



Mr. Chris Doiron  
Mining Section  
Environment Canada  
351 St Joseph Blvd  
Gatineau, Quebec, K1A 0H3

**re: Ruby Creek TIA – Schedule 2 MMER review**

February 16, 2009

Dear Mr. Doiron,

Rivers Without Borders (RWB) was chosen by the Canadian Environmental Network (CEN) to participate as a delegate in consultations regarding the mine proposal that would reclassify a natural fish-bearing water body near the Ruby Creek mine to schedule two of the Metal Mining Effluent Regulations (MMER). After attending consultation sessions in Atlin (Jan 20, 2009), and Gatineau (Jan 26, 2009), and having reviewed the information package for the consultations, RWB has provided a number of comments and concerns outlined below.

RWB has worked in the BC-Alaska transboundary region since 2000, promoting conservation of intact unprotected landscapes and encouraging measured responsible development in areas that have known few industrial impacts. RWB's awareness of Schedule Two was piqued in June 2008, following CBC's release of the story: "Lakes across Canada face being turned into mine dump sites."

<http://www.cbc.ca/canada/story/2008/06/16/condemned-lakes.html>.

The timing of the article from RWB's perspective coincided with a moment of broader awareness of the issue. Many became aware that six natural water bodies in BC were candidates for re-classification in conjunction with six metal mine proposals: Red Chris, Ruby Creek, Prosperity, Mt Milligan, Kutcho Creek and joint-panel rejected Kemess North. So, discussion about the preferred tailings impoundment area (TIA) - Upper Ruby Creek A - is rooted in a broader discussion about the relatively new practice of listing natural water bodies as TIAs. Although the Ruby Creek case is not nearly as contentious as others, it still bears the stigma and poor optics surrounding the practice of sacrificing natural bodies of water in general. Should upper Ruby Creek A be the chosen alternative for a TIA, it would also become another precedent-setting case of a natural body of water set aside for re-classification, thereby potentially making it easier to choose the same route in another case. RWB shudders to think of this practice becoming more commonplace in the mining industry. It does not leave an impression of innovation in this age of growing environmental awareness and moving toward higher standards of stewardship of the land. In the Ruby Creek case,

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the Department of Fisheries and Oceans Canada (DFO) and Adanac Molybdenum argue the schedule 2 option is the most environmental (and cheapest) TIA option.

### **Proponent's legacy & financial situation**

Adanac Molybdenum is currently under bankruptcy protection. The proponent has protection until May 2009. Adanac is trying to keep things afloat in tremendously challenging economic times. Before the fall 2008 economic downturn, credit markets were already either frozen or drying up. Conditions to obtain financing are not likely to improve in the short term. In short, the proponent is working against great odds and will have tremendous difficulty moving the Ruby Creek project forward.

In light of the proponent's tenuous financial situation, and keeping in mind there are other far more viable projects moving forward nationally, RWB has critically questioned the federal government's prioritization of the Ruby Creek project, particularly carrying on with this controversial aspect of the environmental assessment process at this moment in time. Environment Canada representatives stressed how controversial each Schedule 2 is, how it requires Cabinet approval and the allocation of Cabinet time throughout the decision-making process.

RWB has heard from a broad cross-section of individuals and groups that Adanac Molybdenum has established a strong reputation locally in the areas of consultation and accommodation. Adanac's tendency, we have often heard, has been to clearly disclose their plans and be forthright with Atlin community members, Taku River Tlingit First Nation (TRTFN) and stakeholders. Adanac put effort into earning its social licence, working with local groups to address the particular needs of the local environment, economy and social fabric. This social licence does not simply transfer on to a future proponent, should Adanac not be able to overcome its financial difficulties. There is a concern in moving the most controversial element of the project forward when there could soon be no proponent at all at Ruby Creek. A mining proposal and its proponent are integral to each other.

### **Environment Canada and consultation process**

This section requires a rather blunt forthrightness on the part of RWB. RWB took its role as delegate seriously, but was not given the best chance to participate in a meaningful way, particularly at the January 20th Atlin session. The process was rushed and flawed. RWB attended the consultation session having not received the documents package from Environment Canada in time. The CD Rom info package sent by Environment Canada arrived in Whitehorse the day of the Atlin consultation, one day after RWB had departed for Atlin. Environment Canada pledged to send documents to delegates a reasonable amount of time in advance of the consultation



sessions. Why this was such a challenge is a mystery to all, including Environment Canada, disclaimed at both the Atlin and Gatineau sessions. Some delegates suggested that 30 days is an appropriate amount of time to have the materials in hand prior to the meetings - to be able to meaningfully assimilate all the information and to have time to develop critical, constructive commentary to add to a controversial element of the overall Ruby Creek proposal. If meaningful, carefully planned consultation was Environment Canada's goal, it did not accomplish this with all the delegates. Why not set up a file transfer protocol site (or file sharing equivalent) with a password a month ahead of time for delegates so that each could download the documents required for study? The documents were presumably available ahead of time. Sending a CD Rom makes little sense unless it is sent off way ahead of time.

In Atlin, residents were relatively unaware of Environment Canada's consultation session. RWB asked many Atlin residents – who are typically very interested in developments in the community - if they would be in attendance, and most were unaware of the session. Environment Canada placed notices in residents' mailboxes the day of the event, and by some accounts, another notice was sent out a month before. Regardless, there was very low attendance at the session. The first hour of the session was spent in informal discussions between RWB, federal representatives and the spokesperson for the proponent. After debating whether the session should proceed at all (since RWB was to attend the Jan 26 Gatineau session as well) three people eventually arrived after RWB, and stayed for the balance of the session, triggering an official consultation. For future consultations in Atlin, Environment Canada might consider contacting the Atlin Community Improvement District (ACID) weeks ahead of time, as they are now the autonomous local government body responsible for providing local services for the benefit of the residents of Atlin. ACID would notify its membership of upcoming meetings related to development projects in the region. ACID is the amalgamated body consisting of the former Atlin Advisory Planning Commission and Atlin Improvement District.

### **'Project' definition**

The central concern lies in section 23 of the DFO CEAA screening report – scope of project. The 'project' in the Ruby Creek screening report refers only to the TIA, excluding the mine as a component of the 'project', having been scoped out of the federal EA by DFO. Limiting the scope in this way takes the environmental assessment away from the way RWB thinks a public process should proceed - a comprehensive federal assessment. We are aware of concerns related to duplication or redundancy with provincial counterparts, however, reducing the extent of federal role with such a large-scale project is worrisome. Potentially adverse impacts to fish are necessarily generated by the mine itself; the TIA is the effect of the mine. Restricting federal involvement to the TIA only, will likely expedite the process, a good thing for



the proponent. There is a concern that this kind of project splitting reflects a broader federal shift away from the comprehensive toward the piecemeal.

### **Fish Compensation Plan**

This part of the plan is progressive in concept. Adanac has put some serious thought into addressing the problem of moving the grayling population that lives in the proposed TIA – Upper Ruby Creek A. Adanac has considered ways it could compensate and create new fish habitat in the area surrounding Ruby Creek. Adanac claims it would increase spawning and habitat areas measurably, and in areas that are connected to Surprise Lake, unlike Upper Ruby Creek. There is real potential, as the proponent asserts, for a fish population increase in Surprise Lake and streams connected to it where Adanac would carry out its habitat creation plan.

However, more details are required regarding this proponent's (or another's) monitoring responsibilities – to BC, Canada and/or TRTFN. How exactly will the compensation plan function over time, and what legally binding reporting actions will the proponent have to undertake? There is a concern that federal monitoring in a remote location such as this will prove to be difficult and as such, it will not be enough to ensure that the plan is carried out over time. The proponent has demonstrated a certain amount of commitment by drafting the plans around fish habitat compensation to begin with. As discussed above, the real likelihood of a new proponent in the future makes the fish compensation plan as potent as the next proponent's commitment to the plan. If the plan could be concretized further, be given regulatory teeth and strict monitoring conditions, then the no-net-loss concept could become a far more assured proposition.

### **Alternatives assessment**

As is evidenced with this proposal, there will likely be a growing trend with mining companies considering reclassifying natural bodies as TIA options, because the legislation allows it. An obvious point is that not having to create an elaborate TIA is very likely to lower costs for mining companies. Thus, listing a local body of water to a new status as part of a mining proposal is likely to be attractive to the proponent due to lower costs and less engineering challenges. In the Ruby Creek case, the proponent's consultants found that the Upper Ruby Creek A case had the highest overall engineering and environmental score. It may be the case that listing Ruby Creek A to Schedule 2 does not represent a major sacrifice of high value fish habitat or heritage values. But the style of framing the analysis, leading to the selection of Ruby Creek A, reflects concerns about project economics as much as environmental ones.

### **Conclusion**



RWB recommends not proceeding with any elements of the environmental assessment process at this time since it is not clear the project will proceed as currently proposed in light of the proponent's difficult financial position. To move this aspect forward at this time makes an inexpensive tailings disposal site option look attractive for the current or future proponent. Further, the Ruby Creek alternatives assessment is presented in such a way that there is only one option to consider in terms of environmental and engineering considerations - in the direction of Ruby Creek A. Despite the scientific objectivity framing in developing TIA alternatives, there is also an inherent bias present in the analysis. The way the alternatives assessment is weighed in favour of the Schedule 2 option is worrisome for RWB despite the scientific rigour that went into the work. Supporting this case may have the effect of endorsing a general strategy in the way alternative tailings assessments are framed.

The Ruby Creek mine is proposed in an area that has already known significant impacts from historic placer mining operations. In terms of cumulative effects to the local environment, this site is already accessible by a road, and not a great deal more infrastructure would be required in the event the proposal moves forward. Ruby Creek is within close proximity to a local population and as such local hires could commute to the mine and it could provide important community benefits. Ruby Creek does not impact on wild salmon habitat, and does not impact the neighbouring Taku River watershed, which is intact, undeveloped and unfragmented. In the context of the current Atlin-Taku land use plan, it is an area to consider the possibility of mining. Having said that RWB remains very concerned about Ruby Creek's Schedule 2 element and its precedent setting environmental implications.