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MiningWatch Canada Submission to the Review Panel for the New Prosperity Gold-Copper Project

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The following comments are provided to the New Prosperity Gold-Copper Project Review Panel as the written submission for MiningWatch Canada, a recognised interested party to the review process. MiningWatch Canada is Canada's only national independent organization with an exclusive focus on mining. We seek to improve the social and environmental standards for mining and uphold the rights of communities to protect themselves from irresponsible mining practices.

MiningWatch Canada has been following this project for a number of years and was an active participant in the earlier review process of the Prosperity Gold-Copper Project. At that time we argued that the project could not be accepted due to its significant adverse effects. We focussed our submissions on: the impacts to fish habitat; the failure of Taseko to develop an adequate compensation plan for the whole-scale destruction of two lakes and connected stream and wetland ecosystems; on the uncertainties in Taseko's socio-economic claims; and on the regressive nature of the project in terms of Aboriginal rights and the much-needed reconciliation between Canada's Aboriginal and non-Aboriginal people.

Having been once rejected and found to have a number of important significant adverse effects, we would have expected Taseko to re-apply only with the most rigorous application of science and Aboriginal consultation and accommodation. We are troubled that this has not been the case. We continue to be deeply concerned about this project and still see no way for it to

proceed without significant adverse effects to the environment and to Aboriginal rights and title. We do not agree with the proponent that the issues raised by the previous review panel have been addressed by the proposed modifications and mitigation measures.

The proposed mitigation measures for the protection of Teztan Biny have a great degree of uncertainty associated with them and require an unacceptable degree of perpetual management.

Within Canada and internationally, standards and expectations for the respect and protection of Aboriginal rights have advanced over the last three years while this project represents a serious step backward on the path to justice and reconciliation.

The proponent explains the need for the project in economic terms as providing employment revenue and investment. There is a lopsided portrayal of how the project would fulfil these needs. Aspects of the project's economics have worsened since our earlier review¹ of the Prosperity Project, which identified serious uncertainties, limitations and overstatements of economic benefits. These economic issues are fundamental to the ability of the proponent to meet its commitments and to an analysis of the need for the project and should be included in any description of the justification for the project.

In order to further examine the economic aspects of the need for the project, MiningWatch, through the Participant Funding Program, contracted Dr. Marvin Shaffer to undertake a review of Taseko's claims of economic benefits. Dr. Shaffer's technical submission shows that the stated benefits are not the full economic picture and that, when a more balanced approach is taken, the net economic benefits are highly questionable. His findings are pointed to in this submission and his full report have been submitted under separate cover.

Below we will elaborate on our concerns and perspectives on the aforementioned points. We will focus our comments on the extent to which Taseko has addressed the significant adverse effects of the previous proposal on aspects related to the conservation and use of Teztan Biny, Nabas (Little Fish Lake) and the interconnected streams and wetlands.

We understand there are also serious concerns with the mitigation measures proposed for the other significant adverse effects including cumulative impacts on grizzly bears, but feel that others are better placed to comment on these issues.

The Significant Adverse Effects on Fish and Fish Habitat, Navigation and Indigenous Rights Related to the Aquatic Habitats of the Teztan Biny Watershed

Taseko is proposing a complex management scheme for managing the water quality and quantity for the conservation of the ecological and social values of Teztan Biny and the surrounding area. We have concerns about the extent to which these measures can mitigate the significant adverse effects identified by the previous panel from the operation of the mine and

¹ MiningWatch Canada and J. Kuyek, Submission to the Prosperity Project Review Panel, CEAR #2314.

we are very concerned about the likely need to maintain this infrastructure long after the mine has ceased operating.

As the T̓silhqot'in National Government (TNG) has pointed out,² Taseko's understanding of the ecology of the lake and the implications of changes and potential changes is far from adequate. This is no surprise given that the previous plan was focussed on draining the lake, not managing it.

The repeated information requests and continued concern expressed by reviewers such as Natural Resources Canada indicates a considerable amount of uncertainty in the proponent's predictions about water flows into and out of Teztan Biny. While we are not in a position to comment on the technical aspects of these discussions that they continue unresolved is of great concern to us.

We are also concerned by Taseko's continued intransigence in openly discussing the need and potential options for water treatment of site effluents (Information Request 15). A recent report by the Mine Environment Neutral Drainage (MEND) Program indicates that most modern operating mines do in fact require water treatment "in perpetuity" and that the costs can be highly variable depending on the type of treatment used and volume of effluent to be treated.³ MEND is an internationally-recognised Canadian multistakeholder initiative to share research on acid drainage with participation from representatives of the mining industry, federal and provincial governments, and non-government organizations. This report will be filed with the panel for its information. The aforementioned uncertainties around site hydrology increase our concern for the potential need for water treatment before mine closure.

Even if Taseko can manage pumps to maintain water levels during operation, the extent to which these pumps would be required and who would manage them and pay for their management in perpetuity is unclear. British Columbia does not have a program for long-term management of closed mine sites.

Even with water treatment, should the company only treat to existing regulations, there is no guarantee that there will not be impacts on the receiving environments as has been shown by two national assessments of the Environmental Effects Monitoring (EEM) program for metal mines⁴ included as attachments to this submission.

Beyond the ecological values of the Teztan Biny area, the previous panel found that it also provided many important cultural values and the loss of these values was an important part of the panel's findings of significant adverse effects. In order to maintain these values, people, and in particular the T̓silhqot'in, have to be able to access and make use of the area. Taseko

² T̓silhqot'in National Government Comments on EIS, CEAR #460

³ J. Zink and W. Griffith. "Review of Mine Drainage Treatment and Sludge Management Options". MEND Report 3.43.1. March 2013

⁴ Lowell RB. et al. "National Assessment of Phase 1 Data from the Metal Mining Environmental Effects Monitoring Program". Environment Canada. 2007. No longer available online; and Environment Canada, "Second National Assessment of Environmental Effects Monitoring Data from Metal Mines Subjected to the Metal Mining Effluent Regulations". 2012. available at <http://www.ec.gc.ca/Publications/default.asp?lang=En&xml=51895DE7-90F3-4C6A-8786-DECBFD681F96>

responded to the panel's information request (#40) regarding access to Teztan Biny claiming that the project would cause only minor disturbances to current practices. Nothing in their response reflects the T̄silhqot'in's view of these impacts and there is no technical review of changes to the viewshed from the proposed relocated camping area. We have not conducted a formal study of the matter but question whether that the impacts of a 115 metre high tailings dam to the south of the camping area would not interfere with the view.

A fundamental difference in accessing the site is the fact that anyone, including the T̄silhqot'in, will now have to ask permission of the mine manager and be escorted through the mine area. In terms of accessing one's traditional territory this is a significantly adverse change. Though it is for them to speak to, having come to know many T̄silhqot'in people I question whether or not any of them would be willing to put themselves under the discretion of the manager of a project that they have done everything they can to prevent from proceeding.

Taseko also suggests that the impacts are not significant as the area of the mine is small relative to the wider territory of the T̄silhqot'in. This line of argument was tried in the previous review and discredited by the previous panel's findings of multiple significant adverse effects.

Taseko's response on the question of access minimises what most rational people would experience as a fundamentally different experience being in a wilderness environment to one where there is the constant sound and sight of industrial activity and where one loses the freedom to come and go at will.

The extent of adverse effects to Teztan Biny may be uncertain but there is no question that the project as proposed will destroy Nabas. The proponent has stated that there is only a minimal trout population and regular winter kills give the lake little ecological, recreational or aboriginal value. Indications to the contrary suggest otherwise and the panel rightly asked for additional information about Taseko's claims.

It is not our place to speak to the frequency or significance of use of the area, however, upon visiting the area, I was impressed with the size and quantity of fish that were easily caught from the shore, and by those jumping in the water towards the centre of the lake. Taseko's minimal efforts to define the fish population and weak response to the panel's information request mean that is impossible to assess the full extent of the adverse environmental effects of locating the tailings impoundment in the lake basin.

Regardless of the extent of current use of the lake, the historic or potential use of the lake should also be considered. The previous panel clearly noted that role of the trout in the Teztan Biny watershed as a back-up resource that provided key food source in times of scarcity. We would remind the panel of the previous panel's conclusion that there were no examples of successful, self-sustaining compensation plans to replace the loss of an entire lake ecosystem.

The outright destruction of Nabas and the failure of Taseko to provide any compensation or mitigation measures means that the loss of Nabas, from a fish habitat and Aboriginal use perspective, should be considered a significant adverse effect.

Aboriginal Rights and Title

We do not intend to provide information to the panel about the adverse effects this project will have on the rights and title of the T̓silhqot'in as we have no doubt that they will continue to effectively represent their interests. We would like to provide some contextual information about tendencies toward greater recognition of Indigenous rights, and in particular Free Prior Informed Consent (FPIC). In contrast to tendencies seen in leading companies and some political jurisdictions, Taseko's proposal to advance a project against well-founded opposition of the T̓silhqot'in is a troubling backwards step.

When the project was last proposed, MiningWatch submitted for the record the UN Declaration of the Rights of Indigenous Peoples (UNDRIP). Taseko responded by reading out a considerable part of Canada's speech rejecting the Declaration at the UN. Canada has since endorsed the UNDRIP.

At the international level, a recent review of the concept of FPIC indicates a growing recognition and adoption within the UN and regional human rights bodies. The UNDRIP and the concept of FPIC has also begun to influence other international standards. For example, FPIC has been incorporated into the standards of the International Finance Committee. Though language in the guidelines is strangely weaker than the overarching standard, the direction of greater recognition is clear.

Recently, the International Council on Mining and Metals (ICMM) endorsed the concept of FPIC. This new position is also not without some qualifications, but again represents a growing acknowledgement that responsible mining projects do not advance against the interests and aspirations of affected Indigenous peoples.

Though not named as such, FPIC has been an element of two recent provincial decisions to not approve proposed mining projects. The companies proposing both the Morrison Mine in British Columbia and the Matoush Project in Quebec failed to obtain the FPIC of the affected First Nations and their opposition to the projects were cited as part of or, in the case of the Matoush Project, the primary reason for rejection. We could also look at British Columbia's rejection of the Enbridge Northern Gateway as a recognition of the importance of the acceptance of both First Nations and the broader public for major projects.

In contrast to these indications of a greater recognition of Indigenous peoples' rights, Taseko continues to make its efforts to advance a problematic project. This fact has already meant that certain ethical investment funds have indicated they will not buy Taseko shares.⁵ Financing companies following the Equator Principles, which are based on the IFC, who do not want to be called out for violating ethical standards will likely avoid investing in the company.

⁵ Ethical Funds Newsletter, June 2011:

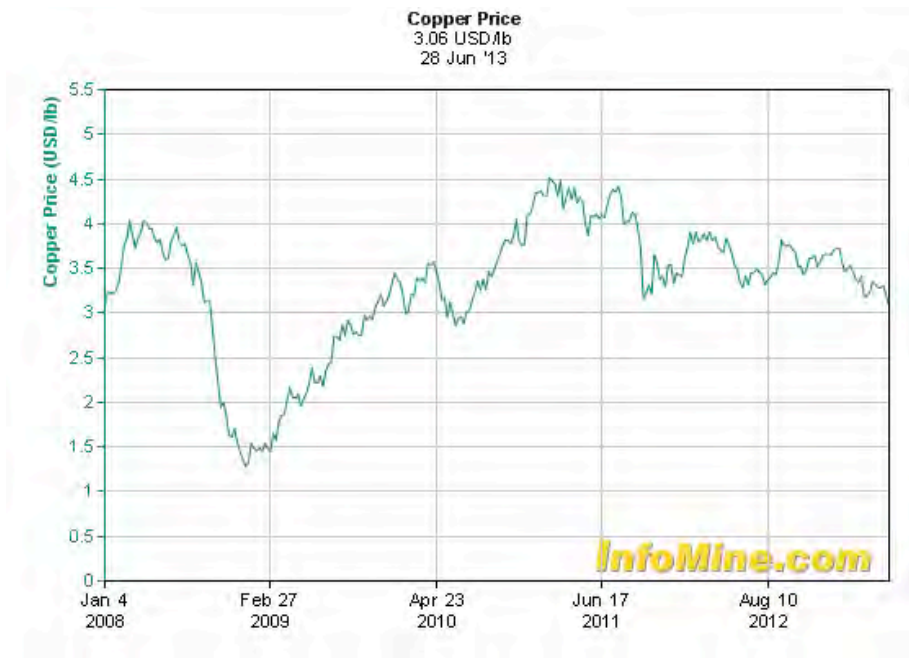
http://www.ethicalfunds.com/NEIFiles/PDFs/5.1.4%20Sustainable%20Investing%20Update/Ethical%20Funds%20in%20Action%202011/Ethical_06_11_En_web.html

In light of these international changes, and the growing movement for recognition of Aboriginal rights within Canada, the New Prosperity project is clearly out of step with modern expectations and best practices.

Need for the Project and Economic Justification

The examination of the “need” for the project and the description of potential justifications of significant adverse effects fall within the panel’s mandate and should form an important part of the panel’s deliberations. In the EIS (Chapter 2.2), Taseko’s description of why the project is needed can be summarised as responding to growing demand for copper and providing economic benefits to the local region and province of B.C.

With regard to the demand for copper, there is now a considerable weight of opinion that the consistent growth in demand experienced in recent years – known as the minerals “super cycle” has ended.⁶ This is seen in weakening copper prices which can be seen in the chart below from the website InfoMine.com.



While the super cycle was still spinning, the high prices and perception of long-term strengthening demand stimulated considerable interest and investment in mineral project development. In the EIS, Taseko noted that there are only six operating mines as part of explaining the “need” for the project. According to the B.C. governments map of Operating

⁶ Wall Street Journal, “Wheels Fall Off the Supercycle”. April 25, 2013:
<http://online.wsj.com/article/SB10001424127887324743704578442992534704094.html>

Northern Miner, “Citibank calls the end of the supercycle”. May 29, 2013:
<http://www.northernminer.com/news/citibank-calls-the-end-of-the-supercycle/1002346410/>

Mines and Selected Major Exploration Projects (2012)⁷ there are now eleven metal mines operating, three in development, and eighteen proposed; thirteen of this later group are in the provincial environmental review process.⁸ The perceived need for new mines in B.C. can clearly be met with other projects, some of which are proceeding in collaboration with First Nations and with fewer significant adverse environmental effects.

Interestingly, the growth in the sector does not seem to have been affected by the rejection of the Prosperity Project as predicted by the Mining Association of BC in its submission to the previous panel (Prosperity Project CEAR # 1771). A second rejection of this project is unlikely to have any additional negative effect on the sector but rather will provide a further clarity of the non-acceptability of projects that have significant adverse effects and that do not have the free, prior, and informed consent of affected Aboriginal peoples.

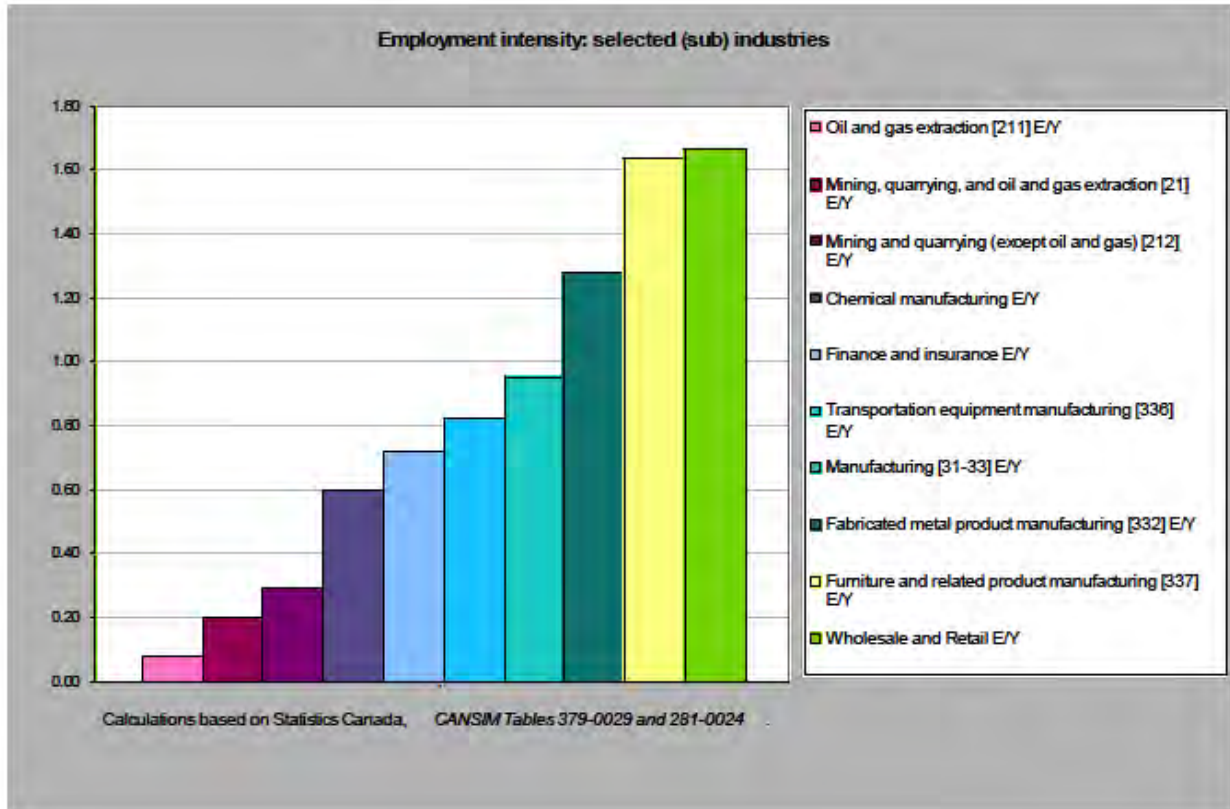
Our technical submission by Dr. Shaffer provides a critique of Taseko's claims to regional economic benefits of this specific project. He has found that there are substantial subsidies that would go to the project, that net employment would be much less than Taseko describes, and that there is no information available on which to assess the proponent's claims of tax revenues to B.C. and the federal government.

In addition to Dr. Shaffer's analyses we would like to add a counter point to MABC's claim (as part of the submission referenced above) that mining is the best way to develop jobs for BC. In general terms, mining is a poor 'jobs' generator in terms of the amount of investment required to create a job relative to almost any other industrial sector. While the jobs created are above average salary compared to other sectors, the job intensity (employment/GDP) of mining is amongst the lowest of all the sectors (see chart below)⁹. There is also, as we may soon again see, a considerable amount of uncertainty and instability in the mining sector, which negates some of the benefits of higher wages.

⁷ <http://www.empr.gov.bc.ca/Mining/Geoscience/PublicationsCatalogue/OpenFiles/2013/Documents/2013-01/OF2013-1.pdf>

⁸ Searched July 9, 2013 via: <http://a100.gov.bc.ca/pub/epic/advancedProjectSearch.do>

⁹ T. Fast. Presentation to Beyond Extraction Conference, Ottawa. March 2013: http://www.miningwatch.ca/sites/www.miningwatch.ca/files/fast_panel_4.pdf



We remain concerned about the financial viability of mining this large but low-grade deposit. We are concerned because, average construction and operating costs have continued to climb since we filed the economic assessment by Joan Kuyek during the previous review.¹⁰ Taseko has added substantial costs to its project, but has not filed an updated technical report. When softening metal prices are taken into account, we are left wondering whether Taseko will be able to operate in the long term and, if it is able to operate, whether it will have adequate resources to fulfil its commitments regarding mitigation and monitoring activities.

We submit that it is vitally important for the panel to assess the need for the project and to undertake a thorough exploration of the justification of the project, rather than simply take the industry's self-serving rhetoric of jobs and economic development at face value. There are larger economic, social, cultural, and ecological values that must be given due consideration.

¹⁰ Joan Kuyek. "Review of the Proposed Prosperity Mine Socio-Economic Assessment, Volume 6". 2009. Available online at: <http://www.fnwarm.com/media/747be5ed814d0b88ffff86c87f000001.pdf>