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VIA EMAIL

Kristin Coverly
A/ Chief Compliance and Enforcement Unit
Canadian Environmental Assessment Agency
160 Elgin St, 22nd Floor
Ottawa, ON K1A 0H3

Re: Notice of Work Activities and Section 6 of *CEAA 2012*

I write in response to your letter of today in which you advise that the Agency considers that the proposed activities described in Taseko's Mineral Exploration Permit MX-3-131 (the "Exploration Permit") are subject to the prohibition in section 6 of *CEAA 2012*.

There are numerous problems with the position that you advance, and it is necessary that we respond for the record.

You purport to rely on section 6 of *CEAA 2012*. It applies only to designated projects. The term "designated projects" is defined as follows:

> ***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.

All requirements must be met. But here only element (a) is met.

With respect to item (b), the *Regulations Designating Physical Activities* states:

> **2** The **physical activities** that are set out in the schedule are designated for the purposes of paragraph (b) of the definition ***designated project*** in subsection 2(1) of the *Canadian Environmental Assessment Act, 2012*. (emphasis added)

The schedule refers only to the following activities - "construction, operation, decommissioning and abandonment" of a mine. It does not purport to define exploration activities as being a designated project.

Similarly, with respect to item (c), there must be a link between the relevant activity and the Agency. This is again defined in terms of "activities". Section 4 of the *Regulation* states:

> **4 (1)** The **activities** set out in items 1 to 30 of the schedule are linked to the Agency when they are not regulated under, or incidental to a physical activity that is regulated under, the *Nuclear Safety and Control Act*, the *National Energy Board Act* or the *Canada Oil and Gas Operations Act*. (emphasis added)

The activities referenced are again "construction, operation, decommissioning and abandonment of a mine" – not exploration.

In the present case it is clear activities authorized by the Exploration Permit consist of test pits, drill holes and monitoring wells, which will generate data. None of the work involves construction or operation of a mine.

We also note that if the CEAA interpretation were allowed to stand, it would result in absurd and unconstitutional effects. Specifically:

- It would prevent companies from utilizing provincial exploration permits to gather information necessary for federal and / or provincial assessments. A proponent of a designated project must submit a wide variety of detailed information as part of its application for an environmental assessment. That data must be collected somehow. It cannot be correct that *CEAA 2012* prohibits proponents from collecting the very data they need to engage in the *CEAA 2012* process or related provincial processes

- With respect for information gathering relevant to post-EA permitting, we note the CEAA position would wholly undermine the operation of the provincial British Columbia *Environmental Assessment Act* and *Concurrent Approval Regulation.* This legislation permits proponents to make applications for various permits early in the environmental assessment processes, and (where so applied for) requires provincial permitting officials to make their permitting decisions within 60 days of completion of the environmental assessment. This inevitably requires the proponents to obtain significant exploration and geotechnical data under exploration permits like the one issued here. Is the federal government now taking the position that the provincial concurrent permitting regime cannot be applied unless and until a federal EA approval is issued?

- It would constitute a grave incursion on provincial authority respecting natural resources and property and civil rights in the province, with no valid federal legislative basis to do so. I.e. the federal government would go beyond regulating mining construction

(something that is itself is presently the subject to constitutional challenge with judgment under reserve) and would extend into regulation of mineral exploration.

- It would arguably prevent any mineral exploration in Canada unless and until a federal; EA had been completed, since all mineral exploration relates in some way, shape or form to a potential construction of a mine (even though only a very small percentage of projects ever get constructed).

The issues raised by this rather remarkable position of the Agency go well beyond the facts of this particular case and, before you take any further steps or express any further positions, we strongly encourage you to seek the views provincial governments across the land, as well as relevant industry groups. In that regard, we are by copy of this letter asking the province of BC, the Mining Association of Canada and the Mining Association of BC to make their views known to you.

Finally, I wish to raise, in closing, a concern that arises from the timing of your letter. The Agency has been aware of Taseko's plans since at least February of this year, when the Agency requested that the BC Ministry of Energy and Mines provide it with, and in response received, a copy of Taseko's Notice of Work application and maps. It is troubling that the Agency would wait some six months, until the Friday immediately before an injunction hearing seeking to enjoin Taseko from commencing work under the Notice of Work Permit begins, to express for the first time its position that *CEAA 2012* prohibits the Activities.

Yours truly,
<Original signed by>

John McManus, P. Eng.
Chief Operating Officer

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