



Court File No. **VLC-S-S-177504**

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**PETITIONER**

**AND:**

**TASEKO MINES LIMITED**

**RESPONDENT**

**PETITION TO THE COURT**

**ON NOTICE TO:**

Taseko Mines Limited  
15th Floor - 1040 West Georgia Street  
Vancouver, BC V6E 4H1

**This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

#### TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner(s),

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

1)	The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1
2)	The ADDRESS FOR SERVICE of the petitioner is:	Attorney General of Canada Department of Justice Canada British Columbia Regional Office 900 – 840 Howe Street Vancouver, BC V6Z 2S9 <b>Attention: Donnaree Nygard</b>
	Fax number address for service (if any) of the petitioner(s):	(604) 775-5942
	E-mail address for service (if any) of the petitioner(s):	Not applicable
3)	The name and office address of the petitioner's lawyer is:	Attorney General of Canada Department of Justice Canada British Columbia Regional Office 900 – 840 Howe Street Vancouver, BC V6Z 2S9 <b>Attention: Donnaree Nygard</b>

## CLAIM OF THE PETITIONER

**Part 1: ORDER(S) SOUGHT**

1. An order enjoining Taseko Mines Limited ("Taseko") from carrying out the work outlined in the Ministry of Energy, Mines and Petroleum Resources Permit Number MX-3-131 dated July 14, 2017, in whole or in part.
2. An order authorising any person designated under subsection 89(1) of the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19 ("CEAA, 2012")<sup>1</sup> to enter the area of work outlined in the Ministry of Energy and Mines Permit Number MX-3-131 dated July 14, 2017 for the purposes of verifying compliance with the order requested in paragraph 1.
3. That this petition be heard on an expedited basis.
4. Costs of this petition.

**Part 2: FACTUAL BASIS**

5. The petitioner, Attorney General of Canada ("Canada"), brings this petition on behalf of the Minister of the Environment (the "Minister").
6. The respondent, Taseko, is a company incorporated pursuant to the laws of British Columbia with a registered records office at 1500 Royal Centre, 1055 West Georgia Street, Vancouver, British Columbia.

*The Original Prosperity Project*

7. Taseko seeks to construct a mine at a site approximately 125 km southwest of Williams Lake, British Columbia. Taseko initially proposed the Prosperity Gold-Copper Mine Project ("the Original Prosperity Project").<sup>2</sup>
8. In January 2010, the Government of British Columbia ("BC") issued an environmental assessment certificate (the "BC EA Certificate") for the Original Prosperity Project.<sup>3</sup>
9. The BC EA Certificate will expire in January 2020 if work on the Original Prosperity Project is not "substantially started", as that term is used under the *British Columbia Environmental Assessment Act*, SBC 2002, c 43, by that date.<sup>4</sup>

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<sup>1</sup> *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19 ("CEAA, 2012").

<sup>2</sup> Affidavit #1 of Carl Johansson, sworn August 9, 2017 ("Johansson Affidavit"), Exhibit "F": New Prosperity Panel Report at 1.

<sup>3</sup> Affidavit #1 of Claudia Pace, affirmed August 9, 2017 ("Pace Affidavit"), Exhibit "B".

<sup>4</sup> *Environmental Assessment Act*, SBC 2002, c 43; Johansson Affidavit, Exhibit "E": Reasons for Decision, dated July 17, 2017.



10. In November 2010, Canada announced that after taking into consideration the report of the review panel and taking into account the implementation of appropriate mitigation measures, the responsible authorities and the Governor in Council were of the opinion that the Original Prosperity Project was likely to cause significant adverse environmental effects that could not be justified in the circumstances.<sup>5</sup>

#### *The New Prosperity Proposal*

11. Following Canada's rejection of the Original Prosperity Project, Taseko revised its mine proposal and in 2011 submitted a project description for the New Prosperity Gold-Copper Mine Project ("New Prosperity Project") to the Canadian Environmental Assessment Agency ("Agency").<sup>6</sup>
12. On November 7, 2011, the Minister of the Environment announced that the New Prosperity Project would undergo a federal environmental assessment under the *Canadian Environmental Assessment Act*, SC 1992, c 37,<sup>7</sup> by way of a review panel (the "New Prosperity Review Panel").<sup>8</sup>
13. *CEAA, 2012* came into force on July 6, 2012. Pursuant to the transition provisions of *CEAA, 2012*, particularly section 126, the New Prosperity Review Panel continued under that legislation.
14. On October 31, 2013, the New Prosperity Review Panel released its panel report ("New Prosperity Panel Report"), concluding that the New Prosperity Project would cause significant adverse environmental effects listed in ss. 5(1) and 5(2) of *CEAA, 2012*, specifically on water quality in Fish Lake (Teztan Biny), on fish and fish habitat in Fish Lake, on current use of lands and resources for traditional purposes by certain Aboriginal groups, and on their cultural heritage. The Panel also concluded that there would be a significant adverse cumulative effect on the South Chilcotin grizzly bear population, unless necessary cumulative effects mitigation measures were effectively implemented.<sup>9</sup>
15. On February 26, 2014, the Minister issued a decision statement under s. 54(1) of *CEAA, 2012*, advising that she had decided the New Prosperity Project was likely to cause significant adverse environmental effects referred to in ss. 5(1) and (2) of *CEAA, 2012*, and that the Governor in Council had decided these effects were not justified in the circumstances.<sup>10</sup>

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<sup>5</sup> Pace Affidavit, Exhibit "A": Prosperity Decision Statement.

<sup>6</sup> Johansson Affidavit, Exhibit "F": New Prosperity Panel Report at 1.

<sup>7</sup> *Canadian Environmental Assessment Act*, SC 1992, c 37 ("Old *CEAA*").

<sup>8</sup> Pace Affidavit, Exhibit "C": Notice of Commencement.

<sup>9</sup> Johansson Affidavit, Exhibit "F": New Prosperity Panel Report.

<sup>10</sup> Pace Affidavit, Exhibit "D": Decision Statement.

16. The existing BC EA certificate authorizes the Original Prosperity Project, which Taseko is no longer pursuing. Instead, Taseko has applied to amend the BC EA Certificate to authorize the New Prosperity Project. That amendment has not yet been approved.<sup>11</sup>

### *The Judicial Reviews*

17. Taseko brought two applications for judicial review in Federal Court. The first challenged the New Prosperity Panel Report. The second challenged the decision of the Minister that the project was likely to cause significant adverse environmental effects, along with the Governor in Council decision that those effects were not justified in the circumstances (the “Judicial Review Applications”). The Judicial Review Applications were heard together in January 2017. Decisions in both of the Judicial Review Applications remain on reserve at this time.<sup>12</sup>

### *The Proposed Work*

18. On or about October 17, 2016, Taseko applied for a permit under the *Mines Act*, RSBC 1996, c 293,<sup>13</sup> to carry out a field work program (“2016 Notice of Work Application”). The 2016 Notice of Work Application includes:
- a. establishment of a 50 person camp of 11 mobile trailer units;
  - b. a temporary core shed to store drill core;
  - c. a base camp staging area;
  - d. a fuel storage site for up to 10,000 litres of fuel;
  - e. 20 km of cut lines;
  - f. construction of 357 test pits;
  - g. 122 geotechnical drill sites;
  - h. 48 km of new exploration trails;
  - i. modification of 28 km of existing access trails; and
  - j. 7 water intake points.<sup>14</sup>
19. The activities contemplated in the 2016 Notice of Work Application are predominantly in areas where the Tsilhqot’in Nation have proven Aboriginal rights. Taseko has previously conducted exploratory drilling in the area.<sup>15</sup>

<sup>11</sup> Johansson Affidavit, Exhibit “E”: Reasons for Decision, dated July 17, 2017; Pace Affidavit, Exhibit “H”: Affidavit #1 of John-Paul LaPlante, affirmed February 15, 2017 at paras 4-5.

<sup>12</sup> Pace Affidavit at paras 9-12.

<sup>13</sup> *Mines Act*, RSBC 1996, c 293.

<sup>14</sup> Johansson Affidavit, Exhibit “A”: 2016 Notice of Work Application.

<sup>15</sup> Johansson Affidavit, Exhibit “E”: Reasons for Decision, dated July 17, 2017; Pace Affidavit, Exhibit “J”: Affidavit of Susan Westmacott.



20. Taseko has acknowledged that the purpose of the 2016 Notice of Work Application is to obtain data and information necessary to inform detailed design work required in order to obtain an operating permit for the New Prosperity Project, which is a necessary step in substantially starting the New Prosperity Project prior to the expiry of the BC EA Certificate.<sup>16</sup>
21. The activity described in the 2016 Notice of Work Application may have the following environmental effects described in s. 5(1) of *CEAA, 2012*:
  - a. Changes to fish habitat by stream crossings and certain drilling and pumping activities;
  - b. Changes to migratory birds from use of heavy equipment;
  - c. Changes to the health of aboriginal peoples by the work as a whole;
  - d. Changes to the physical and cultural heritage of aboriginal peoples by the work as a whole;
  - e. Changes to the current use of land and resources for traditional purposes by aboriginal peoples by the work as a whole; and
  - f. Changes to sites of historical, archeological significance to aboriginal peoples by the work as a whole.<sup>17</sup>

*Events leading up to this Petition*

22. On July 14, 2017, Rick Adams, Senior Inspector of Mines – Permitting, issued an amended permit (“Permit MX-3-131”) under the *Mines Act* authorizing the work described in the 2016 Notice of Work Application, with certain conditions. On July 17, 2017, Mr. Adams issued reasons for decision for Permit MX-3-131.<sup>18</sup>
23. On July 17, 2017, the Agency wrote to Taseko requesting that Taseko indicate whether the 2016 Notice of Work Application includes any act or thing which is connected to the carrying out, in whole or in part, of the designated project – the New Prosperity Project. The Agency further requested that Taseko provide its views, with supporting rationale, regarding whether any of the activities described in the 2016 Notice of Work Application are designated activities as defined under the *CEAA, 2012*.<sup>19</sup>
24. By letter of July 21, 2017, Taseko responded to the Agency stating that the 2016 Notice of Work Application did not include any act or thing that is connected with carrying out the

<sup>16</sup> Johansson Affidavit, Exhibit “E”: Reasons for Decision, dated July 17, 2017; Pace Affidavit, Exhibit “H”: Affidavit #1 of John-Paul LaPlante, affirmed February 15, 2017, Exhibits “O”, “AA” and “AA(1)”.

<sup>17</sup> Johansson Affidavit at para 17, Exhibit “A” 2016 NOW Application and Reasons for Decision, Exhibit “C”: Revised Impact Statement, Exhibit “E” Amended *Mines Act* Permit MX-3-131; Exhibit “F”: New Prosperity Panel Report; Pace Affidavit, Exhibit “H”: Affidavit #1 of John-Paul LaPlante, affirmed February 15, 2017, Exhibit “X(3)”.

<sup>18</sup> Johansson Affidavit at para 17, Exhibit “E” Amended *Mines Act* Permit MX-3-131.

<sup>19</sup> Johansson Affidavit at para 12.

New Prosperity Project and that the 2016 Notice of Work Application related to the approved field work program described in Permit MX-3-131. Taseko further advised that the activities do not involve the construction or operation of a mine or any other activities that would be defined as a designated activity under *CEAA, 2012*.<sup>20</sup>

25. On July 28, 2017, the Agency wrote to Taseko advising that the proposed activities described in the 2016 Notice of Work Application were in connection with the carrying out of the New Prosperity Project and may cause environmental effects listed in s. 5(1) of *CEAA 2012*, and were therefore barred by section 6 of that Act.<sup>21</sup>
26. On July 28, 2017, Taseko wrote to the Agency advising that it disagreed that s. 6 of *CEAA, 2012* barred it from carrying out the activities described in the 2016 Notice of Work Application.<sup>22</sup>
27. From July 31 to August 3, 2017, an interlocutory injunction application, brought by the Tsilhqot'in Nation seeking to restrain the activities described in the 2016 Notice of Work Application and authorized by Permit MX-3-131, was heard by the British Columbia Supreme Court. A decision on that interlocutory injunction is expected by August 14, 2017. Until that date, Taseko has agreed to have no presence on the site of the activities described in the 2016 Notice of Work Application and authorized by Permit MX-3-131.<sup>23</sup>
28. On August 2, 2017, the Agency sent a letter to Taseko advising that it maintained its position set out in its July 28 letter. On August 4, 2017, the Agency wrote again to Taseko seeking confirmation that it would not do the work described in the 2016 Notice of Work Application, regardless of whether the TNG obtained an injunction, as the activity was prohibited by section 6 of *CEAA, 2012*.<sup>24</sup>
29. On August 9, 2017, Taseko wrote to the Agency advising that Taseko does not intend to move forward on any work pursuant to the notice of work program regardless of whether the Tsilhqot'in Nation succeeds in its injunction application.<sup>25</sup>

### **Part 3: LEGAL BASIS**

#### *Statutory injunctions*

30. Canada seeks a statutory injunction pursuant to s. 96 of *CEAA, 2012*, ordering that Taseko refrain from the activities set out in the 2016 Notice of Work Application and authorized by Permit MX-3-131.

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<sup>20</sup> Johansson Affidavit at para 13.

<sup>21</sup> Johansson Affidavit at para 18.

<sup>22</sup> Johansson Affidavit at para 19.

<sup>23</sup> Johansson Affidavit at para 20.

<sup>24</sup> Johansson Affidavit at paras 21-22.

<sup>25</sup> Affidavit #2 of Claudia Pace, affirmed August 9, 2017.



31. The test for a statutory injunction under s. 96 of *CEAA, 2012* requires the Court be satisfied that it appears a person has done, is about to do or is likely to do any act constituting or directed toward the commission of an offence under s. 99 of *CEAA, 2012*. If so satisfied, the Court may issue an injunction ordering the person to refrain from doing that act.
32. A statutory injunction is available without proof that damages are inadequate as a remedy or that irreparable harm will result if the injunction is refused. Nor is there any need for other enforcement remedies to have been pursued.<sup>26</sup>
33. The Minister may seek an injunction under s. 96 of *CEAA, 2012* to restrain an anticipated violation of *CEAA, 2012* in order to enforce a public right. As such, while the court has the discretion to refuse to grant the injunction sought, even if the statutory preconditions are met, any hardship that a person may suffer from such an injunction will not ordinarily outweigh the public interest in having the law obeyed.<sup>27</sup>

*The Proposed Notice of Work Program will constitute an offence under CEAA, 2012*

34. Carrying out the elements of the 2016 Notice of Work Application and authorized by Permit MX-3-131 listed above will constitute an offence under s. 99 of *CEAA, 2012*, on the basis that it would contravene s. 6 of *CEAA, 2012*. There is no reason in this case to refuse the injunction and allow Taseko to pursue its Notice of Work program in contravention of *CEAA, 2012*. This Court should not allow section 5(1) environmental effects where the project for which the work is being done has already specifically been denied approval under *CEAA, 2012*.
35. Section 6 of *CEAA 2012* provides:

6 The proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause an environmental effect referred to in subsection 5(1) unless

(a) the Agency makes a decision under paragraph 10(b) that no environmental assessment of the designated project is required and posts that decision on the Internet site; or

(b) the proponent complies with the conditions included in the decision statement that is issued under subsection 31(3) or section 54 to the proponent with respect to that designated project.

<sup>26</sup> *Canada v Ipsco Recycling*, 2003 FC 1518; *Shaughnessy Heights Property Owners' Association v Northrup* (1958), 1958 CanLII 289 (BCSC).

<sup>27</sup> *Maple Ridge (District of) v Thornhill Aggregates Ltd* (1998), 162 DLR (4<sup>th</sup>) 203 (BCCA); *Fraser Health Authority v Jongerden*, 2010 BCSC 355; *West Vacovuer v Lui*, 2016 BCCA 96.



*The Proposed Work is in connection with the carrying out of a Designated Project*

36. The New Prosperity Project is a Designated Project because it was a “project” under the Old *CEAA* that was referred to a Review Panel established under that Act. Section 126(1) of *CEAA, 2012*, part of the *CEAA, 2012* Transitional Provisions, provides in part:

**126 (1)** Despite subsection 38(6) and subject to subsections (2) to (6), any assessment by a review panel, in respect of a project, commenced under the process established under the former Act before the day on which this Act comes into force is continued under the process established under this Act as if the environmental assessment had been referred by the Minister to a review panel under section 38. The project is considered to be a designated project for the purposes of this Act...

37. Project is defined in the Old *CEAA* as:

2(1) ... **project** means

(a) in relation to a physical work, any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work, or

(b) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to regulations made under paragraph 59(b);

38. Designated project is defined in *CEAA, 2012* as:

**designated project** means one or more physical activities that

(a) are carried out in Canada or on federal lands;

(b) are designated by regulations made under paragraph 84(a) or designated in an order made by the Minister under subsection 14(2); and

(c) are linked to the same federal authority as specified in those regulations or that order.

It includes any physical activity that is incidental to those physical activities.

39. What constitutes the “designated project” in relation to the New Prosperity Project is the “project” as defined under the Old *CEAA*, including any physical activity incidental to the project. Specifically, it includes the physical activity of the construction, operation, and decommission of the mine project itself, as well as any other undertaking in relation to that

physical work and, pursuant to the definition of “designated project” in *CEAA, 2012*, any physical activity incidental to that physical activity.

40. Section 6 of *CEAA, 2012* prevents the carrying out of a designated project which may cause subsection 5(1) environmental effects unless: 1) that work is carried out in compliance with the conditions in a decision approving the project; or 2) a decision is made that an environmental assessment is not required. Section 6 also expressly prohibits activities which may cause s. 5(1) environmental effects that are “in connection with” the carrying out of the designated project.
41. Those additional words must be given meaning. Here the activities authorized by Permit MX-3-131 are necessary to obtain a mine operating permit to allow the New Prosperity Project to be “substantially started” before the expiry of the BC EA Certificate. Substantially starting the New Prosperity Project is Taseko’s stated goal in pursuing Permit MX-3-131. In those circumstances, the work is clearly “in connection with” the carrying out of the designated project.
42. Alternatively, in the circumstances of this case, activities authorized by Permit MX-3-131 are not only in connection with the carrying out of the designated project, they are part of the designated project. The work constitutes undertakings in relation to, or physical activities incidental to, the construction of the mine.

*The Proposed Work will cause listed Environmental Effects*

43. Further, activity contemplated in the 2016 Notice of Work Application and authorized by Permit MX-3-131 may cause environmental effects listed under ss. 5(1)(a)(i),(iii) and 5(1)(c) of *CEAA, 2012*.
44. Consequently, as the 2016 Notice of Work Application describes work that is an act or thing in connection with the carrying out of the designated project, and as the work will cause environmental effects listed in ss. 5(1) of *CEAA, 2012*, proceeding with the work set out in the 2016 Notice of Work Application: (1) will violate s. 6 of *CEAA, 2012*, (2) will constitute an offence under s. 99 of *CEAA, 2012*, and (3) can be prevented by an injunction under s. 96 of *CEAA, 2012*.

*There is no basis to refuse to grant the injunction*

45. There is no reason for this Court not to exercise its discretion to issue the injunction sought. Assuming any other applicable statutory, consultation, or other requirements are met, Taseko will be able to proceed with any work associated with acquiring a final *Mines Act* operating permit for the New Prosperity Project if it ever succeeds in receiving Federal approval for that project. In the meantime, there is no public purpose served in allowing Taseko to cause listed environmental effects in pursuit of a mine that has twice been denied the necessary Federal environmental assessment approval as a result of unjustified



significant adverse environmental effects. In such a case there is an overwhelming public interest in ensuring that the prohibitions in *CEAA, 2012* are upheld.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Carl Johansson, sworn August 9, 2017;
2. Affidavit #1 of Claudia Pace, affirmed August 9, 2017;
3. Affidavit #2 of Claudia Pace, affirmed August 9, 2017;
4. Affidavit of John-Paul LaPlante, affirmed August 8, 2017;
5. Affidavit of Cecil Grinder, affirmed August 8, 2017;
6. Affidavit of Norman William, sworn August 8, 2017;
7. Affidavit of Orry Hance, sworn August 8, 2017; and
8. Such further and other materials as this Court may permit.

The petitioner estimates that the hearing of the petition will take two (2) days.

<Original signed by>

Dated: August 9, 2017

Signature of  
☐ petitioner      ☒ lawyer for petitioner(s)

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
 British Columbia Regional Office  
 900 – 840 Howe Street  
 Vancouver, British Columbia  
 V6Z 2S9

Fax: (604) 775-5942

*For* Per: **Donnaree Nygard**

Tel: (604) 666-2054

File: 9160853

Solicitor/counsel for the petitioner, the  
 Attorney General of Canada

*To be completed by the court only:*

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application☐ with the following variations and additional terms:

Dated: \_\_\_\_\_

Signature of

☐ Judge ☐ Master

THIS PETITION TO THE COURT is prepared and served by the Attorney General of Canada whose place of business and address for service is the Department of Justice Canada, British Columbia Regional Office, 900 - 840 Howe Street, Vancouver, British Columbia, V6Z 2S9, Telephone: (604) 666-2054, Facsimile: (604) 775-5942, Attention: Donnaree Nygard