



File: 30200-25/KSMP-19

Reference: 357626

May 25, 2020

**SENT VIA EMAIL**

Jay Layman  
President & Chief Operating Officer  
KSM Mining ULC  
106 Front Street East, Suite 400  
Toronto, ON M5A 1E1  
[info@seabridgegold.net](mailto:info@seabridgegold.net)

Dear Jay Layman:

I write regarding your March 30, 2020 memo to the Minister of Energy, Mines and Petroleum Resources and April 29, 2020 letter to the Deputy Minister of Energy, Mines and Petroleum Resources expressing your concerns. Wherein the ability of KSM Mining ULC to meet the deadline in the Environmental Assessment Certificate (Certificate) M14-01 for the Kerr-Sulphurets-Mitchell (KSM) Project to be substantially started are being impeded by the novel coronavirus (COVID-19) pandemic, the resulting provincial state of emergency, and associated health orders issued by the Province of British Columbia.

The Environmental Assessment Office (EAO) is responsible to manage matters that pertain to the Certificate. As such, the memo and the letter were provided to the EAO, and I am responding to your concerns about the KSM Certificate and your interest to extend the Certificate.

You state that the COVID-19 pandemic is impeding the ability to meet the deadline because:

- Government and corporate safety guidelines during the pandemic make transporting and accommodating workers difficult and, in some cases, prohibitively expensive. This means that fieldwork planned for the summer of 2020, and essential to advancing the project on schedule, is postponed indefinitely.

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- Investors who previously expressed interest in partnering with KSM Mining ULC are now unwilling to commit based on uncertainty that the project will be completed on schedule given the new restraints and a reluctance to embark on new ventures during a pandemic.
- Engagement and consultation with Indigenous groups is challenging, given that many communities currently do not allow outside visitors and do not have adequate digital infrastructure for alternative means of communication.

The KSM Certificate was issued on July 29, 2014 with a substantially started deadline of July 29, 2019. An extension was granted on March 21, 2019, extending the deadline to July 29, 2024. The *Environmental Assessment Act* (the Act) only allows certificate deadlines to be extended once, and for no more than five years. However, Section 46 of the Act allows the Minister to vary the requirements of the Act in response to an emergency, and where the variance is in the public interest. There is an ongoing emergency related to the COVID-19 pandemic. In order to consider using Section 46 to allow for a further extension of the Certificate, the Minister must be satisfied that the challenges the project currently face are directly related to the emergency and that the variance would be in the public interest.

To better understand your concerns, and to determine whether a further extension to the Certificate is warranted, please provide further details on the following:

- How delays to the 2020 field season and the start of project construction, resulting from COVID-19, are directly related to the project's inability to meet its 2024 substantial start deadline. This should include specifics as to why the 2020 field and construction seasons are both critical for reaching a 2024 substantial start, and why the lost time cannot be made up in the coming four years.
- Information that shows how the lack of willingness of investors to commit to the project is directly related to the COVID-19 emergency and clarifies how this could have a direct effect on the project's ability to meet its substantial start deadline. Specifically, please clarify how this unwillingness in 2020 is critical to the project's timeline.
- Information that would help substantiate that any decision made to vary the Act is in the public interest.

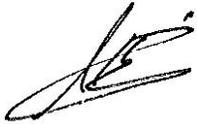
After considering your responses to the questions above, if the EAO determines it is appropriate to recommend to the Minister to use Section 46 to vary the requirements of the Act and the Minister proceeds to do so, KSM Mining ULC will need to apply for an extension to the Certificate in accordance with the Certificate Extension Policy.

The policy is available on the EAO's guidance documents website at the following link: <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/environmental-assessments/guidance-documents/2018-act-guidance-materials>.

Please note that applications for extensions require consultation with Indigenous nations. If an application is made, KSM Mining ULC will need to engage Indigenous nations to inform them of the application and to consult on the reasons for the request for the extension, in accordance with the Certificate Extension Policy. The EAO will also undertake consultation after an application has been submitted.

I thank you for your engagement thus far on this topic and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Bailey', with a stylized flourish at the end.

Scott Bailey  
Acting Chief Executive Assessment Officer and  
Associate Deputy Minister

cc: Dave Nikolejsin, Deputy Minister  
Ministry of Energy, Mines and Petroleum Resources  
[Dave.Nikolejsin@gov.bc.ca](mailto:Dave.Nikolejsin@gov.bc.ca)