Ministre de l'Environnement et
du Changement climatique

Minister of Environment
and Climate Change

Ottawa, Canada K1A 0H3

November 29, 2022

The Honourable George Heyman, M.L.A.
Minister of Environment and Climate Change Strategy and
Minister Responsible for TransLink
Government of British Columbia
Parliament Building
Victoria BC V8V 1X4
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Minister Heyman:

I am writing to advise that I have approved the province of British Columbia's (B.C.) request for substitution of the impact assessment under the *Impact Assessment Act* (the IAA) with an assessment conducted under B.C.'s *Environmental Assessment Act, 2018*, for the Eskay Creek Revitalization Project (the Project), located near Stewart, B.C.

In granting this substitution request, I considered B.C.'s commitment to fulfilling the approach set out in the *Impact Assessment Cooperation Agreement Between Canada and British Columbia* (2019) as well as other commitments made in the letter sent to the Impact Assessment Agency of Canada (the Agency) by B.C.'s Environmental Assessment Office (EAO) on August 6, 2021.

I also acknowledge that, on June 6, 2022, B.C. and the Tahltan Central Government signed the first consent-based decision-making agreement (the Agreement) under B.C.'s *Declaration on the Rights of Indigenous Peoples Act* related to the Project. I commend the work in achieving the Agreement and understand that the Agency will cooperate with B.C. and the Tahltan Central Government to support the implementation of the Agreement through the substituted assessment process.

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I also considered the comments received by the Agency from Indigenous groups and the public regarding the substitution request, both outside and during a joint comment period held by the Agency and the EAO from August 30 to September 29, 2021. This included comments related to the role of the Agency and federal authorities in a substituted process, as well as the need to address transboundary effects.

I note in your request for substitution your commitment to provide federal and state agencies of the United States and Native American Tribes the opportunity to access information and provide input on the assessment.

I recognize B.C.'s leadership on climate change through the establishment of legally binding greenhouse gas reduction targets, and the development of the CleanBC Plan to achieving these goals. Assessing the greenhouse gas emissions of a proposed project is an important aspect of all environmental assessments, particularly as Canada and B.C. work to achieve our important climate objectives.

In response to these concerns and consistent with subparagraph 33(1)(i) of the IAA, I have included additional conditions for the substituted assessment in my approval of your request for substitution:

- the designated project to be assessed is the construction, operation, and decommissioning of an open-pit gold and silver mine, and any incidental physical activities; and
- B.C. will gather necessary information to inform the Agency's assessment of the potential effects of the project, including from road transportation of concentrate, supplies and personnel, on the Nisga'a Nation's treaty rights, as Canada is required to do under the Nisga'a Final Agreement, and to allow Canada to make a determination of whether it has met its obligations under Chapter 10 of the Nisga'a Final Agreement.

The Agency will communicate with the EAO regarding the fulfillment of these conditions in B.C.'s process.

I am satisfied that the conditions identified in my enclosed Substitution Approval will be met and that B.C.'s *Environmental Assessment Act, 2018* process is an appropriate substitute.

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I am confident that this approach supports the strong cooperative relationship between Canada and B.C. in the conduct of impact assessments; working together to ensure the best environmental, health, social, and economic outcomes for all Canadians.

Sincerely,

The Honourable Steven Guilbeault, P.C., M.P. (he/him, il)

Enclosure

Notice of Substitution Approval under the *Impact Assessment Act*

The Impact Assessment Agency of Canada (the Agency) has determined that an impact assessment pursuant to the *Impact Assessment Act* (IAA) is required for the Eskay Creek Revitalization Project (the Project), located near Stewart, British Columbia (B.C.).

For this project, the Honourable Steven Guilbeault, Minister of Environment and Climate Change, has approved the substitution of the conduct of the impact assessment to B.C. This means that B.C.'s Environmental Assessment Office (EAO) will conduct the impact assessment of the Project under the *Environmental Assessment Act*, *2018* on behalf of the Agency. The EAO will gather the information needed to inform a federal decision on the Project under the IAA.

On August 6, 2021, B.C. requested that the conduct of the federal impact assessment process be substituted to the province. From August 30 to September 29, 2021, the Agency held a joint public-comment period with the EAO on the Initial Project Description and B.C.'s request to substitute the impact assessment process.

Comments received from the public and Indigenous groups on the substitution request covered a range of topics, including the role of the Agency and federal authorities in a substituted process and addressing transboundary effects. The Agency has shared these comments with the EAO so that they can be addressed in the substituted process, guided by B.C.'s commitments made to fulfilling the requirements of the IAA in the *Impact Assessment Cooperation Agreement between Canada and British Columbia* (the Cooperation Agreement) and its substitution request.

On June 6, 2022, B.C. and the Tahltan Central Government signed the first consent-based decision-making agreement (the Agreement) under the B.C. *Declaration on the Rights of Indigenous Peoples Act* related to the Project. The Agreement lays out a pathway to consent, as well as informational and process requirements for Tahltan Nation's and B.C.'s environmental assessment decision-making for the Project. The EAO will be cooperating with the Tahltan Nation to gather the information needed for the Tahltan Nation and B.C. to make their decisions on the Project.

Having taken into consideration the request for substitution from B.C., the commitments made by B.C. in the Cooperation Agreement, and comments received during the joint public comment period, the Minister is of the opinion that B.C.'s process is an appropriate substitute for the federal process for the following reasons:

- B.C. has committed to a substituted impact assessment process that meets the legislative requirements of the IAA. This will include consideration of the factors set out in subsection 22(1) and the conditions and reporting requirements for substitution outlined in subsections 33(1) and (2), taking into account the definition of effects within federal jurisdiction in section 2;
- B.C. and Canada have established a framework to facilitate efficient and effective substituted impact assessments, set out in the Cooperation Agreement. B.C. has committed to fulfilling the conditions for substitution in Section 7 of the Cooperation Agreement;

- B.C. has the ability to enter into an arrangement with any jurisdiction referred to in paragraphs (e) to (g) of the definition of jurisdiction in section 2 of the IAA respecting cooperation in the conduct of the impact assessment;
- EAO has committed to gathering the necessary information to inform Canada's assessment of the potential effects of the Project on Nisga'a Nation and allow Canada to make its own determination of whether the requirements under Chapter 10 of the *Nisga'a Final Agreement* have been met; and
- EAO has committed to engaging with federal and state agencies of the United States and Native American Tribes to access information and provide input, if the effects of the Project have the potential to extend beyond Canada's border to the United States.

Additionally, the Minister is satisfied that:

- federal authorities will have the opportunity to participate in the impact assessment;
- B.C. will conduct consultation with Indigenous peoples that may be affected by the Project, including Indigenous groups identified by the Agency for consultation, and will provide the Agency the opportunity to participate in the consultation;
- the public will have the opportunity to meaningfully participate in the impact assessment process, as the B.C. process includes multiple opportunities for public comments; and
- the public will have access to information related to the impact assessment, including the Proponent's information and studies, other scientific information, public comments, and the draft assessment report (subject to Section 13 of the Cooperation Agreement).

The Minister is also satisfied that B.C. will meet the following additional conditions that he has established for the impact assessment of the Project:

- the designated project to be assessed is the construction, operation, and decommissioning of an open-pit gold and silver mine, and any incidental physical activities; and
- B.C. will gather necessary information to inform the Agency's assessment of the potential effects of the project, including from road transportation of concentrate, supplies and personnel, on the Nisga'a Nation's treaty rights, as Canada is required to do under the *Nisga'a Final Agreement*, and to allow Canada to make a determination of whether it has met its obligations under Chapter 10 of the *Nisga'a Final Agreement*.

The Agency will make funding available to support the participation of Indigenous groups and the public in the substituted impact assessment, and will work with the EAO to coordinate the timing of the funding to support the appropriate process steps.

Information about the substituted impact assessment process for the Project will be located on the EAO's project-specific website, EPIC.