

## **APPENDIX 5 – AGREEMENT TO ESTABLISH THE JOINT REVIEW PANEL**

### **AGREEMENT**

concerning

### **The Establishment of a Joint Review Panel for the Kemess North Copper-Gold Mine Project**

between

### **The Government of Canada, as represented by the Minister of the Environment**

and

### **The Province of British Columbia, as represented by the Minister of Sustainable Resource Management**

#### **WHEREAS:**

- A. The provincial Minister of Sustainable Resource Management has certain statutory responsibilities pursuant to the British Columbia *Environmental Assessment Act*;
- B. The federal Minister of the Environment has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act*;
- C. Northgate Minerals Corporation plans to expand the Kemess mine situated 300 kilometres northwest of Mackenzie and 250 kilometres northeast of Smithers, British Columbia, which is subject to an environmental assessment under the *Canadian Environmental Assessment Act* and the British Columbia *Environmental Assessment Act*;
- D. The Takla Lake, Kwadacha and Tsay Key Dene First Nations and the Gitksan House of Nii Kyap, are asserting aboriginal rights at or near the Project area;
- E. The federal Minister of Fisheries and Oceans, with the support of Transport Canada and Natural Resources Canada, has, pursuant to section 25 of the *Canadian Environmental Assessment Act*, requested the Minister of the Environment to refer the Project to a review panel in accordance with section 29 of the *Canadian Environmental Assessment Act*;
- F. The Kemess North Copper-Gold Mine Project was referred to a review panel in accordance with section 29 of the *Canadian Environmental Assessment Act* and the Minister of the Environment has determined that a panel should be established pursuant to subsection 40(2) of the *Canadian Environmental Assessment Act*;
- G. The Kemess North Copper-Gold Mine Project was referred to the Minister of Sustainable Resource Management in accordance with section 10 of the British Columbia *Environmental Assessment Act* and the Minister of Sustainable Resource Management has determined that a panel should be established pursuant to section 14 of the British Columbia *Environmental Assessment Act*; and
- H. This Agreement is consistent with the Canada-British Columbia Agreement on Environmental Assessment Cooperation, signed on March 11, 2004, which provides for harmonized environmental assessments, including the establishment of panels.

**THEREFORE**, the Minister of Sustainable Resource Management and the Minister of the Environment hereby establish a panel for the Project in accordance with the provisions of this Agreement and the Terms of Reference attached hereto as an Appendix.

## **1.0 DEFINITIONS**

For the purpose of this Agreement and of the Appendix attached to it,

**"Agency"**

means the Canadian Environmental Assessment Agency.

**"Environmental Impact Assessment (EIA)"**

means the report submitted by the Proponent that, pursuant to the Guidelines, sets out the Proponent's assessment of the effects of the Project.

**"EAO"**

means British Columbia's Environmental Assessment Office.

**"Federal Authority"**

refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

**"First Nation"**

means those First Nations who assert aboriginal rights at or near the Project area and include the Takla Lake, Tsay Keh Dene and Kwadacha First Nations and the Gitksan House of Nii Kyap.

**"Follow-up Program"**

means a program for

- a. verifying the accuracy of the environmental assessment of the Project, and
- b. determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the Project.

**"Guidelines"**

refers to the document which will identify the information that must be included in the EIA.

**"Ministers"**

means the federal Minister of the Environment and the provincial Minister of Sustainable Resource Management.

**"Panel"**

refers to the joint review panel established pursuant to this Agreement.

**"Parties"**

means the Government of Canada and the Province of British Columbia as represented by the Ministers.

**"Project"**

means the Kemess North Copper-Gold Mine Project as described in the Project Description in Part 1 of the attached Appendix.

**"Proponent"**

means Northgate Minerals Corporation.

**"Responsible Authority"**

refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

## **2.0 ESTABLISHMENT OF THE PANEL**

**2.1** A process is hereby established to create a panel, pursuant to section 14 of the British Columbia *Environmental Assessment Act* and sections 40, 41 and 42 of the *Canadian Environmental Assessment Act*, for the purposes of the review of the Project.

**2.2** The EAO and the Agency will make arrangements for the coordination of public announcements respecting the joint review of the Project.

### **3.0 CONSTITUTION OF THE PANEL**

**3.1** The Panel shall consist of three members, one of whom shall be the chairperson.

**3.2** The Ministers shall appoint the Panel members, consistent with the requirements of the *Canadian Environmental Assessment Act* and the British Columbia *Environmental Assessment Act*, based on recommendations from the Agency and EAO, following consultation by the Agency and EAO with First Nations.

### **4.0 CONDUCT OF THE REVIEW BY THE PANEL**

**4.1** The Panel shall conduct its review in a manner that discharges the requirements set out in the British Columbia *Environmental Assessment Act*, the *Canadian Environmental Assessment Act* and in the Terms of Reference for the Panel attached hereto as an Appendix.

**4.2** All Panel hearings shall be public and shall provide for Aboriginal and public participation.

### **5.0 SECRETARIAT AND ADMINISTRATIVE MATTERS**

**5.1** Administrative, technical and procedural support for the Panel shall be provided by a Secretariat. The EAO and the Agency will jointly establish the Secretariat.

**5.2** The Secretariat shall report to the Panel and shall be structured so as to allow the Panel to conduct its review in an efficient and cost-effective manner.

**5.3** The Agency and EAO shall prepare a budget for the panel review process.

**5.4** Costs associated with the review by the Panel will be apportioned between the Parties in accordance with a cost-sharing agreement to be finalized prior to the appointment of the Panel.

### **6.0 RECORD OF REVIEW AND REPORT**

**6.1** A public registry consisting of all submissions, correspondence, meeting records, hearing transcripts, exhibits and other information received by the Panel and all public information produced by the Panel relating to the review of the Project shall be maintained by the Secretariat during the course of the review in a manner that provides for convenient public access, and for the purposes of compliance with section 55 of the *Canadian Environmental Assessment Act* and section 25 of the British Columbia *Environmental Assessment Act*.

**6.2** On completion of the review of the Project, the Panel shall prepare a report in both official languages and submit it to the Ministers and First Nations and make it available to the public.

**6.3** Once the report is submitted to the Minister of the Environment, responsibility for the maintenance of the public registry in accordance with section 55 of the *Canadian Environmental Assessment Act* will be transferred to a Responsible Authority and the EAO will maintain records relating to the environmental assessment of the Project.

**6.4** The report will address the factors identified in the Appendix to this Agreement, and will set out the rationale, conclusions and recommendations of the Panel relating to the environmental assessment of the Project, including any mitigation measures and Follow-up Program, and an assessment of whether issues raised by First Nations and the public, that are within the scope of the environmental assessment, have been or will be addressed.

**6.5** The Parties agree to coordinate, to the extent possible, the timing of decisions on the Project and announcements on decisions pertaining to the Project.

**7.0 OTHER GOVERNMENT AGENCIES**

**7.1** At the request of the Panel, Federal Authorities and provincial agencies having specialist knowledge with respect to the Project shall provide available information and knowledge in a manner acceptable to the Panel.

**7.2** Subject to clause 7.1 of this Agreement and subsection 12(3) of the *Canadian Environmental Assessment Act*, nothing in this agreement shall restrict the participation by way of submission to the Panel by federal departments.

**8.0 PARTICIPANT FUNDING**

**8.1** The Agency will administer a participant funding program to facilitate the participation of First Nations and the public in the review of the Project.

**8.2** The EAO will make funding available, subject to provincial Treasury Board approval, to facilitate the participation of First Nations in the review of the Project.

**8.3** The President of the Agency will decide on the allocation of funds under the Agency's participant funding program. The Executive Director of the EAO will decide on the allocation of funds available from the EAO.

**9.0 AMENDING THIS AGREEMENT**

**9.1** The Parties may amend this Agreement by mutual agreement.

**10.0 SIGNATURES**

In Witness whereof the Ministers hereto have signed this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

***Original signed on May 19, 2005 by:***

***For the government of Canada***

\_\_\_\_\_  
The Honourable Stéphane Dion  
Minister of the Environment  
Canada

***For the government of British Columbia***

\_\_\_\_\_  
The Honourable George Abbott  
Minister of Sustainable Resource Management  
British Columbia

## **Appendix 1 - Terms of Reference for the Panel**

### **Part I - Project Description**

Northgate Minerals Corporation is proposing to expand the operating Kemess mine which is Projected to close in late 2008. The proposed Project will be an open-pit mine with production of up to 120,000 tonnes per day and an 11-year mine life.

The Project would result in present-day milling capacity at the operating Kemess mine being increased from the current 55,000 tonnes per day to up to 120,000 tonnes per day. The Project would use all of the existing primary infrastructure in place at the Kemess mine, including the 380-kilometre transmission line, the 500-person accommodation and camp facilities, the service complex consisting of personnel offices, warehouse and maintenance facilities, the mining truck fleet, shovels and drills, the mill complex and the 1500-metre airstrip. A copper-gold concentrate would continue to be transported off-site.

New infrastructure for the Project would include:

- a 12-kilometre access road from the Kemess mine to the Project site;
- haul roads within the pit and to waste dumps;
- a new primary crusher;
- an 8.8-kilometre ore conveyor system and 3-kilometre tunnel to transport ore from the Project site to the Kemess mine mill;
- waste rock dump(s);
- tailings delivery system(s) and storage facility(ies);
- fuel depot;
- explosives storage and manufacturing plant if necessary;
- borrow material sites (quarries) and storage sites for salvaged topsoil and overburden;
- maintenance shops and equipment laydown areas; and
- an extension of the existing electrical transmission line.

The Project would extend employment for employees at the operating Kemess mine. The Kemess mine employs approximately 500 persons full-time, including approximately 140 full-time contract persons, and up to 70 seasonal persons. In addition, approximately 150 persons will be employed during the construction and early operational phase of the Project.

### **Part II - Scope of the Environmental Assessment**

The Panel shall include in its review of the Project, consideration of the following factors:

- purpose of the Project;
- need for the Project;
- alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means;
- the environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other Projects or activities that have been or will be carried out, and the significance of those effects;
- economic, social, heritage and health effects;
- comments from the public that are received during the review;
- comments from First Nations that are received during the review;

- measures that are technically and economically feasible and that would mitigate any significant adverse environmental, economic, social, heritage or health effects of the Project, including such effects on First Nations;
- the need for, and the requirements of, any Follow-up Program in respect of the Project; and
- the capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future.

### **Part III Components of the Panel Review Process**

The main steps in the review by the Panel will be as follows:

1. The Agency and EAO shall prepare draft Guidelines. The public and First Nations shall be provided 30 days to review the draft Guidelines and provide comments to the Panel.
2. After taking into account the comments received from First Nations and the public, the Panel shall finalize and issue the Guidelines within 14 days of the close of the comment period. The Panel will forward the Guidelines to the Proponent and, at the same time, the Guidelines will be made available on the public registry.
3. The Panel will require the Proponent to prepare the EIA in accordance with the Guidelines issued by the Panel, and submit the EIA to the Panel. The Panel shall require the Proponent to make the EIA available to First Nations and the public.
4. Within five working days of receipt of the EIA, the Panel will initiate a 60-day comment period on the EIA. First Nations and the public will be able to review the document and provide comments on whether the EIA adequately addresses the requirements of the Guidelines.
5. Comments received during the comment period, shall be immediately provided to the Proponent by the Panel. The Proponent shall, as appropriate, provide to the Panel its response to the comments not later than 30 days following completion of the comment period.
6. Should the Panel identify deficiencies after reviewing the EIA, and in consideration of any comments received from First Nations and the public, and in consideration of the Proponent's response, the Panel may require additional information from the Proponent. Any request for additional information shall be issued by the Panel within 30 days following the close of the comment period or 30 days following receipt of written comments from the Proponent, whichever occurs later. The Panel will determine the need, timing and location of any public meetings required for clarification of technical information.
7. The Panel shall schedule and announce the start of the hearings once the Panel is satisfied that sufficient information has been provided. Forty-five days notice will be provided to First Nations and the public prior to the start of the hearings.
8. The Panel will hold hearings in locations determined by the Panel within the area likely to be affected by the Project, or in any area reasonably close to where the Project is proposed to be carried out, to provide convenient access for potentially affected First Nations and the public.
9. The hearings will be completed within 45 days from the start of the hearings.
10. The Panel will deliver its report to Ministers within 60 days following the close of the hearings. The report will take into account and reflect the views of all Panel members.