Consideration of Impacts If the Project Were to Become a Major Mine***

I have also considered the potential for impacts from a full mining operation when consulting on this exploration permit, including the appropriateness of having a mine in that location. It is possible that the potential impact of the exploration permit could be conceived as having a more serious impact on Aboriginal rights than if I were considering the impact of the exploration permit in isolation of a consideration of a future mine. That raises the question from a procedural fairness perspective of how can I appropriately consider the potential adverse effects of a future mine without also considering the potential measures that could mitigate or accommodate such effects? In my view it is not the gross impacts before mitigation measures that should be considered, it is the impact net of any offsetting mitigation or accommodation measures that should be considered. Further, it would seem appropriate that I would also have to consider not only the potential adverse impacts, but also the potential socio-economic, and other societal benefits which could accrue from a major mine project.

In considering this issue, I have considered the status and the outcomes of the Provincial and Federal Environmental Assessments of the Prosperity and New Prosperity Mine Projects, as well as the Application before me.

#### Prosperity Project

TML initially submitted the Prosperity Gold-Copper Project to the BC environmental assessment process in 1995. TML submitted an environmental impact statement/application for the Prosperity Project mine development after the completion of an updated feasibility study in 2007, and it was subject to reviews under British Columbia's *Environmental Assessment Act* and the *Canadian Environmental Assessment Act* through the period 2009 to 2010.

The Prosperity Gold-Copper Project as then conceived was to produce 70,000 tonnes of mineral ore per day over a 20 year operating life as an open-pit mining project. The project was expected (then) to contribute approximately \$340 million to provincial GDP annually, and \$400 million in provincial revenue and \$43 million to local and regional government over the life of the project. The total capital cost was (then) approximately \$800 million with annual expected operating costs of \$200 million. The project was expected to directly result in an average of 375 jobs during both the two-year construction period and the 20-year operational life of the project, and 325 person years of indirect employment annually over the life of the proposed project.

The reviews culminated in 2010. Through their respective reviews, the province and the federal government made similar findings that if the mine moved forward to development there would be no significant adverse effects to: air quality; terrain and soil; surface or groundwater quality; moose and mule deer and their habitat; vegetation, including old growth forest and grasslands; archaeological resources; fish in the Taseko River; water quality in Onion Lake; or human health.

The province's environmental assessment report concluded the project was not likely to result in any significant adverse effect, with the exception of the loss of Fish Lake and Little Fish Lake. Given the finding of a significant adverse effect, the province's assessment report provided ministers with a number of factors to consider prior to making their decision on whether or not to issue an Environmental Assessment certificate for the project. The provincial Environmental Assessment

certificate issued on January 14, 2010, contained 103 commitments the proponent must implement throughout various stages of the project.

The federal government environmental assessment process concluded there would be significant adverse effects on fish and fish habitat through the loss of Fish Lake, Little Fish Lake and some portions of Fish Creek. The federal panel review further determined that through the development of the Prosperity Project that there would be adverse environmental effects: on navigation; on the current use of the land and resources by First Nations for traditional uses; on potential or established Aboriginal rights or title; and (in combination with past, present, and reasonably foreseeable projects, including logging and ranching) on grizzly bears. On November 2, 2010, the federal government announced it would not approve the project, due to concerns that the significant adverse environmental effects of the Prosperity Project could not be justified as proposed. The federal government left it open to TML to submit a new application for a re-designed project to address those impacts.

#### Extension of Provincial Environmental Assessment Certificate for the Prosperity Project

The BC Environment Minister granted a five-year extension to the Environmental Assessment certificate on January 13, 2015 for the Prosperity Gold-Copper project, extending the date by which substantial construction on the mine project must have commenced to January 14, 2020. Under current legislation no further extensions may be granted.

#### Federal Review of the New Prosperity Project

TML presented the New Prosperity Project Description dated August 2011 to CEAA, describing the New Prosperity Project as including a mine development plan that avoids the significant adverse environmental effects of the former Prosperity Project. TML stated in comparison to the Prosperity mine proposal that was reviewed by CEAA in 2009/2010, the development design for New Prosperity (predicated on higher long term prices for both copper and gold) results in a direct increase in capital costs of \$200 million and a \$100 million in direct operating costs over the 20-year mine life to locate the tailings dam and mine waste away from Fish Lake.

#### Federal Decision on the New Prosperity Project

The federal Minister of the Environment established a Review Panel for the New Prosperity Gold-Copper Mine Project on May 9, 2012 in accordance with the *Canadian Environmental Assessment Act*. The Review Panel submitted its report to the new Minister of the Environment on October 31, 2013. The Federal Review Panel concluded that New Prosperity would result in a significant adverse effect on fish and fish habitat, on Tsilhqot'in current use of lands and resources for traditional purposes, and on Tsilhqot'in cultural heritage and that that effects cannot be mitigated.

On February 25, 2014, the Minister announced the federal decision that, after consideration of the Panel report and the implementation of mitigation measures that she considered appropriate, the New Prosperity Project was likely to cause significant adverse environmental effects, and that she had referred the matter of whether those significant adverse environmental effects were justified in the circumstances to the Governor in Council. The Governor in Council subsequently determined that the significant adverse environmental effects that the New Prosperity Project is likely to cause were not justified in the circumstances.

TML has stated that to the extent that the federal decision presents any impediment to the start of construction going forward, TML seeks to address that issue through the two judicial reviews it has pursued and views the provincial decision as independent of those processes.

### Provincial Review of Amendment to Certificate Application for New Prosperity Project

TML also made a request to the BC Environmental Assessment Office (EAO) regarding the related matter of their certificate amendment application for the New Prosperity Project – submitted August 2011. The EAO has not yet made a decision on the certificate amendment application for the New Prosperity project.

### Consideration of Major Mine Project Impacts During the Review of this Application

I have considered the potential for adverse impacts upon the TNG's Aboriginal Interests should the exploration activities in the Application eventually lead to the development of a major mine. I have identified a number of limitations and uncertainties in that consideration, including the speculative nature of the mining industry, the lack of certainty as to any final mine plan design given the status of the environmental assessment processes, the potential economic and social benefits which could be associated with the mine should it be developed, and the potential mitigations, conditions and accommodations which could also be considered by future decision-makers in the course of its development in order to avoid, minimize or otherwise offset such adverse effects.

While I have had the benefit of some information in regard to the potential for a full mining project being developed in this location from the previous federal and provincial EA review processes (in addition to materials specifically raised during my consideration and consultation on the Application) I am of the view the potential impacts of a future mine in the context of consulting on this exploration Application, is highly speculative.

### **6. *Tsilhqot'in Statement on the Only Decisions Which Could Uphold the Honour of the Crown***

The TNG stated in their January 24, 2017 response to the initial engagement request that:

*“The Ministry and TML have suggested that the 2017 NOW is required if TML is to “substantially start” the New Prosperity project before its provincial EA Certificate for Prosperity expires in January 2020. This position is entirely speculative. It is contingent on a series of pre-conditions, e.g.: (1) TML would have to succeed in its legal challenges to the Federal Government’s rejection of New Prosperity; (2) the Federal Government would have to reverse its position and approve New Prosperity; and (3) BC would have to approve TML’s application to amend the “Prosperity” Environmental Assessment Certificate. Each of these conditions is, at best, uncertain. All of them would have to occur before TML could “substantially start” the project.*

*With respect, it cannot be considered honourable for the Crown to authorize the NOW 2017 program—and all of its attendant impacts for the Tsilhqot'in people— based solely on the speculative and remote possibility that TML might someday have an approved project to construct.*

*The Federal Government’s rejection of New Prosperity is just that: a full and final rejection of the project. A government decision rejecting a project is equally as valid as a government approval for a project: in either case, the decision must be considered valid and effective unless and until it is set aside by a court.”*

Through their legal counsel, the TNG submit that as the stated purpose of the Application is to collect information required for a *Mines Act* permit application for a mine project which the Federal government has rejected twice and which therefore cannot be built, any further disturbance or adverse

impacts on Aboriginal rights is unwarranted. They further have stressed to me that the only decisions which would uphold the Honour of the Crown would be: to reject the Application; to defer any decision until there has been a change in the Federal position on New Prosperity; or in the event a decision is made to approve the Application, that such approval be conditional on TML first obtaining the necessary environmental assessment approvals for New Prosperity. The TNG, through their legal counsel, have also made submissions that while Taseko has initiated legal challenges of the Federal government's jurisdiction to preclude development of New Prosperity, and of due process and fair hearing in the Federal panel review process, the outcomes of both proceedings are highly speculative and cannot be relied on.

The TNG reiterated the above position in their April 18, 2017 response to the revised impact assessment from MFLNRO First Nations Relations staff dated March 13, 2017.

Section 10 of the *Mines Act*, and section 9.2.1 (1) of the Health, Safety and Reclamation Code for Mines in BC (the Code), describes the application and notice requirements for this type of Application. The Code does not require a purpose statement and no purpose statement was included in the Application submitted for review. TML has stated varying purposes for this Application in different levels of detail in their correspondence to the TNG. (John McManus to Chief Joe Alphonse, July 29, 2016; John McManus to Chief Joe Alphonse, October 13, 2016; Meeting minutes of the September 12, 2016 between the TNG and TML in Vancouver)

MFLNRO First Nations' Relations staff made efforts to confirm the purpose of the application with TML for the consultation process and stated in the Province's revised impact assessment dated March 13, 2017:

*“Purpose of Proposed Activity:*

*Taseko Mines has indicated previously, in a letter addressed to Chief Joe Alphonse that this notice of work application is necessary in order to obtain information that will support the detailed design work required in order to complete and file the provincial Mines Act and Environmental Management Act permit applications. The existing provincial EA certificate will expire early 2020 if the project has not been substantially started, and thus, Taseko is moving forward with gathering the additional information to support its ability to substantially start prior to the provincial EA certificate expiration. They expect the NOW filed program to take approximately 6 months to complete, which will support TML's ability to prepare, consult and file a Mines Act operating permit application.*

*It is recognized that for the New Prosperity project to proceed, TML is required to obtain various provincial and federal approvals, including environmental assessment approval under the Canadian Environmental Assessment Act, 2012 and the provincial Environmental Assessment Act. The existing provincial EA certificate relates to the original Prosperity mine project and section 9 of the Environmental Assessment Act prevents the issuance of any Mines Act permit for authorizing the construction or operation of the New Prosperity Mine. Taseko Mines has submitted a request to the Environmental Assessment Office (EAO) to amend its certificate and we understand the EAO will be in contact with you shortly regarding next steps on that amendment process. With respect to the federal environmental assessment, it is recognized that following a federal review panel process, in November 2010, the federal government declined to issue an environmental assessment certificate for the Prosperity project, and in February 2014, following another federal review panel process, the federal government made a decision to reject the New Prosperity project. However, TML has since*

*challenged in Federal Court the federal government's 2014 decision on this project. Should the previous federal decision be reconsidered as a result of that court challenge, and should the request to amend the existing EA certificate be granted, Taseko Mines is preparing to have the provincial permitting sufficiently advanced, prior to early 2020, to prevent the expiry of that EA certificate."*

I have also reviewed TML's statements regarding: their urgency to meet their EA certificate requirement to substantially commence construction of the mine prior to January 2020: their investment of \$20 million to date in environmental assessment processes which would be lost if they cannot substantially start the project by that date; their estimated additional costs of \$10 - \$15 million to re-enter the BC EAO process if their current environmental assessment certificate expires; and the anticipated additional 2 year delay in their project.

My statutory decision on this Application is a separate and independent process from the federal review process for the major mine project. I have given some consideration in my decision to the fact that the federal government has rejected two different project designs, however the federal decisions do not preclude further planning and development in the area and TML is not precluded from applying with a new project design.

In consideration of all of the above, I find that I cannot reasonably refuse to issue a *Mines Act permit* for the Application based solely on the TNG's position that the stated purpose of the Application is to collect information required for a *Mines Act* permit application for a mine project which the Federal government has rejected.

Consideration of "Deferral Until Federal Government Position Changes", or "Approval With a Condition that it Cannot be Exercised Until the Federal Government Position Changes"

I have considered the TNG's alternate suggestions together, either that I defer any decision until there has been a change in the Federal position on New Prosperity; or in the event I decide to approve the Application, that the approval be conditional on TML first obtaining the necessary environmental assessment approvals for New Prosperity.

I am aware that TML has challenged the federal government's decision in federal court through a judicial review process, the hearing of which occurred in early 2017. I have not participated in or observed that process, nor am I aware of any of the details, the likelihood of TML being successful, or of any expected date for a court decision.

While I have given some weight to the federal government's rejection of the two project proposals submitted to date, in consideration of all of the above, I do not find it would be reasonable for me to effectively subjugate my statutory decision making responsibilities to review processes conducted by other parties for decisions having a different order of magnitude, impacts, and mitigation and accommodation opportunities, than the Application before me. Further, I am of the view it would be unreasonable for me to rely on those parties' terms of reference, summary reports, and recommendations, without having to also access to the full suite of information those parties were provided, and the opportunity to make my own informed determinations. Nor do I find it reasonable under the circumstances, for me to place an indefinite delay on TML's ability to proceed with the work program set out in the Application, which could potentially preclude their ability to meet their EA certificate deadline, when I have found their application to be technically acceptable, and in view of the assessment that the province has met its consultation obligations.

## **DISCUSSION OF KEY ISSUES AND CONCERNS**

Provincial representatives, including myself, heard various concerns from the TNG throughout the consultation process. I have reviewed and considered all of the relevant facts and all other arguments and concerns provided by the TNG even if they are not specifically identified in this letter. My considerations of key issues and concerns advanced by the TNG are identified below and include permit conditions and accommodations.

TML is already required to meet all requirements of the *Mines Act*, and the Health, Safety and Reclamation Code for Mines in British Columbia (the Code), which apply to the activities they are conducting. I have avoided re-stating or duplicating those requirements as permit conditions. I have developed permit conditions where I have identified that additional measures, more specific measures, or more restrictive measures than those provided in the *Mines Act* or the Code are required to address TNG concerns raised through the consultation process.

### **TNG Concern:**

1. *The project area, Teztan Biny (Fish Lake) and Nabas holds a significant spiritual and emotional attachment for the TN (Tsilhqot'in Nation). In response to this Notice of Work, members of the TN have indicated that approval of the exploration/drilling work will alienate them from this culturally and spiritually significant part of their traditional territory. They have indicated that they will not use the area for hunting, fishing, gathering while the machinery and workers are present. Members of the TN have also shared that if the larger open pit mine project gets approved, it will alienate them from a culturally significant part of their traditional territory.*

*The mineral drilling activity may cause some wildlife species to change their use of the area. The creation of roads may cause changes in wildlife distribution, increased access for non-aboriginal hunters and trappers/poaching until trails are reclaimed.*

*The loss of 1,084m<sup>3</sup> of timber will have a longer impact of 15-20 years. The addition of 48km of new drilling trails will also have a longer term impact on wildlife and habitat features, pending reclamation.*

### **Considerations:**

The mineral drilling activity may cause some wildlife species to change their use of the area. The creation of trails may cause changes in wildlife distribution, increased access for non-aboriginal hunters and trappers/poaching until trails are reclaimed. The loss of 1,084m<sup>3</sup> of timber will have a longer impact of 15-20 years. The addition of 48km of new drilling trails will also have a longer term impact on wildlife and habitat features, pending reclamation.

The disturbance will take place over a limited period of time. TML has indicated they will complete the majority of the proposed work activities within a 6 month period, but depending on the results of that work, may need to conduct further limited work in years 2 or 3. TML also wishes to engage with the TNG to determine if the least impactful route of access, in terms of disturbance and residual impacts on wildlife and the Tsilhqot'in's exercise of their Aboriginal rights, involves clearing and constructing trails within standing timber, or crossing open meadow areas.

Clearing small openings in mature standing timber will have some immediate impact, and some continuing impact on species dependent on mature forest cover for habitat, but can benefit other



species through provision of early seral forage vegetation in close proximity to hiding and thermal cover, and variation in stand structure. Access restrictions can be implemented to block, or deter, vehicle, ATV and hunter use of exploration trails created, and can be constructed in a manner to also provide some habitat requirements for some species.

Opportunities exist to enhance reclamation activities beyond minimum Code requirements, accelerate the restoration of disturbed areas, and maintain the integrity of the ecosystems, and may include: establishing shrubby browse species for ungulates by planting whips or waddles in moister areas; seeding herbaceous forage species for small mammals preyed upon by fisher and marten; seeding herbaceous forage species for ungulates and bears; planting 2 year old, large plug size or bare root coniferous seedlings of mixed species to accelerate the replacement of coniferous trees; creating access restrictions at the start of exploration trails and where trails intersect meadows using logs piled at least 5 m wide by 2m tall so they double as habitat corridors for fisher and marten and their prey species, and allow fisher and marten access through the snow crust to their prey species in winter; scatter coarse woody over other disturbed areas; where it is feasible to establish native forage species, limiting range seed mix application to the rates required to control erosion and noxious weeds. Enhancing reclamation activities beyond minimum Code requirements will accelerate the succession from cleared openings to an early seral forest state, and improve post- disturbance aesthetics.

Opportunities exist through minor field location and timing changes of the proposed activities to avoid or minimize some disturbance by conducting operations on dry meadows or on frozen ground and snow pack in winter, or choosing trail locations through pine beetle impacted stands to avoid mixed species old growth stands to the extent possible. Some opportunity may exist to establish traditional food or medicinal plants within the cleared openings. TML has confirmed their willingness to work with TNG representatives to identify opportunities to avoid or minimize impacts on TNG interests, including specific sites or features on the land, as TML did previously in their 2012 exploration program. In consideration of the intensive exploration history and high Tsilhqot'in values in this area, TML has confirmed their willingness to work with the TNG to re-assess reclamation work completed on previous mineral exploration disturbances in the Application area, determine the degree of wildlife forage production, wildlife capability and wildlife use, and identify whether feasible opportunities exist to further enhance forage production and wildlife capability in those areas.

File information from a previous application indicates: a Conservation Data Centre Masked Sensitive Occurrence occurs west of Fish Lake in the Taseko River Valley, the wetland and meadow complexes near Little Fish Lake may support sand hill cranes, and eagle and osprey nests may be present in the Application area.

For their 2011 Notice of Work application, TML developed Environmental Protection Management Plans (EPMPs ) containing mitigating measures for: Archaeological Management for Exploration; Working In or Near Streams and Wetlands; and Sensitive Vegetation and Wildlife Habitat Features. The full EPMPs were provided to the TNG with the December 6, 2016 Initial Impacts Assessment. The EPMPs were also provided previously to the TNG and presented at a workshop in early 2012. The TNG raised no issues or concerns related to these EPMP's at that time. The principle mitigation measures incorporated in these EPMP's are equally applicable to the proposed work in this Application (2016 NOW).

Permit conditions:

I have imposed the following permit conditions:

Environmental Protection Management Plans

- a) The permittee must ensure all staff and contractors working on the exploration site area are adequately trained in the Environmental Protection and Management Plans for: Working in or Near Streams and Wetlands; Archaeological Management Plan for Exploration; and Sensitive Vegetation and Wildlife Habitat Features; the Chance Find Procedures contained within above Environmental Protection and Management Plans; and the Mine Emergency Response Plan.
- b) The permittee must ensure the Environmental Protection and Management Plans for: Working in or Near Streams and Wetlands; Archaeological Management Plan for Exploration; and Sensitive Vegetation and Wildlife Habitat Features; the Chance Find Procedures contained within above Environmental Protection and Management Plans; and the Mine Emergency Response Plan are implemented for the exploration program.

Assessments, Prescriptions, Notification and Access Restrictions

- c) The permittee must hire or contract a qualified cultural heritage monitor, with preference given to a qualified cultural heritage monitor nominated by the TNG should the TNG choose to nominate one, to conduct a cultural heritage assessment of all areas proposed for mechanical disturbance prior to disturbance.
- d) The permittee must hire or contract a qualified wildlife specialist with knowledge of the TNG's traditional food and medicine plants, with preference given to a qualified wildlife specialist nominated by the TNG should the TNG choose to nominate one, to develop reclamation prescription recommendations for the permittee's consideration and implementation for all newly disturbed areas where practicable.
- e) The permittee must notify the TNG on a weekly basis of the work completed within the last one week period, and the work planned for the upcoming two week period.
- f) In determining and implementing signage and access restrictions to ensure public and worker safety during the exploration program as required under the Code, the permittee must ensure the Mine Manager also gives consideration to the Tsilhqot'in's practice of their Aboriginal rights.

Minimizing Disturbance and Care in Construction

- g) The permittee must make all reasonable efforts to consult with the TNG and reach agreement on the preferred, and least impactful, route of access where options exist to locate trails either within standing timber or across open meadows.
- h) The permittee must utilize existing access or previously reclaimed access wherever possible, and locate new trails on gentle gradient slopes wherever possible, to minimize disturbance of the terrain and soils.
- i) For access trails that do require construction, the permittee must construct them with care, avoid grubbing, grading and blading wherever possible, and construct trails to the minimum dimensions required to meet operational and safety requirements.

- j) On exploration trails where heavier traffic will occur, the permittee must strip, salvage and windrow organic materials, and replace it when activities are completed.
- k) The permittee must locate new disturbances through pine-dominated forest and avoid clearing old forest of mixed species, wherever feasible.
- l) The permittee must ensure drill site, trench/test pit, and borrow site clearing is to the minimum amount of timber removal and disturbance required to meet operational and safety requirements.
- m) The permittee must carry out activities in a manner which minimizes soil loss, and must carry out progressive reclamation at all times subject to weather conditions.

Reclamation, Revegetation, Wildlife Forage, Wildlife Habitat Elements and Vehicle Access

- n) The permittee must retain potential furbearer denning trees wherever possible. Denning trees are cottonwood  $\geq 90$  cm diameter breast height, aspen  $\geq 40$  cm diameter breast height and lodgepole pine  $\geq 35$  cm diameter breast height.
- o) The permittee must retain furbearer forage areas of advanced coniferous regeneration and shrub understory wherever possible.
- p) The permittee must rip or otherwise de-compact all compacted surfaces.
- q) The permittee must retain or place  $>25$  m<sup>3</sup>/ha of elevated coarse woody debris  $>20$  cm diameter across all disturbance areas where sufficient coarse woody debris is available.
- r) The permittee must establish coarse woody debris piles  $\geq 5$  m across and  $\geq 2$  m high across the entrances of all exploration trails, and where exploration trails intersect meadows, where sufficient coarse woody debris is available.
- s) The permittee must revegetate all disturbed areas with natural wildlife forage species wherever possible, and must use forestry range agronomic mix only to the degree necessary to control noxious weeds or erosion, or where no natural revegetation option is available.
- t) The permittee must re-establish mixed coniferous species in all disturbed areas suitable for coniferous species utilizing  $\geq 2$  year old, bare root or large plug size seedlings.
- u) The permittee must immediately backfill test pits upon completion of geological mapping and sampling, replace organics, salvaged vegetation, and coarse woody debris, and revegetate.
- v) The permittee must reclaim drill sites by re-contouring as required, replacing topsoil, organics, salvaged vegetation and coarse woody debris, and revegetating prior to the completion of the site investigation program.
- w) The permittee must provide all disturbed exploration trails roads with appropriate drainage structures including water bars.

- x) The permittee must fully deactivate all new and reactivated exploration trail disturbances at the end of the multi-year work program.
- y) The permittee must reclaim exploration trails by pulling back any side cast material, re-contouring as required, replacing topsoil, organics, salvaged vegetation and coarse woody debris, and revegetating.

Wildlife Protection

- z) The permittee must plan activities to minimize mechanical disturbance during spring moose calving season.
- aa) During the spring and summer, the permittee must ensure that all helicopter activity related to this Notice of Work is confined to Fish Creek Valley, and away from the Taseko River Valley and west-facing bluffs.
- bb) The permittee must report all crane or crane nest observations to MFLNRO Wildlife staff and cease work in those immediate areas if cranes are noted. If sand hill cranes are confirmed to be nesting in the wetlands, the permittee must cease drilling activity within 500 m of the wetland nesting areas until August 1st or until after cranes have left the area.
- cc) The permittee must review wildlife-specific inventory information, particularly for bald eagle and osprey nests, to ensure these nests and other significant wildlife habitat features are not disturbed or destroyed, and record and report any new significant wildlife habitat features or species at risk identified to MFLNRO Wildlife staff if observed.

**TNG Concern:**

- 2. *The island in Fish Lake is used for ceremonial/spiritual activities. The TN currently uses this area to transfer knowledge to their youth about hunting and other cultural activities.*

Considerations:

No exploration activities are planned for the island in Fish Lake. TML has confirmed their willingness to work with TNG representatives to identify opportunities to avoid or minimize impacts on TNG interests, including specific sites or features on the land, as they did previously in their 2012 exploration program.

Permit conditions:

I have imposed conditions e) and f) as identified in the discussion of TNG Concern #1 above and I have also imposed the following additional permit condition:

Consideration for Cultural Gatherings

- dd) Upon receipt of at least 2 weeks notice from the TNG of the location(s) and timing of their two significant cultural gatherings planned for the summer, and their healing camp in the fall, the permittee must avoid operating heavy equipment within 500 m of the gathering site(s) for a period of up to 3days, or other time period and setback distance as may be agreed to by TML with the TNG.

**TNG Concern:**

3. *Teztan Biny has become more culturally important as other areas are alienated and developed. During the Federal Review Panel, the TN stated that displacement from ability to exercise rights in these areas is aggravated by:*
- 1) *loss of key cultural hunting and trapping areas,*
  - 2) *severing of centuries old connection to the land,*
  - 3) *the acknowledged fact of the economic, cultural and spiritual significance of the area,*
  - 4) *the scale of environmental destruction,*
  - 5) *the broader adverse impacts on wildlife populations that support the TN, and*
  - 6) *the broader adverse impacts on an ancient and enduring hunt and trapping and trapping pattern of the TN people for which Teztan Biny area serves as the hub*

**Considerations:**

I reiterate my considerations as set out in the discussion of TNG Concern #1 above.

The declared Title Area, nearby Provincial Parks, and Proven Rights Area outside of the Application area are relatively pristine, have high wildlife values, remain available for hunting and trapping, and were historically used for cultural purposes.

Additionally on June 23, 2017 the Ministry of Aboriginal Relations and Reconciliation extended an offer to provide \$50,000 to be used for the support of cultural initiatives within Tsilhqot'in territory, as further accommodation to the TNG if the Application was approved. This financial contribution is intended to address potential adverse effects of the Application on the Tsilhqot'in Nation's Aboriginal rights in that area, and support the ongoing preservation, enhancement and sustenance of Tsilhqot'in cultural and spiritual practices across the Tsilhqot'in territory. On June 29, 2017, the TNG responded by indicating that "Money offers no compensation for the serious cultural, emotional and spiritual impacts that this drilling program means for our people."

TML has indicated they remain open to discussion of further accommodation measures in this regard, if and when the TNG is willing to engage in those discussions with them.

**Permit Conditions:**

I have imposed the permit conditions as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

4. *TNG have indicated that there is extensive, multi-seasonal use of the area by much of the TN population including for hunting and trapping activities.*

*They are concerned that the 2016 NOW (the Application) may impact wildlife in the following ways:*

- *Increased human-wildlife contact,*
- *Increased access (ATV trails), more potential for collisions, increased access for non-aboriginal hunters and trappers,*
- *Impacts to wildlife abundance, diversity and habitat, which are linked to the proven aboriginal right to hunt and trap due to the increased access and harvesting of timber*
- *Impacts to hunting and trapping opportunities (spatially and temporally during operations),*
- *Impacts from noise,*

- *Impacts from altered water resources and riparian zones,*
- *If there is mineral drilling activity near riparian areas, sedimentation may affect water quality, and*
- *There may be some decreased access to the mineral drilling area during times of industrial activity, for everyone's safety.*

**Considerations:**

I reiterate my considerations as set out in the discussion of TNG Concern #1 above.

**Permit Conditions:**

I have imposed the permit conditions as set out in the discussion of TNG Concern #1 above. In regard to the concerns of potential impacts on water and riparian areas, I have imposed the following additional permit conditions:

**Water and Riparian Protection**

- ee) The permittee must ensure that an emergency spill kit is available on site at all time of operations that is of suitable size to account for the volume of hydrocarbons on site. The permittee must ensure that all employees are trained in its use.
- ff) The permittee must design the pump setups to capture hydrocarbon drips/leaks and prevent their release to the environment. The permittee must utilize a two-walled fuel tank, or secondary containment designed to capture 110% of fuel tank contents for pump fuel tanks.
- gg) The permittee must utilize two-walled fuel tanks, or secondary containment designed to capture 110% of fuel tank contents, at all fuel storage sites.
- hh) The permittee must contain and/or treat sediment contaminated water caused by any operation prior to discharge into any watercourse to ensure that there is no deposit of sediment, or any other deleterious substance, into any creek or its tributaries.
- ii) The permittee must design and install all stream crossings to meet the minimum design peak flows identified within the Handbook for Mineral and Coal Exploration and Coal Exploration in British Columbia.
- jj) The permittee must seal or grout all drill holes to prevent the discharge of water and/or potential contamination of groundwater upon completion, unless the drill holes will be used as sampling or monitoring wells.

**TNG Concern:**

5. *This area is important to the TN for hunting, and has social, cultural and spiritual significance for the community.*

**Considerations:**

I reiterate my considerations as set out in the discussion of TNG Concern #1 and #3 above.

**Permit Conditions:**

I have imposed the permit conditions as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

6. *It is noted that the project area has been disturbed by previous mineral drilling activity. The Province has not considered Justice Grauer's comment in Taseko Mines Limited v. Phillips, 2011 BCSC 1675 at para. 65:*

Each new incursion serves only to narrow further the habitat left to them in which to exercise their traditional rights. Consequently, each new incursion becomes more significant than the last. Each newly cleared trail remains a scar, for although reclamation is required, restoration is impossible. The damage is irreparable. It follows that if only a portion of the proposed new clearings and trails prove to be unnecessary, the preservation of that portion is vital.

Discussion:

I reiterate my considerations as set out in the discussion of TNG Concern #1 above.

Permit Conditions:

I have imposed the permit conditions as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

7. *TN community members exercising Aboriginal Interests in this area may be impacted by noise, industrial activity, and dust which will cause adverse impacts to the Tsilhqot'in community members who traditionally hunt in the area over the next 3 years, depending on how close they are to the drilling area. Visual quality may also be impacted by the activity, as there are trees that will be cut and access trails that will be created and brushed. It is understood that the loss of trees and the increased access resulting from the 2016 NOW activities will significantly impact TN's use and enjoyment of the area and may result in the TN choosing to avoid the area entirely until the work is done. It is also understood that given the unique and special significance of this area to the TN, the proposed exploration work can be disruptive and may have significant emotional impacts such as TN members avoiding use of this area for hunting and trapping activities during an active drilling program.*

Considerations:

I reiterate my considerations as set out in the discussion of TNG Concern #1, #2 and #3 above.

Permit Conditions:

I have imposed the permit conditions as set out in the discussion of TNG Concern #1 and #2 above.

**TNG Concern:**

8. *The moose population in the Cariboo-Chilcotin Natural Resource District has declined substantially from the early 2000's to early 2010's. This 2016 NOW project may impact moose populations by increasing access to the area, and reducing thermal cover through the removal of 1,084 m<sup>3</sup> of timber.*

*The TN has raised impacts about increased non-First Nations hunter access to the area.*

Considerations:

I reiterate my considerations as set out in the discussion of TNG Concern #1 above.

The Application involves no new major roads or major road systems. Major road systems have been identified as a probable significant contributor to the moose population decline.

There are multiple regional projects underway to address the depressed moose population, including reductions in Limited Entry Hunting (LEH) authorizations, the initiation of a research

project focused on better understanding the factors contributing to moose mortality, the South Chilcotin Stewardship Plan, and ongoing Fish and Wildlife Panel work focusing on moose recovery strategies that includes TNG and Provincial representatives.

The Province has reduced the number of LEH permits issued for moose in the South Chilcotin from 600 in 2011 to 297 in 2016. Since January 2014, provincial staff have radio-collared and monitored a total of 65 adult cow moose within the Big Creek area (maintaining a minimum of 30 cows monitored per year). Investigations of the mortalities of radio-collared moose, in collaboration with the TNG, have provided valuable insights regarding population dynamics and the primary factors that contribute to moose mortality in the Chilcotin, and will be part of a larger dataset to examine landscape-level factors that affect moose vulnerability provincially. The TNG have ongoing involvement in the study, and updated results are generally presented to First Nations once the report is finalized annually. A recent moose survey conducted in the South Chilcotin has found a significant increase in the moose population (+57%) from 2012 to 2017. The recent survey results suggest that collaborative moose recovery efforts are positively affecting Chilcotin moose populations.

As a result of the collaborative efforts of the TNG and the Province on the South Chilcotin Planning Process the Province has committed to provide \$200,000 to the TNG for the development of a Moose Management plan, which may include road deactivation prescriptions, plans and completion of the works under the approved management plan. The Province has provided the TNG with an inventory of non-status roads to review and develop their priority areas that they would like to see deactivated and build a plan around.

The TNG is also engaged in other collaborative wildlife initiatives with MFLNRO Fish and Wildlife staff through the provisions of the Tsilhqot'in Stewardship Agreement.

**Permit Conditions:**

I have imposed the permit conditions as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

- 9. Rainbow Trout are present in Fish Lake and Little Fish Lake, Middle and Upper Fish Creek, and in several other reaches of tributaries to Fish Creek and Fish Lake. Salmon are harvested from the Taseko River, which is west of the mineral drilling tenure footprint. Wetlands mainly consist of fens and herbaceous meadows. Fens are either dominated by sedges or by willows and scrub birch with moderate covers of brown mosses. Herbaceous meadows and shrub-carrs are less common than fens but dominate fluvial plains that feed and drain Fish Lake. For instance, rich meadows with various flowering herbs, sedges and willow species are common adjacent to fluvial channels to the north and south of Fish Lake. The stream crossings that have been proposed may cause sedimentation.*

**Considerations:**

The Tsilhqot'in use Fish Lake, Little Fish Lake, and Big Onion Lake for trout fishing. They use the Taseko River for salmon fishing. The area is important to the Tsilhqot'in for fishing, as well as its social, cultural and spiritual significance. Fish Lake and Little Fish Lake are adjacent to the mineral drilling activity, but should remain open to the Tsilhqot'in for fishing. Access trails, visual quality, and industrial activity (noise and dust) may impact the Tsilhqot'in's fishing activities. The TNG have stated the impact of the proposed camp will be more significant if camp location A on the north shores of Teztan Biny is approved.



**Permit Conditions:**

I have imposed the permit conditions as set out in the discussion of TNG Concern #4 above. In addition, I have imposed the following permit condition:

**Camp Location**

kk) The permittee must establish the camp in proposed location B.

**TNG Concern:**

10. *The drilling area contains one ecological community of conservation concern (i.e. rare plant ecosystem), the lodgepole pine-trapper's tea-crowberry unit, which is in the vicinity of the drilling activities. Three rare plants are found in the area: Bird's foot buttercup (Ranunculus pedatifidus spp. Affinis), Schistidium heterophyllum, and Drepanocladus longifolius. The provincially blue-listed Bird's foot buttercup is associated with the herbaceous meadow ecosystem (Taseko Mines Ltd., 2011).*

**Considerations:**

It is not confirmed whether the Tsilhqot'in harvests these plants as part of its traditional harvesting activities in the area. Potential effects of the drilling activity may include damage to the vegetation and soil caused by removal of vegetation and soil for drilling and test trenches/pits, the removal of timber over storey and soil disturbance to create access trails. The drilling activity may cause some disruption to Tsilhqot'in gathering activities traditionally carried out within the tenure boundary. The Application area is important to the Tsilhqot'in for gathering, and has social, cultural and spiritual significance for the community.

The potential impacts on the Tsilhqot'in's ability to gather in the area are limited to the duration and disturbance area of the Application. There may be some inconvenience due to the industrial activity, however the impact is temporary – the work program is expected to be substantially completed within 6 months, with the possibility of lesser activity levels continuing into years 2 or 3, and the area is required to be reclaimed.

TML's Environmental Protection and Management Plan states comprehensive wetland surveys, terrestrial ecosystem mapping, and rare plant surveys have been conducted in the area in a comprehensive manner. Plant communities of concern have been mapped and identified. When drilling trails require field fitting, TML has committed that drilling staff will use the mapping and specific coordinates of rare plant sites to avoid disturbance. When near to proposed drilling activities, these sites will be flagged by field staff to avoid disturbance.

**Permit Conditions:**

I impose permit conditions a), b), c) and d) as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

11. *The project area includes archaeological sites, both known and unknown. Drilling activities are planned to occur in areas with moderate and high Archaeological potential and in and around registered sites. Archaeological resources may be unknowingly disturbed in this area if industrial activity, particularly mining activity, is permitted in the Fish Lake area.*

**Considerations:**

Archaeological sites are protected under the *Heritage Conservation Act*. TML states appropriate archaeological investigations/work, as determined by a qualified professional archaeologist, have been conducted to ensure the approved work will not impact identified archaeological resources.

**Permit Condition:**

I have imposed permit condition a) and b) as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

*12. Many of the TN community members consider this area their home. They have shared experiences of growing up and learning to fish, hunt, gather and spend time with their relatives there. There will be direct overlap of the areas used by the TN now and in the past and the area the proponent wishes to drill/explore.*

**Considerations:**

I acknowledge that many Tsilhqot'in community members consider this area their home, and this was further communicated in the Elders' statements and accompanying photographs showing historic cabins used by their families, as well as recently constructed cabins in the area. In the Application, TML proposes only one test pit in close proximity to the historic and recently constructed cabins in the clearing on the east side of Little Fish Lake, and that test pit is located on an existing trail.

I reiterate my considerations as set out in the discussion of TNG Concern #1 and #3 above.

**Permit Condition:**

I have imposed permit conditions as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

*13. The TN uses the Fish Lake and the island in Fish Lake for ceremonial/spiritual practices. Present-day and previous generations of Tsilhqot'in people have conducted rituals to receive their spiritual powers. The TN is understood to hold a significant spiritual and emotional attachment to this specific area, and identifies it as an area of particular significance. The 2016 NOW is located adjacent to Fish Lake. The TN uses this area to transfer knowledge to their youth about gathering as well as other cultural activities. The use and access to this area for spiritual/cultural activities may be limited during the 3 year term by this mineral drilling activity.*

**Considerations:**

I reiterate my considerations in the discussion of TNG Concern #3 above. In addition, I acknowledge that for the TNG the Teztan Biny and Nabas areas are places of unique and special significance for the Tsilhqot'in cultural identity and heritage. This is reflected in the Impacts Assessment, in the consideration of the social, cultural, experiential component of the various Aboriginal Interests.

I have considered the spiritual significance of the Fish Lake area (especially the island in Fish Lake), from the perspective of the TNG as expressed to me during the consultation process, as well as considering the proposed activities included in the Application, duration, and potential impacts and accommodations which may be appropriate to address such impacts. In particular, I

have considered the types of activities related to the Application and how they may impact cultural heritage resources, archaeological values, and the spiritual significance of the area to the Tsilhqot'in. With respect to the proposed drilling activities, and the proposed 50-man camp, although they are located >0.5 km from the island in Fish Lake, given the cultural and spiritual significance of this area to the Tsilhqot'in, I understand that there may be serious potential adverse impacts from the Application. Considering this in conjunction with the preliminary assessment of a strong *prima facie* claim to an Aboriginal right to practice ceremonial/spiritual activities in this area, it has led to consultation with the TNG being conducted at the deep end of the *Haida* consultation spectrum in regard to this Application, in addition to specific considerations as to what accommodations may be appropriate.

The Application, however, proposes no disturbance activities for the island in Fish Lake, nor in Fish Lake itself. The Application proposes a maximum of 3 years of activities, and most activities will be conducted within 6 months.

During the consultation process the TNG identified two significant cultural gatherings which would take place this summer, and a healing camp later in the fall. I encourage the TNG to communicate the details of these significant planned cultural gatherings as least 2 weeks in advance of such events to TML, including the specific locations, so that TML can incorporate dates for these gatherings into their work plans to avoid or minimize any disruption to these events.

Permit conditions:

I have imposed permit conditions e) and f) as set out in the discussion of TNG Concern #1 above, and permit condition dd) as set out in the discussion of TNG Concern #2 above.

**TNG Concern:**

*14. Concerns regarding the cumulative effects of access trails and previously un-reclaimed activity.*

Considerations:

The 2.18 hectares of disturbance that remains un-reclaimed from a previous work program are access trails that TML intends to re-use. All other test pit sites, drill sites, sumps and short trail spurs to test site locations have been reclaimed in accordance with Health, Safety and Reclamation Code for Mines in BC (Wassenaar, Letter, September 22, 2011).

The Application is planned over 3 years, with most of the work occurring within a 6 month period, and the reclamation planned for the first year is 20 hectares. The reclamation program as presented in the Application indicates:

- Test pits will be immediately backfilled and have organics and woody debris placed on the site
- Drill sites will be reclaimed as drilling at each site is completed and prior to the completion of the site investigation program.
- All areas will be re-seeded with an approved forestry mix.
- Access routes will be reclaimed by pulling back any side cast material, re-contouring as Required, top-dressing with available topsoil and woody debris.

In addition to the above, I reiterate my comments as stated in the discussion of TNG Concern #1 above.

Permit Conditions:

I have imposed permit conditions as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

*15. Request by Tsilhqot'in legal counsel, Jay Nelson, that if a Mines Act permit is issued against the TNG's objections, that a clause be included prohibiting TML from conducting any work within 30 days to enable the TNG to submit their application for a Judicial Review and/or injunction, and to avoid any potential risk of civil unrest by Tsilhqot'in members upset by the permit decision.*

**Considerations:**

I have considered this request, along with the following:

- TML's statements that they have avoided commencing any survey or assessment work in the area to avoid upsetting any Tsilhqot'in members prior to a permit decision being made;
- TML's estimate that they will need to conduct about 2 weeks of that survey and assessment work prior to doing any mechanical work;
- TML's mining lease requirement to provide First Nations notice of at least 14 days prior to commencing work and TML's voluntary commitment to provide the same notice for any work in areas outside of the mining lease area;
- The length of the consultation period which has elapsed; and
- The likely timeline required for TML to meet permit conditions c) and d) in #1 above.

In consideration of the above, I do not find it reasonable nor necessary to include a permit condition prohibiting commencement of work for 30 days after the issuance of the permit.

I respectfully suggest TML develop a communication strategy or protocol with the Tsilhqot'in leadership to first avoid issues, manage any issues which may arise, and seek to ensure the safety of TNG members, TML or contract workers, and the general public at the exploration site.

**Permit Conditions:**

I have imposed permit conditions c), d) and e) as set out in the discussion of TNG Concern #1 above.

**TNG Concern:**

*16. Tsilhqot'in members unwilling to trap while exploration activities are underway as the animals will leave, and for fear their traps will be damaged by heavy equipment.*

**Considerations:**

Animals may be temporarily displaced from areas while equipment is operating. The majority of the work will be completed within a relatively short 6 month period, with some lesser amount of work possibly continuing into year 2 or 3. The work activities occur within an Application area of 3,067 ha, which is roughly 11 km long by 2.5 km wide. Opportunities for trapping will remain within the Application area outside of areas where equipment is operating. The disturbed areas are required to be reclaimed with consideration given to the habitat requirements of species the Tsilhqot'in hunt and trap. Risk of damage to traps can be averted through the notice provision condition required of TML.

Permit Conditions:

I have imposed permit conditions e) and f) as set out in the discussion of TNG Concern #1 above.

TNG Concern:

17. *If the project were to become a major mine, Tsilhqot'in members would will be unable to practice their hunting and trapping rights for the 20 year life of mine.*

Discussion:

The information provided below to the TNG is primarily for information purposes only, as this issue is not directly engaged in my statutory decision on this Application.

Very few operating major mines have no-shooting areas established under the *Wildlife Act*, as noted in the 2016 – 2018 Hunting & Trapping Regulations Synopsis. There is no *Mines Act* or Code requirement for the establishment of no-shooting areas over operating major mines – only the requirements under 1.3.1, 1.3.2, and 1.3.3 of the Code regarding Mine Manager control of access to ensure public and worker safety at mine sites. I spoke with Ted Zimmerman, Director of Resource Management, MFLNRO. He indicated that while some no-shooting areas appear to have been established previously under the *Wildlife Act* for public safety, or other reasons, their current practice is that no-shooting and no-hunting areas are now established under the *Wildlife Act* only for wildlife species conservation concerns.

Of further interest for the TNG, is the Superintendent of Environment and Community Affairs at Teck's Highland Valley Copper Mine has advised their company has an agreement with local First Nations to allow a First Nations' only deer hunting season on reclaimed areas of their mine site in areas where the deer presence is very high and mine workers would not be exposed to any danger from hunting activities. This area remains a no-shooting area under the *Wildlife Act* for non-First Nations hunters. He further advised that one of Teck's coal mines in the Kootenays has a similar agreement with local First Nations.

I am not relying on the above information in making my statutory decision, as I acknowledge they relate to a different company and different mine sites, and the probability of a major mine in the Application area remains speculative. The examples are merely to illustrate the Mine Manager is responsible for ensuring safety at the mine site, and under some circumstances agreements may be negotiated between a First Nation and a Mine Manager which allow for the practice of Aboriginal rights on the inactive, reclaimed portions of a mine site and where no safety hazards to workers would result.

**OPPORTUNITIES FOR TSILHQOT'IN INVOLVEMENT IN THE WORK PROGRAM**

As outlined in TML's First Nations' Engagement Record submitted with the Application, since mid-July 2016, TML has offered to meet with the TNG to discuss the 2016 Application. TML has indicated that it remains committed to engaging First Nations on various aspects of the proposed work including access trail planning and review of environmental management plans in order to minimize potential effects on Aboriginal Interests, and regarding participation in the field program.

TML has indicated that similar arrangements to those agreed to for the 2011 NOW could occur for the 2016 Application, in relation to employing two TNG environmental monitors and a professional biologist working on behalf of TNG.

TML indicated that at the request of TNG, it hauled water from Taseko River for the 2011 NOW drilling program, which it is prepared to do again for the 2016 Application, along with monitoring sumps, and implementing sediment control measures. These measures can be monitored by TNG's environmental monitors and professional biologist.

TML has indicated that it is committed to providing similar opportunities for contracting, monitoring and reclamation work as was provided in relation to the 2011 NOW.

TML has also indicated its willingness to consider additional measures or projects that could accommodate the impacts to Tsilhqot'in, similar to its willingness to facilitate the hauling of merchantable timber for Tsilhqot'in use from the program area to the 4500 Road in relation to the 2011 NOW.

## **CONCLUSION**

In making my decision on the permit amendment, I have considered all of the relevant facts and concerns raised by the TNG during the consultation process, even if they are not specifically identified in these reasons for decision. I have also considered advice from MFLNRO First Nations' Relations staff in reaching my decision.

After review and consideration of the available information, I am satisfied that the consultation has been meaningful and adequate and the proposed mitigation and accommodation measures appropriately address the concerns identified by the TNG with respect to impacts to their Aboriginal rights and interests.

I have attempted in my decision-making to reasonably balance the impacts and key concerns expressed by the TNG representatives with other societal values.

For the reasons noted above and having regard to my responsibility as an Inspector of Mines with delegated authority under the *Mines Act*, I have made a decision to amend *Mines Act* permit (the Permit) MX-3-131 and have issued an authorization for Taseko Mines Limited to conduct detailed site investigation activities as described in the Notice of Work applications #0300150201601, dated October 17, 2016, subject to the specified conditions.

Sincerely,  
<Original signed by>

Rick Adams  
Senior Inspector of Mines - Permitting

Encl: Appendix 1 Delegation of Chief Inspector's Authority Under the Mines Act – Section 10  
Appendix 2 Partial Summary of Documents I Have Considered in Making My Decision