

Terms of Reference for the Federal Panel Reviewing the New Prosperity Gold-Copper Mine Project

INTRODUCTION

In November 2010, following the 2009/2010 environmental assessment of Taseko Mines Limited's Prosperity Gold-Copper Mine project under the *Canadian Environmental Assessment Act* by a federal review panel, the Government of Canada concluded that the project as then proposed was likely to cause significant adverse environmental effects that could not be justified in the circumstances.

On August 9, 2011, the Canadian Environmental Assessment Agency (the Agency) accepted a project description from Taseko Mines Limited (the proponent) for the development and operation of the New Prosperity Gold-Copper Mine project (the Project). The Project is a modification of the project proposal that was considered by the previous review panel.

On November 7, 2011, the Honourable Peter Kent, Minister of the Environment, announced that the Project will undergo a federal environmental assessment by way of a review panel (the Panel). In referring the Project to a review panel, the Minister directed the Agency to design an environmental assessment process that will:

- thoroughly assess whether the Project addresses the environmental effects identified in the 2009/2010 environmental assessment of the previous project proposal;
- make use of the information obtained during the 2009/2010 environmental assessment, to the extent possible, in order to ensure a timely decision; and
- allow the Agency to complete these activities and the Panel to conduct its review, including holding public hearings and preparing its report, within a timeframe of no more than 12 months.

These Terms of Reference have been developed in consultation with the responsible authorities (Fisheries and Oceans Canada, Transport Canada, and Natural Resources Canada) for the Project and were made available in draft form for review and comment by Aboriginal groups, the public, the proponent and other interested parties. The Minister of the Environment fixed and issued these Terms of Reference to the Panel after considering the comments received on the draft version.

DEFINITIONS

Definitions of terms used in these Terms of Reference are listed in Appendix 1.

PART 1 SCOPE OF THE PROJECT

- 1.1.** The proponent proposes to develop and operate the Project located 125 kilometres (km) southwest of Williams Lake, British Columbia. The Project consists of an open pit mine and mill for the purpose of extracting and processing ore containing gold and copper over a 20-year mine life. The Project also includes support infrastructure and ancillary activities, including, but not limited to:
- the construction and/or use of equipment, buildings and structures;
 - the establishment, construction and operation of a tailings storage facility, an explosives factory, a magazine facility, waste rock storage areas, water management facilities, and a 125-km transmission line;
 - the decommissioning, closure and abandonment of the mine and mine-related infrastructure; and
 - the establishment, construction and/or modification and use of transportation infrastructure including access roads, and highways to support the above-mentioned activities and the transport of mine concentrate(s) to the existing Gibraltar mine concentrate load-out facility near Macalister, 54 km north of Williams Lake.

PART 2 SCOPE OF ASSESSMENT

- 2.1.** The Panel shall conduct an assessment of the environmental effects of the Project referred to in the Scope of the Project (Part 1) in a manner consistent with the requirements of the *Canadian Environmental Assessment Act* (the Act) and these Terms of Reference.
- 2.2.** The assessment by the Panel shall include a consideration of the following factors listed in subsection 16(1) and 16(2) of the Act:
- a. the environmental effects of the Project including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out;
 - b. the significance of the environmental effects referred to in the above paragraph;
 - c. comments from the public and Aboriginal groups that are received during the review;
 - d. measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project;
 - e. the need for the Project and alternatives to the Project; *
 - f. the purpose of the Project; *

* Consideration of these factors is to be from the proponent's perspective as set out in the Agency's Operational Policy Statement on Addressing "Need for", "Purpose of", "Alternatives to" and "Alternative Means" under the *Canadian Environmental Assessment Act*.

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- g. alternative means of carrying out the Project that are technically and economically feasible, and the environmental effects of any such alternative means;
 - h. the need for, and the requirements of, any follow-up program in respect of the Project; and
 - i. the capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future.
- 2.3.** As per section 16.1 of the Act, community and Aboriginal traditional knowledge will be considered in conducting the environmental assessment.
- 2.4.** The scope of the factors to be considered in the environmental assessment of the Project shall be as outlined in the “Guidelines for the Preparation of the Environmental Impact Statement for the New Prosperity Gold-Copper Mine Project”, issued by the Minister of the Environment on March 16, 2012, and in these Terms of Reference.

PART 3 MANDATE

- 3.1.** The Panel shall, in accordance with section 34 of the Act and with these Terms of Reference:
- a. ensure that the information required for the environmental assessment is obtained and made available to the public;
 - b. hold hearings in a manner that offers the public and Aboriginal groups an opportunity to participate in the assessment;
 - c. prepare a report setting out:
 - i. its rationale, conclusions and recommendations relating to the environmental assessment of the project, including any mitigation measures and follow-up program; and
 - ii. a summary of any comments received from the public and from Aboriginal groups; and
 - d. submit its report to the Minister of the Environment and to the responsible authorities.
- 3.2.** The Panel shall use the information, submissions and testimony generated as part of the 2009/2010 review, including the 2009 Environmental Impact Statement for the previous project (2009 EIS) and the Report of the Federal Review Panel for the Prosperity Gold-Copper Mine Project dated July 2, 2010 (previous panel’s report) to conduct its assessment. This information will be supplemented by a new Environmental Impact Statement (EIS) prepared by the proponent and, as required, by additional information generated through the panel process.
- 3.3.** For those components of the Project that have not changed from the previous project proposal and whose environmental effects are not anticipated to be affected by the new components of the Project, the Panel:

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- shall use to the greatest extent possible the information, submissions and testimony generated as part of the 2009/2010 environmental assessment, including the 2009 EIS and the previous panel's report as its primary sources of information; and
 - may require additional information with respect to these components if it concludes that such additional information is required to fulfill its mandate.
- 3.4.** These project components referred to in article 3.3 that have not changed from the previous project proposal include the transmission line, the load out facility and the access road.
- 3.5.** To assess the environmental effects of those components of the Project that have changed or are new from the previous project proposal, the Panel shall use the information generated through the current environmental assessment, including the EIS to be submitted by the proponent.
- 3.6.** The Panel shall undertake its mandate in four stages:
- 1) Review the information, submissions and testimony generated as part of the 2009/2010 environmental assessment, including the 2009 EIS and the previous panel's report, particularly as they relate to the components of the Project outlined in article 3.4;
 - 2) Review the EIS as set out in articles 4.14 to 4.18 of these Terms of Reference;
 - 3) Conduct public hearings as set out in articles 4.19 to 4.23; and
 - 4) Prepare and submit a report to the Minister of the Environment and the responsible authorities.
- 3.7.** The first stage will occur during the period when the proponent is preparing its EIS. During that time, the proponent will be able to engage with the Agency and federal departments on guidance with respect to fulfilling the EIS Guidelines. The remaining stages will unfold once the proponent submits its EIS to the Panel.
- 3.8.** The Panel shall accept as part of its record and review information from Aboriginal groups related to the nature and scope of potential or established Aboriginal rights or title within the Project area, as well as information on the potential adverse impacts or potential infringement that the Project may cause on potential or established Aboriginal rights or title.
- 3.9.** The Panel shall also review the information, submissions and testimony generated as part of the 2009/2010 environmental assessment, including the 2009 EIS and the previous panel's report, with respect to the nature and scope of potential or established Aboriginal rights or title within the Project area, as well as information on the potential adverse impacts or potential infringement that the Project may cause on potential or established Aboriginal rights or title.
- 3.10.** The Panel shall include in its report a summary of information referred to in article 3.8 and 3.9.

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- 3.11.** The Panel, based on its assessment of the environmental effects of the Project, may, subject to article 3.12, recommend measures to mitigate any adverse environmental effects of the Project that could adversely impact, or infringe on those potential or established Aboriginal rights or title that were identified in articles 3.8 and 3.9.
- 3.12.** The Panel shall not have a mandate to make any determinations with respect to:
- the validity of Aboriginal rights or title claims asserted by Aboriginal groups or the strength of those claims;
 - the scope of Canada's duty to consult and accommodate Aboriginal groups in respect of rights recognized and affirmed by section 35 of the *Constitution Act*, 1982; and/or
 - whether Canada has met its duty to consult and accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act*, 1982.
- 3.13.** If the Panel concludes that taking into account the implementation of mitigation measures, the Project is likely to cause significant adverse environmental effects, it may include in its report a summary of any information it has received and that may be relevant to a determination by the Government of Canada with respect to the justifiability of any such significant adverse environmental effects. However, the Panel shall not have a mandate to make any conclusions or recommendations with respect to the justifiability of any significant adverse environmental effects.

PART 4 ENVIRONMENTAL ASSESSMENT PROCESS

The Panel

- 4.1.** After consulting with the responsible authorities, the Minister of the Environment will appoint members of the Panel, including the chairperson. The Panel shall be composed of three members, each of whom shall be unbiased, free from any conflict of interest relative to the Project and shall have knowledge or experience relevant to the anticipated environmental effects of the Project. In the event that a Panel member resigns or is unable to continue to work, the remaining members shall constitute the Panel unless the Minister determines otherwise. In such circumstances, the Minister may choose to replace the Panel member.
- 4.2.** The Panel may request clarification of its Terms of Reference by sending a letter signed by the chairperson to the President of the Agency setting out the request. Upon receiving such a request, the President, on behalf of the Minister of the Environment, is authorized to provide to the Panel such clarification. The President shall use best efforts to provide a response to the Panel within 14 calendar days. The Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the time periods of the original Terms of Reference. The Panel shall notify the public of any clarifications to its Terms of Reference.
- 4.3.** Subject to article 4.12, the Panel may seek an amendment to its Terms of Reference by sending a letter signed by the chairperson to the Minister of the Environment setting out the request. As appropriate, the Minister may delegate to

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the President of the Agency the authority to consider and respond to any request from the Panel, to amend the Terms of Reference. The Minister or the President in case of delegation shall use best efforts to ensure a response is provided to the Panel's letter within 14 calendar days. The Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the timelines of these Terms of Reference. Any requests for amendments under this article, as well as any amendments to these Terms of Reference, shall be posted on the Public Registry.

- 4.4.** The Panel shall have all the powers and duties of a panel described in section 35 of the Act and those set out in the Terms of Reference.

The Secretariat

- 4.5.** Administrative, technical, and procedural support requested by the Panel shall be provided by a Secretariat. The Secretariat is comprised of staff from the Agency. The Secretariat will support the Panel and will be structured so as to allow the Panel to conduct its review in an efficient and cost-effective manner.

EIS Preparation and Submission

- 4.6.** The proponent will prepare its EIS in accordance with the EIS Guidelines approved by the Minister of Environment.
- 4.7.** The proponent will submit a draft of its EIS to the Agency. Within 30 days the Agency will review the EIS, compare it to the EIS Guidelines and provide the proponent with comments, on whether the draft EIS addresses the EIS Guidelines. As necessary, the Agency will identify aspects of the draft EIS that require further analysis or information.
- 4.8.** Staff from the Agency who are assigned to the Secretariat referred to in article 4.5 shall not be involved in the Agency's review of the draft EIS.
- 4.9.** The Agency's review of the draft EIS does not affect or alter the Panel's assessment of the sufficiency of the EIS pursuant to articles 4.14 to 4.18.
- 4.10.** The proponent will revise its EIS in accordance with any comments from the Agency referred to in article 4.7 and will submit its EIS to the Panel.

Timelines

- 4.11.** The Panel shall complete its mandate and submit its final report to the Minister of the Environment and the responsible authorities within 235 days from the submission by the proponent of the EIS to the Panel in accordance with article 4.10
- 4.12.** The time period between the issuance by the Panel of any deficiency statement in accordance with article 4.16 and the submission of the requested information by the proponent is not included in the timeline referred to in article 4.11.

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4.13. As may be required in order to meet the timeline referred to in article 4.11, the Panel may, notwithstanding article 4.3, modify any timeline referred to in articles 4.14 to 6.8 of these Terms of Reference. The Panel shall notify the Minister of the Environment and the public of any such modification.

EIS Sufficiency

4.14. Upon its submission to the Panel, the EIS will be made available on the Public Registry for public comment for 45 days. Aboriginal groups, the public, government authorities, and other interested parties may submit written comments to the Panel on the sufficiency of the EIS as measured against the EIS Guidelines and on the technical merit of the information within that period of time.

4.15. Within 30 days of the conclusion of the public comment period on the EIS, the Panel, taking into consideration any comments received and its own review of the EIS, shall determine if the EIS contains sufficient information to proceed to public hearing. If the Panel determines that the EIS contains sufficient information to proceed to public hearing, it will schedule and announce the hearing in accordance with the procedures set out in these Terms of Reference.

4.16. If the Panel determines that the EIS is not sufficient to proceed to public hearing, it shall issue a deficiency statement requesting additional information to be provided by the proponent. At the same time, the Panel shall place the deficiency statement on the Public Registry.

4.17. Upon its submission to the Panel, the additional information provided by the proponent shall be placed on the Public Registry. The Panel shall commence, if it determines it is needed, a 15-day public comment period based on this additional information provided by the proponent.

4.18. The Panel shall determine within 15 days of the submission of the additional information by the proponent, or of the end of the public comment period referred to in article 4.17, if such consultation occurred, if the EIS, supplemented by the additional information, is sufficient to proceed to public hearing. The procedures described in articles 4.16 through 4.18 will apply, with the necessary adjustments, until such time as the Panel determines it has sufficient information to proceed to public hearing.

Public Hearing

4.19. Upon determination that the EIS contains sufficient information to proceed to public hearing, the Panel will announce the public hearing. The Panel shall provide a 30-days notice of the start of the public hearing.

4.20. The Panel shall issue procedures for the conduct of the public hearing. These procedures will allow for the public hearings to be conducted in a manner that provides for a full examination of matters determined by the Panel to be relevant, and encourage public input and participation in the environmental assessment process.

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- 4.21.** The public hearing will provide Aboriginal groups, the public, government authorities, the proponent and other interested parties with an opportunity to participate in the assessment.
- 4.22.** The Panel shall, where practicable, hold the public hearing in the communities in closest proximity to the Project, including Aboriginal communities, to provide convenient public access for potentially affected Aboriginal groups and the public.
- 4.23.** The Panel shall, taking into account the timing of traditional activities in local Aboriginal communities when setting the time and location of the public hearing session, complete the public hearing within 30 days.

PART 5 SPECIALIST ADVISORS TO THE PANEL

- 5.1.** The Panel may request specialist or expert information or knowledge with respect to the Project from federal authorities in possession of such information or knowledge. The Panel may also retain the services of independent non-government experts to provide advice on certain subjects within the Panel's Terms of Reference.
- 5.2.** The names of the experts retained by the Panel and any documents obtained or created by the experts and that are submitted to the Panel will be placed on the Public Registry. For greater certainty, this shall exclude any information subject to solicitor-client privilege where the expert is a lawyer.
- 5.3.** The Panel may require any expert referred in articles 5.1 and 5.2 to appear before the Panel at the public hearing and testify in regard to the documents they have created or obtained and that were submitted to the Panel and made public in accordance with the preceding paragraph.

PART 6 REPORT

- 6.1.** Following the completion of the public hearing, the Panel shall prepare and submit to the Minister of the Environment and the responsible authorities a report including, but not limited to, a description of the panel process, and the rationale, conclusions and recommendations of the Panel relating to the environmental assessment of the Project, including any recommended mitigation measures and follow-up programs. The report will include an executive summary in both official languages of the finding and recommendations of the Panel.
- 6.2.** The Panel shall also include within its report a summary of any comments received, including those from the public and Aboriginal groups and the information as outlined in articles 3.8 to 3.11.
- 6.3.** The Panel shall identify in its report the mitigation measures it recommends, including as appropriate any commitments identified by the proponent in its EIS, as

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well as any other commitments identified by the proponent during the current panel review process and, as relevant, during the 2009/2010 review.

- 6.4.** If, taking into account the implementation of any mitigation measures, the Panel concludes that the Project is likely to cause significant adverse environmental effects, the Panel may, in a manner consistent with article 3.13, include in its report a summary of any information that it has received with respect to the justifiability of those significant adverse environmental effects.
- 6.5.** The report shall reflect the views of each member of the Panel.
- 6.6.** In order to meet the timeline referred to in article 4.11 the Panel will submit its report to the Minister of the Environment and the responsible authorities at the earliest possible date, and no later than 70 days following the date that the chairperson of the Panel formally closes the hearing process.
- 6.7.** Upon receiving the report submitted by the Panel, the Minister of the Environment will make the report available to the public and will advise the public that the report is available.
- 6.8.** In accordance with section 37(1.1) of the Act, the Panel may be required to clarify any of the recommendations set out in its report.

Appendix 1: Definitions of Terms

“**Agency**” means the Canadian Environmental Assessment Agency;

“**the Act**” refers to the *Canadian Environmental Assessment Act* S.C. 1992, c.37;

“**environmental effect**” means,

(a) any change that the Project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,

(b) any effect of any change referred to in paragraph (a) on

- i. health and socio-economic conditions,
- ii. physical and cultural heritage,
- iii. the current use of lands and resources for traditional purposes by aboriginal persons, or
- iv. any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or

(c) any change to the Project that may be caused by the environment,

whether any such change or effect occurs within or outside Canada;

“**EIS Guidelines**” means the direction provided to the proponent by the Minister of the Environment on matters that must be addressed in the proponent’s Environmental Impact Statement;

“**environmental assessment**” means an assessment of the environmental effects of the Project that is conducted in accordance with these Terms of Reference and the Act;

“**Aboriginal**” means those Aboriginal peoples of Canada as defined in the Constitution Act, 1982, Section 35 (2) including the Indian, Inuit and Métis peoples of Canada;

“**Panel**” means the review panel established by the Minister of the Environment pursuant to the Act and composed of the persons appointed by the Minister of the Environment pursuant to section 33(1) of the Act to conduct an assessment of the New Prosperity Gold-Copper Mine project;

“**Project**” means the New Prosperity Gold-Copper Mine Project as described in the section of the Terms of Reference entitled “Scope of the Project”;

“**proponent**” means Taseko Mines Limited;

“**Public Registry**” means a registry established by the Agency in accordance with section 55 of the Act.