

**IN THE MATTER OF
THE ENVIRONMENTAL ASSESSMENT ACT, RSBC 1996, c.119 (“the Act”)**

AND

**IN THE MATTER OF
AN APPLICATION FOR A PROJECT APPROVAL CERTIFICATE BY
REDFERN RESOURCES LTD. (“Redfern”)
FOR THE TULSEQUAH CHIEF MINE PROJECT (the “Project”)
IN NORTHWEST BRITISH COLUMBIA**

**REASONS FOR MINISTERS’ DECISION
UNDER SECTION 30(1)(c) OF THE ACT**

The Minister of Sustainable Resource Management (the Minister) and the Minister of Energy and Mines (the Responsible Minister), considered, in the context of the purposes of the Act, as set out in section 2, and the judgment of the Court of Appeal of British Columbia of January 31, 2002 (file No. CA027488), the following documentation remitted to the Minister and the Responsible Minister on May 31, 2002, by the Executive Director of the Environmental Assessment Office:

- Redfern’s application for a project approval certificate;
- the project report, including a report entitled *Determining the Impact of the Tulsequah Chief Mine Project on the Traditional Land Use of the Taku River Tlingit First Nation: Addendum on Impacts, December, 1997*, prepared by Lindsay Staples;
- the recommendations of the Tulsequah Chief Project Committee (“Project Committee”) and the reasons for its recommendations, given in a report entitled *Report and Recommendations of the Tulsequah Chief Project Committee with Respect to a Decision on a Project Approval Certificate by the Minister of Environment, Lands and Parks and the Minister of Energy and Mines and Minister Responsible for Northern Development and Fulfilling the Requirements of a Screening Report pursuant to the Canadian Environmental Assessment Act* (the Committee Report);
- the recommendations of the Taku River Tlingit First Nation (“TRTFN”) and the reasons for its recommendations, given in a report entitled *Tulsequah Chief Mine Re-Opening Project, Report and Recommendations of the Taku River Tlingit First Nation (Project Committee Member), March 6, 1998*;
- the decision of the Court of Appeal regarding the Tulsequah Chief Mine proposal (*Taku River Tlingit First Nation v. British Columbia*, BCCA, January 31, 2002);
- the Paul decision (*Paul v. Forest Appeals Commission*, BCCA, June 14, 2001);
- the Haida decision (*Haida Nation v. British Columbia and Weyerhaeuser*, BCCA, February 2002);
- Court of Appeal Order (April 22, 2002); and

- Court clarification of Court of Appeal Order (April 22, 2002), Memorandum from Madam Justice Rowles, Court of Appeal, sent to Deputy Registrar Low, dated April 11, 2002.

In fulfilling their statutory authority under the Act, and the Court of Appeal's direction to

“revisit the question of the issuance of the Project Approval Certificate, bearing in mind these reasons for judgment (BCCA, January 31, 2002) including the division of powers question under the *Constitution Act*, 1867, that was explored in the recent decision of this Court in *Paul (Paul v. British Columbia) (Forest Appeals Commission)*, British Columbia Court of Appeal, 2001) and the decisions of the Supreme Court of Canada concerning the Crown's constitutional and fiduciary obligations to aboriginal people in relation to matters that may affect their aboriginal rights”,

the Minister, with the concurrence of the Responsible Minister, issued Project Approval Certificate M02-01 (“the Certificate”) approving the Project, subject to Conditions.

The following are our reasons for issuing the Certificate, based on the above mentioned record:

- All measures relating to the distribution of information specified by the Project Committee about the Project have been carried out by Redfern and there has been adequate consultation by Redfern and the Environmental Assessment Office with the public.
- Issues and concerns identified by the public were duly considered by the Project Committee, and the Committee Report identified these issues and documented how they would be addressed.
- With respect to the consultations with the TRTFN and the concerns raised in their report and recommendations, the Ministers have considered their concerns and the following outlines how those concerns will be addressed.

Mine Road: Management of Access – During Construction and Operational Phases of Project

The access road to the mine site can be effectively managed to ensure protection of wildlife in the region through the measures outlined below.

Province's Measures to Respond to Access Management

- The Minister of Water, Land and Air Protection will make regulations pursuant to the *Wildlife Act* to prohibit hunting or trapping and to prohibit or

restrict access by members of the public in a defined area along the road corridor, while still permitting industrial use of the road.

Redfern's Measures to Respond to Access Management

- The Certificate requires that Redfern finalize a detailed plan for the construction and operational phases of the Project and confirm a strategy for Redfern to manage the access road to prohibit public use.
- Redfern has committed to and is required by the Certificate to develop a detailed plan to control use of the access road, and is required to:
 - Install and manage gates to control authorized vehicles and prohibit unauthorized vehicles:
 - For the north section of the road through the Spruce-Wilson road alignment, gates will be installed that are closed and locked at the start and end of the new 12 km portion of road. Redfern will require mine vehicle operators to lock and unlock these for their use, to maintain these and to report any malfunctions immediately so the road security provided by the gates can be maintained.
 - For the south section of the road, Redfern will install a gate and facilities at the O'Donnel River crossing that will be fully attended on a continuous basis. The attendant will ensure that only authorized road users pass through the gate.
 - Install signs at strategic locations along the road, providing notice of the private and industrial nature of the industrial road and an intention to enforce restrictions on its use.
 - Execute agreements with other industrial users, under the *Mining Right of Way Act*, to require that they abide by the same restrictions on road use as Redfern.
 - Require all industrial users to adopt procedures to ensure restrictions on road use; this will include use of communications tools in vehicles and adoption of a reporting system to remove unauthorized users or to take steps to support enforcement measures.
 - Develop a protocol for vehicle operators and the gate attendant to cooperate with the local RCMP detachment regarding unauthorized road users and develop a protocol with the personnel retained to enforce wildlife regulations to deal with potential infractions under the *Wildlife Act*, observed by persons using the road legitimately.
 - Continue the access road management plan through temporary mine closures or work stoppages.

Mine Road: Management of Access – Road Closure/Decommissioning

The Province will require that Redfern close the access road as a means of ensuring that any impacts to wildlife that result from the use of the access road stop, when the mine closes.

Province's Measures regarding Road Closure

- The Province, as represented by the Regional Manager, Ministry of Forests ("MOF"), responsible for the special use permit for the access road, will require that the road be closed and decommissioned at the end of the life of the Project.

Redfern's Measures regarding Road Closure

- Redfern has committed to closing the access road in accordance with the detailed plan required by the Regional Manager, MOF, at the end of the life of the mine, and in a manner consistent with the reclamation requirements of Ministry of Energy and Mines ("MEM").

Potential Impacts on Wildlife Arising from the Construction and Use of the Road

The measures outlined below are intended to protect wildlife and are in addition to those provided for above regarding access management.

Province's Measures to Mitigate Impacts

- The Province, under the lead of the Ministry of Water, Land and Air Protection ("MWLAP") and the involvement of MOF, MEM and the Ministry of Sustainable Resource Management ("MSRM"), will establish a committee and will invite the TRTFN to join it. The committee will work with Redfern to develop an adaptive management strategy for the protection of wildlife. MWLAP and other agencies will contribute resources based on their assessment of what is reasonably required to support the adaptive management strategy.
- To date, MWLAP has expended about two million (\$2,000,000) dollars in collecting and analyzing wildlife data which has significantly expanded the data base for Project management. This expenditure of Provincial resources substantially exceeded the level of funding routinely allocated for wildlife monitoring and management in the region. Future support of the adaptive management strategy will likewise require further funding allocations above the apportioned base budget of the Ministry.
- In fulfilling the adaptive management strategy for the access road, the Province will rely on the pre-construction and post-construction data collected through the monitoring programs agreed to by Redfern and enhanced by Provincial contributions of resources.
- The Province, through the Treaty Negotiations Office ("TNO"), will offer financial support as reasonably required for training, to develop capacity within the TRTFN for participation in the wildlife management strategies.
- MWLAP will enforce wildlife protection during the operation of the access road and will adjust the enforcement strategy as necessary throughout the

life of the Project. The strategy will include a community education component about wildlife management and protection.

- The Province, through TNO, will offer support as reasonably required for training two representatives of the TRTFN, to serve as guardians, to enhance provincial enforcement capability.
- MWLAP will continue ongoing consultation with the TRTFN regarding management of several key species of wildlife (e.g., caribou, moose, goats, bears).
- The Minister of WLAP will adopt regulatory controls as necessary for the region under the *Wildlife Act* to protect wildlife. For example, regulations could be adopted following consultation with the TRTFN to address hunt closures for particular species such as goats and caribou, and/or sex and age restrictions on harvest for particular species.

Redfern's Measures to Respond

- Redfern has committed to and is required by the Certificate to adaptively manage the construction and use of the access road to avoid and minimize any potential impacts on wildlife.
- Redfern has cooperated with provincial agencies to collect pre-construction data and information pertaining to wildlife around the proposed road alignment.
- Redfern has committed to and is required by the Certificate to continue to participate with provincial agencies and with the TRTFN, should representatives of the TRTFN choose to join the committee for the management of wildlife, to monitor the results of road construction and operations.
- Redfern has committed to and is required to cooperate with the proposed wildlife committee to develop and adjust a detailed traffic management plan to avoid and manage impacts on wildlife. The plan could include limiting the use of all or parts of the access road by setting appropriate time windows for use and reliance on conveying.

Potential Economic and Community Impacts of the Project on the TRTFN

The measures outlined below are designed to mitigate any potential adverse economic and community impacts to the TRTFN associated with the Project.

Province's Measures to Respond

- The Province, through the Treaty Negotiations Office ("TNO"), will offer financial support as reasonably required for training regarding wildlife protection and management and so that members of the TRTFN can secure employment associated with mineral exploration and mining in the region.

Redfern's Measures to Respond

- Redfern has committed to and is required by the Certificate to enter into negotiations with the TRTFN to develop an agreement to ensure benefits to the TRTFN from the Project.
- Redfern has provided a framework of the agreement to the TRTFN to include training of members of the TRTFN to obtain employment associated with the mine, direct employment opportunities, and to develop counseling and family support programs.

Potential Social Impacts

The measures outlined below are intended to mitigate adverse social impacts to the TRTFN that may arise in relation to the Project.

Province's Measures to Respond

- The specific measures outlined above for wildlife protection in relation to this Project and the wildlife management strategies applied throughout the region, should enable the TRTFN to continue to rely on wildlife as a source of food.

Redfern's Measures to Respond

- Redfern has committed to and is required by the Certificate to establish an employee support and counselling program which will be accessible by all employees, including TRTFN employees, to deal with social issues.

Potential Cultural Impacts

The measures outlined below are designed to mitigate adverse cultural impacts to the TRTFN.

Province's Measures to Respond

- No access road route alignment was identified in the course of the assessment or discussions with the TRTFN that could be used to completely avoid some impacts with a heritage trail. These impacts are anticipated to be primarily in connection with the heritage trail extending from the Tulsequah River north to the area of Kuthai Lake.
- MSRM, MOF, and MEM, in evaluating further approvals in connection with the Project, will seek to cooperate with the TRTFN to conserve heritage and cultural resources.

- The strategies for wildlife protection outlined above will respect the TRTFN's way of life, and their use of and dependence on traditional foods.

Redfern's Measures to Respond

- Redfern has committed to and is required by the Certificate to enter into negotiations with the TRTFN to develop an agreement to ensure benefits to the TRTFN from the Project.
- Redfern has committed to and is required by the Certificate to establish an employee support and counseling program which would be accessible by all employees, including TRTFN employees.
- Redfern has committed to and is required by the Certificate to seek the participation of the TRTFN regarding the placement of the final access road alignment, to avoid or minimize direct impacts of the road crossing the heritage trail, especially in the area of Kuthai Lake south to the Tulsequah River. Much of this is dependant on detailed ground work to be completed during road construction.
- Where it is impractical for Redfern to avoid conflict with the heritage trail, Redfern has committed to and is required by the Certificate to seek the participation of the TRTFN to develop road use and management strategies to avoid conflict with trail users. These strategies will take into consideration times when the heritage trail will be used and the levels of use at those times. An effective outcome will require effective communication with the TRTFN.

Other Issues

While the TRTFN did not put the redevelopment of the mine site at issue, we have reviewed all of the information pertinent to the management of the mine site and have concluded that, with the procedural safeguards provided by the Certificate in Conditions 5(1) through 5(4) regarding further consultation about the potential chronic toxicity of the mine discharge and the stability of the proposed site of the tailings impoundment, the Project should proceed to permitting.

It is expected that the resulting mine operations will be effective in managing acid rock drainage currently seeping from the mine site into the Tulsequah River. Management and curtailment of this drainage through the proposed mine development plan will in all likelihood result in environmental benefits to the river system as well as the rich fishery supported by the river. These are key benefits which we anticipate as a result of the Project.

Ministers' Summary Regarding Issuance of a Certificate

We have taken considerable time from May 31, 2002 until now to review the implications associated with making a decision on the proposed Tulsequah Chief Mine Project.

We have considered all the issues presented by the application, Project Report, and Project, reviewed the two reports and recommendations of Project Committee members, received briefings on the court decisions and the direction of the Court of Appeal with regard to discharging the Crown's obligations to the TRTFN. We have met with the TRTFN several times to review their issues of concern directly, and have sought to address those concerns as outlined above.

We have also reviewed the long history of the assessment of the Project and considered the wide and varied interests of the members of the community of Atlin and British Columbia with respect to the Project in the broader context of our mandates as Ministers of the Province. We have considered the interests of our neighbours, the Yukon Territorial Government, the State of Alaska, and the United States and we have considered the interests of our federal government.

We have also considered the financial commitment and expenditures that Redfern has made to explore the resource and to undertake the environmental assessment. In addition to the interests of the TRTFN, we have also considered Redfern's interests in considering the overall public interest of the people of British Columbia, both aboriginal and non-aboriginal.

Taking all of this information into account and in particular bearing in mind the direction of the Court of Appeal, we have decided to issue Certificate M02-01 to Redfern because we believe that with the many measures required of Redfern in connection with the Project and the measures that we have committed to on behalf of the Province, the interests of the TRTFN can be accommodated and the Project developed and managed successfully.

Land Use Plan for Region

In addition to the mitigation measures and accommodations we have taken into account in making our decision to issue the Certificate with Conditions, we have given much consideration to the need for a land use plan for the region.

The Province, under the lead of MSRM, has initiated discussions with the TRTFN to negotiate a protocol agreement to develop a land use plan for the region. The government's goal for a plan is to provide a broad strategy for regional economic opportunities, social benefits and environmental protection. The strategy would be based on an assessment of resources and understanding of First Nation's (including the TRTFN's) asserted rights to and traditional uses of regional resources. Once a protocol is negotiated with the TRTFN for participation and

cost sharing established between government and the TRTFN, MSRM will seek funding approval from government to proceed with developing the plan. It is expected that the plan would be completed in two years.

The region to be planned covers three million hectares centered around the Taku River watershed. It is rich in resources - minerals, fisheries, wildlife and forests. The land use plan will allow for sustainable economic opportunities and benefits to be maximized for all with an interest in the region including the First Nations, and will allow for further consultations with First Nations about their interests.

The plan is not a precondition to the approval of the Tulsequah Chief Mine. The plan will be based on the presence of the Project, access road and mine site, as defined in the Certificate. We believe that this region which encompasses a vast area with a rich variety of resources, can accommodate the Tulsequah Chief Mine Project and other opportunities both for the population of the TRTFN and the citizens of British Columbia. Accordingly, the plan will provide a basis for negotiating appropriate measures with the TRTFN to enable future economic opportunities associated with the resources in the region. The plan will review the current requirement for closure of the access road.

We will involve other provincial agencies, federal agencies, other First Nations with claims in the area covered by the plan, the community of Atlin and interested groups working in the area, in finalizing the protocol for developing the plan. Representatives from the governments of the Yukon Territory, the State of Alaska, and agencies of the US federal government will also be invited to participate in the plan.

Honourable Richard Neufeld
Minister of Energy Mines

Honourable Stan Hagen
Minister of Sustainable Resource
Management

Dated: _____

Dated: _____