

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2 In Re:

3)
4 Appeal of Reclamation Permit:)
5 Permit No. 0286 TGC Holdings Ltd.)
6 Moonlight Exploration Project)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

7 This matter came before a panel of the State Environmental Commission
8 (“Commission”) on November 20, 2008. Appellant Darlene Jackson appeared and
9 represented herself. Appellant Connie Herman and Oma Dicus appeared. Appellant Ron
10 Bunte did not appear. Respondent Nevada Division of Environmental Protection (“NDEP”)
11 appeared and was represented by its counsel, Janet Hess, Esq. Intervener TGC Holdings
12 Ltd. appeared and was represented by its counsel, Thomas P. Erwin, Esq.

13 On October 3, 2008, appellants appealed NDEP’s issuance of Permit No. 0286 to TGC
14 Holdings Ltd. for the Moonlight Exploration Project. Appellants argued in their appeal that
15 TGC Holdings Ltd. was applying for a permit to cross their lands via evidence of an old road
16 and that pollution from vehicles, from possible oil dripping or slicks, could damage the
17 environment, including Indian Creek. Appellants also argued that vehicle accidents resulting
18 in liability issues could result from vehicle traffic over their private property.

19 After review of the admitted documentary evidence, after hearing the testimony of
20 Shane Martin, Darlene Jackson, Frank Maurer, Joseph Martini and Charles Sulfrian, and after
21 hearing the arguments of Jackson, and counsel for NDEP and TGC Holdings Ltd., the
22 Commission finds and decides as follows:

23 FINDINGS OF FACT

24 1. On or about May 27, 2008, TGC Holdings Ltd. (“TGC Holdings”) submitted to
25 NDEP a reclamation permit application for the Moonlight Exploration Project, which included a
26 reclamation plan, and paid an application fee. The reclamation plan included maps which
27 show the area where the exploration is planned, a description of the land where prior
28 exploration work has been done, and an estimate of the acreage that will be disturbed. It

1 shows the proposed location and the approximate width and length of access roads. The
2 reclamation plan identifies any surface water that may be impacted and describes measures
3 that will be taken to prevent sedimentation of surface water. It also includes a description of
4 the techniques for prospecting and excavation and an anticipated schedule for the project and
5 the reclamation work.

6 2. On July 24, 2008, NDEP provided comments to TGC Holdings regarding its
7 review of the permit application for the Moonlight Exploration Project and requested additional
8 information. TGC Holdings submitted the requested information on July 28, 2008.

9 3. NDEP reviewed the permit application for the Moonlight Exploration Project and
10 determined that it was complete and met the statutory and regulatory requirements. It notified
11 TGC Holdings on August 15, 2008 that it was issuing Reclamation Permit No. 0286 for the
12 Moonlight Exploration Project.

13 4. On August 21, 2008, NDEP published its Notice of Intent in the Lovelock Review
14 Miner newspaper, stating that its tentative decision was to issue the reclamation permit for the
15 Moonlight Exploration Project and that written comments were due by September 22, 2008.
16 NDEP sent the Notice of Intent to interested parties, including the applicant, county
17 commissioners, property owners in the project area, and state agencies.

18 5. NDEP received written comments from Darlene Jackson ("Jackson"), a property
19 owner in the project area, on or about August 29, 2008. Jackson stated that she refused to
20 sign an access permit agreement from TGC Holdings and she wanted to know why the state
21 would or could have the right to grant access to private property.

22 6. Shane Martin ("Martin"), a permit writer for Bureau of Mining Regulation and
23 Reclamation at NDEP, spoke to Jackson. Jackson said that she did not want anybody to
24 trespass on her property, she was afraid of liability if someone got hurt on her property, and
25 that she didn't think NDEP had the right to authorize or issue a permit for TGC Holdings to use
26 private property. Martin told Jackson that the reclamation permit did not grant access to
27 private property, that it only covered how the project was going to be reclaimed and the
28 amount of the reclamation bond.

1 7. On September 26, 2008, NDEP issued its Notice of Final Decision, which included
2 a response to Jackson's written comments. NDEP stated that the reclamation permit only
3 authorizes TGC Holdings to properly reclaim the exploration project, to provide for a
4 productive post-mining land use, and to ensure adequate bonding to cover the costs of
5 reclamation. It stated that NAC 519A regulations do not regulate the operation of exploration
6 sites or where exploration site disturbances can be located and that the permit does not serve
7 as a determination of ownership or the validity of any mining claim to which it might relate. It
8 also stated the reclamation permit does not grant access to persons who do not otherwise
9 have legal access to any property. NDEP sent the Notice of Final Decision to the same
10 persons who were sent the Notice of Intent.

11 8. On September 26, 2008, NDEP informed TGC Holdings that the reclamation bond
12 amount for the Moonlight Exploration Project reclamation permit was \$86,798 and that the
13 permit would not become effective until the surety was in place.

14 9. After the Notice of Final Decision was issued, Martin had another conversation
15 with Jackson. Jackson asked why she had not received a written response to her comments,
16 to which Martin replied that the written response was included in the Notice of Final Decision
17 which Jackson should receive in the mail. Martin explained again that the permit did not
18 authorize access to Jackson's property. Jackson said that she wanted to appeal the final
19 decision and Martin explained the procedure and sent her the appeal forms.

20 10. On October 7, 2008, Reclamation Permit No. 0286 for the Moonlight Exploration
21 Project ("the Permit") became final.

22 11. The Commission received a timely request for an appeal hearing from Appellants
23 regarding the Permit.

24 12. Jackson did not raise issues regarding contamination or pollution of Indian Creek
25 from oil leaking from the equipment until after the Notice of Final Decision was issued.

26 13. TGC Holdings did not indicate in its permit application for the Moonlight
27 Exploration Project that it planned to discharge any petroleum product, hazardous materials or
28 unlawful contaminants on the property. TGC Holdings included a spill prevention plan in its

1 permit application. Its permit application stated that contract drillers would maintain spill kits
2 on site and that if hazardous or regulated materials were spilled, measures would be taken to
3 control the spill, and the appropriate federal and state agencies notified. It stated that any
4 hazardous substance spills would be cleaned in a timely manner and any resulting waste
5 transferred off site in accordance with applicable regulations. TGC Holdings indicated in its
6 permit application how it would prevent sediment loading to the stream.

7 14. If there was petroleum contaminated soil, the Bureau of Mining Regulation and
8 Reclamation would refer the issue to the Bureau of Corrective Action. The regulations in NAC
9 chapter 519A do not require applicants for exploration permits to address spills and clean up.

10 15. The Permit describes how TGC Holdings is going to reclaim the project, identifies
11 where the disturbances and exploration is going to occur, and describes how TGC Holdings is
12 going to comply with NAC 519A regulations. The Permit does not cover operational activities.

13 16. Pursuant to NAC 519A.105, the regulations pertaining to reclamation projects and
14 mining operations, found in NAC 519A.100 to 519A.415, inclusive, do not apply to roads built
15 prior to January 1, 1981, if the road is used for access to an exploration project or mining
16 operation and the road has not been altered other than maintenance activities and minor
17 repairs. All existing access roads to the area covered by the Permit were constructed prior to
18 January 1, 1981.

19 17. No exploration disturbance or drilling is proposed on private land owned by
20 Appellants.

21 18. In June 2007, TGC Holdings submitted an access permit agreement to Jackson,
22 which would have given TGC Holdings a non-exclusive right to road access across her
23 property. Jackson did not sign the agreement.

24 19. Nevada law requires permittees for exploration projects to maintain a reclamation
25 bond. In the event a permittee is not able to return the land to its previous condition, the state
26 contacts a third party to perform the reclamation work and the costs may be paid from the
27 bond. When a permittee wants its bond back, it submits a request for release from
28 reclamation liability. The Bureau of Mining and Reclamation would then inspect the site to

1 ensure that the reclamation was done according to the regulations and the permit before
2 returning the bond.

3 20. TGC Holdings estimated the bond amount necessary for the Moonlight
4 Exploration Project using a standardized reclamation cost estimate, a cost estimating tool put
5 together by the federal Bureau of Land Management, NDEP and the Nevada Mining
6 Association. NDEP determined that the estimation of the reclamation costs provided by TGC
7 Holdings was a correct and accurate determination.

8 CONCLUSIONS OF LAW

9 1. The Commission has jurisdiction to hear this appeal pursuant to NAC 519A.415.

10 2. TGC Holdings complied with NRS 519A.190 when it submitted its reclamation
11 permit application for the Moonlight Exploration Project. Its reclamation permit application
12 complied with NAC 519A.125.

13 3. The reclamation plan submitted by TGC Holdings for the Moonlight Exploration
14 Project complied with NRS 519A.230 and NAC 519A.265.

15 4. NDEP complied with NAC 519A.185 when it published and circulated the Notice
16 of Intent regarding its tentative decision to issue the reclamation permit for the Moonlight
17 Exploration Project.

18 5. NDEP properly issued the final Reclamation Permit No. 0286 for the Moonlight
19 Exploration Project and acted within its authority as granted by NRS chapter 519A, and its
20 implementing regulations, NAC chapter 519A.

21 6. The Commission does not have jurisdiction regarding whether or not TGC
22 Holdings has access to the road on Appellants' property.

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ORDER

Based on the foregoing findings of fact and conclusions of law, NDEP's issuance of Reclamation Permit No. 0286 to TGC Holdings Ltd. on September 26, 2008 is affirmed.

Dated this ____ day of December, 2008.

Lew Dodgion, Panel Chair
State Environmental Commission

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1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada, State Environmental
3 Commission, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was duly mailed,
5 postage prepaid, to the following:

6 Darlene Jackson
7 4368 Cordero Dr.
8 El Dorado Hills CA 95762
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10 Connie Herman
11 4460 Driftwood Ct.
12 Discovery Bay CA 94505
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15 27711 Horseshoe Bend
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An employee of the State Environmental Commission

DATED: _____

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