

Reasons for Decision of the Chief Executive Assessment Officer

TRANSITION OF THE TENAS PROJECT ASSESSMENT FROM THE
ENVIRONMENTAL ASSESSMENT ACT, 2002, TO THE
ENVIRONMENTAL ASSESSMENT ACT, 2018

DECEMBER 16, 2022



EAO

Environmental
Assessment Office

1.0 CONTEXT

Telkwa Coal Limited (TCL) is proposing the Tenas Project (Tenas or the Project), an open pit coal mine located seven kilometres southwest of the Village of Telkwa, British Columbia (B.C.) with an estimated production rate of 775,000 to 825,000 tonnes of metallurgical coal per year and an expected mine life of 26.5 years.

The Environmental Assessment Office (EAO) began the environmental assessment (the assessment) on November 6, 2018, after issuing an Order under Section 10(1)(c) of the *Environmental Assessment Act* (2002) (the former Act) stating that the Project requires an environmental assessment (EA) certificate, and that TCL may not proceed with the Project without an assessment. On June 25, 2019, the EAO issued an Order under Section 11 of the former Act, outlining what would be included in the assessment and how it would be carried out.

Over the past three years, progress on the assessment has been delayed for a number of reasons, including a request by TCL in September 2019 that the EAO put the assessment of the Project on hold until April 30, 2020, to allow the Wet'suwet'en to focus on strategic reconciliation discussions with the Province of B.C. The COVID-19 pandemic also affected TCL's timelines.

The EAO received a letter from TCL on March 4, 2020, requesting that the assessment remain under the former Act. Subsequently, the project continued in the pre-application phase under the former Act. On January 24, 2022, the EAO issued the Application Information Requirements, specifying the information that must be contained in TCL's application for an EA certificate (Application). On February 24, 2022, TCL applied for an EA certificate and on April 27, 2022, the EAO accepted the Application for review under the former Act.

Although it had been TCL's intention to complete the assessment under the former Act, the factors above affected TCL's timelines for submitting their Application. Additionally, several key information gaps were identified during Application Review. The combined impact of these factors has necessitated a transition from an assessment under the former Act to one that will be completed under the *Environmental Assessment Act* (2018) (the 2018 Act).

On October 22, 2022, TCL notified the EAO of its wish to rescind their request to remain under the former Act and continue the assessment of the Project under the 2018 Act, which brings me to the decision regarding the transition of the assessment.

2.0 NATURE AND SCOPE OF THE DECISION

Transitional provisions under [Section 78](#) of the 2018 Act outline requirements for assessments that were started under the former Act, including an option for projects at a certain stage to choose to continue the assessment under the former Act. Under those provisions, however, assessments must be referred for decision within three years after the 2018 came into force, by December 16, 2022.

As the Project's environmental assessment will not be complete by December 16, 2022, a transition to the 2018 Act is required. Under the Transitional provisions, I must specify the step in the environmental assessment process at which the project must proceed or vary the process to accommodate the assessment under the 2018 Act.

On December 16, 2022, I issued an order under Section 78(7), hereafter referred to as the Transition Order, specifying the assessment will continue under the 2018 Act, at the Effects Assessment and Recommendation phase (Section 28). The Transition Order also establishes a period of 30 days for an Indigenous nation to provide notice that they wish to participate in the assessment as a participating Indigenous nation, and 10 days following that for the EAO to provide notice to TCL of the participating Indigenous nations. Pursuant to the requirements of Section 78(8), I am providing reasons for my decision to issue this Transition Order.

3.0 CONSIDERATIONS

In making my decision that the assessment should proceed in Effects Assessment and Recommendation, I considered the progress made to date under the 2002 Act, the information already submitted by the Proponent, and engagement with Indigenous nations and the public that has occurred and is still needed.

3.1. Project status and documents submitted

As outlined in Section 1.0, beginning in November 2018, the EAO confirmed through legal orders that an assessment was required, and set out what would be included in the assessment and how it would be carried out. Following those orders, the Project entered the pre-application stage of the former Act. The key requirements for TCL in that stage were the development of a Valued Components document, draft Application Information Requirements (AIR), Public Consultation Plan, and Indigenous Consultation Plan. To date, TCL has submitted documents to the EAO to address all these requirements.

TCL submitted their Application for an EA Certificate on February 24, 2022, which the EAO accepted for review on April 27, 2022.

As the legislated 180-day timeline of Application Review proceeded, and critical project issues were evaluated by technical reviewers, Indigenous nations, and the public, the EAO and TCL recognized that the assessment would not be completed within the legislated timeline (November 8, 2022) nor by the transition deadline of December 16, 2022. In planning for a transition, the EAO, in discussion with TCL and Indigenous nations, considered the best phase in which to start the project under the 2018 Act to facilitate a transition that recognized the work completed to date, and made use of the enhancements in the 2018 Act.

The Transition Order I issued on December 16, 2022, varies the Section 11 Order, describes additional information needed from TCL to address required assessment matters under [Section 25](#) of the 2018 Act, and references information requests issued to TCL during the Application Review phase to better understand potential Project effects on caribou, water, and Wet'suwet'en interests.

Given that the EAO has conducted a thorough review of the Application, conducted public consultation on TCL's materials, and identified the outstanding issues, once TCL provides the EAO with the additional information and information requests outlined in the Transition Order, I believe the most appropriate phase for the assessment to proceed is Effects Assessment and Recommendation.

3.2. Indigenous engagement

Comprehensive engagement with Indigenous nations is an important component for all environmental assessments in B.C. Consensus-seeking and seeking an Indigenous nation's views of consent related to the Ministers' decision on issuing an environmental assessment certificate are essential parts of the 2018 Act that support the EAO's work to advance reconciliation with Indigenous peoples in B.C.

I understand that TCL has engaged with Indigenous nations on the Project and the assessment to date, including in the development of Valued Components, the AIR, and the Application. I anticipate that engagement and consultation with Indigenous nations during Effects Assessment and Recommendation will continue to support a comprehensive assessment of the Application and its effects on the rights and title of the Wet'suwet'en Nation.

The EAO is also working closely with Indigenous nations on understanding how effects to Indigenous interests from the Project should be assessed and reflected in the EAO's Assessment Report.

The ongoing engagement between Indigenous nations, TCL, and the EAO, and the additional opportunities for engagement and clarification in Effects Assessment and Recommendation, are considerations for my decision that the assessment should proceed in Effects Assessment and Recommendation. To enable Indigenous nations to decide how

they would like to be involved in the assessment, the Transition Order includes a period of 30 days for Indigenous nations to notify the EAO of intent to participate in the assessment.

3.3. Public engagement

Public engagement is a key element of the environmental assessment process under both the 2002 Act and the 2018 Act. The Section 11 order previously issued by the EAO for the Project set out the opportunities for public engagement and the Public Consultation Plan submitted by TCL on September 12, 2019, provided more detail on public engagement.

The EAO held public comment periods on the draft AIR from June 8 to July 23, 2020, which included virtual information sessions on June 17 and June 23, 2020, and on TCL's Application from May 19 to July 3, 2022, which included an in-person open house on June 1, 2022, and a virtual information session on June 8, 2022. These activities informed my decision about the phase of the 2018 Act to which the assessment should transition.

Given the public engagement activities that have already taken place under the former Act, and that there will be an additional public comment period and public engagement on the EAO's draft referral materials during the Effects Assessment and Recommendation phase, I have decided that the establishment of a Community Advisory Committee is not required.

4.0 CONCLUSION

After consideration of the status of the assessment and ongoing engagement with Indigenous nations and the public, I have decided to issue a Transition Order under the relevant provisions of the 2018 Act (Section 78(7)). The Transition Order specifies that the assessment of the Tenas Project will continue under the 2018 Act, in the Effects Assessment and Recommendation phase (Section 28). The Transition Order also establishes a 30-day period for Indigenous nations to provide notice that they wish to participate in the assessment, and 10 days following that for the EAO to provide notice to TCL of the participating Indigenous nations. I note, for clarity, that the Effects Assessment and Recommendation phase will not begin until the information required in the Transition Order has been provided to the EAO's satisfaction.



Elenore Arend

Chief Executive Assessment Officer

Environmental Assessment Office

Signed this 16th day of December 2022