

New Prosperity Gold-Copper Mine Project Federal Review Panel

Canadian Environmental Assessment Agency, 160 Elgin Street, 22nd Floor, Ottawa, ON K1A 0H3, Tel: 1-866-582-1884
NewProsperityReview@ceaa-acee.gc.ca

October 12, 2012

To: Registered Parties

Sent by e-mail

Subject: Panel Ruling on Interested Party Status

This letter sets out the Federal Review Panel's (the Panel) ruling on Interested Party status related to the public hearing for the New Prosperity Gold-Copper Mine project.

On September 14, 2012, the Panel issued directions on how to apply for Interested Party status. In response, the Panel received 31 applications. The Panel considered all the applications in light of its mandate under the *Canadian Environmental Assessment Act, 2012* (the Act) and its Terms of Reference.

The attached ruling explains the Panel's decision on those applications. The list of the groups and individuals being granted Interested Party status is also provided as part of this ruling.

The Panel will establish the schedule and location for the different hearing sessions at a later date. The Panel will also explain how to register for specific sessions at that time.

If you have any question regarding the Panel's ruling on Interested Party status, please contact Livain Michaud, Panel Manager at 613-948-1359 / 1-866-582-1884, or by email at Newprosperityreview@ceaa-acee.gc.ca

Sincerely,

<original signed by>

Bill Ross, Chair

Attach.

NEW PROSPERITY GOLD-COPPER MINE PROJECT – FEDERAL REVIEW PANEL

RULING ON INTERESTED PARTY STATUS

I. Introduction

On September 14, 2012, the New Prosperity Review Panel (the Panel) issued directions on how to apply for Interested Party status for the New Prosperity Gold-Copper Mine project review (the Review). In response, the Panel received 31 applications. This ruling explains the Panel's decision on those applications.

While the Panel will allow the opportunity for general public input within the Review, only those persons with Interested Party status will be permitted to participate in all aspects of the Review during the public hearing phase.

II. Legal Framework

The relevant sections of the *Canadian Environmental Assessment Act, 2012* (the Act) are as follows:

- Subsection 2(2) defines an “interested party” as a person who, in the opinion of the Panel, is either “directly affected by the carrying out of the designated project” or “has relevant information or expertise.”
- Paragraph 19(1)(c) requires the Panel to take comments from the public into account as part of the environmental assessment.
- Paragraph 43(1)(c) of the Act requires the Panel to, in accordance with its terms of reference, “hold hearings in a manner that offers any interested party an opportunity to participate in the environmental assessment.”

The explicit definition of “interested party” and the requirement for the Panel to determine whether a person qualifies as an interested party are new under the Act. The Canadian Environmental Assessment Agency does not have policy guidance on this issue. Therefore, the Panel is guided by the general principles established by case law on interested party standing, the Panel's Terms of Reference, and the Act.

Subsection 2(2) states that it is a matter of opinion for the Panel to decide if a person is “directly affected by the carrying out of the designated project” or has “relevant information or expertise.” However, the exercise of that opinion must take into account and balance the important public interests reflected in the stated purposes set out in section 4 of the Act.

Generally, “directly affected” refers to a personal interest that is distinct from the general public interest in a matter. In the private law situation, a direct interest may arise from holding property or other legal right that may be affected by a decision. In the public law situation, an interest sufficient to support standing is interpreted more broadly but still must be “genuine interest”, a

“real stake” or “substantial connection”.¹ The Supreme Court of Canada has emphasized the need to screen participation to allow only those with a genuine interest and exclude the mere “busybody”. In public law cases, the Court calls for a “liberal and generous” or “flexible” approach, guided by the purposes that underlie the traditional limitations on standing designed to protect the efficient use of the court’s resources.²

When assessing whether a person is “directly affected” by a designated project the Panel regards the situation to be closer to the public law situation because of the purposes of the Act. In addition, subsection 2(2) also contemplates granting interested party status if the Panel decides a person “has relevant information or expertise”. Therefore, the Panel has followed a liberal and generous approach to determine Interested Party status for this Review, weighing the requirements of 2(2) with the purposes listed in section 4.

III. Decision Criteria

The Panel instructed parties seeking Interested Party status to submit an application to the Panel by September 28, 2012, containing the information set out in Appendix A to the September 14, 2012 letter. (See Appendix A to this ruling)

When reviewing the applications, the Panel considered the effect the Project may have on the interests identified by the applicant and the contribution of information or expertise that the applicant may offer to the Review record. The specific types of factors the Panel considered included:

- Whether the applicant resides, works or spends substantial lengths of time in the Project area;
- Whether the applicant’s immediate interests may be affected by the Project, including the applicant’s social, safety, health, environmental, community, legal or economic interests;
- Whether the applicant can demonstrate a genuine interest in the Project or Project area that is distinct from the general public interest;
- Whether the applicant has relevant information or specific expertise that is relevant to the Project and would assist in informing the Panel;
- How the applicant intends to participate; and
- The extent to which the interests of applicants may overlap and those applicants may reasonably collaborate in their participation so the Review proceeds efficiently.

¹ See *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45; *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607 [Finlay], *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138, *Nova Scotia (Board of Censors) v. McNeil*, [1976] 2 S.C.R. 265, 55 D.L.R. (3d) 632 and *Canada v. Borowski*, [1981] 2 S.C.R. 575.

² See *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, *supra* note 2, at paras. 1 and 2.

IV. Analysis of the Applications

The Panel has applied the factors set out above to the applications that it has received. A complete list of applicants is attached at Appendix B. The List of Interested Parties includes both the Interested Parties that the Panel identified in its September 14th letter, as well as the Interested Parties whose applications have been approved by this ruling.

Where an individual has submitted an application for Interested Party status and will be appearing on behalf of an organization, the Panel has granted Interested Party status to the organization only. The individual may participate as part of the organization's presentation. Also, individual members of the Aboriginal communities that have been granted Interested Party Status may participate as part of their community's presentation during the Community Hearings. The scheduling of the Community Hearings will occur later and the Panel will issue further notices about how to register to make a presentation.

A. Applications for Interested Parties Status Granted

The Panel has determined that the following organizations and individuals demonstrated a sufficient connection to the Project, either on the basis of being "directly affected by the carrying out of the designated project" or having "relevant information or expertise."

1. Organizations

(a) Alkali Resource Management Ltd. (Alkali)

Alkali Resource Management Ltd. manages a Community Forest. The Project's proposed power line will cross the Community Forest, which Alkali says will affect its timber harvesting rights.

(b) Amnesty International Canada English Speaking (Amnesty International)

Amnesty International is a world-wide movement for the promotion of human rights. Amnesty International has expert knowledge of the international standards for the protection of the human rights of indigenous peoples and the relevance of these standards to the deliberation of review panels.

(c) Council of Canadians - Williams Lake Chapter

The Council of Canadians is a public interest advocacy organization that promotes environmental and social justice in Canada and abroad. The Council has over 25 years of experience working with communities to protect water resources. The Council of Canadians' chapter in Williams Lake comprises members who live in the area and have been actively engaged in social and environmental issues in the community. In particular, the Council of Canadians raises issues around water justice, human right to water, environmental justice, and the impacts of climate change and regional water security.

(d) Fish Lake Alliance

Fish Lake Alliance is a group comprising local citizens with community concerns about the Project. Some of the interests of the group include industrial traffic, possible social impacts of the Project, environmental issues, and the social license area. Fish Lake Alliance has partnered with the Council of Canadians Williams Lake Branch and the Cariboo Chilcotin Conservation Society.

(e) Friends of Nemaiah Valley

The Friends of Nemaiah Valley provides public education outreach and additional public voice for the Nemaiah Valley and surrounding area. The organization researches environmental, economic, and socio-cultural impacts of the Project. The organization also researches wildlife (grizzlies and wild horses) and ecosystems, economic development, and Aboriginal rights and title. The organization will be assessing the quality of the proposed mitigation efforts, especially with respect to the endangered dry land interior grizzly population, and alternative economic development models.

(f) MiningWatch Canada

MiningWatch is a member-based organization comprising not-for-profit organizations working on environmental, social justice, international development, and Aboriginal issues. MiningWatch has expertise on issues which include, but are not limited to water quality, fisheries, long term risks, and risk management, consideration of alternative mine plans, and Aboriginal rights from the perspective of non-indigenous people concerned with social justice and equity.

(g) Share the Cariboo-Chilcotin Resources Society (and John Meech)

Share the Cariboo-Chilcotin Resources Society is a Cariboo-based land use advocacy group that is interested in long-term community stability through the wise use of land and resources. The Society has been in existence for over 20 years and has participated in many discussions on how to utilize resources that sustain communities and allow for the development of social programs that are funded by the results of wise resource utilization. John Meech may appear as part of the Share the Cariboo-Chilcotin Resources Society.

(h) St'át'imc Chiefs Council and St'át'imc Government Services (and Susan Senger)

The Panel expects that St'át'imc Chiefs Council and St'át'imc Government Services will coordinate their participation.

(i) St'át'imc Chiefs Council

The St'át'imc Chiefs Council is the council of all 11 St'át'imc chiefs elected from the 11 St'át'imc member communities. The St'át'imc have a membership of roughly 6,000 individuals, living both on and off-reserve. The Council asserts that the Project footprint is approximately 40 km northwest of the St'át'imc territory. The Council further asserts the mine footprint and cumulative impacts have may adversely affect St'át'imc interests in the area.

(ii) St'át'imc Government Services

The Environment Program within St'át'imc Government Services provides technical and advisory services on the sustainable management of natural resources within the St'át'imc territory. This includes, but is not limited to, high-valued resources like grizzly bear, mule deer, water, and culturally significant plants. The proposed mine footprint of the Project affects the wetland habitat currently used by South Chilcotin grizzly bears -- bears that are considered at risk by the St'át'imc Nation and are listed as "threatened" by the provincial government. Grizzly bears are an umbrella species for the landscape values associated with the St'át'imc culture. Susan Senger may appear as part of the St'át'imc Government Services.

(i) Taseko Lake Lodge

The Lodge is located within 5 km of the Project area. Taseko Lake Lodge asserts that the Project directly affects the Lodge's facilities, grazing, use areas, property value, and tourism business.

(j) Union of BC Indian Chiefs

The Union of BC Indian Chiefs represents 108 First Nations in British Columbia and is dedicated to promoting and supporting the efforts of First Nations to affirm and defend Aboriginal title and rights and treaty rights. The Union of BC Indian Chiefs has experience and expertise in developing options for addressing the social and economic conditions of First Nations peoples in British Columbia, the impacts of development on First Nations, the unique cultural considerations that must be factored into the development of rules, policies, and legislation, and broader issues of reconciliation and sustainable, culturally respectful development.

(k) Upper Fraser Fisheries Conservation Alliance

The Upper Fraser Fisheries Conservation Alliance is a non-profit society mandated to work towards the fisheries and aquatic-related interests of First Nations in the Upper Fraser watershed. Its membership consists of Aboriginal Governments and Tribal Councils in the Upper Fraser region. It has expertise in fisheries management and conservation, with specific regional expertise in the Upper Fraser.

(l) Wilderness Committee

The Committee is a non-profit conservation organization concerned with research and education regarding the importance of protecting Canada's remaining wilderness and wildlife. In the past, the Committee advocated for the designation of Ts'yil?os Provincial Park and protection of the South Chilcotins/Spruce Lake Provincial Park. The Committee will address the risks posed to fish and grizzly bear populations by the Project.

(m) Williams Lake Field Naturalists

The Williams Lake Field Naturalists is local group based in the Cariboo-Chilcotin region with an interest in good stewardship of natural resources including wildlife, fisheries, and water in the region. The group includes biologists, foresters, educators, research scientists, and naturalists who spend a great deal of time outdoors and have a very good knowledge of regional species

and ecosystems. This local knowledge is a valuable asset in assessing potential impacts and potential mitigation.

(n) Williams Lake & District Chamber of Commerce (and John Meech)

The Williams Lake & District Chamber of Commerce is a business organization with a membership of over 300 businesses in the Cariboo Chilcotin Coast region. The Chamber of Commerce will address the economic and employment opportunities that the Project will create for the members of the community. John Meech may appear as part of the Williams Lake & District Chamber of Commerce.

[NOTE: The Métis Nation British Columbia was not included in this list because it was granted Interested Party status on September 14, 2012.]

2. Individuals

(a) Michael Atwood

Mr. Atwood has been a resident of Williams Lake for sixty years. He is a director of the Cariboo-Chilcotin Conservation Society and a member of the Williams Lake Chapter of the Council of Canadians. Mr. Atwood has also been responsible for the Chimney and Felker Lake campgrounds for the last 11 years.

(b) Mike Bird

Mr. Bird is a resident of the Williams Lake.

(c) Stephanie Bird

Ms. Bird is a resident of the Williams Lake.

(d) Jonaki Bhattacharyya

Dr. Bhattacharyya has visited, lived, and conducted research in the Nemaiah Valley, Brittany Triangle, and surrounding areas of the Chilcotin – including Teztan Biny and the project area for the proposed New Prosperity mine – since 2006. Dr. Bhattacharyya has a PhD in Environmental Planning and seven years of direct research experience with the cultures and ecology of the Project area and surrounding region.

(e) Leonard Doucette

Mr. Doucette is a resident of 100 Mile House.

(f) James Hodgetts

Mr. Hodgetts owns property near Scum Lake, on the Haines Creek water system, within 1 km of the Taseko River. Mr. Hodgetts has been a resident in the area since 1983.

(g) Stuart Kohut

Mr. Kohut has been a resident of the Williams Lake area for 30 years. Mr. Kohut has also worked in the tourism field for the past 6 years, including in the Project area.

(h) Titi Kunkel

Ms. Kunkel is currently completing a PhD dissertation on Aboriginal values and resource development in the Cariboo Chilcotin region. Ms. Kunkel has worked with members of the First Nations communities in the region to understand Aboriginal values and assess the compatibility of these values with resource development in the region. Ms. Kunkel will present some of the outcomes of the study, including intergenerational connections of the Tsilhqot'in people to their land and the implications of resource development.

(i) Robert McCandless

Mr. McCandless has visited the area and has experience in the mining sector. Mr. McCandless has contributed to the environmental assessments of approximately 40 proposed mines in British Columbia from 1990 until his retirement from Environment Canada in 2009. Mr. McCandless has specialized knowledge of geochemistry, water quality, mine closures, and the Project's feasibility.

(j) Jack Monk

Mr. Monk fishes recreationally in the Taseko/Chilko watershed.

(k) Herb Nakada

Mr. Nakada has been a resident of Williams Lake for over 30 years.

(l) Marc Pinkoski

Dr. Pinkoski has taught more than two dozen courses at the University of Victoria on topics such as Contemporary Aboriginal Peoples of Canada, Ethnology of BC, Aboriginal Rights, Indigenous Politics in Canadian, Indigenous Studies, Political, and Economic Anthropology.

(m) Patricia Spencer

Ms. Spencer has travelled to Fish Lake and currently chairs the Lower Bridge Creek Watershed Stewardship Society and the South Cariboo Sustainability Society.

(n) George Wood

Mr. Wood fishes recreationally at Fish Lake. Mr. Wood has an M.A. degree in Geography and spent 15 years as a park planner with BC Parks. Mr. Wood has represented the Sierra Club on the development of the Tsitika Valley Provincial Park and Robson Bight Ecological Reserve in the past and is currently a member of the Friends of Nemaiah Valley.

(o) Gary Young

Mr. Young is a resident in the area south of Williams Lake.

B. Applications for Interested Parties Status Not Required

The Panel has determined that the following individuals may participate as part of the groups that have engaged them to present on their behalf. The sponsoring organizations have been granted Interested Party status. Separate Interested Party status is not necessary for the individuals.

(a) John Meech

Dr. Meech is a Professor of Mining Engineering at the University of British Columbia and the Director of the UBC Centre of Research in Minerals, Metals, and Materials. He has been associated with the mining industry since 1969.

He will be appearing separately on behalf of the Williams Lake and District Chamber of Commerce and the Share the Cariboo-Chilcotin Resources Society on different topics.

(b) Susan Senger

Dr. Senger has a PhD in biology from SFU, an MSc in Plant Science from UBC and is a double-registered professional (biology and agrology) in BC. She has been leading the work on grizzly bears within the St'át'imc territory since 2000. Dr. Senger will give a brief presentation at the topic-specific hearing on the grizzly bear values and the potential cumulative effects of further development on bears. She will be appearing on behalf of St'át'imc Government Services.

APPENDIX A

INTERESTED PARTY APPLICATION

If you wish to apply for Interested Party status in the Review, then submit an application to the Panel with the following information by September 28, 2012:

- (a) Your name or organization name, address, phone number, and email address.
- (b) If you are applying on behalf of an organization, explain the organization and describe its membership.
- (c) A brief explanation of:
 - The relevance of the Project to you;
 - Your specific connection with the Project area or activities: and
 - How the Project may affect your interests.
- (d) A summary of the relevant information or expertise that you or your organization can provide to assist the Panel.
- (e) A brief statement describing:
 - how you or your group or a representative intend to participate in the environmental assessment process; and
 - the issues that you or your group intend to address and why those issues are relevant to your interests.
- (f) An explanation of how you or your group may collaborate with other persons or groups whose interests or perspectives may overlap with yours.

Applicants who have shared interests or a similar perspective in the Review should submit a single application for Interested Party status and list the members of the group who are collaborating in the participation.

The Panel may group parties with similar interest together and grant Interested Party status on the condition that the members of the group co-operate to participate as a single Interested Party.

**APPENDIX B
LIST OF INTERESTED PARTIES**

1. Proponent

Taseko Mines Limited

2. First Nations

- (a) Tsilhqot'in National Government
- (b) Xenigwet'in
- (c) Tsi Del Del – Alexis Creek Band
- (d) Yunesit'in – Stone Band
- (e) Tl'esqox – Toosey Band
- (f) ?Esdilagh – Alexandria Band
- (g) Tl'etinqox – Anaham Band
- (h) Esketemc
- (i) Stswecem'c Xgat'lem First Nation – Canoe Creek Band
- (j) T'exelc – Williams Lake Band
- (k) Xat'sull – Soda Creek Band
- (l) Llenleney'ten – High Bar First Nation
- (m) Ulkatcho First Nation
- (n) Métis Nation British Columbia

3. Federal and Provincial Government Agencies

Fisheries and Oceans Canada
Transport Canada
Natural Resources Canada
Environment Canada
Health Canada
Aboriginal Affairs and Northern Development Canada

British Columbia Environmental Assessment Office
Ministry of Energy and Mines
Ministry of the Environment
Ministry of Forests, Lands and Natural Resource Operations
Ministry of Aboriginal Relations and Reconciliation

4. Organizations

- (a) Alkali Resource Management Ltd.
- (b) Amnesty International Canada English Speaking

- (c) Council of Canadians (Williams Lake Chapter)
- (d) Fish Lake Alliance
- (e) Friends of Nemaiah Valley
- (f) MiningWatch Canada
- (g) Share the Cariboo-Chilcotin Resources Society (and John Meech)
- (h) St'át'imc Chiefs Council and St'át'imc Government Services (and Susan Senger)
- (i) Taseko Lake Lodge
- (j) Union of BC Indian Chiefs
- (k) Upper Fraser Fisheries Conservation Alliance
- (l) Wilderness Committee
- (m) Williams Lake Field Naturalists
- (n) Williams Lake & District Chamber of Commerce (and John Meech)

5. Individuals

- (a) Michael Atwood
- (b) Mike Bird
- (c) Stephanie Bird
- (d) Jonaki Bhattacharyya
- (e) Leonard Doucette
- (f) James Hodgetts
- (g) Stuart Kohut
- (h) Titi Kunkel
- (i) Robert McCandless
- (j) Jack Monk
- (k) Herb Nakada
- (l) Marc Pinkoski
- (m) Patricia Spencer
- (n) George Wood
- (o) Gary Young