

September 9, 2021

Honorable John Horgan  
Premier, Province of British Columbia  
PO Box 9041 STN PROV GOVT  
Victoria, BC V8W 9E1

Dear Premier Horgan,

Re: Cover-letter for Response to Letter to S'ólh Téméxw Stewardship Alliance re Imperial Metals Notice of Work

What follows is a copy of the S'ólh Téméxw Stewardship Alliance's (STSA) response to BC's Ministry of Energy, Mines and Low Carbon Innovation regarding the Giant Copper Mine Notice of Work to restart mining activity within the Skagit River Headwaters, located in the "Donut Hole", an unprotected area surrounded by Skagit Valley Provincial Park to the east, and E.C. Manning Provincial Park to the west. Dated to March 31, 2021, that letter included five reasons that the Imperial Metals mining request must be denied, namely that:

1. The Ministry has not adequately fulfilled its responsibilities concerning consultation and engagement under the SEA.
2. The Ministry's limited scope of review is incompatible with the holistic and rights-based perspectives of STSA.
3. The Ministry has made an inappropriate assessment of Stó:lō interests and strength of claim to Aboriginal rights and title.
4. The Ministry's finding that an Integrated Cultural Assessment (ICA) should be funded through the STSA Strategic Engagement Agreement (SEA) is incorrect.
5. The Ministry has not adequately engaged critical concerns raised by STSA, including those regarding Imperial Metals' history of non-compliance.

We include this record along with our signed support for the Washington Treaty Tribes letter of opposition, to highlight the numerous objections STSA and other neighbouring First Nations have to these proposed works, and the incomplete manner in which indigenous consultation was carried out for them.

March 31, 2021

Ministry of Energy, Mines and Low Carbon Innovation  
Mining & Minerals Resources Division  
PO Box 9395 Stn Prov Gov  
Victoria, BC V8W 9M9

Attention: Kevin Chisholm  
Manager, First Nations Relations  
South Coast Regional First Nations Initiatives  
via email: kevin.chisholm@gov.bc.ca

Don Harrison  
Senior Inspector of Mines, SW Region  
via email: donald.harrison@gov.bc.ca

Dear Mr. Chisholm and Mr. Harrison

Re: Response to Letter to S'ólh Téméxw Stewardship Alliance re Imperial Metals  
Notice of Work

We write in response to the letter from the Ministry of Energy, Mines and Low Carbon Innovation (the “**Ministry**”) dated December 18, 2020 letter (the “**December Letter**”) to the S'ólh Téméxw Stewardship Alliance (“**STSA**”) regarding the Notice of Work application of Imperial Metals in the Giant Copper Mine area (the “**Application**”).

The December Letter does not provide an adequate response to the issues that have been raised by STSA in its correspondence with the Province since 2019 concerning the potential impacts of the Application, nor does it fulfill the engagement requirements of the Ministry pursuant to the S'ólh Téméxw Stewardship Alliance Strategic Engagement Agreement (the “**SEA**”) between the Province and STSA. STSA has the following concerns in relation to the December Letter and the Ministry's engagement with STSA regarding the Application, all of which are discussed in greater detail below:

1. The Ministry has not adequately fulfilled its responsibilities concerning consultation and engagement under the SEA.
2. The Ministry's limited scope of review is incompatible with the holistic and rights-based perspectives of STSA.
3. The Ministry has made an inappropriate assessment of Stó:lō interests and strength of claim to Aboriginal rights and title.
4. The Ministry's finding that an Integrated Cultural Assessment (“**ICA**”) should be funded through the SEA is incorrect.
5. The Ministry has not adequately engaged critical concerns raised by STSA, including those regarding Imperial Metals' history of non-compliance.

## **SUMMARY OF CORRESPONDENCE**

On June 24, 2019, the People of the River Referrals Office (“PRRO”) completed its final assessment of the Application (the “**Final Response Report**”) as part of the referral process set out in the SEA. The Final Response Report identified several key impacts likely to result from the Application and set out an appraisal that the Application required an assessment at “Level 4 – Special Projects”, generally due to its potential to result in a high degree of social, cultural, and environmental impacts within the Skagit Valley area.

Importantly, the Final Response Report expressed an understanding that the Application must be viewed holistically with respect to Stó:lō cultural and environmental values and established a requirement that the Application be assessed within the full scope of impacts likely to arise from the development and operation of a mine site. Consequently, the Application was rejected in the Final Response Report pursuant to the review process set out in the SEA.

By letter dated February 5, 2020, the Ministry acknowledged the findings in the Final Response Report but disagreed with STSA regarding the issue of the Application’s scope. The Ministry set out site-specific and terrestrial permit conditions that it stated would be adequate to address the concerns set out in the Final Response Report. However, following disagreement from STSA, the Ministry reassessed the potential impacts of the Application in the December Letter. This reassessment was based in part on the Ministry’s determination of the strength of claim to Stó:lō Aboriginal rights and title within the area of the Giant Copper Mine.

To date, the Ministry has not suggested proactive measures to engage with STSA in accordance with the requirements under the SEA.

## **DISCUSSION OF ISSUES**

### **The Ministry has not adequately fulfilled its responsibilities concerning consultation and engagement under the SEA**

The engagement activities of the Ministry to date have not risen to the level required under the SEA. The Ministry acknowledged in its February 5, 2020 letter that the Application was assessed at Engagement Level 4 in the Final Response Report. Pursuant to the SEA, this level of engagement requires special consideration, including a requirement that the Ministry either propose or co-develop an engagement process with the affected Stó:lō First Nations or PRRO or that engagement be elevated to the G2G Forum Working Group.<sup>1</sup> In certain circumstances, the SEA may also require that a Mines Development Review Committee be established for proposed exploration projects.<sup>2</sup>

Despite these requirements, the Ministry has repeatedly demonstrated that the perspectives of STSA will merely be supplementary factors to those of the Ministry in determining the Application. As you are aware, the engagement framework set out in the SEA is intended to support meaningful consultation and to identify collaborative measures to mitigate impacts to Stó:lō Aboriginal rights and title arising from proposed projects. These key purposes flow from the commitment of the Province to recognize the decision-making of STSA through co-operation that upholds the Indigenous rights identified in the United Nations Declaration on the Rights of Indigenous Peoples (“**UNDRIP**”), including rights regarding the management and protection of

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<sup>1</sup> S'ólh Téméxw Stewardship Alliance Strategic Engagement Agreement, Appendix C, s 4.8 [“SEA”].

<sup>2</sup> *Ibid*, Appendix C, s 9, at page 48.

lands and resources by Indigenous peoples. The Province has also recognized a critical role for Indigenous decision-making by affirming UNDRIP and bringing it into British Columbia law in the *Declaration on the Rights of Indigenous Peoples Act*.

The measures proposed in the December Letter do not adequately support the Ministry's commitments toward recognizing Stó:lō decision-making and Indigenous rights under UNDRIP, nor do they give full meaning to the purpose of the SEA regarding "developing and maintaining progressive improvements to a respectful, positive, and mutually beneficial government-to-government relationship between the Parties."<sup>3</sup> The processes developed in the SEA that support this purpose require a collaborative relationship that is consistent with the Province's affirmation of UNDRIP and respects the decision-making of STSA, which is informed by Stó:lō stewardship principles and community-based understandings of impacts. Such a collaborative process is necessary in the current circumstance, given that STSA and the Ministry disagree on the scope of the Application and the need for further assessment. The Ministry cannot continue to substitute adequate engagement under the SEA with unilateral decision-making based on its own interpretation of STSA's concerns.

Finally, in its correspondence with STSA to date, the Ministry has not adequately regarded PRRO's rejection of the Application in the Final Response Report. The Ministry's invitation for STSA "to comment on the revised impact assessment discussed in [the December Letter], as well as provide input on additional accommodations that can address such impacts",<sup>4</sup> and the Ministry's statement that it will "ensure a transparent process for the review of this Application and will provide to the applicant a summary of the concerns and accommodations proposed to date in relation to the Application"<sup>5</sup> does not represent adequate collaboration on this issue in light of the Final Response Report.

The position taken by the Ministry in the December Letter does not represent an adequate measure of engagement that satisfies the requirements of the SEA, recognize Stó:lō Indigenous rights under UNDRIP, nor satisfy the Crown's constitutional duty of consultation with potentially impacted Stó:lō communities. Adequate engagement and consultation must go well beyond mere correspondence with STSA and must include a meaningful two-way dialogue.

### **The Ministry's limited scope of review is incompatible with the holistic and rights-based perspectives of STSA**

STSA has been clear that the practice of segmenting the review of potential mining projects in to phases, including exploration, environmental assessment, and development phases, is fundamentally incompatible with the Stó:lō worldview. STSA's holistic perspective in this regard is expressed within the critical referral practices undertaken within the SEA, as seen in the Final Response Report, in which it was made clear that the Application warrants a broad a scope of considerations that must include subsequent phases of development of a major mine.

In addition to the drilling, trenching, and excavation activities proposed in the Application, the activities Imperial Metals may pursue under a multi-year area-based permit include bulk sampling of up to 10,000 tonnes over a five-year period and the construction and maintenance

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<sup>3</sup> SEA, s 2.1(b).

<sup>4</sup> December Letter at page 7.

<sup>5</sup> *Ibid.*

of roads, helicopter landing sites, and other sites.<sup>6</sup> STSA has been clear in its correspondence that such exploration activities enable broader impacts related to mining and that such resulting impacts must be considered cumulatively and holistically from the perspective of Stó:lō Aboriginal rights and title and Indigenous rights. The Ministry's current approach to assessing the Application includes critical gaps in this regard.

While the Ministry has acknowledged that “the future potential of a mining operation in the area of the [Notice of Work] cannot be ignored while consulting on the currently proposed permit amendment”,<sup>7</sup> the Ministry has also expressed a position that the scope of the assessment must be limited to the proposed exploration and development work under the Application, and has emphasized that it views the potential impacts of the Application from the lens of a “small-scale mineral exploration program”.<sup>8</sup> The Ministry's response implies a view that the proper venue to engage STSA's concerns would be an environmental assessment if Imperial Metals proceeds to the “major project” phase.

As you are aware, the Giant Copper Mine site has been subject to exploration and mining activities for nearly a century despite the creation of both the EC Manning and Skagit Valley Provincial Parks that surround the site. Because of this historical context, it is reasonable for STSA to view potential impacts arising from new proposed exploration activities as being connected to the eventual and likely operation of a major mining project. However, the Ministry has provided no certainty that it will adequately engage STSA's concerns regarding the scope of the Application.

### **The Ministry has made an inappropriate assessment of Stó:lō interests and strength of claim to Aboriginal rights and title**

In the December Letter, the Ministry has inappropriately assessed the Stó:lō strength of claim to Aboriginal rights and title based on a limited set of factors, including the Minister's own interpretation of public sources. It is not for the Ministry to explain to STSA what the limits of Stó:lō interests are in the area. Such an approach is both incorrect and viewed by STSA as an attempt to diminish the issues raised in the Final Response Report by imposing limits on the Aboriginal rights and title of the Stó:lō people.

Further, the Ministry's use of the Stó:lō Atlas to support its assessment is inappropriate. The Stó:lō Atlas was not published as a definitive source of Stó:lō cultural information, and the information it contains references a deeper contextual knowledge that can only be properly understood within the wider scope of Stó:lō social and cultural practices and traditions. The Stó:lō Atlas must not be used in support of efforts to limit the scope of the Aboriginal rights and title of the Stó:lō people in such an arbitrary way.

Generally, the December Letter disregards critical Stó:lō perspectives and diminishes the importance of respecting the informed decision-making of STSA – being a representative of the holders of Stó:lō Aboriginal rights and title and Indigenous rights.

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<sup>6</sup> See: *Mineral Tenure Act*, RSBC 1996, C 292, BC Reg 529/2004, ss 2, 17(3).

<sup>7</sup> December Letter at page 6.

<sup>8</sup> February 5, 2020 letter of the Ministry at page 4.

### **The Ministry's finding that an Integrated Cultural Assessment should be funded through the SEA is incorrect**

In the December Letter, the Ministry stated that an ICA was not appropriate within its preferred scope of the Application, that it has no available funds, and that it will not consider the matter until Imperial Metals has proposed to develop a mine. The Ministry suggested that STSA should fund an ICA through funding available under the SEA.

Apparently it is necessary for STSA to remind the Ministry that the funding made available under the SEA is used for the purposes of the referral process, the scope of which is limited to providing a general assessment and determination of the risks of proposed projects. An ICA is conducted at a significantly higher level of detail and through a critical and scientific lens. Funding under the SEA cannot be expected to be a “catch-all” to address all issues related to Stó:lō Aboriginal rights and title. Such a perspective would unreasonably limit STSA's engagement through the SEA to its funding limits and fetter the ability of STSA to undertake critical research concerning potential impacts to Stó:lō Aboriginal rights and title of proposed developments.

STSA has clearly identified that its concerns regarding the Application extend beyond the scope of the referral and has determined that an ICA is required in this instance. The ICA would provide a level of analytical detail concerning the impacts of the Application that is appropriate in light of the scope of issues raised in the Final Response Report. It is the view of STSA that the Ministry cannot adequately assess the Application without the critical information that would be provided by an ICA.

### **The Ministry has not adequately engaged critical concerns raised by STSA, including those regarding Imperial Metals' history of non-compliance**

Finally, in response to STSA's concerns regarding Imperial Metals' history of non-compliance, the December Letter simply identifies that the Ministry has required the company to submit an updated reclamation plan in June of 2021 in respect of unclaimed areas in the Giant Copper Mine area. The Ministry's response does not address the significant concerns raised by STSA regarding the practices of Imperial Metals within British Columbia, including those that resulted in the Mount Polly disaster. As stated in the Final Response Report:

[Imperial Metals] has a strong negative history due to their disaster in the Mount Polley mine, and thus we have no confidence in how Imperial Metals values and safeguards traditional lands, water and all life [supported therein]. We cannot be assured that this company will protect these valuable assets, as their history shows a pattern of disregarding safety for people, wildlife and the environment; the Mount Polley mine site has still not recovered from [the] disaster, and we are unwilling to have this situation repeated in the Skagit Valley.

The correspondence of the Ministry to date has avoided addressing this concern within the Skagit watershed, and it remains unclear how the facts identified in the Final Response Report will be considered by the Ministry in determining the Application. The Ministry's lack of engagement on this issue further supports the need for a comprehensive review of the critical concerns raised by STSA, and must include an ICA.

## **Moving Forward**

The issues raised in this letter are inter-related and illustrate a failure of the Ministry to adequately engage STSA and to give meaning to the Minister's mandate towards "lasting and meaningful" reconciliation.<sup>9</sup> To date, the Ministry has not sought to apply the information provided in the Final Response Report collaboratively with STSA and in a manner that is consistent with the requirements of the SEA. Instead, the Minister has proceeded unilaterally in interpreting the findings of STSA concerning the Application. This approach by the Ministry has diminished the expression of Stó:lō Aboriginal rights and title and Indigenous rights within the context of the Application.

In light of the above, STSA requires that the Ministry propose a meaningful and clearly defined engagement process pursuant to the requirements of Schedule C of the SEA. This engagement process must: i) be alive to the findings of the Final Response Report; ii) provide clarity regarding how information shared by STSA will support collaboration; and iii) give meaning to the referral process set out in the SEA. The Ministry's proposed engagement process must also give due consideration for Stó:lō expressions of Aboriginal rights and title and Stó:lō Indigenous rights set out under UNDRIP.

STSA additionally requires that the Ministry make adequate consideration for supporting an ICA and to meaningfully address STSA's pointed concerns regarding Imperial Metals history of non-compliance.

Moving forward, STSA hopes to engage the Ministry within a more transparent and collaborative relationship in respect of the Application that more adequately reflects due consideration for the Stó:lō rights and values highlighted in the correspondence on this matter to date and in the Final Response Report.

Regards,



Dr. David Schaepe  
Chairperson, S'ólh Téméxw Stewardship Alliance  
Executive Director, Stó:lō Research and Resource Management Centre  
General Manager, People of the River Referrals Office  
[Dave.Schaepe@stolonation.bc.ca](mailto:Dave.Schaepe@stolonation.bc.ca)

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<sup>9</sup> Mandate Letter to Minister Ralston, November 26, 2020, online: <<https://news.gov.bc.ca/files/EMLI-Ralston-mandate.pdf>>.



CC:

Chief Angie Bailey  
Aitchelitz First Nation  
Political Representative, S'ólh Téméxw Stewardship Alliance  
[aitchelitzfn@gmail.com](mailto:aitchelitzfn@gmail.com)

Chief Mark Point  
Skowkale First Nation  
Member-At-Large, S'ólh Téméxw Stewardship Alliance  
[mark.point@skowkalefn.com](mailto:mark.point@skowkalefn.com)

Councilor Lorn Muth  
Tzeachten First Nation  
Member-At-Large, S'ólh Téméxw Stewardship Alliance  
[loren@tzeachten.ca](mailto:loren@tzeachten.ca)

Honourable Bruce Ralston  
BC Minister of Energy, Mines and Low Carbon Innovation (MEMPR)  
[Bruce.Ralston.MLA@leg.bc.ca](mailto:Bruce.Ralston.MLA@leg.bc.ca)

Fazil Mihlar  
BC Deputy Minister of Energy, Mines and Low Carbon Innovation (MEMPR)  
[Fazil.Mihlar@gov.bc.ca](mailto:Fazil.Mihlar@gov.bc.ca)

Jim Dunkley,  
Senior Mines Inspector, BC South-West Region Mines Office  
[Jim.Dunkley@gov.bc.ca](mailto:Jim.Dunkley@gov.bc.ca)

Brian Janes,  
First Nations Relations Advisor, BC South-West Region Mines Office  
[Brian.Janes@gov.bc.ca](mailto:Brian.Janes@gov.bc.ca)

Matt McGinity  
Manager, People of the River Referrals Office  
[mmcginity@peopleoftheriver.com](mailto:mmcginity@peopleoftheriver.com)