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November 7, 2012

Chief Shane Gottfriedson & Chief Rick Deneault
Stk'emlupsemc Te Secwepemc Nation
200 - 355 Yellowhead Hwy
Kamloops BC V2H 1H1

Chief Shane Gottfriedson
and Councillors
Tk'emlups te Secwepemc (Tk'emlups Indian Band)
200-355 Yellowhead Hwy
Kamloops BC V2H 1H1

Chief Rick Deneault
and Councillors
Skeetchestn Indian Band
PO Box 460
Savona BC V0K 2J0

Dear Chief Gottfriedson, Chief Deneault and Councils:

This letter is an important update that is related to the current on-going consultation between the Environmental Assessment Office (EAO) and the Stk'emlupsemc te Secwepemc Nation (SSN) regarding the proposed Ajax Mine Project (proposed Project).

EAO is making efforts to coordinate consultation with the provincial permitting agencies who have a role in adjudicating and consulting on related permit applications should an Environmental Assessment (EA) Certificate be issued for this proposed Project – it is hoped that by coordinating the provincial consultation, this will simplify the authorization processes for First Nations and the Proponent.

.../2

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Recently, in conjunction with the Ministries of Aboriginal Relations and Reconciliation (MARR), and FLNRO, and in support of the recent discussions and consultation with SSN, we have reviewed the initial assessment of strength of claimed aboriginal rights and title (Aboriginal Interests), and considered additional available information and applicable court judgments. We have also considered the information provided by the SSN in their recent letters to government. This recent coordinated review has resulted in revisions to the EAO's initial assessment as communicated in member bands of S'tkemplupsemc division of the SSN dated September 20th 2011.

The revised assessment is being presented below to the SSN and affiliated T'kemplup and Skeetchestn Bands for your input and relates to the following question, which is a key step in EAO's process to consult the SSN regarding potential impacts of the proposed Project on SSN's Aboriginal Interests:

What practices, traditions, or customs have been engaged in by the SSN, in the past, particularly at the time of European contact and at 1846, in the vicinity of, or in relation to the area of the proposed Project area?

The following revised assessment of strength of claims is specific to the proposed Project as defined in the Section 11 Order dated January 11, 2012 (attached), and does not apply to other parts of SSN's traditional territory. This assessment is based on information currently available to government and is subject to change should additional information become available or case law change. Please review these revised assessments and if you have additional information that should be considered or comments regarding these assessments, please contact me.

In assessing the strength of claim for Aboriginal interests in the proposed Project area, the agencies involved have considered the following information:

#	Reference information
1	Ministry of Justice (BC), "Secwepemc a Brief Ethnohistoric overview of the Eastern Divisions" revised August 2012
2	Ministry of Attorney General (BC), "Harper Creek Mine, Review of Ethnographic and Historical Sources" June 2011
3	Ministry of Attorney General (BC), "Sun Peaks A Review of Historical and Ethnographic sources relating to Aboriginal Use and Occupancy" January 2010
4	Ministry of Justice (BC) New Afton Copper-Gold Project: Review of Historic and Ethnographic Sources Relating to Aboriginal Use and Occupation of the Site Area by Kamloops and Skeetchestn Indian Bands. 2007.

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5	Teit, James, "The Shuswap", 1909, The Jesup North Pacific Expedition, Memoir of the American Museum of Natural History, New York, Volume II, Part VII. Edited by Franz Boas.
6	Dawson, George M., "Notes on the Shuswap People of British Columbia", Proceedings and Transactions of the Royal Society of Canada, 1891. 9(2):3-44
7	Dawson, George M., [Kamloops] British Columbia: Kamloops Sheet. Montreal: The Canada Eng. & Litho. Co. 1895.
8	Boas, Franz, "The Shuswap" in Second General Report on the Indians of BC". Report of the British Association for the advancement of Science 60:632-647.
9	Smith, Harlan, Anthropology The Jesup North Pacific Expedition, Volume II, Archaeology of the Thompson River region, British Columbia, New York American Museum of Natural History, 1900.
10	Handbook of North American Indians- Plateau, Vol 12- Deward E Walker Jr. (1998)
11	Ignace, Ronald, Our Oral History are Our Iron Posts: Secwepemc Stories and Historical Consciousness, 2008
12	Bonaparte/Skeetchestn Traditional Use Study March 2000
13	Supreme Court of BC, Adams Lake Indian Band v. British Columbia Reasons for Judgement, 2011
14	Chiefs of the Shuswap, Okanagan and Couteau Tribes of BC, Memorial to Sir Wilfred Laurier, 1910
15	Ignace, Marianne and Ron Ignace, The Secwepemc: Traditional Resource Use and Rights to Land in Bruce Morrison and C. Roderick Wilson eds., Native Peoples, The Canadian Experience, Don Mills: Oxford University Press, 2004.
16	Court of Appeal for British Columbia, William v. British Columbia 2012 BCCA 285, 2012
17	Letter from the SSN to the EAO dated June 15 2012
18	AIA Interim Report Draft May 2012 for KGHM Ajax Mining Inc Proposed Ajax Mine Site by Terra Archaeology Project number 09-0427.
19	Identified Archaeological Sites - as indicated through the Provincial Remote Archaeology Access Database (RAAD).
20	Discussions between SSN representatives and EAO on: April 28, 2011; December 12, 2011; May 3, 2012; July 24, 2012; and October 2, 2012.

This assessment is based on the assumption that aboriginal rights within Secwepemc territory are held at the level of the historic divisions of the Secwepemc Nation. Although it is assumed that aboriginal rights are held at the division level, the ethnographic sources indicate that Secwepemc people from different divisions could exercise

.../4

aboriginal rights within each other's territories. The proposed Project area falls within the asserted and historical territory of the Kamloops division, in the present day known as the St'kemplupsemc of the Secwepemc division involving T'kemlups and Skeetchestn Bands. The proposed Project area also falls within territory that has been asserted by the Nlaka'pamux nation and its affiliated Bands.

Based on the information sources described above, the Province's assessment is that there is a strong *prima facie* case in support of the St'kemplupsemc division of the Secwepemc's aboriginal rights to hunting, fishing, gathering, spiritual use, and trapping in the proposed Project area. Ethnographic, historical, cultural and other information supports that the proposed Project area was located within the Secwepemc's territory at the time of contact (1793-1811), and within the territory of the Kamloops (St'kemplupsemc) division. Ethnographic sources report that at the time of contact, the Kamloops division's hunting, fishing, gathering and trapping territories extended over the proposed Project area. This view is supported by information provided by the SSN.

There are some specific outstanding questions that remain about: the location of the significant prayer tree; 'places for key transformation events'; trails and campsites; and other stated features of the area. We look forward to understanding more about these features. We would also appreciate receiving any information in relation to any additional uses of the proposed Project area by the SSN and the Secwepemc at the time of European contact, not captured above or in your letter to EAO dated June 15, 2012.

The information available to the Province also indicates there is a possibility for aboriginal title for the St'kemplupsemc division of the Secwepemc (SSN) in the proposed Project area. The information available supports a weak to moderate *prima facie* case for aboriginal title in consideration of the following factors:

1. There is no information indicating that the proposed Project area was physically occupied at 1846 as a village site or settlement site by the SSN or the Secwepemc.
2. There is limited available information to indicate that the proposed Project area was a specific tract of land that was regularly or intensively used at 1846 by the SSN or the Secwepemc.
3. There is some information from George Dawson (1895) that indicates there was a trail running through the proposed Project area, which leads to Lac Le Jeune. Dawson also noted a specific site called "Ka-whoo'sa" was located along this trail. The site description provided would locate this site within the proposed Project area. Dawson reported there was an old Shuswap myth associated with

.../5

the site and noted that "in passing this place Indians always throw some little offering upon it". He also noted that when he saw it in 1890, "several matches had recently been laid on the stump, and a fragment of tobacco or shred of clothing is often placed there". Dawson indicates that the site he viewed involved rocks piled around the stump. The general location provided by Dawson is in the vicinity of Archaeological site EdRC-25.

4. Recent archaeology work completed for the Ajax mine identifies a new site EdRC-25 as a site containing 3 rock petroforms. The photos of the archaeology site show the petroforms to be rocks piled in a circle. The archaeology report (P-29) states that 'although this area and the rock features may have offered hunters good vantage points above game animals in the gully below, the function of the petroforms has not been assigned at this time and further investigation is planned'. The archaeology report notes that "although 688 shovel tests were systematically excavated within the immediate area of the rock petroforms, no additional cultural material was observed or recovered during the excavation of subsurface tests" (P-31). The features were left undisturbed pending non-invasive assessment to ascertain function and determine antiquity. Possible further investigation may include lichenology studies to assist in determining antiquity (P-82).
5. The SSN indicates the three rock petroforms are used as hunting blinds, also involved in a 'hunting blind complex' that includes the trails and landforms as used by the hunters, animals, and people directing the animals. During our field trip to the site an SSN representative, indicated that this complex has been in use for hundreds of years. No further supporting information was provided at this time.
6. The SSN also indicates there is a significant prayer tree in this proposed Project area, that the Jacko Lake is culturally important for Underwater people, and that oral histories and songs tell of places for key transformation events for the SSN people.
7. There is information available in support that a Kamloops division village was inhabited at 1846 within 8 km of the proposed Project site at Kamloops.
8. The Nlaka'pamux nation assert territory over the proposed Project site, however ethno-historical information indicates this area as Secwepemc territory since the time of contact.

.../6

Given the clarification of the test for aboriginal title in the 2012 *Williams v. BC* case of the BC Court of Appeal, there was a lack of information indicating a regularity and intensity of use at 1846 to support a good claim for aboriginal title in the proposed Project area. However, as indicated above, the information available does support a strong claim to certain aboriginal rights. We appreciate that there may be additional information regarding Secwepemc use within the proposed Project area at 1846 that may change these assessments. We would appreciate receiving any additional information in relation to the occupation or specific uses of the proposed Project area by the SSN and the Secwepemc at 1846.

EAO has considered the potential for impacts of the proposed Project to the SSN's Aboriginal Interests, which relates to the following question:

How might the proposed Project potentially impact the practices, traditions, or customs of SSN?

Based on currently available information, we anticipate that the proposed Project, which is an open pit mine with associated infrastructure, load out facility, access road and transmission line, has the potential to impact wildlife, wildlife habitat, fisheries, fish habitat and cultural sites. Based on the currently available information, EAO is of the initial view that the proposed Project has the potential for significant adverse impacts to the SSN's Aboriginal Interests within the proposed Project area, including hunting, trapping, fishing, gathering and spiritual uses of this area. The seriousness of the potential impacts of the proposed Project on SSN's meaningful opportunity to continue to exercise such traditional activities within its traditional territory will be assessed further during the environmental assessment process, as more information on the potential impacts of the proposed Project becomes available.

Our assessment of the required scope of the duty to consult the SSN, based on these assessments of strength of claims and potential for impacts from the proposed Project, is that it lies at the deeper end of the consultation spectrum described in the *Haida* case.

To fully answer the question regarding the potential impacts on SSN Aboriginal Interests, we anticipate that once the Proponent is able to share the results of their EA studies with SSN and EAO, we can further examine this question, which typically occurs during the application review stage of an EA.

There are some additional questions that EAO requires a better understanding of, in the context of consulting SSN about the potential impacts of the proposed Project on SSN Aboriginal Interests. While we have delegated to the Proponent a procedural role in working with SSN to answer these question, EAO is also willing to work directly with SSN on these questions:

.../7

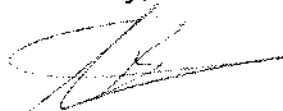
- 1) What practices, traditions, or customs are currently engaged in by SSN in the vicinity of, or in relation to the proposed Project area?
- 2) What measures could be used in the proposed Project's design or operation to avoid, mitigate or otherwise address these potential concerns?
- 3) What are the opportunities for all or some of the identified practices, traditions and customs be engaged in elsewhere within the SSN Traditional Territory?
What are the views of SSN regarding whether these practices would still be meaningful if engaged in elsewhere within the traditional territory?

With respect to the second question, SSN has shared with EAO a number of potential mitigation measures, largely related to involvement in various processes such as permitting, bonding, closure planning, employment at the mine and the development of a cultural/heritage study with the Proponent. We look forward to working with you and the Proponent to fully explore these ideas in the context of the EA process and with respect to the specific Aboriginal Interests we have identified in this letter. Some of these discussions can continue now, while some aspects would be more suitably discussed at application review stage, once impacts to practices, traditions, or customs are understood.

We look forward to hearing your views regarding the contents of this letter, and working with SSN to ensure EAO can reasonably and adequately assess the potential impacts of the proposed Project on SSN's Aboriginal Interests, and to then explore measures to mitigate, avoid or otherwise address these impacts. We also look forward to continuing our joint effort to develop a Government to Government consultation process that meets both of our needs. I would be pleased to meet with you or your representatives, by teleconference, or possibly in Kamloops, to discuss these important items. Representatives from the FLNRO have stated their interest to be involved in the ongoing discussions.

Feel free to contact me anytime at 250-356-1124 or scott.bailey@gov.bc.ca to discuss this.

Sincerely,



Scott Bailey
Executive Project Director

Enclosures: Section 11 Order with map of proposed project area

cc: Don Ryan, SSN

Catherine Ponsford, CEAA