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PARLIAMENTARY SECRETARY TO THE MINISTER OF NATIONAL REVENUE

Hon. Peter Kent, P.C., M.P.
407 Confederation Bldg.
House of Commons
Ottawa, ON
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December 1st, 2011

Dear Minister Kent,

On May 31st, 2011, the Canadian Environmental Assessment Agency (CEAA) posted a Notice of Commencement of an Environmental Assessment (EA) of the proposed Ajax copper-gold open pit mine project. Because the CEAA determined that the project is listed on the *Comprehensive Study List Regulations*, it was decided that the EA would take the form of a comprehensive study.

Subsequently, as Member of Parliament for the riding of Kamloops-Thompson-Cariboo my office was, and continues to be, inundated with communications from constituents with concerns about the proposed mine and the EA process. The primary reason for the former concern is that the proposed mine would be situated within the southern limits of the City of Kamloops, with mine facilities in close proximity to homes and the future urban growth boundary. The latter concern arises from a public perception that, as it stands, the comprehensive study is insufficient, and that only a panel review can provide clarity on potential environmental impacts arising from the project.

Although I certainly acknowledge the importance of mining on our economy, I felt it my duty as the local federal representative to investigate whether sufficient grounds exist to ask the Minister of the Environment for a referral of the EA to a review panel. As a result of these investigations, I have concluded that there are indeed sufficient grounds for this move, and I am therefore here today to formally request that the Minister refer this EA to a federal review panel.

Section 28 of the *Environmental Assessment Act* indicates that the Minister of the Environment may refer if at any time the Minister is of the opinion that a project may cause significant adverse environmental effects or public concern warrants reference to public

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review.¹ This provision was interpreted in 2001 by the Federal Court of Canada in *Hamilton Wentworth v. Canada* that "the practice of the (CEAA) has been to not refer projects to the public review stage where the federal government lacks the legislative authority to implement any recommendations that may result from the review."²

With that in mind, public outcry in tandem with clear areas of federal jurisdiction must be established in order for there to be grounds for referral under the *Act*. I believe the following points do establish grounds for referral:

- The Department of Fisheries and Oceans is already established as the Federal Responsible Authority for the project because it requires authorization under the *Fisheries Act* related to potential impacts on fish and fish habitat. As currently planned, the Ajax project requires the following changes to local bodies of water:
 - pumping water out of Kamloops Lake
 - flooding Ink Lake for use as a reservoir
 - constructing a berm at the eastern end of Jacko Lake (a local fishery) to separate it from the mining pit.
 - The rerouting of Peterson Creek in two places so that it will skirt around the southern boundary of the mine.
 - Potential damage from seepage to the local water table
- At least one species included in Schedule 1 of the *Species at Risk Act* is known to be present in the area where the mine will be situated, the Burrowing Owl. An additional species affected includes the short-eared owl (Schedule 3, Special Concern).
- The project site is situated within the northern edge of the Southern Thompson Upland Grasslands region, which includes rare habitat for several species and may include plants scheduled under the *Species at Risk Act*. Currently B.C.'s grasslands ecosystems cover 1% of the province.
- As an open pit mine, the project will require the extensive use of explosives for blasting. This will require a permit from Natural Resources Canada under the *Explosives Act*. The City of Kamloops has indicated that the close proximity of the mine to residential areas may present a risk in terms of blasting affecting the stability of terrain near to present and future homes bordering the mine.

Having thus established clear areas of federal jurisdiction in relation to this project, I now turn to the key element that has convinced me that the project should be referred to a panel review: the political will of the public is overwhelmingly in favour of taking this course.

Although I do not have conclusive quantitative data to support this assertion, I base my statement on the following observations:

- The dozens, even hundreds of emails, phone calls and walk-ins from constituents that my offices have received in support of a panel process.

¹ "Canadian Environmental Assessment Act." In *Statutes of Canada 1992*, Chapter 37. Ottawa: Public Works and Government Services Canada, 1992. Available: <http://laws-lois.justice.gc.ca/eng/acts/C-15.2/page-16.html> (November 14, 2011)

² *Hamilton Wentworth v Canada*, 2001 FCT 381 at para 180

- The presentation of petitions in favour of a panel from the Kamloops Area Preservation Association, one that includes 1,468 signatures by members of the public, and a second that contains 59 signatures by "Physicians and Surgeons of the City of Kamloops & Surrounding Area."
- The hundreds of interested constituents who have participated in public consultations and information sessions thus far.
- The heavy media attention to this issue, which has included news pieces and numerous editorials and letters-to-the-editor, keeping this project continually in the public eye.

There is a perception among Kamloops residents that the comprehensive federal/provincial EA is not going to provide a fulsome and unbiased assessment. Some constituents have cited the previous case of the Taseko Prosperity Mine EA, in which the provincial EA process did not identify some key factors later identified by the federal review panel. Others point to B.C. Auditor General John Doyle's comments in July of this year that were highly critical of the B.C. EA process.³ These have led to entrenched scepticism about the effectiveness of our current EA process.

Finally, the proximity of the mining site is having the most obvious and profound effect on the local population. Fears about the size of the mine (at 2,500 hectares it dwarfs the current mine infrastructure present in part of the proposed site). The impact the mine may have on property values, health and safety, noise, air quality and tourism all cause local constituents to demand the most rigorous possible process. Again, the perception is that the best process would be a federal review panel process.

This fact, more than any other, in combination with clear federal jurisdiction over some aspects of the EA, cause me to conclude that the best way forward is a panel review process.

Thank you for your consideration in this matter.

Sincerely,



Cathy McLeod, M.P.
Kamloops-Thompson-Cariboo

³ Doyle, John. "Improved oversight needed by Environmental Assessment Office." July 7, 2011. Office of the Auditor General of British Columbia. Print.