



MiningWatch Canada

Mines Alerte

*Suite 508, 250 City Centre Avenue, Ottawa, Ontario, Canada K1R 6K7
tel. (613) 569-3439 — fax: (613) 569-5138 — info@miningwatch.ca — www.miningwatch.ca*

New Prosperity Review Panel Written Comments of MiningWatch Canada

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The following submission is an update to our initial written submission of July 12 (CEAR# 609) in which we addressed the following points:

1. The failure of Taseko's mitigation measures to meet the test of effectively addressing the significant adverse effects identified by the previous review panel;
2. The failure of the project to obtain the free prior and informed consent of the indigenous peoples on whose territory the mine and transmission line are proposed;
3. The need and justification for the project

In addition we take this opportunity to comment on the content of the hearings and associated correspondence related to:

4. Examples of mining impacts on lakes and adjacent water bodies;
5. Mine closure and reclamation;
6. Potential effects of rejecting the proposed mine on the state of the industry in BC;

In making its findings and recommendations, we urge the Panel to apply the purposes of the legislation, and in particular to carefully consider sections 4(1) and (2).

In the course of our oral closing submissions by Mr. Ramsey Hart, we will endorse some of the proposed findings and recommendations that have been advanced by other parties.

1. Mitigation Measures for Adverse Effects of the Project

Prior to the technical hearings we expressed concern about uncertainty and reliability of the proposed mitigation measures. From reviewing transcripts and written submissions from the hearings our concerns have only increased. In our closing comments we will identify those submissions that we have found particularly poignant.

At this point we would like to comment on the use of monitoring, adaptive management programs and corporate policies as part of the overall mitigation strategy. While we certainly support rigorous monitoring programs for all mines, with a high-risk project such as this, deference to future remedial actions based on future monitoring or on company policy cannot be construed as effective mitigation.

Environment Canada's environmental effects monitoring (EEM) program for mines shows the weakness of relying on monitoring to address critical areas of uncertainty and any impacts that may occur over a relatively short time period. The EEM program at Taseko's Gibraltar Mine, designed to meet provincial and federal requirements is a case in point. The initial monitoring from this program has shown a significant difference in the invertebrate communities upstream and downstream of the mine's discharge into the Fraser River with the downstream benthic community being less diverse than upstream¹. The consultants conducting the monitoring could not however, explain the cause of the difference though their statistical analysis suggested it was mine-related and not due to differences in the physical attributes of the sites. Without knowing the cause of the changes it is not possible for Taseko to make targeted management actions if they chose to do so. The EEM program will not require further action until a second round of studies in three years confirms a measured effect. Proceeding through all the steps of Environment Canada's EEM program takes upwards of 13 years after which there is not clear direction for management changes to be put in place.

Given the importance placed within this review on the need to ensure protection of Teztan Biny a relatively small and sensitive aquatic system, monitoring with its inherent lags and limitations cannot take the place of robust and realistic mitigation measures. This is consistent with the direction given in the CEAA Operational Policy Statement on Adaptive Management. (While this document was created in reference to the previous CEAA, absent any updated guidance it still provides important direction.)

Throughout the hearings Taseko has pointed to various environmental policies and participation in voluntary initiatives such as the Towards Sustainable Mining (TSM) program as evidence that the Prosperity project would be undertaken with due care. Given that these policies have no accountability measures and that Taseko only very recently began participating in TSM we submit that such measures should not be considered as legitimate aspects of a mitigation program.

We also submit that the considerable controversy over the Gibraltar mine's discharge into the Fraser River, the October 2009 spill into Souran Lake and the initial and not unsurprising impacts observed in the Gibraltar EEM study as evidence that Taseko has at best an average environmental track record and not one that should alleviate concerns about the significant adverse effects and extreme limitations of mitigation measures for the proposed project.

¹ Gibraltar Mine Cycle 1 Environmental Effects Monitoring Interpretive Report, Minnow Environmental Inc. November 2011. Document obtained through the federal Access to Information Program.

In considering and reaching conclusions about the proposed mitigation measures, and what MiningWatch submits is the significant uncertainty and reason to doubt their effectiveness and appropriateness, the Panel should not only consider CEA Agency policy but the legislation itself. In particular, the Panel should bear in mind that, in considering and making decisions based upon your report, the Government of Canada and the Minister of Environment “must exercise their powers in a manner that protects the environment and human health and applies the precautionary principle.” We urge the Panel to find that the proposed mitigation measures are unlikely to protect the environment and/or human health, and that there is a real possibility for serious, irreversible, significant adverse effects of this project – such that the application of international law’s precautionary principle would strongly disfavour approval of the project.

During the community hearing in Esketemc it was made very clear that Taseko had failed to provide any new mitigation measures for the adverse effects of the transmission corridor. The proponent briefly pointed to some conceptual, preliminary ideas for habitat improvements to offset wildlife habitat losses but sufficient detail was not provided to be able to understand their likelihood of success or whether they would address concerns over loss of wildlife habitat from within the Esketemcs territory that the community depends on to exercise their Aboriginal rights

2. Free, Prior and Informed Consent

Since filling our initial written hearing submission the UN’s Special Rapporteur on Indigenous People’s has completed and filed his submission to the UN Human Rights Council.² In his report the Rapporteur states that:

The Declaration [on the Rights of Indigenous Peoples] and various other international sources of authority, along with practical considerations, lead to a general rule that extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent.

This report supports the information presented to the panel by MiningWatch and others on the increasingly recognised normative standard of free prior informed consent (FPIC).

We note that in questioning Craig Benjamin of Amnesty International following his excellent overview of the legal basis for FPIC, the panel requested Canadian examples of its application. We would again point to the examples in our previous submission which, though they did not invoke the wording of FPIC are projects which were declined at in large part due to absence of consent. These projects are: Morrison Gold Project (BC), Northern Gateway Pipeline (BC) and the Matoush Uranium Project (QC). We would also add the case of the Oji-Cree community of Kitchenuhmaykoosib Inninuwug which successfully advocated to have a large portion of their territory excluded from mineral exploration by the government of Ontario.

FPIC is more than a technical legal standard. It is also a representation of community level demands for reconciliation, self determination and respect from governments and industries that would pretend to decide what’s best for them. The overall trend internationally as in BC and Canada is clearly in favour

² Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples. July 2013: <http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>

of greater recognition of the rights for Indigenous peoples, though the path has not been smooth or direct. Against a backdrop of pervasive challenges, the Tsilhqot'in have been trailblazers in the protection of their rights and title and now have 20 years of time, energy and resources dedicated to the Roger William case – due to be heard in the Supreme Court this fall.

A project such as this, that drastically opposes the trajectory of human rights and seeks to impose itself on unwilling host communities, is more than just a breach of an international legal standard. It is an act of oppression and confrontation. The review of the effects of such a project must therefore consider more than material impacts it must also consider the psycho-social and political implications of this oppression and confrontation.

3. Need and Justification for the Project

We have already submitted evidence to the panel indicating that the economic assessment of the project provided by the proponent lacks a robust net-benefit analysis and ignores important costs to local and provincial governments and institutions such as BC Hydro. The overall effect is to exaggerate the economic benefits of the project.

During the hearings, the Mayor, MLA, the Chamber of Commerce and individuals continued to echo Taseko's argument from the previous review about the need for the project to improve the economy of the Williams Lake, which during the last hearing was perceived to be in decline. Since our initial submission there is further evidence before the panel, including an August 2 press release from Williams Lake (CEAR #933) that indicates that the local economy is improving and that the downward economic spiral evoked in the previous review has, fortunately, not come to pass. Mayor Cook importantly referenced her assessment of the mines impact on William's Lake as "additional" and noted that the resiliency of the town would carry it forward without the project.³

We searched the transcripts and written submissions for evidence that mine proponents had developed a more robust plan to support their claims that the mine would help diversify the local economy and support a transition to a sustainable economic base. We found no evidence of such a plan, nor were any examples provided of other communities that have successfully used extractive projects to leverage a more diversified and sustainable economic base. In her oral testimony Mayor Cook repeatedly pointed to the need for diversification but did not indicate how adding a third mining operation to the regional economic base would result in actual diversification above and beyond ongoing efforts.⁴

Potential employment for First Nations is portrayed as an important benefit of the project, however there would be significant barriers to accessing most of the available jobs. Taseko has acknowledged this and highlighted their work with the BC Aboriginal Mine Training Association as a means of overcoming these barriers⁵. We wish to call the panel's attention to public statements made by the Executive Director of this organization which indicate that the organization will only work with projects that have

³ Hearing Transcripts Vol. 2, pg. 122.

⁴ Hearing Transcript Vol. 2, pg. 98 to 122.

⁵ Hearings Transcripts Vol. 10, pg. 44.

the consent of the affected First Nations⁶. It is not clear therefore how proposed activities with BCAMTA would be carried out given the clear and continued opposition to the project.

Given the extent and depth of opposition to the mine we also question the likelihood that many members of the First Nations communities will seek out employment with Taseko, should the project be approved. Perhaps some individuals may be interested but they would be at the risk of isolation from their community. In our work internationally we have certainly seen damaging divisions in communities and even between families when controversial projects are forced on communities without strong processes of consultation and FPIC.

4. Examples of Operating and Closed Mines Adjacent to Water Bodies

At the community hearings Taseko made reference to several mines that operate or operated adjacent to water bodies in an effort to show how mines and these water bodies co-exist. The relevance of these examples is highly questionable and there was little specific, credible information presented about actual environmental impacts or uses of the area by the public or First Nations.

Two of the examples, Diavik and Island Copper are mines adjacent to very large water bodies that overwhelm the relative footprint of the mines – though this is not to say these mines have not or could not have negative impacts. For example the impacts of a 2008 tailings spill at Diavik were fortunately mitigated as the spilled wastes flowed over the lake while it was frozen.

The Island Copper mine is on the Pacific coast adjacent to Rupert Inlet, an arm of Quatsiat Sound. This tidal water body has little in common with Teztan Biny. The mine was rehabilitated using seawater to rapidly flood the open pit and reduce the risk of acid mine drainage – an option obviously not available at Teztan Biny. While the rehabilitation of Island Copper is often cited as a success, as we submitted to the previous panel in our closing comments⁷ the assumption that the pit lake would stratify and maintain contaminants in the lower layers is not proving out in reality and it is likely that the mine will require treatment of the surface waters in order for it to meet water quality guidelines.

The other two examples were smaller lakes at Gibraltar and Mt. Polley mines with recreational properties around them. Statements were made about the fact that people continue to enjoy the use of their properties including fishing in the lakes. In response to questions from community members in Esketemc about the edibility of fish from these lakes and from the Gibraltar tailings pond Taseko staff could not provide any assurance that in fact people did or could eat the fish from these lakes. The use of a recreational property adjacent to a mine is also distinct from the uses and values associated with Teztan Biny that have been well articulated in the past panel report and in the recent hearings.

With respect to Mt. Polley, Dr. Kevin Morin stated during the hearings that the Mt. Polley mine is contaminating the ground water of the area, a fact that we have confirmed with another colleague familiar with the mine. To date we have not been able to acquire the actual monitoring reports. Unfortunately participants at other community hearings where this example continued to be used could not benefit from the personal knowledge of Dr. Morin.

⁶ For First Nations, Great Jobs in a Controversial Industry, Katie Hyslop, The Tyee July 26, 2013: <http://theyee.ca/News/2013/07/26/BC-Aboriginal-Mining-Jobs/>

⁷ Prosperity Review Panel Hearings Transcripts Vol 34, pg. 7157.

To balance the examples provided to Taseko we wish to provide the following examples of water bodies adjacent to mines that have been negatively impacted by mining operations.

In 2005, the failure of a tailings dam at the Pinchi Lake mercury mine released contaminated water and sediment into Pinchi Lake. The spill added to the historic contamination of the lake which has a fish consumption advisory and mercury levels in sediments that are over 100 times acceptable levels.

Ontario's first mine to be closed according to the modern mine closure requirements is the Renabie Gold Mine that went through closure in 1992. Despite being closed according to the regulations, cyanide continues to leach from the tailings and is a concern for the health of downstream aquatic ecosystems.

Also in Ontario, the Victor Diamond mine is reporting increases in mercury levels in small fish within a creek adjacent to the operation.

At the recently expanded Lac Bloom mine in Quebec, Cliffs Natural Resources had a series of spills over the past year that sent iron ore tailings mine wastes downstream for several kilometres.

Certainly these brief references do not do justice to the complex interactions between the sites and the receiving waters. A full review these sites is beyond the scope of the present submission, but for a more robust assessment we would again point the panel to the two national surveys of the EEM data which found that most mines in Canada are having an effect on downstream aquatic ecosystems.

Mine Closure and Rehabilitation

With large complex projects such as New Prosperity mine closure costs may become as much a factor in project economics as ore grades.⁸ For this reason we were pleased to see the panel taking a close look at the closure process and in particular the bonding requirements for mines.

The additional information provided by BC Energy and Mines indicated that Taseko has underestimated closure costs. While this could be rectified by the application of a greatly increased closure bond, we are concerned that there is a considerable amount of discretion with the Chief inspector of mines to set the amount of closure bonds. Mining insider and commentator Jack Caldwell noted that the failure of BC to get mine closure right was in part due to a tension between what regulators might want to do and what companies are willing to do.⁹

While the information provided by MEM about setting and updating closure bond amounts was informative it only provided the policy directions and potential actions of regulators. Research into

⁸ Andrew Robertson. Top Ten Things that go Wrong with Plans for Mine Closure. Presentation to Mine Closure 2011. <http://www.infomine.com/library/publications/docs/Robertson2011b.pdf>

⁹ Is British Columbia failing to plan for and close mines responsibly? I Think Mining Blog, June 14 2011. <http://ithinkmining.com/2011/06/14/is-british-columbia-failing-to-plan-for-and-close-mines-responsibly/>

actual practices has indicated that closure bonds may not be revised as often as suggested by the policies.¹⁰

Impacts of rejecting the project

As with the previous review process, during their presentation to the panel the Mining Association of BC once again suggested that rejecting the project would result in a flight of investment away from BC. They cited the highly subjective Fraser Institute's annual mining report as evidence. There is however, no indication that the previous rejection of the Prosperity Project had such an impact so there is little reason to think that this would happen following a second rejection. Following the rejection of the Prosperity project in 2010, BC's share of national mineral exploration expenditures rose from 13.5% to 15.3% in 2011 and rose again to 19.2% in 2012.

We continue to maintain that findings and recommendations by this Panel that provide strong support for rejection of the project by the Government would be consistent with other decisions and provide greater clarity to industry about the acceptable conditions for resource development projects.

¹⁰ The Raven Coal Project –A Regulatory and Fiscal Black Hole?, Environmental Law Centre, 2011.