

TSE KEH NAY – BC PROTOCOL AGREEMENT FOR RECLAMATION, REMEDIATION AND MONITORING OF MINES SITES

December 2008

**TSE KEH NAY – BC PROTOCOL AGREEMENT FOR RECLAMATION, REMEDIATION AND
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Introduction

The Tse Keh Nay (Takla Lake, Kwadacha, and Tsay Kay Dene First Nations) and the Province of British Columbia (British Columbia) wish to enter into this Protocol Agreement, consistent with a Government-Government approach and in the spirit of the New Relationship*, by which they intend to develop and implement a Reclamation, Remediation and Monitoring Plan (the Plan) to address historic and current mining sites within the asserted territories of the Takla Lake, Kwadacha, and Tsay Kay Dene First Nations. The Plan is to be a collaborative effort between the Tse Keh Nay and British Columbia, the latter of which is to be represented by the Ministry of Agriculture and Lands, the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Environment.

Through this Protocol Agreement the Tse Keh Nay wishes to ensure the maintenance of healthy environments through adequate protection and monitoring of the environment during and after mining activities.

This Protocol Agreement intends to inform dialogue relating to broader issues of concern to Tse Keh Nay and British Columbia in relation to mining activity.

Scope

The Tse Keh Nay and British Columbia have an interest in water and environmental quality, and are interested in engaging in this Protocol Agreement to address:

- Historic Mine Sites (as defined below and incorporating site identification, investigation, monitoring and remediation) through the establishment of a working group, which working group will be established within 60 days of the date of execution of this Protocol Agreement; and

* As acknowledged in the *New Relationship Vision Statement*, “We recognize the vision of First Nations to achieve the following goals: ...

- To achieve First Nations self-determination through the exercise of their aboriginal title including realizing the economic component of aboriginal title, and exercising their jurisdiction over the use of the land and resources through their own structures;
- To ensure that lands and resources are managed in accordance with First Nations laws, knowledge and values and that resource development is carried out in a sustainable manner including the primary responsibility of preserving healthy lands, resources and ecosystems for present and future generations;...[and]...
- To achieve these strategic goals, we recognize that we must achieve First Nations economic self-sufficiency and make First Nations a strong economic partner in the province and the country through sustainable land and resource development, through shared decision-making and shared benefits that support First Nations as distinct and healthy communities...[and]...
- We will mutually develop processes and implement new institutions and structures to achieve the following: integrated intergovernmental structures and policies to promote co-operation, including practical and workable arrangements for land and resource decision-making and sustainable development” (*The New Relationship*).

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- Current Mine Sites (as defined below and incorporating exploration, mine development, mine operations and reclamation) through the establishment of a working group, which working group will be established within 60 days of the date of execution of this Protocol Agreement.

Parties

The Parties to this Protocol Agreement are as follows:

- Tse Keh Nay:
 - Tsay Keh Dene First Nation;
 - Kwadacha First Nation; and
 - Takla Lake First Nation.
- British Columbia, through the following Branches:
 - Ministry of Agriculture and Lands, Crown Land Administration Division, Crown Land Restoration Branch;
 - Ministry of Energy, Mines and Petroleum Resources, Mining and Minerals Division – Prince George Region; and
 - Ministry of Environment, Environmental Protection and Environmental Stewardship Divisions, Regional Operations Branches.

Historic Mine Sites

Historic Mine Sites are defined as those mine sites that are not presently permitted under the *Mines Act* and that display evidence of disturbance resulting from past exploration or mineral extraction activities.

Objectives

In relation to Historic Mine Sites, the Plan objectives are to:

- Establish a working group between the Parties to this Protocol Agreement to implement outcomes relating to Historic Mine Sites (the Historic Mine Site Working Group);
- Develop and foster a collaborative working relationship between the Tse Keh Nay and British Columbia;
- Develop a list of Historic Mine Sites and conduct site investigations to determine priority sites;
- Develop the Plan for those Historic Mines Sites determined to be priority sites within an area of defined common interest identified in the work plan;
- Develop a strategy to implement the Plan; and
- Review, evaluate and report on progress of the Plan.

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Outcomes

In relation to Historic Mine Sites, the desired outcomes for the Tse Keh Nay – BC Reclamation, Remediation and Monitoring Plan are:

- An enhanced collaborative relationship between the Tse Keh Nay and British Columbia;
- Agreement between the Tse Keh Nay and British Columbia regarding an inventory of historic mining sites to be addressed within the Plan;
- Engagement of the Tse Keh Nay in the identification and site investigation of Historic Mine Sites of concern and the development and monitoring of implementation plans to address reclamation, remediation and monitoring issues associated with Historic Mine Sites deemed by the Parties to be priority sites;
- Establishment of a geographic area of first priority for the Historic Mine Site Working Group, which would include a joint implementation plan for site identification, investigation, monitoring and remediation; and
- Improvements to public safety, human health and environmental quality through the implementation of the Plan.

Current Mine Sites

Current Mine Sites are defined as mine sites that are presently permitted under Section 10 of the *Mines Act*.

Objectives

In relation to Current Mine Sites, the Plan objectives are to:

- Establish a working group between the Parties to this Protocol Agreement to implement outcomes relating to Current Mine Sites (the Current Mine Site Working Group);
- Share information and work together on environmental aspects of protection, regulation and monitoring of Current Mine Sites;
- Explore opportunities and initiatives to enhance engagement between the Tse Keh Nay and the mining industry, including on-site environmental monitoring by representatives of the Tse Keh Nay;
- Establish environmental monitoring reporting mechanisms appropriate for conveying information to the communities comprising the Tse Keh Nay;
- Better coordinate linkages between the Parties relating to the referral and permitting process for Current Mine Sites; and
- Identify other areas for joint collaboration between the Parties relating to Current Mine Sites.

Outcomes

In relation to Current Mine Sites, desired outcomes for the Plan are:

- Delivery of at least one community education session relating to environmental aspects of protection, regulation and monitoring of Current Mine Sites;

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- Sharing of information between the Parties that will help to identify ways in which the environmental aspects of protection, regulation and monitoring of Current Mine Sites could be improved;
- Establishment of a geographic area of first priority for the Current Mine Site Working Group, which would include a joint implementation plan for environmental protection, regulation and monitoring;
- Review of Current Mine Site reclamation plans to inform the Parties of current industry standards and to identify areas where these standards could potentially be improved; and
- Other matters jointly agreed upon by the Parties.

Roles and Responsibilities of the Parties to this Protocol Agreement

British Columbia

As represented by the Ministry of Agriculture and Lands, the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Environment.

Ministry of Agriculture and Lands (MAL)

MAL is responsible for the Crown Contaminated Sites Program which deals with the management of contaminated sites for which British Columbia has or may have responsibility. The Crown Land Restoration Branch is responsible for management of the program, which includes the identification of sites, land and corporate registry searches to identify potentially responsible parties, the identification of priority sites, site investigations and remediation.

MAL will identify a project lead within the Crown Land Restoration Branch to be the primary contact for the purposes of implementing this Protocol Agreement.

In cooperation with other British Columbia branches, MAL will undertake the status work associated with identified sites to determine Crown responsibility. MAL will collaborate with the Tse Keh Nay to conduct field work, to undertake site investigations and risk assessments, and to develop and implement remedial plans in keeping with the Plan.

Ministry of Energy, Mines and Petroleum Resources (MEMPR)

MEMPR is responsible for issuing exploration tenures and permits under the *Mineral Tenure Act* and *Mines Act*, and for ensuring compliance with all permit requirements, including establishing requirements for closure and restoration of permitted mine sites.

The primary contact for MEMPR Mining and Minerals Division will be the Regional Director – Prince George Region.

In cooperation with other British Columbia Branches, MEMPR will undertake a review of sites currently under *Mines Act* permit to assist in the determination of the status of each site. MEMPR will work with MAL, MoE and the Tse Keh Nay

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to assist with field work, to undertake site investigations and risk assessments, and to develop and implement remedial plans associated with Remediation Sites according to the Plan. MEMPR will also coordinate the Current Mine Site Working Group.

Ministry of Environment (MOE), Environmental Protection Division (EPD) and Environmental Stewardship Division (ESD), Regional Operations Branches

EPD and ESD are responsible for reviewing monitoring requirements, terms of reference for mining projects submitted to the Environmental Assessment Office and for permitting or authorizations of point source water and air emission discharges under the *Environmental Management Act* and *Regulations*.

EPD monitors data, audits compliance and may issue pollution prevention orders or pollution abatement orders, if they are required. EPD will assist in development and delivery of community outreach programs that examine monitoring data.

ESD reviews proposed Environmental Assessment Terms of Reference and Certificate Applications, from the perspective of effects on wildlife, fisheries and ecosystem values. ESD reviews the information to ensure sufficient background information is collected and risk factors identified so that appropriate mitigation or compensation is proposed.

The primary contact for EPD will be the Regional Manager - Omineca and Peace Regions. The primary contact for ESD will be the Ecosystems Section Head - Omineca Region.

In cooperation with other British Columbia branches (such as Land Remediation Section within the Environmental Management Branch in Victoria), EPD will assist in conducting a review of sites under *Mines Act* permit in order to determine the status of each site. MOE EPD will work with MEMPR, MAL and the Tse Keh Nay Nations to assist with field work, to undertake site investigations and risk assessments, and to develop and implement remedial plans associated with Remediation Sites according to the Plan.

ESD will provide a similar service of review and comment for monitoring plans for Historic Mine Sites.

Tse Keh Nay

The Tse Keh Nay are an alliance comprised of three self governing First Nations (Tsay Keh Dene First Nation, Kwadacha First Nation, and Takla Lake First Nation) which share an area of common geographic interest.

Community members from these three nations continue to live a lifestyle largely based on the land and resources within their traditional territories. The Tse Keh Nay are of the view that past, current and future resource extraction activities,

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particularly mining and exploration activities have an impact on the land and resources of the Tse Keh Nay. In 2006, a Health Canada funded study undertaken by the Takla Lake and Tsay Keh Dene First Nations identified several areas of contamination within their traditional territories.

Once areas are remediated and reclaimed, the Tse Keh Nay will want to work jointly with all Parties to ensure that they have continuing access to clean air, water and pollution free land and healthy fish and wildlife and healthy food sources.

In co-operation with the other Parties, the Tse Keh Nay will undertake the work associated with identified sites to determine Tse Keh Nay reciprocal obligations. Tse Keh Nay will collaborate with MAL, MEMPR and MOE to conduct fieldwork, undertake site investigations, risk assessments, and to develop and implement remedial plans according to the Plan and also the coordination between the Parties to this Protocol Agreement of the Current Mine Site Working Group.

Funding

MAL and MEMPR will together provide up to \$100,000 per year for three years, subject to the availability of an annual budget appropriation to the Ministries, to the Tse Keh Nay to facilitate their involvement in implementing this Protocol Agreement and in developing and implementing the Plan. The first payment will be made as soon as possible following the date of execution of this Protocol Agreement.

The Tse Keh Nay will identify their resource requirements, including the need for additional personnel and for contractors and equipment; will present a work plan and specific deliverables necessary to deliver on the commitments set out in this Protocol Agreement; and will identify how the funding of \$100,000 per year will be spent in furtherance of the activities described in this Protocol Agreement.

Historic Site Remediation Funding

MAL will commit additional funding up to \$1,000,000 per year for three years, subject to the availability of an annual budget appropriation, for site risk assessments and the development and implementation of remedial plans associated with Historic Mine Sites according to the Plan. This funding will be held and administered by MAL.

Independent of this Protocol Agreement, and under the Crown Contaminated Sites Program (CCSP) administered by MAL, the ten highest priority historic sites across the province are identified annually based on potential risks to human health and the environment. If any historic sites identified under the Plan are deemed by MAL to be eligible as one of the ten priority sites under the CCSP, said site could be eligible for additional funding under the CCSP. The Historic Mine Site Working Group will assess the amount of funding required to investigate and remediate the said site, with consideration to having funds to deal

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with other sites of concern identified pursuant to the Plan, in order to determine how much of the \$3 million in remediation funding available under this Protocol Agreement should be applied to the said site, and what amount of additional funding from the CCSP may be required to investigate and remediate said site.

The Historic Mine Site Working Group may identify candidate sites for consideration as provincial priorities under the CCSP.

The Tse Keh Nay and MAL will work jointly to develop implementation plans associated with the identification of Historic Mine Sites to determine and allocate necessary funding on a site specific basis.

Communication

For the purposes of communication with the general public and media related to this initiative the Parties agree to work cooperatively to develop a communications strategy to ensure that all communication materials include a reference to each Party that properly reflects the important role of that Party under this Protocol Agreement. The Parties agree that all public and media communications will be undertaken as a joint and combined effort and no party will engage in such communications independently of the other parties.

General

This Protocol Agreement does not limit, deny, define, create, recognize, affirm, suspend or alter any existing rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*. Nothing in this Protocol Agreement is to be construed as an acknowledgement of acceptance by British Columbia of any assertions of aboriginal rights or title by one or more of the Tse Keh Nay, or as an admission of fact or liability, including, without limitation, claims for compensation of any kind.

This Protocol Agreement does not limit the positions that a Party may take in any other ongoing or future discussions, negotiations, settlements, or court actions between British Columbia and one or more of the Tse Keh Nay.

This Protocol Agreement is intended to be a protocol for understanding amongst the Parties and is not intended to be a fulfillment of consultation and accommodation responsibilities.

The Parties recognize that other aboriginal peoples have asserted interests, including aboriginal rights and title, in the Protocol Agreement area.

Termination

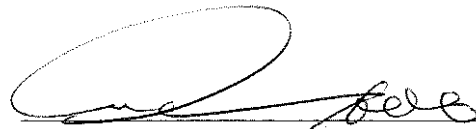
A Party may terminate this Protocol Agreement on giving 90 days notice, in writing, to the other Parties. During the termination notice period the Parties will meet and make best efforts to resolve the issues that give rise to the termination notice, when applicable.

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SIGNED in the presence of:

Province of British Columbia – Ministry of Energy,
Mines and Petroleum Resources


witness signature


signature

Sabrina Loiacono
print name

Carene How
print name

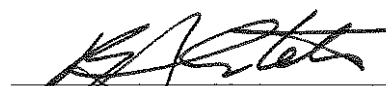
Signed this 2 day of March, 2008⁹

Signed this 2 day of March, 2008⁹

SIGNED in the presence of:

Province of British Columbia – Ministry of Agriculture
and Lands


witness signature


signature

R J Secko
print name


Ken Cartelon
print name


Signed this 25 day of FEB, 2008⁹

Signed this 25 day of Feb., 2008⁹

SIGNED in the presence of:

Province of British Columbia – Ministry of
Environment


witness signature


signature

Doug Konkini
print name

Barry Penner
print name


Signed this 25 day of Feb, 2008⁹

Signed this 25th day of FEBRUARY, 2008⁹ B.P.

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SIGNED in the presence of:

) **Kwadacha First Nation**
)
)
)
)


witness signature


signature

Madonna Warren
print name

Donny Lou Smith
print name


Signed this 4 day of February, ~~2008~~ ²⁰⁰⁹

Signed this 17 day of December, 2008

SIGNED in the presence of:

) **Takla First Nation**
)
)
)
)


witness signature


signature

WARRINGTON GEORGE
print name

Dolly Abraham
print name

Signed this 6 day of FEBRUARY, 2008

Signed this 02 day of February, ~~2008~~ ²⁰⁰⁹

SIGNED in the presence of:

) **Tsay Keh Dene First Nation**
)
)
)
)


witness signature


signature

Sherril Perry
print name

Ella Pierre
print name

Signed this 23 day of JANUARY, ~~2008~~ ²⁰⁰⁹

Signed this 23 day of JANUARY, ~~2008~~ ²⁰⁰⁹