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August 16, 2013

Panel Chair & Members
c/o Livain Michaud, Panel Manager
Canadian Environmental Assessment Agency
160 Elgin Street
Ottawa, ON K1A 0H3
Sent by email to: newprosperityreview@ceaa-acee.gc.ca

Dear Panel Chair and Members:

Subject: New Prosperity Gold-Copper Mine Project – Addendum to Transport Canada’s July 19, 2013 Written Submission

Transport Canada (TC) submitted its July 19, 2013 Written Submission (CEAR # 647) in response to the federal Review Panel’s (the Panel) June 21, 2013 request for TC’s participation in the public hearing for the New Prosperity Gold-Copper Mine Project (the Project). The Panel’s letter invited TC to provide its views on the Project and its environmental effects, and in particular, its technical review of the potential environmental effects of the Project in matters relating to the department’s expertise.

Some of the information requirements mentioned in TC’s July 19, 2013 Findings have been fulfilled or partially fulfilled as information has since been provided to the Panel through Undertaking U-014 and the Community Hearing Sessions. Given this information, this letter is an addendum to TC’s July 19, 2013 Written Submission and responds in part to the Panel’s June 21, 2013 request to provide information and recommendations to the Panel. This addendum accounts for the additional information provided by participants during the public hearing process between July 19, 2013 and August 15, 2013.

I. July 19-August 16, 2013 Information Presented

TC notes that between July 19, 2013 and August 15, 2013, some information related to navigation on the waterways affected by the Project was provided to the Panel. In particular, information was provided during the Community Hearing Sessions regarding rafting¹ on Little Fish Lake for the purposes of fishing or setting traps and nets. Rafting and boating were mentioned in association with the area around Little Fish Lake, as well as other lakes in the broader area surrounding the Project. TC has confirmed that Little Fish Lake is navigable and its destruction by the proposed Tailings Storage Facility (TSF) would extinguish navigation. From the perspective of the public’s right to navigate on Little Fish Lake: the Lake does not appear to be an important waterway for navigation by the public. However, from the perspective of current use of lands and resources for traditional purposes by Aboriginal peoples (and the perspective of health and socio-economic conditions with respect to Aboriginal peoples): information provided during the Community Hearing Sessions indicates that the waterway is likely important for Aboriginal groups in conducting traditional activities, some of which are supported by navigation.

¹The legal definition of ‘vessel’ within the Navigable Waters Protection Act (NWPA) would include a raft.

II. Revisiting TC's July 19, 2013 Findings

TC Finding #2 – Community Hearing Sessions provided information on navigational use for some of the waterways that will be impacted by the Project. The information does not provide a comprehensive overview of navigational use of all the waterways impacted by the Project.

TC Finding #3 – Based on the information made available between July 19, 2013 and August 15, 2013, mitigation measures for indirect effects to navigation do need to be revisited. The suggested mitigation measures put forward in the Environmental Impact Statement (EIS) (p.1183) do not address the loss of Little Fish Lake and the surrounding waterways, of which some waterways may be navigable.

The mitigation measures provided in the EIS may be considered a starting point for mitigating impacts of the fish compensation plan and other temporary/ancillary works to *navigation*. The mitigation measures presented on p.1183 of the EIS lack detail and facilitate further discussion regarding potential mitigation measures. However, these mitigation measures are not adequate for the impacts to navigation on Little Fish Lake and adjoining sections of Fish Creek.

TC Finding #4 – The information provided during the Community Hearing Sessions provided some detail on how the infilling of Little Fish Lake might affect the ability of Aboriginal groups to navigate in the Little Fish Lake area and within the Fish Creek Watershed, particularly as navigation relates to the exercise of a potential or established Aboriginal right.

TC Finding #5 – TC is of the opinion that based on the information provided during the Community Hearing Sessions, the infilling of Little Fish Lake is expected to have an adverse impact on Aboriginal groups' ability to exercise their potential or established Aboriginal rights while navigating on Little Fish Lake, and potentially in the Fish Creek Watershed. Based on TC's current understanding, the comments made under TC Finding #3 above are applicable here.

TC notes that on Thursday, August 8, 2013, Taseko Mines Ltd. stated that no "specific compensation measures for the loss of Little Fish Lake with regards to navigation" were proposed, but that Taseko Mines Ltd. "would remain open to those concepts for including into our fish habitat compensation plan" (Transcript volume 13, CEAR #922, p.253, L.17).

The mitigation measures proposed by Taseko Mines Ltd. do not address the loss of Little Fish Lake and the surrounding waterways. Further, additional detail is required with respect to mitigating or accommodating impacts to Aboriginal groups' ability to exercise their potential or established *Aboriginal rights* while navigating.

TC Finding #6 – Undertaking U-014 addresses the number and permanency of the structures associated with the TSF; however, U-014 does not provide the location of such structures. TC notes that portions of U-014 were not fulfilled (e.g. a portion of the undertaking was to provide a map indicating the location of coffer dams associated with the construction of the TSF embankments).

III. Other Comments

Since Little Fish Lake has been deemed navigable and portions of Reaches 8 and 10 are within the footprint of the TSF, the Governor in Council process under section 23 of the NWPA will cover all the waterways associated with the TSF, including Little Fish Lake and portions of Reaches 8 and 10, should the Project proceed.

Page 1177 of the EIS states that "an effect is significant if there are long-term effects on navigational use of the local study area for a large proportion of the area and users." Page 1174 of the EIS mentions that one of the effects assessed is change of the public's use of and right to navigate," including "the effect of the Project on traditional use." TC notes that there will be long-term effects on navigational use of the TSF area. A large proportion of the area around Little Fish Lake will be

affected. Users (Aboriginal peoples) in the area around Little Fish Lake will be affected with respect to their ability to navigate when using the area for traditional purposes. This environmental effect (navigation) is captured under S.5(c)(i) and (iii) in the *Canadian Environmental Assessment Act*, 2012.

IV. Conclusion

TC has found that a number of the information gaps outlined in the department's July 19, 2013 Written Submission remain outstanding. However, TC has determined that Little Fish Lake is navigated by Aboriginal groups to undertake traditional activities.

TC has found that mitigation measures have not been adequately addressed to date with respect to the impacts associated with the TSF, as the TSF will affect a large proportion of the local study area, and in particular, Aboriginal groups that are currently navigating on Little Fish Lake in order to exercise their traditional activities. Further, it is noteworthy that the impact of the TSF to navigation within the Project area is irreversible and appropriate mitigation measures for some effects may not exist.

Please feel free to contact Gina Aitchison, Senior Environmental Officer, at (604) 666-1741 or gina.aitchison@tc.gc.ca if you have any questions.

Sincerely,

<original signed by>

Mike Henderson,
Regional Director General
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Transport Canada

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