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September 10, 2022

SENT VIA EMAIL: [Matt Rodgers, Project Assessment Director: EAO](#)

British Columbia Environmental Assessment Office
PO Box 9426 Stn Prov Govt
Victoria, British Columbia V8W 9V1

Attention: Heather Noble, Acting Executive Project Director

RE: Request to suspend prescribed time limit of British Columbia Environmental Assessment Office ("BCEAO") review of Telkwa Coal Limited ("TCL") Tenas Coal Project application ("Application") pursuant to s. 24(2) of the Environmental Assessment Act, SBC 2002, c 43 ("Act")

Office of the Wet'suwet'en ("OW") requests that the Executive Director exercise their discretion under s. 24(2) of the Act and suspend the prescribed time limit of the BCEAO's review of the Application until such time as critical information gaps related to impacts on cultural and socio-economic values and cumulative effects are addressed by TCL through direct engagement with Cas Yex and Kwen Bea Yex house members.

A suspension of the time limit is necessary in order to allow TCL the time and opportunity to address such information gaps which have been previously identified by OW, and which TCL has previously committed to address through the collection and ground truthing of data, values and methodologies with Cas Yex and Kwen Bea Yex house members. These requirements have not been met with respect to cultural and socio-economic values and cumulative effects with only limited engagement with Cas Yex and Kwen Bea Yex house members on the Tenas Coal Project generally, and no engagement on the development of Part C of TCL's Application. As a result, TCL's Application with respect to Wet'suwet'en Title and Rights has been completed as a desktop exercise only, relying exclusively on existing baseline data for cultural and socio-economic values and cumulative effects without collection of new data, engagement and ground truthing directly with Cas Yex and Kwen Bea Yex house members.

These gaps in engagement and information must be addressed before BCEAO may complete its review of the Application, and Cas Yex and Kwen Bea Yex house members may complete the concurrent Wet'suwet'en assessment and decision-making process for the Tenas Coal Project. Specifically, a suspension of the prescribed time limit is required for TCL to address



gaps in the following information to be gathered and collected in direct consultation and engagement with Cas Yex and Kwen Bea Yex house members for their consideration and decision-making:

- Cultural data and values specific to Cas Yex and Kwen Bea Yex house territories in the Tenas Coal Project area in order to collaboratively determine and ground truth the cultural valued components to be assessed in the review of the Tenas Coal Project.
- Cumulative effects data specific to Cas Yex and Kwen Bea Yex house territories in order to collect and ground truth data, and to collaboratively determine the methodology for assessing cumulative effects.
- Socio-economic data and values specific to Cas Yex and Kwen Bea Yex house territories in relation to the Tenas Coal Project in order to collaboratively determine and ground truth the socio-economic valued components to be assessed in the review of the Tenas Coal Project.

As confirmed by the Supreme Court of Canada in the 1997 Delgamuukw-Gisday'wa decision and by the Governments of Canada and British Columbia in the 2020 Memorandum of Understanding with the Wet'suwet'en Hereditary Chiefs, Wet'suwet'en Title and Rights:

- Are held by the Wet'suwet'en houses under their hereditary system of governance.
- Have never been surrendered or extinguished.
- Continue to exist throughout the entirety of the Wet'suwet'en Yintah.
- Includes but is not limited jurisdiction over water, lands, resources, fish, wildlife, land use planning, and decision-making and an economic component.
- Must be given legal recognition and protection in the laws of British Columbia and Canada through good faith negotiation, mutual consent and legislative action.

In circumstances such as these where a proposed project is being contemplated that will significantly infringe on Wet'suwet'en Title and Rights, the Supreme Court of Canada has been clear that the honour of the Crown and the Crown's fiduciary responsibilities require the consent of Wet'suwet'en Title holders to be obtained and for their independent legal interest in the land to be preserved throughout the Wet'suwet'en Yintah until honourably implemented through good faith negotiations and mutual consent, or by court declaration.

If a suspension of the time limit is not granted, and the information gaps are not addressed by TCL during the prescribed time limit for your review of the Application, then Wet'suwet'en Title and Rights, including the rights of Cas Yex and Kwen Bea Yex house members to decision-making and free, prior and informed consent, will be significantly infringed upon and rendered meaningless in the administration of the Act contrary to Wet'suwet'en, Canadian and international law. This places the Tenas Coal Project at significant risk of being cancelled after any approval by the Minister under the Act with



associated liabilities and investor risk being entirely borne by provincial taxpayers and company shareholders.

We understand that TCL's limited engagement with Cas Yex and Kwen Bea Yex house members on the Tenas Coal Project may be partially a result of prevailing social and environmental conditions within Wet'suwet'en yintah that are outside of their control (e.g., COVID-19 pandemic, opioids crisis, Coastal Gaslink pipeline construction, police violence, nation-to-nation negotiations, child and family wellness). Further engagement and information are necessary for completion of the BCEAO review of the Application and the concurrent Wet'suwet'en assessment and decision-making process for the Tenas Coal Project in manner that respects and upholds Wet'suwet'en Title and Rights. In particular, the information is required for Cas Yex and Kwen Bea Yex to fully assess potential impacts to Wet'suwet'en Title and Rights and any proposed mitigation or accommodation in the exercise of their rights to decision-making and free, prior and informed consent. Completing the review of the Application without adequate engagement and the best available information would represent a total failure of the BC EAO.

British Columbia gave TCL the option to have the Tenas Coal Project review under the Act (2002) and now are looking to modernize into the Environmental Assessment Act (2018). This proposed change has to be considered by the Wet'suwet'en and Affected House Groups. Predictably, the old Act and its prescribed timelines are undermining Wet'suwet'en Title and Rights. A suspension of the timeline is therefore necessary to ensure the BCEAO review and Minister's decision on the Tenas Coal Project are informed by the Wet'suwet'en assessment and decision-making rather than trying to accommodate them after the fact of them being infringed upon. We trust that you see that the suspension of the prescribed time limit, in the circumstances, is for the betterment of all. However, OW requests your timely consideration of this request and reserves the right to request an extension of the prescribed time limit pursuant to s. 24(4) of the Act.

Please contact me directly should you require any further information regarding OW's request for suspension of the prescribed time limit.

Sincerely,



Mike Ridsdale
EA Coordinator
Office of the Wet'suwet'en

cc: Dinī ze' Woos (Frank Alec), Cas Yex, Gitumden (frankjalec@gmail.com)

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