

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wrightson v. British Columbia (Chief
Permitting Officer)*,
2026 BCSC 922

Date: 20260521
Docket: S7710
Registry: Golden

Between:

Charles Bruce Wrightson

Petitioner

And

British Columbia (Chief Permitting Officer)

Respondent

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

The Petitioner, appearing in person:

C.B. Wrightson

Counsel for the Chief Permitting Officer:

R.V. Doerksen
J.T. Lovell

Place and Date of Hearing:

Cranbrook, B.C.
October 7-8 and
December 11, 2025

Place and Date of Judgment:

Golden, B.C.
May 21, 2026

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Introduction

[1] Charles Wrightson is a professional geologist who owned and operated a small-scale placer mine in the McKee Creek Valley, near Atlin, British Columbia. The Smithers Regional Office is responsible for regulating mining activities under the *Mines Act*, R.S.B.C. 1996, c. 293 [Act] in the Northwest Region of the Province in which the placer mine is located. They do so under the delegated statutory authority of the Chief Permitting Officer (“CPO”).

[2] Over a number of years, the relationship between Mr. Wrightson and some officers in the Smithers office became contentious. While Mr. Wrightson has many concerns about the conduct of Ministry officials in relation to him and his placer mine, there are three specific decisions which Mr. Wrightson challenges in this petition. The first is described by him in his amended petition as the respondent’s decision requiring him to re-vegetate the north side of reclaimed lands at a rate of 1000 stems per hectare, and the respondent’s decision to retroactively reject Inspector Ambrose’s acceptance of a Reclamation and Closure Plan. The second is the respondent’s decision to require Mr. Wrightson to submit a Reclamation and Closure Plan signed by a Qualified Professional (“QP”). The third is the respondent’s

decision refusing to issue a term authorization extension to Mr. Wrightson's mining permit. Mr. Wrightson seeks orders setting aside each of these decisions, and requiring the respondent to reconsider them in accordance with the *Act*, the Health, Safety and Reclamation Code for Mines in British Columbia [*Code*], official policy documents of the British Columbia government, and the principles of procedural fairness.

[3] The respondent opposes all order sought, with the exception of part of the first order sought.

Preliminary Issue – Who is the Proper Respondent?

[4] In his petition, Mr. Wrightson named four individuals as respondents. They are: the Chief Permitting Officer of Mines, Lowell Constable; the Regional Director of Mines, Barry MacCallum; the Senior Permitting Inspector of Mines, Anastasia Ledwon; and the Inspector of Mines, Harrison Mazur. These four individuals were all involved in one or more of the decisions under review.

[5] Counsel for the Chief Permitting Officer ("CPO") submits that the statutory decision-maker in this proceeding is the CPO, and requests an order pursuant to Rule 6-2(7) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 substituting the CPO for the individual respondents named by Mr. Wrightson. Mr. Wrightson did not oppose that order.

[6] I agree that the CPO is the proper respondent to this proceeding, and grant the order sought to substitute him for the named respondents. I have amended the style of cause accordingly.

Statutory Scheme

[7] The statutory scheme governing the decisions in issue is helpfully summarized as follows in the respondent's petition response:

Statutory scheme**Permits**

1. In British Columbia, explorers who plan to undertake mechanized mineral exploration activities must have a permit to explore under the *Mines Act*, R.S.B.C. 1996, c. 293 (the "*Mines Act*")
Mines Act, s. 10(1)
2. The *Health, Safety and Reclamation Code for Mines in British Columbia* (the "*Code*") supplements the *Mine Act* and imposes conditions on mining operations in British Columbia that deal with aspects of health, safety and reclamation in the operation of a mine, which may be amended from time to time. The *Code* is established under the *Mines Act*.
Mines Act, s. 34
3. Permits are issued by the Chief Permitting Officer ("CPO") under s. 10 of the *Mines Act*. Prior to August 2020, permits were issued by the Chief Inspector. A permit must be in place before any work in, on, or about a mine can occur.
Mines Act, s. 10(1); *Mines Act*, R.S.B.C. 1996, c. 293 as it appeared on July 31, 2020
4. The CPO may delegate in writing to an inspector any of the powers conferred on the CPO under the *Mines Act*.
Mines Act, s. 8.3
5. As part of the application for the permit, there must be filed with an inspector a plan outlining the details of the proposed work and a program for the conservation of cultural heritage resources and for the protection and reclamation of the land, watercourses and cultural heritage resources affected by the mine, including the information, particulars and maps established by the regulations or the code.
Mines Act, s. 10(1)
6. For placer mines, the proposed mine plan and reclamation program provided in the application under s. 10(1) of the *Mines Act* must consist of the appropriate Notice of Work ("NOW") forms, together with such other information as the inspector may require.
Code, s. 10.1.2(1)/s. 10.1.1(1)/s.10.11(1)
7. If the CPO considers the application for a permit is satisfactory and the applicant has complied with the regulations, the CPO may issue the permit, which may contain conditions the CPO considers necessary.
Mines Act, s. 10(3)
8. The CPO may require the owner, agent, manager or permittee to deposit security in the amount and form satisfactory to the CPO to be used for reclamation (and other purposes) should the owner, agent,

manager or permittee fail to reclaim the permitted area properly or at all.

Mines Act, ss. 10(4) and (5)

9. An owner, agent, manager or permittee, or an inspector, may apply to the CPO for a revision of the conditions or an extension of the term of a permit issued under s. 10, and the CPO, if the applicant has complied with the regulations, may revise the conditions or extend the term.

Mines Act, s. 10(6)

10. The CPO may also, with or without an application under s. 10, impose additional conditions or changes in the existing conditions of a permit if the CPO considers it necessary to do so.

Mines Act, s. 10(7)

11. An owner, agent, manager or permittee must take all reasonable steps to ensure compliance with the *Mines Act*, its regulations, the *Code*, the permit and any orders issued under the *Mines Act*, and must carry out reclamation in accordance with the regulations, the *Code*, the permit, and issued *Mines Act* orders in relation to the mine.

Mines Act, ss. 24(1) and (3)

12. Section 10.9.1 of the *Code* imposes a duty on every owner, agent, and manager to institute and, during the life of the mine, carry out a program of environmental protection and reclamation, in accordance with the standards set out in the *Code*, ss. 10.9.4 to 10.9.21.

Code, s. 10.9.1/s.10.7.1/s. 10.7.1

13. Relevantly, reclamation required includes:
 - a. on all lands to be revegetated
 - i. land must be revegetated to a self-sustaining state using appropriate plant species (s. 10.9.7/s. 10.7.7/s.10.7.7);
 - ii. growth medium must satisfy land use, capability and water quality objectives (s. 10.9.8(a)/s.10.7.8/s.10.7.8); and
 - iii. all surface soil materials removed for mining purposes must be saved for use in reclamation programs unless these objectives can otherwise be achieved (s. 10.9.8(b)/s.10.7.8/s.10.7.8).
14. The reclamation standards in ss. 10.9.8 to 10.9.21 do not apply to a mine if it is specifically excluded by a condition of its permit from complying with a particular standard, or if disturbance created by a mining activity has been reclaimed, inspected and found to be satisfactory to an inspector.

Code, s. 10.9.3/s.10.7.3/s.10.7.3

15. If all conditions of the *Mines Act*, the *Code* and the permit have been fulfilled to the satisfaction of the Chief Inspector and there are no ongoing inspection, monitoring, mitigation or maintenance

requirements, the owner, agent or manager will be released from all further obligations under the *Mines Act*.

Code, s. 10.9.22/s.10.7.22/s.10.7.22

Factual Background

[8] In this section I will summarize the chronology of events related to the decisions under review. I will provide greater detail and address areas in factual dispute in the course of my analysis below.

[9] Mr. Wrightson, with assistance from his children, has operated a small-scale placer mine on McKee Creek since the mid-1990s. Mr. Wrightson says the operation is his source of livelihood. The area has been mined since 1898.

[10] Mining activity is seasonal in nature, with mining operations occurring during the summer months. Operators must obtain permits, which permit mining operations to be continued for a specified period of time.

[11] The first permit relevant to this petition was issued by the CPO to Mr. Wrightson pursuant to s. 10 of the *Act* for the period April 30, 2016 to April 29, 2021 (the “2016 Permit”).

[12] Of note, condition 4(e) of the 2016 Permit provided:

The permittee shall conduct the Operations and carry out the Program in compliance with the following conditions and constraints, unless exempted by the Inspector of Mines after consultation with the appropriate staff in other government agencies and consideration of their concerns:

[...]

(e) At the termination of the Operations each year, disturbed areas are to be left in a neat, clean and safe condition. At the final completion of the Operations, all areas shall be leveled to conform with the natural terrain, covered with topsoil or overburden, and conditions established for natural re-vegetation on lands previously vegetated. All disturbed areas shall be reclaimed to the satisfaction of the Chief Inspector.

[13] Condition 17(iv) of the 2016 Permit provided as follows:

A reclamation plan is to be submitted for review to the Inspector of Mines within 45 day of issuance of this permit. The plan is to include but not limited to the following:

- a. Site plan map showing site upon final reclamation
- b. re-establishment of natural drainage patterns,
- c. erosion control,
- d. de-compaction (where needed),
- e. re-contouring,
- f. replacement of growth medium (where available),
- g. appropriate revegetation

[14] In 2021, Mr. Wrightson requested a term extension to the 2016 Permit. After communications I will discuss below, on May 18, 2021, Inspector Ambrose issued Mr. Wrightson a permit amendment, authorizing works from May 18, 2021 to November 1, 2021 (the “2021 Permit”). The conditions from the 2016 Permit quoted above remained unchanged. The 2021 Permit approved work “as per attached mine plan”. This is a plan that Mr. Wrightson created. There was to be no new disturbance area.

[15] Mr. Wrightson optioned the mining operations to a third party, the Parkland Group, for the 2021 season. The contract terminated in January 2022, and he resumed direct operations.

[16] On October 13, 2021, Mr. Wrightson submitted a Notice of Work (“NOW”) requesting an amendment to the 2021 Permit, seeking a three-year extension to continue his mining operations. The NOW describes the present condition of the land as follows:

The entire area of proposed mining is overlain by relic hydraulic mining tailings. The area has never been reclaimed and is entirely a disturbed area. Surface materials is almost entirely coarse gravel.

[17] The NOW states that limited vegetation has grown in the gravel. The proposed work is described as continuing mining in the existing pit. Proposed reclamation was described as backfilling open pits and settling ponds with coarse and fine tailings. No topsoil is stated to be present on the proposed areas of

disturbance. Areas were to be contoured after backfilling. Vegetation options were to be coordinated with Taku River Tlingit (“TRT”) First Nation representatives. Mr. Wrightson estimated the cost of the reclamation activities at \$10,000.

[18] After communications I will discuss below, Inspector Mazur issued a permit on August 16, 2022 (the “2022 Permit”). The 2022 Permit authorized mining operations from August 16, 2022 to March 31, 2025. Due to the delay in the permit being issued, Mr. Wrightson only operated for ten days in October 2022.

[19] Condition A.4.1 of the 2022 Permit imposed the requirement that all reports required to be submitted were to be signed by a QP. Condition E.1.a required Mr. Wrightson to maintain \$20,500 in security with the Minister of Finance. Condition E.5.a required Mr. Wrightson to submit a reclamation plan prior to March 31, 2023. The plan was required to include site-specific re-vegetation strategies.

[20] Mr. Wrightson sought approval for a term extension to his 2022 Permit in 2024. Senior Inspector Ledwon was not prepared to consider a term extension, and suggested that he file a new NOW to apply for a new term. Mr. Wrightson did not do so.

[21] Mr. Wrightson did not obtain a new or renewed permit to allow him to operate after the 2022 Permit term ended on March 31, 2025.

Analysis

Standard of Review

[22] There is no dispute that the decisions are to be reviewed on the reasonableness standard. The respondent provided the following helpful summary of what reasonableness review means, as explained by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65:

- a. Reasonableness is a deferential standard that involves a significant degree of “judicial restraint and respects the distinct role of administrative decision makers” (para. 75).
- b. Judicial review begins with an examination of the reasons of the decision-maker, if there are any (para. 85).

- c. A reasonable decision is one "that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (para. 85).
- d. A decision maker may assess and evaluate the evidence before it and, absent exceptional circumstances, a reviewing court will not interfere with its factual findings (para. 125).
- e. A reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker and, must not interfere with a decision maker's findings of fact, absent exceptional circumstances (para. 125).
- f. Minor flaws in reasoning will not render a decision unreasonable (para. 100).
- g. The reasons should not be read in isolation, but must be read in light of the record as a whole and with due sensitivity to the administrative regime in which they were given (para. 103).
- h. The impugned administrative decision must be justified in light of the legal and factual constraints that bear on the particular administrative decision maker at issue (paras. 105-17).
- i. Such constraints include but are not limited to: (i) the governing statutory scheme (paras. 108-110); (ii) other statutory or common law (paras. 111-114); (iii) principles of statutory interpretation (paras. 115-124); (iv) the evidence that was before the decision maker (paras. 125-126); (v) the submissions of the parties (paras. 127-128); and (vi) past practices and past decisions of the decision maker (paras. 129-132).
- j. An impugned decision should be approached as an organic whole, without a line-by-line treasure hunt for error (para. 102).
- k. Reasons are not to be assessed against a standard of perfection, or disturbed only on the basis that the reasons do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing court would have preferred" (para. 91, citing *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 16 [*Newfoundland Nurses*]).
- l. To justify intervention by a reviewing court, any shortcomings in a decision must be "sufficiently serious" that the decision as a whole lacks the requisite justification, intelligibility and transparency (para. 100).
- m. In the absence of a finding that the decision lacks internally coherent reasoning, or that it cannot be justified in light of the relevant legal and factual constraints which bear on it, the decision should not be disturbed (paras. 101-107, citing *Newfoundland Nurses*, at para. 14 and *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para. 54).

First Order Sought

[23] There are two aspects to the first order sought, which I will deal with separately. The first aspect relates to Mr. Wrightson's challenge to the respondent's alleged decision to require him to re-vegetate the north side of McKee Creek at the rate of 1000 stems per hectare. The second aspect relates to Mr. Wrightson's challenge to the respondent's decision to retroactively reject Inspector Ambrose's acceptance of a Reclamation and Closure Plan.

Re-vegetation/bonding requirement

[24] Section 10.0.1 of the *Code* provides that:

It is the duty of every owner, agent and manager to institute and, during the life of the mine, to carry out, a program of environmental protection and reclamation, in accordance with the standards described in sections 10.9.4 to 10.9.21.

[25] Section 10.9.7 provides that "on all lands to be re-vegetated, land must be re-vegetated to a self-sustaining state using appropriate plant species".

[26] Section 10.9.3 of the *Code* provides that the reclamation standards, including s. 10.9.7, do not apply if "(a) a mine is specifically excluded by a condition of its permit from complying with a particular standard."

[27] Condition 4(e) of the 2016 Permit required that:

- (e) At the termination of the Operations each year, disturbed areas are to be left in a neat, clean and safe condition. At the final completion of the Operations, all areas shall be leveled to conform with the natural terrain, covered with topsoil or overburden, and conditions established for natural re-vegetation on lands previously vegetated. All disturbed areas shall be reclaimed to the satisfaction of the Chief Inspector.

[28] Mr. Wrightson relies on this clause in support of his position that the 2016 Permit provides an exclusion from the requirement that lands be re-vegetated. He places particular emphasis on the phrase "conditions established for natural re-vegetation on lands previously vegetated". He submits that his obligation was limited

to establishing conditions for natural re-vegetation on lands previously vegetated, which would not include any re-vegetation, such as planting saplings.

[29] Mr. Wrightson submits that Inspector Mazur improperly imposed a re-vegetation obligation on him. He submits that the effect of the way condition 4(e) has been interpreted by Inspector Mazur is to dismiss or eliminate everything but the last sentence, leaving the Chief Inspector will essentially unfettered discretion to determine what constitutes successful reclamation.

[30] In May - July 2022 Mr. Wrightson and Inspector Mazur exchanged emails with respect to Mr. Wrightson's NOW requesting an extension to the 2021 Permit. Those emails began on May 31, 2022, when Inspector Mazur advised Mr. Wrightson that he had "picked up" his NOW and initiated a technical review. This means that Inspector Mazur had just started his review of the NOW. He asked a number of questions, including about Mr. Wrightson's reclamation plans. That same date, Mr. Wrightson responded, answering Inspector Mazur's questions, including about reclamation plans.

[31] The application required a bond calculation, sometimes referred to as a bond calculator, which determines the amount of the bond the operator must post to cover the potential costs of reclamation by the Province if they fail to fulfil their reclamation obligations. On June 13, 2022, Inspector Mazur sent Mr. Wrightson his version of the bond calculator. He said there were a few notable differences from the one Mr. Wrightson had submitted, one of which he described as:

Revegetation of the entire disturbance area. I appreciate that there is no topsoil and that you are in contact with TRT regarding revegetation options, however, this still needs to be accounted for in the bonding. (~\$10,000). This takes into account just under 5ha of disturbance that has been worked over previously issued permits.

[32] Inspector Mazur went on to explain:

Please remember, the bond calculator is meant to capture the cost to the Province for reclaiming the area assuming the proponent does not fulfill their requirements and not the proponents cost to complete the work.

[33] On June 17, 2022, Mr. Wrightson wrote to Inspector Mazur, asking him to remove what he understood to be the requirement to re-vegetate both sides of McKee Creek from the reclamation bonding. Inspector Mazur replied on June 23, 2022. He declined to reconsider the reclamation bonding. He explained that he had bonded on the basis of 1,000 stems per hectare.

[34] On June 25, 2022, Mr. Wrightson responded. He continued to take issue with what he saw as Inspector Mazur's decision to impose a re-vegetation requirement on him. He stated:

From my point of view, your decision to force me to vegetate historically unvegetated, inhospitable ground, which does not meet the conditions to support your proposed vegetation plan, is an arbitrary decision. At best, it is an ill-conceived plan, unlikely to be successful and at worst, it is punitive action to force me to comply with a condition that is unreasonable.

[35] On July 15, 2022, Inspector Mazur replied to Mr. Wrightson's concerns, including about the increase in bonding. With respect to the re-vegetation issue, he wrote:

Firstly, I am not forcing you to revegetate, I am simply accounting for the liability held on the property. If you believe that you have completed reclamation on the North bank then you are free to apply for your work to be reviewed by the Reclamation Team to assess the completeness of the works... Secondly, the Bond Calculator is not a reclamation prescription it is an accounting tool to determine the liability to the Province should the operator fail to meet their requirement to clean up their operation at closure and reclaim the land to a suitable condition. Thirdly, I did not provide you with a re-vegetation plan, I simply described the information gathered from the Stantec report on Placer Reclamation which I used to inform my bonding decision.

[36] In a draft version of his July 15, 2022 email, Inspector Mazur had included the following:

Your thinly veiled accusation of bias only helps to highlight your own unacknowledged bias regarding your proposed project. I am not required to nor will I provide you with a breakdown of my philosophical world view on any aspect of mining, placer or otherwise, just as I do not request it from you.

[37] Inspector Mazur asked Regional Director Schroff to review his draft email. Regional Director Schroff recommended that Inspector Mazur remove the foregoing, in order to avoid a “flame war”, which Inspector Mazur did.

[38] The respondent submits that, as Inspector Mazur made clear in the July 15, 2022 email, the bonding decision was not a decision requiring Mr. Wrightson to re-vegetate at a prescribed rate. It was simply the Inspector’s best estimate as to what the Ministry would need to reclaim the area. The respondent submits that there has been no statutory decision made requiring Mr. Wrightson to re-vegetate the north side of McKee Creek at the rate of 1000 stems per hectare. In essence, the respondent submits that this part of the petition is therefore premature.

[39] I agree with the respondent that Inspector Mazur did not, in fact, impose a re-vegetation obligation, at 1000 stems per hectare, or indeed at any rate. Inspector Mazur calculated the amount of bond payable by Mr. Wrightson on the basis of re-vegetating at the rate of 1000 stems per hectare. That was an estimate of the cost to the Province if Mr. Wrightson ultimately failed to reclaim the project to the satisfaction of the Chief Inspector. While I understand Mr. Wrightson’s concern that he will never get his bond back, no decision has yet been made by the Chief Inspector as to whether Mr. Wrightson has fulfilled his reclamation obligations and, in particular, whether all disturbed areas have been reclaimed to the satisfaction of the Chief Inspector. If Mr. Wrightson believes that his bond has been unreasonably withheld following inspection, it would be open to him to challenge that decision.

[40] I dismiss this part of the petition.

Retroactive rejection of Inspector Ambrose’s acceptance of the Reclamation and Closure Plan

[41] Condition 17(iv) of the 2016 Permit required Mr. Wrightson to submit a reclamation plan within 45 days of the date the permit was issued. He admits he did not do so. In early 2021, Mr. Wrightson applied to extend the permit. Inspector Ambrose was tasked with deciding whether to do so. Within that context, on April 23, 2021, Inspector Ambrose wrote Mr. Wrightson that TRT had pointed out that Mr.

Wrightson had not provided a plan within the required time period. He said that he was not interested in writing an order, but requested that Mr. Wrightson describe his reclamation plans in a little more detail. He wrote that he realized this was “a bit problematic” as there was not much overburden or topsoil on site, and that importing topsoil was not sensible.

[42] Mr. Wrightson submitted information in response on April 24, 2021, which included a location map and photos of reclamation work already performed, as well as a map of the proposed disturbance in 2021. On April 27, 2021, Inspector Ambrose wrote that the reclamation work Mr. Wrightson had performed over the years “looks pretty good”. He expressed the view that, with “a bit of tweaking”, the document could serve as a Reclamation and Closure Plan. He made some suggestions to that end. On April 28, 2021, Mr. Wrightson submitted a revised plan, which was accepted by Inspector Ambrose as fulfilling condition 17(iv) of the 2016 Permit. The plan shows the reclamation work performed by Mr. Wrightson between 2016 and 2020. Inspector Ambrose issued the 2021 Permit on May 18, 2021, with an end date of November 1, 2021.

[43] Inspector Ambrose conducted an onsite health and safety inspection of the mine on June 7, 2021. Jackie Caldwell, a Mining Officer with TRT, was also in attendance, as was Mr. Wrightson. According to his report, Inspector Ambrose noted several contraventions, which he ordered remedied. These were things such as empty oil pails being scattered in front of the repair shop, soil staining indicating a spill under an excavator, and garbage being stored in a manner which might attract wildlife. He does not discuss reclamation in this report.

[44] The respondent says that it would appear that the communications between Inspector Ambrose and Mr. Wrightson about his Reclamation and Closure Plan were not before Inspector Mazur when he was considering Mr. Wrightson's NOW in 2022. I have already referred to some of the email communications between Inspector Mazur and Mr. Wrightson in considering the re-vegetation issue. On June 1, 2022, Inspector Mazur wrote Mr. Wrightson, telling him that he had no record of a

reclamation plan being submitted. This certainly suggests that Inspector Mazur was, for whatever reason, unaware of the previous year's communications with Inspector Ambrose. On June 1, 2022, Mr. Wrightson emailed Inspector Mazur what he said was a copy of the plan previously submitted to Inspector Ambrose.

[45] Further email correspondence ensued. On June 17, 2022, Mr. Wrightson wrote an email in which he stated that he had walked the site with Inspector Ambrose and Ms. Caldwell last season, and that:

My recollection is that both were satisfied with the state of reclamation and that nothing else needed to be done with the possible exception (possible but not required of me) of spreading fireweed seeds in conjunction with the TRT.

[46] Mr. Wrightson repeated this recollection in a June 25, 2022 email to Inspector Mazur.

[47] In his July 15, 2022 email, previously referred to with respect to the re-vegetation issue, Inspector Mazur wrote that he did not doubt the conversation with Inspector Ambrose took place, but without formal sign-off regarding the reclamation works, he could not remove the liability and transfer the securities to the new disturbance.

[48] The parties moved on to other issues, and Inspector Mazur, as mentioned earlier, granted the 2022 Permit on August 16, 2022. Subsequently, Mr. Wrightson again raised his belief that Inspector Ambrose had, during the June 2021 site visit, approved his reclamation works. The first time appears to be in an email to Regional Director Schroff on June 14, 2023, following up on a meeting they had on June 6, 2023. Mr. Wrightson wrote that Inspector Ambrose and Ms. Caldwell had both said reclamation was satisfactory on June 17, 2021. On August 29, 2023, Inspector Mazur wrote Mr. Wrightson. Among other things, he wrote that Inspector Ambrose and Ms. Caldwell looked at the areas North of McKee Creek, and the reclamation works were viewed positively. However, there was no formal or informal record of discussions regarding reclamation, and no statutory decision was made regarding the completeness of reclamation works to date. He also stated that Mr. Wrightson

had submitted a report in 2021, but it did not fulfil condition 17(iv). This is the retroactive rejection of Inspector Ambrose's decision that Mr. Wrightson's report did fulfil condition 17(iv). Mr. Wrightson responded on November 6, 2023. Among other things, he wrote that Inspector Mazur's interpretation of Inspector Ambrose's site visit was inaccurate. He reiterated his view that Inspector Ambrose and Ms. Caldwell stated the reclamation work was satisfactory.

[49] On November 24, 2023, Regional Director MacCallum wrote Mr. Wrightson. Noting Mr. Wrightson's dissatisfaction with Inspector Mazur, he wrote that he was "inserting myself", and all communication was to go through him going forward. With respect to the reclamation issue, he wrote that Inspector Mazur and he had both spoken to Inspector Ambrose. According to Regional Director MacCallum, Inspector Ambrose had told him that "he may have said, while onsite, that some of the reclamation looked satisfactory". Nonetheless, Regional Director MacCallum continued, a comment made in the field by an inspector does not fulfil the requirements for a site to be deemed reclaimed. Regional Director MacCallum directed that if Mr. Wrightson wished to have any areas deemed reclaimed he should make a request, and inspectors could put him on the inspection list. There is no evidence in the record that Mr. Wrightson has done so.

[50] The respondent says that, in light of these communications, the CPO consents to the quashing of Inspector Mazur's rejection of Inspector Ambrose's acceptance of Mr. Wrightson's April 28, 2021 plan as satisfying condition 17(iv) of the 2016 Permit. The respondent further says that its consent does not constitute CPO approval of the sufficiency of reclamation work done to date by Mr. Wrightson. It says that it remains for Mr. Wrightson to apply in the normal course for an inspector to review his reclamation works to date through a mine site visit to determine whether they are done to the satisfaction of the CPO, the permit conditions, the *Act* and the *Code*.

[51] In view of the respondent's consent, I quash Inspector Mazur's rejection of Inspector Ambrose's acceptance of Mr. Wrightson's plan as satisfying condition

17(iv) of the 2016 Permit. As submitted by the respondent, this is separate and apart from the CPO ultimately approving the sufficiency of the reclamation work done. While Mr. Wrightson says he walked the site with Inspector Ambrose and Ms. Caldwell and that they were both satisfied with the state of reclamation, the evidence does not establish that Inspector Ambrose made a statutory decision that Mr. Wrightson had fulfilled his reclamation obligations. That decision remains to be made following an inspection conducted for that purpose.

Second Order Sought

[52] Mr. Wrightson seeks an order quashing the requirement that he submit a Reclamation and Closure Plan signed by a QP. That requirement was imposed in the 2022 Permit. The respondent submits that the QP requirement was reasonable.

[53] On August 16, 2022, Inspector Mazur issued Mr. Wrightson an amended permit authorizing works from that date to March 31, 2025. Condition A.4.a of the 2022 Permit provides that:

Unless otherwise approved in writing by the CPO, all reports required to be submitted under this permit other than the Annual Summary of Placer Activities must be signed by a Qualified Professional.

[54] Inspector Mazur had earlier alluded to this requirement in the July 15, 2022 email discussed above, in which he stated that he would be requiring a reclamation plan, which he expected to be professionally developed.

[55] Mr. Wrightson disagreed with the imposition of the QP requirement. I have not been able to determine in the record when he first complained about the QP requirement. He certainly did so on May 6, 2024 in an email to Inspector Mazur in which he questioned why he had been singled out among other small placer miners in the Atlin area for a QP requirement.

[56] In support of his position that a QP requirement should not have been imposed, Mr. Wrightson relies on a number of provisions of the *Code*. Section 10.1.17(d) of the 2022 *Code* provided that reclamation plans shall be prepared by a QP. Section 10.1.19(1) provided that that provision does not apply to placer mines

unless required by the CPO. Mr. Wrightson submits that these provisions mean that a QP requirement is exceptional for a placer mine, and that the decision-maker must provide sound reasons for why a QP requirement would be imposed on a placer mine such as his.

[57] He also submits that the QP requirement is contrary to a government policy entitled Developing a Reclamation and Closure Plan for Regional Mines, dated November 2021. The stated purpose of this document is “to provide guidance on the development of a site-specific Reclamation and Closure Plan” for mines including placer mines. The document states that:

When the scope, scale or complexity warrants it, mining proponents are encouraged to ensure that the Reclamation and Closure Plan to be implemented on their property is developed or reviewed by a Qualified Professional...

[58] Mr. Wrightson submits that his mine was not sufficiently large in scope or scale or complex enough to warrant having a QP sign his plan. The difficulty for Mr. Wrightson in terms of his reliance on this document is that, as it states, “the content of this document should not be interpreted as legal instruction or legal advice.” The document does not determine whether a QP is legally required in any given case, although I accept that it may have some bearing on the reasonableness of the imposition of a QP requirement on Mr. Wrightson.

[59] In submissions before me, Mr. Wrightson also took issue with how long it took for his NOW application to be processed. He submitted the NOW on October 13, 2021. On May 31, 2022, Inspector Mazur emailed Mr. Wrightson to advise that he had “picked up” his NOW and initiated technical review. This is a delay of 230 days. He submits that this delay, together with the further time it took for Inspector Mazur to issue the 2022 Permit meant that he was only able to operate for ten days in the 2022 season. Mr. Wrightson’s concern about this delay is understandable. However, in his amended petition, he did not seek any orders arising from the delay in processing his NOW.

[60] Mr. Wrightson requested that reasons be provided for the decision to require that a QP sign his reclamation plan. I have not been able to locate in the record when that request was first made. On May 27, 2024, Mr. Wrightson emailed Chief Permitting Officer Constable saying that he questioned the reasoning behind the QP requirement. On November 21, 2024, Mr. Wrightson wrote another email to Chief Permitting Officer Constable expressing his concerns about the permitting staff in the Smithers office, including the imposition of the QP requirement. He noted that reasons had not been provided for this decision. The Chief Permitting Officer replied on November 26, 2024. He stated the following about the QP requirement:

2. **Regarding the requirement for a signature from a Qualified Professional on the Reclamation and Closure Plan** -The question of professional reliance, and when it is required, remains a matter of discussion, both internally, with industry, and with First Nations. While for significant sites there is a clear need for Qualified Professionals to produce those plans, at smaller sites more discretion can be applied by SDMs. The need for a QP may be driven by site complexity, long-term stability/safety risk, elements of the design, or by the ecologic objectives that need to be met. While I am not a reclamation specialist, and I rely on the advice of experienced professionals myself, I have grown to appreciate the complicated interaction of elements that go into these plans. You have raised a concern that the requirement for QP signature may have originated with the First Nation through consultation. It is fair that such a condition may be considered by an SDM where it may provide assurance to Nations through consultation. The key purpose of the Reclamation and Closure Plan is to assure the Province and Nations that the site will be left in a stable and usable condition after the mining is complete, and I do not consider it unreasonable that a QP may be required to provide that assurance, especially where historic tailings are present and may be disturbed or affect stability.

That said, it is not unreasonable that the SDM provide you with reasons for the conditions in the permit. By way of this e-mail I'll ask that Barry follow up with you to provide that rationale.

[61] Reasons were provided in an undated document provided to Mr. Wrightson by Regional Director MacCallum on December 11, 2024 (the "Reasons").

[62] In the Reasons, Inspector Mazur stated that the reasoning fell into two categories: (1) current conditions on the site; and (2) the "existing authorization requirements and compliance with these requirements". In respect of the first line of

reasoning, Inspector Mazur referred to the McKee Creek area having been heavily altered by hydraulic mining, the lack of fines and topsoil, and the lack of riparian or other vegetation. He recognized that the majority of the existing disturbance had occurred prior to Mr. Wrightson working on the site, but noted that Mr. Wrightson had held authorizations for the area for the last 20 to 30 years.

[63] In respect of the second line of reasoning, Inspector Mazur referred to condition 17(iv) in the 2016 Permit, which required that a reclamation plan be submitted within 45 days of the issuance of the permit. The plan was not submitted until 2021. Inspector Mazur wrote that:

During Technical Review of Notice of Work application 0101247.2021.01, it was determined that the reclamation plan submitted under Special Condition 17(iv) in 2021 did not meet the requirements set out in the permit condition. This was discussed with Mr. Wrightson through email on July 15, 2022. Throughout the Technical Review process Mr. Wrightson maintained a dismissive attitude towards reclamation and environmental management and it was determined that he would not provide a document of sufficient detail to suitably plan for site reclamation, nor would he identify novel techniques to maximize efficiency of limited reclamation resources without it being provided for him.

[64] Inspector Mazur went on to note that the QP requirement was discussed with Mr. Wrightson on July 15, 2022 and was subsequently included in the 2022 Permit, with the requirement for the plan to be submitted by March 31, 2023.

[65] Despite disagreeing with the QP requirement, Mr. Wrightson ultimately complied with it. The reclamation plan he submitted on March 25, 2024 was not signed by a QP, and was rejected for that and other reasons by Inspector Mazur on April 8, 2024. Mr. Wrightson submitted a new plan on May 31, 2024 which was signed and stamped by a professional geologist. That plan was rejected following review by an external team in Victoria. The rejection was communicated to Mr. Wrightson by Regional Director McCallum on December 19, 2024.

[66] The respondent submits that the QP requirement was reasonable in the circumstances. In support of this position, the respondent says that Inspector Mazur did not have confidence that Mr. Wrightson would provide an adequate reclamation

report based on his interactions with Mr. Wrightson and the quality of the plan submitted by Mr. Wrightson on June 2, 2022.

[67] Mr. Wrightson took particular offence at Inspector Mazur's comment in the Reasons that he "maintained a dismissive attitude towards reclamation and environmental management", a comment which he submitted was factually inaccurate. I can appreciate why Mr. Wrightson would find this description of his attitude to be offensive. It would have been more appropriate to refer to specific actions or comments made by Mr. Wrightson relating to reclamation and environmental management that were of concern to Inspector Mazur, rather than make a blanket comment that his attitudes are "dismissive". Mr. Wrightson has provided evidence on this judicial review intended to demonstrate that, contrary to this statement, he cares about reclamation and environmental management. It is not clear if all of this evidence was before Inspector Mazur at the time he made the decision to impose the QP requirement. Regardless, *Vavilov* at para. 125 is clear that the reviewing court will not interfere with factual findings absent exceptional circumstances. This court is not in a position to second-guess Inspector Mazur's assessment of Mr. Wrightson's demonstrated commitment to reclamation and environmental management.

[68] Despite deferring to Inspector Mazur's factual conclusion on this issue, I find that the imposition of the QP requirement was not reasonable.

[69] *Vavilov* at para. 84 directs that a principled approach to judicial review on the reasonableness standard is one which puts the decision-maker's reasons first. The reviewing court is to begin its inquiry by examining the reasons with respectful attention and seeking to understand the reasoning process the decision-maker followed in coming to their decision.

[70] In the specific circumstances of this case, I find that Inspector Mazur's Reasons for imposing the QP requirement do not assist in establishing that the requirement was reasonably imposed. Reasons provided two and a half years after the decision was made may reasonably be viewed, both by the person affected, and

by the court on judicial review, more as an after-the-fact justification for the decision, than constituting the actual reasons the decision was made. In this regard, the Reasons can be contrasted with a contemporaneous email Inspector Mazur sent to Ms. Kennedy, the Environmental Mining Officer with the TRT, on August 4, 2022, where he explained his bonding decision, and the QP requirement, as follows:

The main sticking points were the proponents assertions that the areas had no growth medium and he was assuming that we were making him re-vegetate to a condition above what was there prior to his arrival. As well as his assumption that previous works had been “signed off”, which has not happened, I weighed this with the added cost of a professionally developed Reclamation Plan, and came to the conclusion that the benefits of having a professionally developed plan outweigh the slight decrease in bonding held.

[71] At a minimum, the Reasons subsequently provided to Mr. Wrightson expand significantly on the rationale provided almost contemporaneously to Ms. Kennedy.

[72] One element of the Reasons that requires further comment is Inspector Mazur’s statement that the plan submitted by Mr. Wrightson in 2021 did not “meet the requirements set out in the permit condition”. Before this court, the CPO consented to the quashing of Inspector Mazur’s rejection of Inspector Ambrose’s acceptance of Mr. Wrightson’s April 28, 2021 plan as satisfying condition 17(iv) of the 2016 Permit. In other words, the respondent acknowledged that Inspector Mazur was incorrect in concluding that the 2021 plan did not satisfy condition 17(iv), as Inspector Ambrose had already determined that it did. In his earlier communications to Mr. Wrightson, many of which I have referred to, Inspector Mazur repeatedly reiterated his belief that the 2021 plan did not satisfy condition 17(iv). That belief appears to have influenced Inspector Mazur’s overall perception of Mr. Wrightson and his commitment to compliance and reclamation. This error materially undercuts the basis for the decision to impose the QP requirement.

[73] Mr. Wrightson made a Freedom of Information request for communications between Ministry staff relating to him and his project. One of the documents provided in response was a redacted copy of a January 3, 2023 electronic communication between Inspector Mazur and Regional Director Schroff. The respondent subsequently provided an unredacted copy of this document. They are

discussing a response to an email Mr. Wrightson had sent sometime shortly before. Both men described Mr. Wrightson as “ranting”. Regional Director Schroff advised Inspector Mazur to keep the response “as surface-level and brief as possible to avoid getting sucked in any more than necessary”. He also said there was room for a lot of “eye-rolling”. Mr. Mazur commented that Mr. Wrightson seemed to be fighting everything he put to him, “so maybe it’s just me...”. Inspector Mazur offered the opinion that he was pretty sure Mr. Wrightson was the reason another Ministry employee quit her job.

[74] The comments made by Inspector Mazur and Regional Director Schroff about Mr. Wrightson in their electronic conversation are dismissive of Mr. Wrightson and his concerns. This communication tends to indicate that decisions made by them may have been influenced by the overarching view that Mr. Wrightson was “ranting” and fighting everything, and not by the merits of the particular matter at hand.

[75] Considering the record on this issue, I have concluded that the decision to impose the QP requirement was not reasonable. I, therefore, quash that decision.

Third Order Sought

[76] The third order sought by Mr. Wrightson is an order quashing the respondent’s decision refusing to issue a term authorization extension to his 2023 Permit.

[77] The respondent submits that this part of the petition must fail on the basis that there is no reviewable decision.

[78] On June 12, 2024, Mr. Wrightson emailed the Smithers Regional Office to request a three-year extension to his 2023 Permit. The permit had a March 31, 2025 end-date, and Mr. Wrightson requested an extension to March 31, 2028. He attached his current permit, wildlife management plan, reclamation and closure plan, free use permit, and chance find procedure form.

[79] On June 18, 2024, Senior Inspector Ledwon responded. She told Mr. Wrightson that their regional office “does not issue permit extensions except in some extraordinary circumstances.” She asked him to submit a NOW application for an amendment/extension through the Front Counter BC Portal. Mr. Wrightson replied that same day, requesting additional clarity on the circumstances in which a permit extension would be applicable. Senior Inspector Ledwon replied on June 20, 2024, stating that the only extensions they had done recently were during COVID when people were unable to travel to work. She also granted a one-year extension when the system lost the applicant’s NOW. She stated that regulations and requirements are updated regularly, and the only way to inform proponents of these changes is to ensure they are checking in regularly, mainly by a NOW application. She noted that Mr. Wrightson had a year to apply before his current permit expired, so he had plenty of time to apply.

[80] Mr. Wrightson emailed Chief Inspector Ledwon on September 17 2024, again requesting an extension. Senior Inspector Ledwon replied on September 23, 2024, repeating her earlier answer. She added that their First Nation partners had made clear their position that their Crown duty to consult is not met when granting extensions and gave some advice about how he could expedite the processing of a NOW.

[81] Mr. Wrightson emailed Chief Inspector Ledwon again about this issue on October 1, 2024. Among other things, he requested a copy of the policy directive which precludes their officer from issuing an extension, and clearly stated reasons why one could not be issued to him.

[82] On October 4, 2024, Mr. Wrightson emailed a number of officers in other regions. He asked if their officers had issued any term extensions in the past year. One of those officers shared the email with Senior Inspector Ledwon, who shared with them the gist of the earlier correspondence between her and Mr. Wrightson. That same officer, the Senior Inspector in the Southern Region, also responded directly to Mr. Wrightson on October 7, 2024. He explained that whether to grant an

extension is discretionary on the part of the individual inspector, and outlined the factors that they may take into account in deciding whether to do so. He further explained that some term extensions had been granted in his region in the past year.

[83] On November 14, 2024, Senior Inspector Ledwon emailed Mr. Wrightson again. She explained that she had not quoted a policy and did not have such a document. She noted some deficiencies in Mr. Wrightson's compliance with the conditions of his existing permit. She again suggested that he complete a NOW. Mr. Wrightson replied on November 21, 2024, disagreeing with her decision, which he termed arbitrary.

[84] In his December 11, 2024 email to Mr. Wrightson, discussed above, Regional Director MacCallum stated that Senior Inspector Ledwon had, on at least two occasions, stated that she would not consider an extension request and recommended that Mr. Wrightson submit a NOW. She provided reasoning for this position in her September 23, 2024 email, and followed up with more information on November 14, 2024. Regional Director MacCallum requested that Mr. Wrightson not continue to press further questions on this issue, as their response was clear and final.

[85] I agree with the respondent that there is no decision amenable to judicial review. Senior Inspector Ledwon did not make any decision about whether Mr. Wrightson would be granted a new permit; she simply directed him to use the NOW process to apply, rather than considering whether to grant him an extension. The decision to direct Mr. Wrightson to use the NOW process did not decide or prescribe his legal rights, and is therefore not subject to judicial review.

[86] In the alternative, if Senior Inspector Ledwon's decision to require Mr. Wrightson to apply using the NOW process is a judicially reviewable decision, it was a highly discretionary decision. It was similar to the "discretionary administrative winnowing function that did not decide any legal rights, duties or liabilities" referred to in *Harrison v. Law Society of British Columbia*, 2015 BCSC 211 at para. 51. Senior Inspector Ledwon explained to Mr. Wrightson why she was requiring him to

apply using the standard NOW process, including in order to ensure compliance with the duty to consult. The decision to require Mr. Wrightson to use the standard NOW process, rather than consider granting him an extension, was a reasonable one in all the circumstances.

[87] I dismiss this aspect of the petition.

Conclusion

[88] For the reasons given, I have granted the first order sought, in part. Specifically, I have set aside Inspector Mazur's rejection of Inspector Ambrose's acceptance of Mr. Wrightson's plan as satisfying condition 17(iv) of the 2016 Permit. I have dismissed the remainder of the relief sought in the first order.

[89] I have granted the second order sought, in that I have set aside the decision requiring Mr. Wrightson to submit a reclamation and closure plan signed by a QP.

[90] I have dismissed the third order sought, with respect to Senior Inspector Ledwon requiring Mr. Wrightson to submit a NOW application, rather than considering a term extension.

[91] There is nothing for the CPO or his delegates to reconsider in respect of the first order granted, as in effect I have, with the respondent's consent, reinstated Inspector Ambrose's original decision. There is also nothing for the CPO or his delegates to reconsider in respect of the second order granted, as the 2022 Permit containing the QP requirement has already ended, and in any event Mr. Wrightson complied with the QP requirement. Whether to include a QP requirement in any future permits Mr. Wrightson may apply for and be granted should be considered in light of these reasons.

[92] The CPO did not seek his costs, and asked that no costs be awarded against him. Success has been divided. In all of the circumstances, it is appropriate that each party bear their own costs.

“L.M. Lyster J.”

LYSTER J.