



File: 30020-04/MINI 2021

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August 6, 2021

SENT VIA EMAIL

David McGovern
President
Impact Assessment Agency of Canada
22nd Floor, Place Bell
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Ottawa ON K1A 0H3
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Dear David McGovern:

I am writing to request substitution pursuant to the *Impact Assessment Act* (IAA) and in accordance with the Impact Assessment Cooperation Agreement Between Canada and British Columbia (the Cooperation Agreement) for the proposed Eskay Creek Revitalization Project (Eskay Creek).

Skeena Resources Ltd. (Skeena) proposes to restart mining at the site of the historic underground Eskay Creek Mine, in the form of an open-pit gold-silver mine.

Eskay Creek is expected to meet the definition of a designated project under the IAA as its proposed ore input capacity and area of expansion exceed the thresholds for a new metal mill and the expansion of an existing metal mine as described in the *Physical Activities Regulations*. On July 30, 2021, I, as the Environmental Assessment Office's (EAO) Chief Environmental Assessment Officer (CEAO), designated Eskay Creek a reviewable project under the *Environmental Assessment Act* (2018) (EAA).

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Coordination with the Agency

I understand that the Impact Assessment Agency of Canada (the Agency) accepted an Initial Project Description for Eskay Creek on July 30, 2021 and intends to conduct a joint public comment period with the EAO. In accordance with the Cooperation Agreement, I am submitting this request for substitution at this time to allow the Agency to consult the public and Indigenous groups on the substitution request as part of the planned comment period. I am aware that the Agency must determine whether an assessment is required, in order for the federal Minister of Environment and Climate Change (the Minister) to respond to this request for substitution.

As per the Cooperation Agreement, the EAO has been working closely with the Agency on the development of a joint Early Engagement and Planning phase to enable coordinated engagement, facilitate common requirements and issue joint documents where possible. The EAO is committed to this cooperative approach with the Agency in the review of Eskay Creek.

If substitution is approved by the Minister, the EAO commits to meet the legislative requirements of both Canada and B.C. and fulfil the conditions for substitution under the IAA set out in Section 7 of the Cooperation Agreement and any conditions the Minister may establish. The EAO will take into account the factors set out under subsection 22(1) of the IAA and fully assess the effects to areas of federal jurisdiction, as defined in Section 2 of that Act, when conducting the assessment and providing an Assessment Report with findings and conclusions to the Agency.

As announced on June 15, 2021, the Province of B.C. and the Tahltan Central Government are engaged in negotiations on the first consent-based decision-making agreement under the *Declaration on the Rights of Indigenous Peoples Act* related to Eskay Creek. The agreement will lay out a pathway to consent and transparently address the pre-conditions needed for consent to be achieved through the principles of clarity, predictability, clear process, transparency, and administrative fairness.

Potential transboundary effects

The EAO's [Effects Assessment Policy](#) (2020), developed to support implementation of the EAA, describes that spatial boundaries may extend to areas outside of B.C. in cases where transboundary effects are expected. This builds from the EAO's practice of considering potential transboundary effects under the previous *Environmental Assessment Act* (2002).

During the assessment, the EAO would seek, manage and rely on the advice of members of the Technical Advisory Committee (TAC), including representatives from federal authorities, in establishing information requirements for the assessment, assessing the potential effects of the Project and assessing the adequacy of any proposed mitigation measures.

In cases where project effects have the potential to extend beyond Canada's border to the United States (U.S.), the EAO routinely engages with U.S. federal and state agencies and Native American Tribes, as guided by U.S. regulators. An [MOU](#) between the State of Alaska and the Province of B.C. establishes, among other items, reciprocal procedures for interested U.S. regulators to participate in EAs and develop opportunities for interested Indigenous nations and Native American Tribes to access information and provide meaningful input about development projects affecting transboundary areas. Representatives from U.S. federal and state agencies would be invited to participate as members of the TAC. The EAO would engage Alaskan Tribes as well.

Conclusion and next steps

In accordance with the IAA and the Cooperation Agreement, B.C. requests that the Minister approve the substitution of B.C.'s assessment process for Eskay Creek, should an impact assessment be required under the IAA, and should the Project proceed to an EA under the EAA.

Additionally, if the Minister approves the substitution request, consultation with Indigenous groups and federal authorities, and engagement with the public will be carried out by the EAO in accordance with the Cooperation Agreement and the EAA. The EAO will work with the Agency to coordinate engagement with Indigenous groups. The EAO will also work with the Agency on the preparation of a permitting plan, including federal requirements, for Eskay Creek.

I look forward to hearing from you as soon as possible regarding the Minister's decision on this request for substitution.

Sincerely,

<Original signed by>

Elenore Arend
Associate Deputy Minister

cc: Scott Bailey, Assistant Deputy Minister
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