



## **Stk'emlupsemc te Secwepemc Nation (SSN)**

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**Represented by the Tk'emlups te Secwepemc and the Skeetchestn Band  
We do not have a mandate, we have a responsibility We are yecminme7**

October 23, 2017

Via Email

The Right Honourable Justin Trudeau,  
P.C., M.P., Prime Minister of Canada

The Honourable John Horgan, M.L.A.  
Premier of British Columbia

Honourable Catherine McKenna  
Minister of Environment &  
Climate Change

Honourable George Heyman  
Minister of Environment (BC)

Honourable Carolyn Bennett  
Minister of Indigenous & Northern Affairs

Honourable Scott Fraser  
Minister of Aboriginal Relations &  
Reconciliation (BC)

Honourable Dominic LeBlanc  
Minister of Fisheries, Oceans & the  
Canadian Coast Guard

Honourable Michelle Mungall  
Minister of Energy & Mines (BC)

Honourable James Carr  
Minister of Natural Resources

Honourable Doug Donaldson  
Minister of Forests, Lands, & Natural  
Resource Operations (BC)

Honourable Jody Wilson-Raybould  
Minister of Justice

Honourable David Eby  
Attorney General (BC)

**Re: #Me7ePipsellTa7aAjax (Yes Pípsell, No Ajax)- Respecting the SSN's Pípsell Decision,**

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Weytk-p,

Stk'emlupsemc te Secwépemc Nation (SSN) does not give its free, prior and informed consent to the development of the lands and resources at Pípsell (Jacko Lake and Area) for the purposes of the Ajax Mine Project. The Ajax Mine Project in its proposed location at Pípsell is in opposition to the SSN land use objective for this profoundly sacred, culturally important, and historically significant keystone site which significance is fundamental and undiminished.

The SSN Joint Council, composed of the elected leadership of Tk'emlups te Secwépemc and Skeetchestn Indian Band, made this decision in accordance with SSN's laws, traditions, customs and land tenure systems supported by the evidence and assessments as presented in the Pípsell Report and SSN Panel Recommendations Report. Our decision and supporting Pípsell Report and Panel Recommendations Report represent the culmination of close to two years of intense study, hearing and deliberation processes. The Decision and supporting Reports are presented to the Ministers in their entirety for consideration. Our decision to preserve and sustain Pípsell is for the long-term



benefit of all Canadians, ensuring the future enjoyment of this special place serves to further reconciliation, so that we may all be great and good.<sup>1</sup>

Given the inadequacies of the Canadian and BC Environmental Assessment processes, SSN was required to develop our own project assessment process for the proposed KGHM Ajax open pit mine. Our objective is to facilitate informed decision making by the SSN communities in a manner which is consistent with our laws, traditions, and customs and assesses project impacts in a way that respects our knowledge and perspectives. We worked with our communities to appoint representatives from each family to step forward and deliberate on the best decision for the long-term well-being of our people and land.<sup>2</sup>

Since making our decision on March 4, 2017, events and factors further solidify why our decision must stand. Yet, at the same time, our time immemorial laws stand the test of time and directly link to the many negative externally generated impacts that affect our communities as well as those who reside in our traditional territories (Secwepemcúlecw).

It is our belief that, if we as people violate the relationship of reciprocity, respect, kinship and accountability with the living land, we will face consequences. Yirí7 re stsq'ey's-kucw (our laws and customs) were given to us by Sk'elép (Coyote) as laid out in our ancient oral histories, the stseptékwll. Secwepemc laws govern the Secwepemc Nation building a moral and spiritual foundational of Secwepemc society which is inherently connected to the land and our history. The ancient oral history of Sk'elép and the transformers lay down three fundamental laws for the Secwepemc:

- (1) Secwepemc law of sovereignty (including the authority to make treaties);
- (2) Secwepemc law that defines rights and access to resources and;
- (3) Secwepemc laws of social and environmental responsibility (caretakership).

In light of our accountability to the living land, it is clear that federal and provincial laws and policy have been such that we have not been able to fully enact our duty of social and environmental responsibility. We are collectively facing the consequences- through the lack of traditional food sources and the 2017 wildfires.

### **UNPRECEDENTED CLIMATE CHANGE IMPACTS- WILDFIRES AND TRADITIONAL ACTIVITIES & FOODS**

Statistics from the BC Wildfire Service show 1,282 fires have burned about 12,000 square kilometres of land since the fire season began April 1, with more than 45,000 people forced from their homes at the height of the fires.<sup>3</sup>

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<sup>1</sup> SSN Honouring Our Sacred Connection to Pípsell Booklet [https://stkemlups.ca/files/2013/11/2017-03-ssnajaxdecisionsummary\\_0.pdf](https://stkemlups.ca/files/2013/11/2017-03-ssnajaxdecisionsummary_0.pdf)

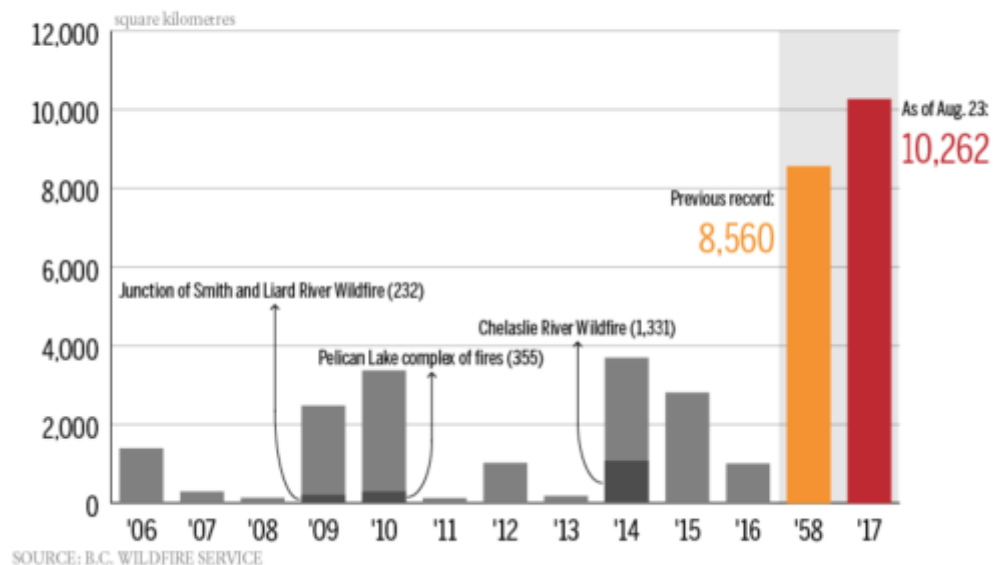
<sup>2</sup> Honouring the Vision of Our Ancestors <https://vimeo.com/194534066>

<sup>3</sup> <http://infotel.ca/newsitem/bc-wildfires-caused-millions-of-dollars-in-insured-damage/it46451>



## TOTAL AREA BURNED BY WILDFIRES IN B.C. PER SEASON

The previous record for total area burned dates back to 1958



Source: <http://www.macleans.ca/news/canada/b-c-s-record-setting-wildfires-in-one-chart/>

Experts from the University of B.C. and the University of Northern B.C., along with fire ecologists, have drafted a letter to the province saying they believe 2017's record-setting fire season "represents the new normal and is part of a global trend of increasing mega-fires."

"The extreme wildfire season of 2017 is not an isolated event. It represents the new normal and is part of a global trend of increasing megafires with tremendous social, ecological and economic costs. In BC, wildfire seasons have started earlier and last longer, and have been influenced by more pronounced droughts due to climate change and excessive fuels as the result of fire suppression, widespread forest health problems, and forest management practices. Inadequate funding and numerous policy conflicts perpetuate hazardous conditions leaving communities vulnerable to wildfire.

As 2017 -- the pinnacle of exceptional wildfire years -- has proven, forests and communities in BC are not resilient to wildfire and adaptation is urgently needed...Climate change will continue to exacerbate the situation through drought, increased tree mortality, and longer and dryer fire seasons."<sup>4</sup>

<sup>4</sup> <http://treering.sites.olt.ubc.ca/files/2013/02/2017-Wildfires-and-Resilience.pdf>



## **SCARCITY OF TRADITIONAL FOOD SOURCES: SALMON AND UNGULATES**

This year has been a year of tragic firsts. It is the first year that many of our members do not have any salmon in their freezers. Officials from the federal Department of Fisheries and Oceans confirmed that only 1.5 million salmon have returned to the Fraser River this year, well below the 4.4 million forecasted.<sup>5</sup>

The mid-season salmon update posted by Watershed Watch Salmon Society, on August 15, 2017, noted that 2017 is proving to be a difficult year for BC's wild salmon.

"Sockeye, chinook, and steelhead that entered the ocean in 2015 endured an inhospitable marine environment. Two years later, those that survived are migrating home through BC's coastal waters, and into our rivers and streams.

Pacific Ocean temperatures in 2015 were much warmer than average, attracting competitors and predators from southern waters, and reducing the quantity and quality of prey for salmon. Making matters worse, BC's wild salmon are being forced to share their diminished food supply with a record number of salmon being released from hatcheries in Alaska, Russia, and Japan."<sup>6</sup>

At the time of writing of this letter, our community members are also facing hard decisions regarding the ability to hunt. There is a call for no moose harvesting in areas affected by the wildfires coupled with the existing trends of declining ungulate population numbers.<sup>7</sup> In addition, there are few or no Secwepemcūlecw alternatives – with restricted Elk harvesting in the East Kootenays.

In a year of unprecedented climate change impacts it is no longer contingent on government to make decisions based solely on project impacts without full consideration of both the past and future of Secwepemcūlecw and our participation as stewards of our land.

## **NEED FOR DEVELOPMENT OF A REGIONAL IMPACT ASSESSMENT FOR THE SSN AND SECWPEMNC NATION**

These recent events further exemplify the need for development of a regional impact assessment for the SSN and Secwepemc Nation. The CEAA expert panel recommended that legislation require regional impact assessments where cumulative impacts occur and already exist with respect to federal interests. SSN has identified the need for a regional impact assessment on SSN's territory with respect to our Aboriginal Rights and Title including issues such as endangered and sensitive ecosystems and species and the Thompson River system. Canada's Discussion Paper identifies the need for collaboration on regional scale studies. Regional scale studies must occur as part of the nation to nation initiative which is consistent with the Secwepemc jurisdiction, laws, traditional governance structure and consistent with Secwepemc customs and protocols. The Expert Panel

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<sup>5</sup> <http://www.houston-today.com/news/sockeye-salmon-return-low-in-b-c-despite-federal-response-2/>

<sup>6</sup> <https://www.watershed-watch.org/2017/08/mid-season-bc-salmon-update/>

<sup>7</sup> Secwepemc letter to BC & Canada dated re- Wildfire in Secwepemcūlecw Elephant Hill Fire (Sept 5, 2017); SNTC letter re-effects to wildlife and habitat as result of Elephant Hill fire



recommended that decision statements regarding the test of the project against the sustainability objectives (i.e. net benefit to Canadians) include a consensus report and sustainability test.

The nation to nation initiative must also include activities with respect to the recognition of Indigenous Protected areas within the Secwepemc Nation and our role as watchmen. On March 10, 2017, Minister McKenna stated her support for a greater role for First Nations in creating new protected areas and managing the ones that Canada already has to meet its international goal of conserving 17% of its land by 2020. Collaborative planning on the identification, management and preservation of protected areas within the Secwepemc Nation must occur in a manner consistent with Secwepemc jurisdiction.<sup>8</sup>

### SSN PÍPSELL DECISION

We are calling both Canada and BC to come together and fully respect the Stk'émłúpsemc te Secwepemc Nation's (SSN) jurisdictional authority as the caretakers of Jacko Lake & area (*re Stk'émłúpsemc w7ec te tsyecwminst.ses re Pípsell*) and the SSN's Pípsell Decision regarding the proposed KGHM Ajax open pit mine. The Pípsell Decision<sup>9</sup> clearly states:

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*This is the Pípsell Decision of the Stk'émłúpsemc te Secwepemc (SSN) regarding a proposal by KGHM Ajax Mining Inc. (KGHM) to build and operate a copper and gold mine within Stk'émłúpsemc te Secwepemcúlecw. The project is known as the Ajax mine. The Ajax mine is proposed to be constructed in an area known to us as Pípsell.*

*The SSN does not give its free, prior and informed consent to the development of the lands and resources at Pípsell for the purposes of the Ajax Mine Project. The Ajax Mine Project in its proposed location at Pípsell is fundamentally in opposition to the SSN land use objective for this sacred site.*

***Pípsell is a cultural keystone area which must be preserved in a state consistent with the traditional importance of the site to the Secwepemc people. Pípsell must only be used in ways which preserve and sustain the area, which allow for the culture of the Secwepemc people to be exercised and maintained, and which preserve the use of Pípsell for all Canadians in accordance with Secwepemc law.***

*The decision of the SSN Joint Council is made in accordance with Stk'émłúpsemc te Secwepemc Nation's laws, traditions, customs and land tenure systems supported by the evidence and assessments as presented in the Pípsell Report<sup>10</sup> and SSN Panel Recommendations Report<sup>11</sup>, and in recognition that Pípsell is a cultural keystone area with significant spiritual and historical importance to the Stk'émłúpsemc te Secwepemc Nation, which significance is fundamental and undiminished.*

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<sup>8</sup> SSN letter to Canada dated August 28, 2017 re- Canada's Environmental & Regulatory Reviews Discussion Paper & the EA for the proposed KGHM Ajax Mine- SSN response,

<sup>9</sup> SSN Pípsell Decision <https://wordpress.roimediaworks.com/STSN/files/2013/11/3-2017.03.04-SSN-Joint-Council-Decision-Documnt-.pdf>

<sup>10</sup> SSN's Pípsell Report <https://drive.google.com/file/d/0B92rPs-T5VkGWVpacENEWTM5MDA/view>


<sup>11</sup> SSN Panel Recommendations Report <https://drive.google.com/file/d/0B92rPs-T5VkGZVNlbzhuZ0VhMk0/view>



## **SSN'S SACRED CONNECTION TO PÍPSELL**

SSN has an irreplaceable historical, cultural and spiritual connection to Pípsell. This connection is deeply rooted in one of our oral histories: the Trout Children Stseptékwll.

The Trout Children Oral History is inseparably connected to the place of the proposed Ajax mine site. It encapsulates and expresses the human connection of Stk'emlúpsmc te Secwépemc, to Pípsell. It sustains Secwépemc law about Secwépemc conduct on the land and the reciprocal accountability to living beings on the land, social conduct across generations and within generations.

Pípsell is a cultural keystone area with significant spiritual and historical importance. The Secwépemc law concept of x7ensq't (the land and sky turning on you) is directly connected to this area because it is imbued with spiritual power due to past events. It is where we have a special responsibility to safeguard the respectful relationship with the land, lest the land and sky turn on you. All activities and developments on SSN Territory must be consistent with SSN Laws.<sup>12</sup> 

## **SSN AS CARETAKERS & PÍPSELL- A SITE FOR RECONCILIATION**

Our relationship of ownership and caretaking of Secwépemcúlecw, our homeland, goes back more than 10,000 years. In accordance with Secwépemc laws, customs, and traditions, members of the SSN are the caretakers and stewards of specific lands within Secwépemcúlecw. SSN has always been caretaker of Pípsell, which will be severely impacted by the proposed Ajax mine if it is permitted to proceed as proposed within Pípsell itself. That caretaking is based on living laws that guide us in regards to all that we do: with the land, in relationship with outsiders, boundaries of our lands and our reciprocal relationship with all living things.

## **DESIGNATION AS SECWÉPEMC CULTURAL HERITAGE SITE**

On June 20, 2017, SSN leadership and members met with many of our neighbouring Secwépemc and allies at the Secwépemc Museum and Heritage Park in celebration of the culmination of work around Pípsell. It was the opening of the SSN Pípsell Exhibit and the inaugural screening of the SSN video<sup>14</sup> highlighting the June 11, 2017, Designation of Pípsell as Secwépemc Nation Cultural Heritage Site.

The designation of Pípsell as a Secwépemc Nation Cultural Heritage Site took place privately with the support of the Secwépemc Nation. Pípsell was marked through ceremony in accordance with Secwépemc Laws, customs and traditions. The SSN, as yecwemíñem (stewards / guardians) of Pípsell on behalf of the Secwépemc, confirmed that the overarching land use objective for Pípsell and the surrounding area is:

*"Pípsell is a cultural keystone area which must be preserved in a state consistent with the traditional importance of the site to the Secwépemc people. Pípsell must only be used in ways which preserve and sustain the area, and which allow for the culture of the Secwépemc people to be exercised and maintained."*

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<sup>12</sup> Trout Children Story Link: <http://stkemlups.ca/files/2013/11/SSN-Community-Information-Article-3-Trout-Children.pdf>

<sup>13</sup> Honouring Our Sacred Connection to Pípsell <https://vimeo.com/210983969>

<sup>14</sup> Pípsell- A Secwépemc Nation Cultural Heritage Site <https://vimeo.com/222291883>





## **SSN ALLIES & SUPPORTERS**

The SSN's Indigenous Impact Assessment Process and Pípsell Decision have been fully supported by the Union of BC Indian Chiefs, BC Assembly of First Nations and Assembly of First Nations through unanimously passed resolutions and through attendance at SSN events. On April 1, 2017 over 30 organizations representing hundreds of thousands of members across British Columbia and Canada announced their support to the SSN's Pípsell decision. In July 2017, the City of Kamloops also officially withheld their support for the proposed Ajax Project<sup>15</sup>. The City's assessment of the project raised further "uncertainties" about human health, water quality and other environmental impacts.

## **FAILED REGULATORY PROCESSES**

There are now clearly identified inadequacies regarding EA Process and legislation at the Federal and Provincial levels, both calling for revision and revitalization to an antiquated process. In "Building Common Ground: A New Vision for Impact Assessment in Canada, The Final Report of the Expert Panel for the Review of Environmental Assessment Processes," the Expert Panel stated that, in British Columbia, they "found a hot-bed of concern around oil and gas pipelines, as well as mining projects, hydro-electrical projects and ports."

SSN are leaders in the field of Indigenous Project & Impact Assessment. We shared our knowledge in our submissions to the CEAA Expert Panel through both oral testimony (November 28, 2017) and our written submission (Lessons from the Land, SSN, December 22, 2016)<sup>16</sup>. Repeatedly in our letters, submissions and communications to the Honourable Minister McKenna, the SSN has raised concerns regarding the current inadequacies of the Canadian Environmental Assessment process for the proposed KGHM-Ajax mine at Kamloops, BC<sup>17</sup>.

SSN leadership has called on the review of the Environmental Assessment Process in general and specifically for the on-going review of the proposed KGHM Ajax Project. The SSN have seen that the Environmental Assessment process does not support reconciliation between Indigenous People and Canadians or the Canadian Government. The process functions to draw lines and assess significance when it does not respect the unique and intimate relationship and responsibility that Indigenous People have with their territories. It does not assess and measure impacts from a place of respecting the sovereignty, laws, knowledge and history of Indigenous people. Much must be changed within this process before it can effectively and consistently support reconciliation.

In the spirit and intent of the recommendations from the Expert Panel and even as cursorily acknowledged in Canada's Discussion paper there is a great need for accountability and transparency. The Joint Report documents the presence of adverse environmental effects regarding SSN's current use of lands for traditional purposes and impacts to Pípsell as an Indigenous Heritage site and also serious impacts to SSN's Aboriginal Rights. Canada's 10 guiding principles recommend

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<sup>15</sup> City of Kamloops Officially Opposes proposed Ajax mine <http://www.cbc.ca/news/canada/british-columbia/ajax-mine-kamloops-1.4209442>

<sup>16</sup> SSN Submission to CEAA Expert Review Panel: "SSN Lessons from the Land: Written Submission" [http://eareview-examenee.ca/wp-content/uploads/uploaded\\_files/dec-22-ssn-lessons-from-the-land-ceaa-expert-panel-report.pdf](http://eareview-examenee.ca/wp-content/uploads/uploaded_files/dec-22-ssn-lessons-from-the-land-ceaa-expert-panel-report.pdf)

<sup>17</sup> SSN to CAN Letter dated August 28, 2017 Canada's Environmental & Regulatory Reviews Discussion Paper & the EA for the proposed KGHM Ajax Mine- SSN response



that any infringement of section 35 rights must meet a high threshold of justification which includes indigenous perspectives with the objective of reconciliation and uses the highest standards established in the Canadian courts (Principle 7) using meaningful engagement which aims to obtain their free, prior and informed consent (Principle 6). In order to better align the EA for the KGHM Ajax and uphold Canada's fiduciary duty, meaningful engagement must occur regarding these aspects of the decision-making process.

## **FAILURE OF THE CROWN TO MEET STATUTORY AND CONSTITUTIONAL DUTIES TO ADEQUATELY AND MEANINGFULLY CONSULT AND ACCOMMODATE SSN**

The Crown may rely on regulatory processes to fulfil its duty to consult in whole or in part, but the Crown always holds ultimate responsibility for ensuring consultation is adequate.<sup>18</sup> In this case, the joint federal and provincial environmental review process failed to meet the statutory requirements and constitutional duties owed to SSN and failed to adequately and meaningfully consult and accommodate the impacts of the proposed Ajax Mine project on SSN's aboriginal rights and title. The Crown's attempt to "fix" the problem by engaging in a parallel Government-to-Government process late in the process of the environmental review is not sufficient to discharge the duty, nor does it remedy the failures endemic to the joint review process described as follows.

### ***FAILURE TO MEET STATUTORY REQUIREMENTS***

The joint environmental review process for the proposed Ajax Mine fails to meet the statutory requirements of the Canadian Environmental Assessment Act, SC 1992, c. 37, ("CEAA, 1992). The proposed Project was reviewed under the old CEAA regime because the original application date for the proposed Project dates back to 2011 and thus, preceded CEAA, 2012.

Specifically, the Crown failed to meet the statutory requirements under CEAA, 1992 in conducting the environmental review process in three ways:

1. First, it failed to consider, or require the Proponent to consider, alternative means of carrying out the proposed project;
2. Second, the Crown failed to consider the cumulative effects of the proposed Project including upstream and downstream greenhouse gas and equivalent emissions generated by the Project and the cumulative effects of other resource development activities within Secwepemcúlcw such as the Trans Mountain Pipeline Expansion Project;
3. Third, the Crown failed to adequately consider section 5 of CEAA, 1992 and the "environmental effects" of the proposed Project on SSN's right and title to Pípsell, a sacred site of significant historical, cultural and spiritual significance where the evidence before the Environmental Assessment Office and the Agency, and before these Ministers, is undisputed - SSN exercises constitutionally protected s. 35 rights and Charter rights including the right to peaceful assembly and the right to freedom of religion at Pípsell.

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<sup>18</sup> Clyde River (Hamlet) v. Petroleum Geo-Services Inc. 2017 SCC 40, para. 22.





### **Alternative means of carrying out the proposed Project**

Section 16(2)(b) of CEAA requires that in addition to the factors set out in subsection (1), every comprehensive study of a project shall include a consideration of the following factors:

(b) Alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;<sup>19</sup>

The review process did not require the Proponent to review alternative means of carrying out the proposed Project, such as alternative locations and/or technology (particularly for reducing the size of the tailings facilities). The Proponent moved the proposed Project mid-way through the review process a significant distance to avoid the Kamloops City limits, yet there is no consideration of why other locations that are not on top of a sacred site were not required to be considered given the apparent flexibility in project location available to the Proponent.

### **Cumulative Effects on SSN's Aboriginal Interests**

Section 16 (1)(a) of CEAA, 1992 requires that cumulative environmental effects that are likely to result from the proposed Ajax Project be considered in combination with other projects or activities that have been or will be carried out.

(a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;

The review process failed to adequately and meaningfully assess the cumulative impacts of the proposed Ajax Project on SSN's aboriginal rights and title at Pípsell. While the draft joint report notes other resource development in Secwepemcúlecw, it does nothing more to consider, address, and respond to SSN's concerns about cumulative impacts of yet another mine in Secwepemcúlecw and the Trans Mountain Pipeline Project, also proposed to directly traverse Pípsell. Further, the review process fundamentally failed to address the cumulative adverse impacts on SSN's aboriginal title and rights manifest by destroying Pípsell by constructing a mine on top of it. Said another way, there is no consideration of the cumulative impact to SSN should it lose a sacred site of historical, cultural and spiritual significance.

### **Aboriginal Sacred Site of Historical, Cultural and Spiritual Importance**

Section 5(1) of CEAA, 1992, requires the environmental assessment of a project by a federal authority to consider "environmental effects" defined to include:

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<sup>19</sup> CEAA, 1992, section 16(2)(b).



“environmental effect” means, in respect of a project,

...

(b) any effect of any change referred to in paragraph (a) on

(i) health and socio-economic conditions,

**(ii) physical and cultural heritage,**

**(iii) the current use of lands and resources for traditional purposes by aboriginal persons, or**

**(iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or**

(c) any change to the project that may be caused by the environment,

whether any such change or effect occurs within or outside Canada;

The review process failed to meaningfully consider the adverse environmental effects that the Project may cause to the SSN at Pípsell being a site of historical, archeological, paleontological and architectural significance currently used by SSN for traditional and spiritual purposes. It concluded there would be a significant adverse impact and in so doing, must go further to review and consider whether a proposed project authorization breaches constitutionally protected rights of indigenous peoples. In this case, a project authorization that breaches SSN constitutionally protected rights cannot serve the public interest.<sup>20</sup>

Moreover, the review process failed to consider SSN’s rights to freedom of religion guaranteed under s. 2(a) of the *Canadian Charter of Rights and Freedoms* (the “Charter”). Unlike the *Ktunaxa Nation*,<sup>21</sup> currently on leave to the Supreme Court of Canada, SSN is not seeking to restrict the otherwise unlawful use of the land on the basis of exercising its religious practices. On the contrary, SSN is exercising its rights to preserve Pípsell, as a cultural heritage site for the benefit of SSN and *all Canadians*. Pípsell cannot be disturbed or disrupted by digging up the land to construct a mine which will forever alter the landscape. This is the site of SSN’s ancestors, where they are buried and where their spirits reside, and it cannot be transferred to another area.

In summary, these CEAA statutory requirements must be met through the joint environmental review process and they have not been and let these Ministers and the Honourable Prime Minister be on notice of that in considering their decision.

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<sup>20</sup> Clyde River, *ibid*, at para. 40.

<sup>21</sup> *Ktunaxa National Council et al., v. Minister of Forests, Lands and Natural Resource Operations and Glacier Resorts Ltd.*



## ***FAILURE TO MEET THE DUTY TO CONSULT AND ACCOMMODATE***

The Joint Report & Project Conditions are dependent on a failed regulatory process. SSN identified many issues and concerns regarding the proposed project, the EA process and governments' consultation processes through meetings, correspondence and a series of 360 Reports. The most recent of these reports reviewed the CEAA-BCEAO Joint Report for the project. This review and these comments have resulted in perfunctory additions of qualifying clauses, or no revisions to the report of any substantive nature. Not a single significance rating or environmental effect was altered or adjusted. There was no balancing of conflicting interests towards fostering reconciliation.

There was no substantive and meaningful consultation with SSN about the impacts of the proposed Ajax Project on SSN's asserted aboriginal title including their right to make decisions about the use of the land at Pípsell and the right to make decisions to preserve those areas for future generation of SSN members. The proposed authorization, if it is to be made, will be made without adequate and meaningful consultation and without reasonable or any accommodation and engagement with SSN about SSN's assessment process and land use objectives at Pípsell. The lack of specific consideration of impacts on SSN's rights and title has been raised throughout the review process.

The consultation record evidences the failure of the Crown to engage on core issues of importance to the SSN and to substantively consult and accommodate SSN's interests. The SSN sees the report as underestimating and misrepresenting environmental, social and cultural impacts which are founded upon an uncertainty of impacts. The EA Report then relies on mine permit conditions and the application of legally binding mitigation measures to reduce the significance of impacts and address uncertainty of impacts. On May 3, 2016, BC Auditor General Carol Bellringer released "An Audit of Compliance and Enforcement of the Mining Sector" and concluded that the BC government's management of the mining industry is failing to protect the environment against significant risk. She based her decision after a two-year investigation that found a regulatory regime defined by too few resources, infrequent inspections and a lack of enforcement. Thus, enforcement of the conditions provides little assurance to SSN about the projects proposed impacts.

The mine permit conditions and mitigation measures do not accommodate SSN with respect to the impact of the proposed Ajax Project on SSN's aboriginal rights or title. As the Federal Court of Appeal observed in *Gitxaala*, "future consultation, as contemplated by the ... conditions would not involve the Crown."<sup>22</sup> The opportunity to consult and accommodate SSN's interests in deciding whether and how the project should be approved is lost by the Crown, or, at best, unlawfully sub-delegated.<sup>23</sup> The duty to consult and accommodate must be fulfilled before the proposed Ajax Project is approved.

The overall consultation process with regard to all of the issues of concern to SSN was fundamentally flawed and reflects an institutional problem with joint environmental review processes. The Crown has not corrected that problem by implementing a "framework for consultation" late in the review process for the proposed Ajax Project which has not resulted in any meaningful engagement or accommodation of SSN's interests.

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<sup>22</sup> *Gitxaala*, p. 99, para. 237

<sup>23</sup> *Haida*, p. 537, para 53.



In the remaining weeks of the Joint EA Process it is our understanding final critical steps remain. We understand that BCEAO & the Agency will provide to Ministers a summary of public comments. SSN has requested that this summary is shared with SSN prior or upon referral of the package to Ministers. SSN also reserves the right to comment and refute both the provincial and federal issues tracking tables, as consistently stated SSN did not have the capacity to provide an in depth or comprehensive review of these tables. SSN also reserves the right to comment on the revisions to the EA Report which we understand will be provided with 5 days for review before referral to Ministers, SSN have never agreed to these time lines and will not likely have the capacity to fully review the revisions.

Materials for the Ministers relating to the SSN Decision Package include: 1) SSN Pípsell Decision Declaration, 2) SSN Pípsell Decision, 3) SSN Panel Recommendations Report 4) Honouring the Vision of Our Ancestors (booklet & video) 5) Honouring Our Sacred Connection to Pípsell (booklet & video), 6) Pípsell Impacts & Infringements Report, 7) Pípsell A Secwepemc Cultural Heritage Site (video) 8) all supporting reports and files relied upon in the Pípsell Decision Package much of which can be found on our website. We also want to highlight to the Ministers the importance of looking beyond the summary EA reports themselves, within the EA process many comments from the EA Working Group comments found in the WG tracking tables show the level of disagreement regarding the conclusions reached in the EA Joint Report.

### **NO NET BENEFIT TO CANADIANS & BRITISH COLUMBIANS**

SSN does not accept that a reliable model for estimating economic impacts was presented by KGHM. The EA Report states that the Statistics Canada Input-Output model is an industry accepted model for estimating economic impacts of a project. However, Dr. Chris Joseph who specialized in economic valuation in environmental assessment provided his independent expert opinion to SSN showing that the Application and KGHM present a skewed and partial picture of the incremental or net benefits of the project. Dr. Joseph criticized the model used by the KGHM and accepted in the EA Report and found it had a number of problems, including that benefits are presented as gross benefits not net benefits, impacts are misconstrued as net benefits, benefits are multiple counted, impact information was not synthesized, and the sensitivity analysis was incomplete and insufficiently documented. Dr. Joseph's assessment valued the project from a net benefit of -\$650 million to +\$110 million utilizing a cost benefit analysis with costs he was able to price however other costs could not be monetized. Dr. Joseph concluded it is not clear from his cost benefit assessment that the project will provide a net benefit to SSN or Canada.

KGHM's claims regarding Economic Benefits in the EA Report are based on the KGHM Feasibility study dated February 19, 2017. Mr. Tim Oliver, a qualified professional with over 40 years of experience, provided his expert opinion as a feasibility study manager. In his analysis, he found that the reported Internal Rate of Return of 11.1% for investors is less than what most companies view as able to support an investment decision to go forward with a project. Mr. Oliver stated that most boards of directors in industrial projects look for a minimum of 15% return on their investment. He also concluded that the economic model was lacking in important, fundamental details and could not be tested or confirmed. For example, the model escalated revenue but provided no corresponding escalation of costs, rendering the model output unreliable.



A report by Mining Watch Canada concludes that the Ajax open pit mine project, “does not make economic sense” and “represents an unconscionable risk to investors, governments and the public.” The watchdog organization recommended that the mine should not be permitted and that an investigation be undertaken by the BC Securities Commission for inadequate disclosure of risks and costs. The report highlights a number of social and environmental costs externalized to Kamloops and BC taxpayers and not monetized in Ajax’s studies. These include as much as \$524 million in power subsidy (\$30million/year), \$216 million or more for air pollution (over \$12million/year), \$155 million in loss of property value (using 5% decrease), \$135 million on loss of tourism (using a 5% decrease) and \$23 million in municipal taxes.<sup>24</sup>

The Joint BCEAO-CEAA (August 31, 2017) response to the SSN’s 360 report relegates economic issues and discussions to a provincial only section stating that the Provincial EA Act does not require assessment of economic feasibility. In May 2016, the UBCIC’s Report *Towards Financial Responsibility* by economist Robyn Allan showed that the BC Government is enabling a dangerous disregard for environmental monitoring, reporting and protection among mining companies by letting them off the hook for the full costs of environmental reclamation – leaving taxpayers liable for more than \$1.5 billion.<sup>25</sup> This raises the issue of whether or not economic feasibility and viability of projects should be subject to assessment in order to ensure the long-term sustainability goals and objectives of both Canada and British Columbia. Just because it isn’t legislated does not preclude the Ministers from considering this in their decision.

### **KGHM POLSKA MIEDZ SA, POLAND & CANADA’S INTERNATIONAL COMMITMENTS**

On May 28th in Williams Lake, SSN Leadership presented to the UN Working Group on Business and Human Rights. Kukpi7 Ron Ignace shared that even months after we withheld our Free, Prior and Informed Consent this international giant continues to disrespect our sovereignty and jurisdiction. SSN shared our SSN Pípsell Decision Package (including the SSN Panel Recommendations report) transcribed into Polish, with Poland’s Foreign Affairs Minister Witold Waszczykowski, KGHM Polska Miedz Management Board Vice-President Michał Marcin Jezioro and KGHM International’s CEO/President Robert Nowak<sup>26</sup>. SSN has called on them to respect the SSN’s Pípsell Decision and immediately withdraw their Application to both the federal and provincial Environmental Assessment Processes and enter into winding down negotiations and process on the divestment of the assets associated with this proposed project. We stated that SSN sees the current situation as a failure of the Provincial Mineral Tenure system and Environmental Assessment processes, which are in need of a public inquiry, comprehensive review and substantial revision.

SSN understand the Polish People are resilient and proud people and are no strangers to the experiences and oppressive actions extolled by foreign governments. We know that the term genocide, coined by Poland’s Rafal Lemkin, was founded on Poland’s truth and history inspiring the Convention on the Prevention and Punishment of the Crime of Genocide. SSN understand that Poland takes an active part in the work of the United Nations, placing special attention on actions fostering

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<sup>24</sup> : [http://miningwatch.ca/sites/default/files/2016-04\\_ajax\\_application\\_review-miningwatch\\_canada.pdf](http://miningwatch.ca/sites/default/files/2016-04_ajax_application_review-miningwatch_canada.pdf)

<sup>25</sup> [http://miningwatch.ca/sites/default/files/toward\\_financial\\_responsibility.pdf](http://miningwatch.ca/sites/default/files/toward_financial_responsibility.pdf)

<sup>26</sup> SSN to Poland letter dated April 10, 2017 re- SSN’s Pípsell Decision



international peace and security and promoting human rights and democracy<sup>27</sup>. President Andrzej Duda at the 70th session of the UN General Assembly reminded us all that respect for human rights is a key premise and that freedom of speech entails the duty to tell the truth, stating that truth about history is such a crucial component of relations.

The truth regarding Canada's treatment of its Indigenous/Aboriginal People has only begun to be told. In December 2015, after 6 years of work the independent Truth and Reconciliation Commission, released its report which stated, "For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights, and through a process of assimilation cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious and racial entities in Canada... which can be best described as "cultural genocide."<sup>28</sup> We are asking that your government and its business interests not support further cultural genocide through a deliberate infringement on our Indigenous Rights.<sup>29</sup>

Canada's recent review by the United Nations Committee on the Elimination of Racial Discrimination (CERD) released its Concluding Observations for Canada. Specifically, the coalition called upon the Government of Canada to take concrete action on racial discrimination and growing race-based inequities and disparities – by acting on all 94 Calls to Action of the Truth and Reconciliation Commission, fully implementing the UN Declaration on the Rights of Indigenous Peoples (UN-DRIP).

The truth is that Pípsell and its lands, waters, minerals, and air was never Canada or British Columbia's to give away. The SSN never consented to the transfer of our lands to private or corporate land holders, and there is a long history of Secwepemc people occupying the area around Jacko Lake. Ultimately, the SSN people were dispossessed of our lands through Colonial laws including the land ordinance act of 1866. Phillip Jacko, an Indigenous person and SSN member, hunted, fished and occupied the area surrounding the lake that bears his family's name and was unable to secure land claims to the area due to the exclusion of "Indians". It wasn't until the 1960's that in Canada Indians were given the unconditional right to vote. Sir John A. Macdonald in 1887 stated that *"The great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the other inhabitants of the Dominion as speedily as they are fit to change."*

## **PÍPSELL AS A SITE FOR RECONCILIATION**

SSN have been actively implementing the Pípsell Decision since its announcement on March 4, 2017. Following the designation of Pípsell as a Secwepemc Cultural Heritage site which saw the revitalization of the Prayer Tree through the Pípsell monument, we commissioned sister exhibits at both the Secwepemc and Kamloops museums commemorating this important work. These museums serve to further share our knowledge with the public about the historic and continued importance of this area.

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<sup>27</sup> [http://www.msz.gov.pl/en/foreign\\_policy/international\\_organisations/united\\_nations/poland\\_and\\_the\\_un/](http://www.msz.gov.pl/en/foreign_policy/international_organisations/united_nations/poland_and_the_un/)

<sup>28</sup> Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada

[http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive\\_Summary\\_English\\_Web.pdf](http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf)

<sup>29</sup> SSN Letter to Poland Aug 4, 2017 re-SSN's Pípsell Decision & Honour & Integrity of Poland and its business KGHM Polska Miedz and its proposed foreign asset the KGHM Ajax Project





On September 15<sup>th</sup> SSN supported the Thompson Rivers University Law Students in a day of learning on the land at Pípsell. SSN leadership and panel members shared their knowledge connecting the students memorializing their experiences through offerings at the monument. The growth in spirit, minds and hearts of these students in connection to this experience has been captured in a newly released film entitled, "TRU Law Learning Day"<sup>30</sup>. This area serves its greatest purpose through these experiences where Canadians, British Columbians and Secwepemc people share this knowledge beside the very lake and surrounding area connected to the Trout Children Stseptékwll. This ancestral teaching once dormant and sleeping is being awoken and lives in the memories and of each person it touches. This is the areas purpose for us all, to act as a vibrant reminder of our interconnectedness to all things at Pípsell and to each other.

Kukwstsétsemc,



Kukpi7 Fred Seymour  
Tk'emlúps te Secwepemc  
Stk'emlupsemc te Secwepemc Nation



Kukpi7 Ron Ignace  
Skeetchestn  
Stk'emlupsemc te Secwepemc Nation

cc.

Minister Witod Waszczykowski, Minister of Foreign Affairs, Poland

Łukasz Weremiuk, Polish Ambassador to Canada

Michał Marcin Jezioro, Vice-President Management Board, KGHM Polska Miedz

Robert Nowak, CEO / President, KGHM International

Kukpi7 Wayne Christian, Tribal Chair, Shuswap Nation Tribal Council

Jesse McCormick, Director of Policy and Indigenous Relations, Office of the Minister of Environment

Ryan Adam, Policy Analyst, NRCan

Daniel Pujdak, Policy & Regional Advisory, INAC

Jonathan Wilkinson, Parliamentary Secretary, Environment and Climate Change Canada

Ben Hartley, Office of Minister of Environment and Climate Change

Amy Avila, Executive Director, Major Mines & Permitting Office (BC)

Tracy James, Project Manager, BC EAO

Alexandra Banford, Chief Negotiator, MARR (BC)

Kevin Inouye, Project Manager, CEAA

Adrian Wall, Aboriginal Affairs Advisor, Fisheries and Oceans Canada

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<sup>30</sup> <https://www.dropbox.com/sh/95wqdu97zo5pl08/AABeKhNdFSTE6hsxuWe3s47Aa?dl=0>



Attachments:

1. SSN's Pípsell Decision Package & Reports (<https://stkemlups.ca/files/>)
2. SSN Correspondence:  
<https://www.dropbox.com/sh/3m58j4px64vtoq5/AABEq8is9T-kiZM2he6BDYzSa?dl=0>
  - a. 2017.04.01 SSN Media Release- SSN Pípsell Decision Allies
  - b. 2017.04.05 SSN Media Release re- CEAA Expert Panel Report
  - c. 2017.04.10 SSN to Poland re- SSN Pípsell Decision (Polish Version)
  - d. 2017.04.26 SSN to CAN-BC Ministers re-SSN's Pípsell Decision
  - e. 2017.06.11 SSN-Secwepemc Pípsell Resolution
  - f. 2017.06.20 SSN Media Release re- Pípsell as a Secwepemc Cultural Heritage Site
  - g. 2017.06.20 SSN KTW Pípsell Cultural Heritage Site Designation
  - h. 2017.07.06 SSN 360 Report & attachments
  - i. 2017.07.18 SSN to NDP-Green re-EA for Pípsell Ajax Project
  - j. 2017.08.02 SSN to BC re- BCEAO Summary Assessment Report & Public Comment Period
  - k. 2017.08.04 SSN to BC re- SSN Pípsell Decision & Honour & Integrity of the Province of BC regarding proposed Ajax Project
  - l. 2017.08.04 SSN to Poland- KGHM re-SSN Pípsell Decision English
  - m. 2017.08.28 SSN to CAN re- Canada's Environmental Regulatory Review Discussion Paper
  - n. SSN Reference Resources (below)



## SSN REFERENCE RESOURCES

- **SSN/Secwepemc Designation of Pípsell as a Cultural Heritage Site**  
Video Link: <https://vimeo.com/222291883>  
PDF of the Media Release  
[http://stkemlups.ca/files/2013/11/June20\\_2017\\_Media-Release\\_final.pdf](http://stkemlups.ca/files/2013/11/June20_2017_Media-Release_final.pdf)
- **SSN DECISION RE: KGHM-AJAX**  
Video Link: <https://vimeo.com/210983969>  
PDF of 12-page Decision Summary Booklet:  
[http://stkemlups.ca/files/2013/11/2017-03-ssnajaxdecisionsummary\\_0.pdf](http://stkemlups.ca/files/2013/11/2017-03-ssnajaxdecisionsummary_0.pdf)
- **SSN ALLIES FORMALISE THEIR SUPPORT FOR SSN DECISION**  
April 1, 2017 Media Release: *SSN Allies* Declare their support for the SSN Pípsell Decision to say No to KGHM Ajax and Yes to Health People and Environment  
PDF of Media Release  
<http://stkemlups.ca/files/2013/11/2017.04.01-SSN-Media-Release-Allies-Event.pdf>
- **SSN SUBMISSION TO CEEA EXPERT PANEL**  
Lessons from the Land: Written Submission, Prepared for the CEEA Expert Panel by Stk'emlúpsmc Te Secwepemc Nation, December 22, 2016  
PDF of Report  
[http://eareview-examenee.ca/wp-content/uploads/uploaded\\_files/dec-22-ssn-lessons-from-the-land-ceaa-expert-panel-report.pdf](http://eareview-examenee.ca/wp-content/uploads/uploaded_files/dec-22-ssn-lessons-from-the-land-ceaa-expert-panel-report.pdf)
- **SSN PROJECT REVIEW PROCESS**  
Video Link: <https://vimeo.com/194534066>  
PDF of 4-Page Process Booklet: [http://stkemlups.ca/files/2013/11/SSN\\_4Pager-v13-12.02-WEB.pdf](http://stkemlups.ca/files/2013/11/SSN_4Pager-v13-12.02-WEB.pdf)
- **SSN Review Process webpage**  
<http://stkemlups.ca/process/>
- **SSN Trout Fishery at Pípsell (May 16, 2017)**  
Kamloops this Week Article: <https://www.kamloopsthisweek.com/pipsell-traditions/>

