



Skin Tyee First Nation  
6914 Campbell Road, P.O. Box 131  
Southbank, B.C. V0J 2P0  
Tel: 250-694-3517  
Fax: 250-694-3268

---

Matthew Rodgers ([Matthew.Rodgers@gov.bc.ca](mailto:Matthew.Rodgers@gov.bc.ca))  
Project Lead – Tenas Project  
BC Environmental Assessment Office  
PO Box 9426 Stn Prov Govt  
Victoria, BC, V8W 9V1

February 9, 2023

Dear Matthew Rodgers

**Re: Telkwa Coal's Tenas Project – Participating Indigenous Nation**

We write in regards to Telkwa Coal Ltd's ("Telkwa Coal") proposed Tenas mine near Telkwa, BC (the "Project"). We write to advise the BC Environmental Assessment Office ("BC EAO") of Skin Tyee's intent to engage as a Participating Indigenous Nation in the environmental assessment process, pursuant to s. 14(1) of the *Environmental Assessment Act*, SBC 2018, c. 51 ("2018 BCEAA").

We understand this Project was originally undergoing an environmental assessment under the now repealed *Environmental Assessment Act*, SBC 2002 ("2002 BCEAA"), c. 43, but has now been transitioned to the 2018 BCEAA.

The Project is located in the traditional territory of the Wet'suwet'en, from whom Skin Tyee are descended. As such, the Project has the potential to impact the lands and resources upon which Skin Tyee relies for the practice of its Aboriginal rights. The Office of the Wet'suwet'en includes Skin Tyee as a member, and we understand the Office of the Wet'suwet'en is already engaged in this environmental assessment process. However, the Office of the Wet'suwet'en does not represent Skin Tyee in this matter. Skin Tyee is a distinct and legally recognized Indigenous collective within the Wet'suwet'en with its own membership and elected government, and as such Skin Tyee is entitled to participate in decision-making in relation to the Project. In order to ensure Skin Tyee's rights and interests are meaningfully considered in the decision-making process for this Project, Skin Tyee is requesting to engage as a Participating Indigenous Nation.

**Skin Tyee's Interests in the Territory and Potential Project Impacts**

The Project is located in an area over which Skin Tyee has and continues to practice its Aboriginal rights including: the establishment of villages and campsites; carrying out traditional ceremonies; regular use of travel routes; harvesting for traditional foods, medicine-making, and traditional

activities like sewing moccasins with thread from pine trees. Critically, harvesting salmon is an extremely important aspect of Skin Tyee rights and culture. Skin Tyee Nation members rely heavily on harvesting salmon to practice their Aboriginal rights. Harvesting salmon is closely tied to Skin Tyee's identity, and an interruption or impairment of this practice would reflect a significant impact to their Aboriginal rights. Critical salmon harvesting sites are located in close proximity to the Project area.

Based on our preliminary assessment of the Project, if approved it would result in the direct disturbance of a significant area of land upon which our members have and continue to rely for the practice of their rights. In addition to the direct impacts associated with the disturbance of this land, such as the removal of wildlife and plants, and harvesting areas from the Project area, the Project may also result in significant indirect impacts including impacts to: air quality, water quality, increased sensory disturbance such as increased light and sound, and diminished animal habitat in and around the project area. The Project may also result in decreased confidence in resources in and around the Project area, further limiting the use of the area for Skin Tyee members. These impacts would last up to, and well beyond, the life of the mine. The significance of these impacts is heightened given that the amount of unencumbered land within Skin Tyee territory is limited, and continues to be reduced through development or dispositions.

In addition to the impacts noted above, as a coal mine, the Project has the potential to have serious adverse effects on the waterways in Skin Tyee's territory. We understand that coal mines produce high concentrations of selenium which will make its way from run-off pipes into waterways, and consequently, fish and invertebrates. As noted above, salmon are a species of critical importance to Skin Tyee rights and culture. We understand that salmon that have been overexposed to selenium can be malformed and potentially toxic for human consumption, and selenium can destroy invertebrate species, which provide integral functions in aquatic ecosystems. We are very concerned about the potential impacts from this Project on salmon.

Given that this Project may have potential impacts on Skin Tyee's rights, and the resources upon which Skin Tyee relies for the practice of our rights, the Crown is required to consult with us on this Project. We understand the Crown may rely on aspects of the environmental assessment process to fulfil its duty to consult, including disclosing information and engagement with impacted First Nations. If BC plans on relying on this environmental assessment process to fulfil its consultation obligations, it must include Skin Tyee in that process.

### **Skin Tyee's Governance Structure**

Skin Tyee's government is an elected representative government made up of a chief and two councillors.

Skin Tyee is part of the Wet'suwet'en Nation and as a part of this Nation, it enjoys the benefit of Aboriginal title and Aboriginal rights. However, Skin Tyee is a distinct and legally recognized

Indigenous collective within the Wet'suwet'en with its own membership and elected government. Skin Tyee and its members have distinct Aboriginal interests that are not necessarily represented by the Wet'suwet'en Hereditary Chiefs. It is thus important that Skin Tyee have the opportunity to engage in this process as well as the Office of the Wet'suwet'en.

### **BC EAO's Lack of Engagement with Skin Tyee**

Despite the potential for this Project to adversely impact Skin Tyee's rights and interests, to date, the BC EAO has excluded us from the environmental assessment and consultation process for this Project. Skin Tyee has not been provided with notification of the Project, it has not been invited to participate in any of the different assessment steps or stages, it was not advised that the Project was being transitioned from the 2002 BC EAA to the 2018 BC EAA, it was not notified of the deadline to submit its notice of intent to engage as a Participating Indigenous Nation, and it has not been offered the opportunity to consult with the Crown about the potential impacts from this Project on its rights. As a result, Skin Tyee was unaware of the January 16, 2023 deadline for providing notice to the BC EAO of its intent to engage as a Participating Indigenous Nation in the EA process, pursuant to s. 14(1) of the 2018 BCEAA and s. 6 of the Transition Order.<sup>1</sup>

Given the circumstances, Skin Tyee requests that the BC EAO exercise its discretion under s. 38 of the 2018 BCEAA to extend the deadline for Skin Tyee to submit its notice of intent to engage as a Participating Indigenous Nation. Failure to extend the deadline would prevent Skin Tyee from participating in the EA process for this Project. This would be inconsistent with Skin Tyee's procedural right to participate in a decision that has the potential to impact Skin Tyee's rights and interests. Failure to extend the deadline would also be inconsistent with BC's commitment to implement the UN Declaration of the Rights of Indigenous People, the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c. 44 ("DRIPA"), and s. 8.1 of the *BC Interpretation Act*, RBC 1996, c. 23 which together, require that legislation be construed as upholding Indigenous rights and interpreted in a manner consistent with BC's commitments under the *DRIPA*. It also bears noting that the Proponent has conveyed that it supports Skin Tyee's participation in the environmental assessment of this Project.

Finally, if Skin Tyee is prevented from participating in the environmental assessment process for this Project, then the Crown will be unable to rely on this process to discharge certain consultation obligations it owes to Skin Tyee in respect of this project.

### **Conclusion**

Given Skin Tyee's exclusion from the process to date, we would like to set up an initial meeting to discuss Skin Tyee's participation in the assessment process, funding opportunities, and the Crown's consultation obligations.

---

<sup>1</sup> Order under s. 78(7) of the BC EAA, s. 6: [Tenas Transition Order Dec 16, 2022 FINAL.pdf\(gov.bc.ca\)](#)

At this time, we have prioritized notifying you of Skin Tyee's interest in engaging as a Participating Indigenous Nation. The information we have provided above in respect of the project and its potential impacts on Skin Tyee is based on a preliminary review of the project application. We will be able to provide more information regarding anticipated Project impacts on Skin Tyee in due course, and through are participation in the assessment process for this Project.

Thank you for your consideration of this important matter. We look forward to hearing from you as soon as possible. Please copy all future correspondence to our legal counsel, JFK Law LLP, copied below.

Sincerely,



Chief Rosemarie Skin

CC:

Jade Irwin, General Manager, Skin Tyee ([gm@skintyeefn.ca](mailto:gm@skintyeefn.ca))  
David Luggi, advisor to Skin Tyee, ([dluggi@netbistro.com](mailto:dluggi@netbistro.com))  
Robin Phillips, Legal Counsel to Skin Tyee ([RPhillips@jfkllaw.ca](mailto:RPhillips@jfkllaw.ca))  
Mae Price, Legal Counsel to Skin Tyee ([MPrice@jfkllaw.ca](mailto:MPrice@jfkllaw.ca))  
Todd Goodsell, Executive Project Director ([tood.goodsell@gov.bc.ca](mailto:tood.goodsell@gov.bc.ca))  
Mark Gray Telkwa Coal Limited ([mgray@allegiancecoal.com.au](mailto:mgray@allegiancecoal.com.au))