

IN THE MATTER OF
THE *ENVIRONMENTAL ASSESSMENT ACT*, S.B.C. 2018, c. 51
(ACT)

AND
TELKWA COAL LIMITED (PROPONENT)

AND
AN ENVIRONMENTAL ASSESSMENT OF THE PROPOSED
TENAS PROJECT (PROJECT)

ORDER UNDER SECTION 78(7)

WHEREAS:

- A. The Proponent proposes to develop the Project near Telkwa, British Columbia (B.C.);
- B. The Project is a reviewable project pursuant to Part 3 of the Reviewable Projects Regulation (B.C. Reg. 370/02), since the Project would have a production capacity that exceeds 250,000 tonnes/year of coal;
- C. On November 6, 2018, the Environmental Assessment Office (EAO) issued an Order under Section 10(1)(c) of the *Environmental Assessment Act* (S.B.C. 2002, c.43) (the former Act), stating that the Project requires an environmental assessment certificate, and that the Proponent may not proceed with the Project without an assessment;
- D. On June 25, 2019, the EAO issued an Order under Section 11, modified on April 27, 2022, under Section 13 of the former Act, determining the scope of the required assessment and the procedures and methods for conducting the assessment (the Section 11 Order);
- E. On December 16, 2019, the *Environmental Assessment Act*, S.B.C. 2018, c. 51 (the Act) came into force;
- F. On March 4, 2020, the Proponent notified the Chief Executive Assessment Officer (CEAO) of its wish to continue the assessment of the Project under the former Act, pursuant to Section 78(6) of the Act;
- G. The former Act therefore continued to apply to the Project;
- H. A Public Comment Period was held on the Application Information Requirements, which specify the information that must be contained in an application for an environmental assessment certificate, from June 8, 2020, to July 23, 2020;

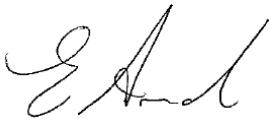
- I. On January 24, 2022, the EAO ordered the Application Information Requirements;
- J. On February 24, 2022, the Proponent applied for an environmental assessment certificate under Section 16(1) (Application), and on April 27, 2022, the EAO accepted the Application for review under Section 16(4) of the former Act;
- K. A Public Comment Period on the Application was held from May 19, 2022, to July 3, 2022;
- L. Section 78(7) of the Act requires that assessments under the former Act be completed by December 16, 2022, after which they must be completed under the Act;
- M. During Application Review under the former Act, the EAO determined that additional information was required from the Proponent to assess potential effects of the Project;
- N. On October 22, 2022, the Proponent withdrew the notice referred to in recital F and notified the EAO of its wish to continue the assessment under the Act;
- O. Subject to Section 78(7) of the Act, the assessment for the Project must now be completed under the Act;
- P. Under Section 78(7) of the Act, the CEAO may make an Order specifying the step in the environmental assessment process under the Act to which the Project must proceed or varying the assessment process to the extent necessary to accommodate the assessment of the Project under the Act; and
- Q. The CEAO has determined that the Project should be transitioned to Section 28 of the Act, for reasons set out in the CEAO's Reasons for Decision, issued with this Order.

NOW THEREFORE:

Pursuant to Section 78(7) of the Act, I order that:

- 1. Subject to Sections 2 and 3 of this Order, the Environmental Assessment of the Project be continued under the Act and considered under Section 28.
- 2. The Proponent must provide the EAO with the additional information referred to in Section C and Section D of the attached Schedule A.
- 3. Before commencing the assessment of the effects of the Project, pursuant to Section 28 of the Act, the Project Lead must seek to achieve consensus with participating Indigenous nations on the sufficiency of the additional information provided by the Proponent that is required by Sections C and D of Schedule A.

4. Assessment of the effects of the Project, pursuant to Section 28 of the Act, will not commence until the additional information has been provided, in a form and content acceptable to the CEAO.
5. The environmental assessment process is varied as set out in Schedule A of this Order.
6. Section 14(1) of the Act is varied so that within 30 days of this Order, an Indigenous nation may provide notice of intent to participate in the assessment of the Project as a participating Indigenous nation.
7. Section 13(5)(b) of the Act is varied so that the notice required by that section is provided within 40 days after this Order is issued.



Elenore Arend
Chief Executive Assessment Officer
Environmental Assessment Office
Dated December 16, 2022

Enclosures: Schedule A

SCHEDULE A

A. The Section 11 Order is varied as follows:

1. All references to the Working Group are to be read as references to the Technical Advisory Committee;
2. The Section 11 Order is varied by rescinding the phrase “as identified on Schedule B” and “listed on Scheduled B”, and by replacing the phrase “Wet’suwet’en Nation through the Office of the Wet’suwet’en Hereditary Chiefs” and the term “Wet’suwet’en Nation” with “participating Indigenous nations” in all those locations where the phrase and the term are found;
3. Section 12.2 is rescinded; and
4. Schedule B and Schedule C are rescinded.

B. The Section 13 Order is rescinded.

C. Additional information to address Section 25(1) and Section 25(2) of the Act:

1. Any positive effects to Indigenous interests or Indigenous nations that are anticipated as a result of the Project.
2. The positive and negative indirect effects of the Project, including
 - a. Long-term trends (e.g., changing environment, cumulative impacts of development, employment, and technology) and market fluctuations.
 - b. Anticipated positive effects, any uncertainties related to those effects, how those effects will be monitored and, in the event those effects prove to be negative, in whole or in part, how the negative effects will be adaptively managed, mitigated, and in the case of impacts to Indigenous interests, accommodated.
3. Disproportionate effects on distinct human populations, including populations identified by gender, including:
 - a. The Proponent’s efforts to engage human populations in culturally appropriate ways, including groups identified by gender, age, race, or other factors considered relevant by the community.
 - b. A description of how the Proponent’s engagement was designed to support the collection of information needed to complete the Gender Based Analysis Plus (GBA+) as described in the EAO’s Human and Community Well-being: Guidelines for Assessing

Social, Economic, Cultural and Health Effects in Environmental Assessments in B.C.¹

- c. The Project's impacts on distinct populations, including Indigenous Peoples or groups identified by gender, age, or other factors considered relevant based on the results of the GBA+.
 - d. A description of how input from Indigenous nations, the public, and local governments was incorporated into the analysis and conclusions set out in the Application about both positive and negative effects and how the proponent's plans for the Project have changed as a result.
 - e. The measures to be taken to address uncertainty in conclusions about effects of the Project on distinct human populations.
 - f. The economic benefits that would be generated by the Project and how these benefits would be distributed, both within the population and over time.
4. The Project's effects on current and future generations, including:
- a. The Project's positive or negative effects on environmental, economic, social, cultural and health valued components (VCs) and Indigenous interests, as those effects impact both current and future generations.
 - b. A description of how input from the public and Indigenous Nations related to effects on current and future generations was incorporated into the Application and how the Proponent's plans for the Project has changed as a result.
 - c. Measures that would more equitably distribute positive and negative effects of the Project over time (e.g., across generations).
 - d. A description of how residual effects to VCs and Indigenous interests will affect both current and future generations.
 - e. The type(s) of economic benefits that would be generated by the Project and how these benefits would be distributed, both within the population and over time.
5. A description of how the Project is consistent with any land-use plan of the government or an Indigenous nation.

¹ Available at: https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/guidance-documents/2018-act/hcwb_guidelines_v1_-_april_2020.pdf

6. The Project's greenhouse gas (GHG) emissions, including:

- a. How the Project's GHG emissions relate to the targets under the *BC Climate Change Accountability Act*².
- b. The Project's potential positive or negative effects on carbon sinks, including forests.

D. Information requested from the Proponent by the EAO to better understand potential Project effects:

1. Information Requests: Caribou³, issued by the EAO on October 6, 2022.
2. Information Requests: Water⁴, issued by the EAO on November 23, 2022.
3. Information Requests: Office of the Wet'suwet'en⁵, issued by the EAO on December 14, 2022.
4. Information Requests: Witset First Nation⁶, issued by the EAO on December 14, 2022.
5. Any other outstanding issues with the Application that have been identified by technical Working Group reviewers or Indigenous nations.

² Available at: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/07042_01

³ Available at:
https://www.projects.eao.gov.bc.ca/api/public/document/633f4bf2d815760022784939/download/Caribou%20IR%20for%20TCL%20Oct%206%202022_FINAL.pdf

⁴ Available at:
https://www.projects.eao.gov.bc.ca/api/public/document/637e708322d0550022b8efeb/download/394052_FARMER_Final.pdf

⁵ Available at:
https://www.projects.eao.gov.bc.ca/api/public/document/639a00ca8d9aec002240859b/download/OW%20IRs%20Dec%2014%20C%202022_FINAL.pdf

⁶ Available at:
https://www.projects.eao.gov.bc.ca/api/public/document/639a011b763a3e002247ebf3/download/Witset%20FN%20IRs%20Dec%2014%202022_Final.pdf