

November 16, 2009

Mr. Robert Connelly  
Panel Chair  
Federal Review Panel  
Prosperity Gold-Copper Mine Project  
160 Elgin Place, 22<sup>nd</sup> Floor,  
Place Bell Canada  
Ottawa ON  
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Dear Mr. Connelly,

While waiting for the submission of information from First Nations on the current use of lands and resources Taseko undertook additional work to expand upon the information already included in our EIS on this subject. Specifically we undertook the following:

1. We re-examined the content of two previously completed studies *An Overview of the Heritage Significance of the Proposed Power and Transportation Corridors Servicing the Fish Lake Project* and *The Heritage Significance of the Fish Lake Study Area: Ethnology*. The information presented in these studies is based on over 200 hours of interviews with over 60 local First Nations people.
2. The Tsilhqot'in National Government (TNG), through their consultant Symbion, identified the trial evidence from the recent *William* decision as a source of information on current use. Taseko examined relevant portions of this evidence, including an assortment of maps and affidavit material from numerous witnesses.
3. We undertook to interview a number of different people in the local region, people that because of their occupations or recreational activities would either have records or first hand recollections of current traditional use activities in the area of the proposed mine development.

4. We have turned our mind to the need, upon receipt of site, season or species specific and relevant current use information on harvest volumes or numbers from First Nations, to further conduct an assessment of any environmental effects of our proposed Project on such use. Utilizing the baseline data and information we already have in hand we have outlined a number of approaches that Tasco intends to follow when analyzing any current use information provided by First Nations.

The findings resulting from these examinations are found in the attached report. From this material we have concluded that while there is no available site specific information to indicate specific locations used, numbers of animals or plants harvested and the nature and extent of harvesting activities there appears to be a limited body of evidence to support a statement of historical use of the area for hunting, trapping and fishing.

We hope that this report will be of assistance to the Panel.

Sincerely,

*<original signed by>*

Brian Battison  
Vice President, Corporate Affairs

## Current Use of Lands and Resources for Traditional Purposes

### Further comments from Taseko

#### Introduction and Methodology

In a letter dated October 6, 2009, the Federal Review Panel (“the Panel”) requested “potentially affected First Nations to provide information on the current use of lands and resources for traditional purposes by November 17, 2009”.

Taseko undertook additional work to expand upon the information already included in our EIS and to further examine the potential for our proposed Project to have a significant effect on the current use of lands and resources and this report is the result of those efforts.

Taseko’s additional work was focussed on two areas recommended by Symbion Consultants

Symbion Consultants were retained by the Tsilhqot’in National Government (“TNG”) and provided a Work Plan that proposed sources of current use information. That Work Plan is included in the July 17<sup>th</sup> 2009 letter<sup>1</sup> from the TNG to the Panel.

The Work Plan identified four data sets where existing current use for traditional purposes information could be found. Taseko undertook to review the two of the four data sets to which it had access.

Specifically, Taseko re-examined the Cindy Erhart-English 1994 Report, and examined relevant 2007 Trial Evidence in the *William* case. Taseko did not have access to the other two data sets referred to by Symbion Consultants, being a “TNG 2001 Traditional Use Study” and a “Xeni Gwet’in Human Use Area Study”.

The Cindy Erhart-English 1994 Reports consist of two previously completed studies: *An Overview of the Heritage Significance of the Proposed Power and Transportation Corridors Servicing the Fish Lake Project* and *The Heritage Significance of the Fish Lake Study Area: Ethnology*. These studies, commissioned by Taseko in 1993 completed by Cindy Ehrhart-English and included in the EIS as Appendices 7-2-A and 8-2-B respectively, are particularly noteworthy since the information presented in them is based on over 200 hours of interviews with over 60 local First Nations people.

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<sup>1</sup> CEAR # 1041

With respect to the 2007 Trial Evidence in the *William* case<sup>2</sup>, Taseko reviewed all of the evidence that was referred to in the Plaintiff's Reply Argument relating to the area of the proposed mine site. This was what was recommended by Symbion on p. 8 (see footnote 5) of Symbion's "Sufficiency Report" dated May 23, 2009, that was attached to the TNG comments on the "Deficiencies of the EIS for the Prosperity Project" dated May 25, 2009 that was sent to the Panel.<sup>3</sup> The *William* trial was the second longest case involving aboriginal title in the history of Canada, and saw in excess of 300 court days devoted to the presentation of evidence, much of which related to the aboriginal use of the lands at issue at various points in time.

Although the use at the 'time of contact' (1793) and the 'time of sovereignty assertion' (1846) were the periods of primary focus in the *William* case, evidence of current use was also provided and considered by the court. As noted by Symbion (p. 6 of Symbion Report dated May 23, 2009 referred to above) "there was substantial evidence in the trial record regarding current conditions" relating to land use by the Tsilhqot'in people.

The mine site is within the area that is referred to in the *William* decision as the "Eastern Trapline Territory", which is one of the areas that was under consideration in the *William* decision, and over which the Tsilhqot'in people sought to establish aboriginal title.

The opinion of Mr. Justice Vickers was that the Tsilhqot'in people had established sufficient use to justify a finding of aboriginal title to almost one-half of the area that was under consideration in the case.

However, it was also Mr. Justice Vickers' opinion that none of the Eastern Trapline Territory was used by the Tsilhqot'in people sufficiently to justify a finding of aboriginal title, although he was of the opinion that it was used sufficiently to justify a finding of aboriginal rights relating to hunting and trapping.

Taseko reviewed the Plaintiff's Reply Argument concerning the Eastern Trapline Area, and where specific references were cited that related to areas that might be affected by the proposed mine, reviewed the transcript of the evidence, or the affidavit evidence, that became the evidence in the trial.

To supplement information that may be forthcoming from First Nations communities and individuals, Taseko also canvassed local people, agencies and organizations that are known to regulate, study, fish, hunt and camp in the mine site area and the vicinity of the transmission corridor for their observations in attempt to gather and compile site specific information on Aboriginal people's current use of fish and fish habitat, and lands and resources. Using a prepared questionnaire as a guide, phone calls were placed to numerous local individuals and offices in the region including but not limited to:

- Department of Fisheries and Oceans Canada
- Fraser Basin Council
- Health Canada
- BC Ministry of Environment (Conservation and Environmental Stewardship Officers)
- Fur Buyer

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<sup>2</sup> *Tsilhqot'in Nation v. British Columbia* 2007 BCSC 1700

<sup>3</sup> CEAR #947

- Various members of Field Naturalists and Rod and Gun Clubs
- Various loggers and ranchers from Alexis Creek

## **Current Use**

Before undertaking this work, Taseko sought to define the term “current use”. Following discussions with senior personnel at CEAA it became evident that they currently provide no policy guidance for defining current use<sup>4</sup>,

Taseko looked at the records from recently reviewed projects on the Canadian Environmental Assessment Act Registry (CEAR) to see if precedents had been established. Taseko located only one completed Panel report containing any indication of having addressed this matter. The 1997, Panel report on the Voisey’s Bay Mine and Mill Project stated in part that:

The Panel is aware that "current use" can have a range of meanings. At a minimum, it means use during the last few years, because land use patterns vary and no single year can be considered fully representative. In its broadest sense, it means land use within "living memory" as recorded by the map biography method typically used to establish Aboriginal title or site-specific Aboriginal rights. This method produces a comprehensive record of the last 30 to 40 years and, for more limited purposes, a record as long as 60 to 70 years.

The Panel went on to indicate in its guidelines that it would consider land claims documentation for the purposes of establishing current use of lands and resources in the context of its review. To determine possible adverse effects of the Project and ways to remediate them, the Panel decided to focus on land and resource use patterns over approximately the last 20 years, and also on possible future uses.

Expanding the search to other jurisdictions, Taseko has learned that during the September 2009 National Energy Board oral hearings on TransCanada’s proposed Keystone XL Pipeline Project it was acknowledged that there is still no regulatory guidance to define current use. Taseko understands that the proponent referred to the dictionary which describes current as “now” when describing the definition of current use considered in that assessment.<sup>5</sup>

For the purposes of this review, Taseko has proceeded on the basis that the most relevant “current use” will be that use which has occurred in the past 10-20 years.

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<sup>4</sup> S. Burgess, Pers. Com

<sup>5</sup> A. Lees, Pers Com.

## Summary of Document Review – Fish Lake Area

After reviewing Ehrhart-English's 1993 report *The Heritage Significance of the Fish Lake Study Area: Ethnology* it is apparent that the Fish Lake area has recently been used by First Nations for hunting, and to a lesser extent for fishing and gathering. However, it is not possible to precisely determine from the study the intensity or frequency of current use of Fish Lake area, by how many persons or families, or quantities harvested.

What can be taken from that Report may be summarized is as follows:

- **Aboriginal Fisheries:** Based on Ehrhart-English interviews, 41 of 61 people indicated they had fished in the Fish Lake study area. This included 17 young people, 16 middle aged people and 10 Elders. Ehrhart-English documents that while Fish Creek, Fish Lake and Little Fish Lake are fished by individuals from all age groups, “most of the effort in these areas has taken place around Little Fish Lake when people are living there”. The study further documents that “the fishing patterns have not persisted because the area has not been inhabited on a permanent basis in the past four or five years” and “should fur prices rise to make trapping more remunerative once again, the family [the Solomon family] would probably return to trapping and they would harvest the fish from Little Fish Lake, Fish Creek, and Fish Lake.” The study concludes that “The importance of fishing in the mine development area seems to be related to the amount of trapping and over-wintering of cattle in the Little Fish Lake area. If these two activities are eliminated, then fishing would take place in another location. Fishing in the Taseko River at the mouth of Taseko Lake is far more important to the Tsilhqot'in people than fishing in the mine development area. Nevertheless, the importance of fishing within the affected area is related to the potential to pursue other activities such as trapping or overwintering cattle.”

Taseko Mines undertook recreational and angling surveys at Fish Lake in 1995, 1996, 1997 and 2006 and 2007. The results of these surveys as reported in the EIS and Appendices 5-3-F and 5-3-J indicating that 16% to 31% of all the users of Fish Lake surveyed come from the Cariboo region including a total of 21 anglers coming from the Chilcotin (defined as the Nemiah Valley, Big Lake and Alexis Creek area) tend to confirm this conclusion.

- **Hunting:** Half of the 61 people interviewed by Ehrhart-English in 1993 hunt in the Fish Lake study area. This included 15 young people, nine middle aged people and seven elders. With regards to current hunting activities in the Fish Lake area, Ehrhart-English's interviews concluded that “deer, moose, grouse and squirrel are the major species of animals hunted by Nemiah and Stoney people in the proposed mine development area”. While she provides no information on number of days spent hunting in the Fish Lake area or harvest quantities, she does suggest that “the hunting ranges of Elders and middle-aged people differs from the young people only to the extent that the older individuals seem to have spent more time searching the Fish Lake study area for game than the younger individuals who have not had as much time in their lives to frequent or heavily use an area and for whom greater transportation opportunities have presented themselves”.

- Trapping: As was noted above, the amount of trapping activity in the Fish Lake area is dependent upon the price paid for furs. Ehrhart-English writes that “when the price of furs made trapping profitable, Henry [Solomon] and his sons used the trapline. They set traps and tended them while they wintered cattle.” While this quote applies to historic use, there is no associated information about harvesting quantities. In fact, Ehrhart-English herself notes that “given the lack of reported information on native trapping activities, it will be very difficult to find precise measures of the amount of trapping that has taken place in recent years”.
- Gathering: Erhart-English states that “The resource use that is least likely to be greatly affected by the proposed Fish Lake mine development is plant gathering. Most of the species of plants collected by Nemiah Band members are situated outside the mine development area. Those species which are found in the mine development area are also found in other areas. Many species of plants are important to Band members, especially when they are residing in remote areas such as the Little Fish Lake area and are gathered for use there.” The study further goes on to indicate that the use of the Fish Lake area for gathering is connected to historic use of the site by saying that “Most of the berries picked by people in the study area that would be affected by the mine are picked in the Little Fish Lake area, probably as a direct result of the fact that people have lived there and picked berries for food”.
- Ceremonial/Spiritual: Ehrhart-English defines spiritual significance as “a measure of the depth of emotion people feel for an area”. In Ehrhart-English’s 1993 interviews each of the 61 persons was asked “are there any sites in the Fish Lake study area that are so important to you that you would feel a great loss if they were greatly altered?” While many people did not respond to this question, the seven that did respond were further questioned. Further questioning revealed that particular sites were spiritually significant to them due to the activities that were conducted in the area. Specifically, “Trapping and fishing seem to be the major activities that have deep spiritual significance to individuals that use the mine development area. Cabins are important to Nemiah people not only because they permit extended use of remote trapping, fishing and ranching activities, but also because they represent memories of past life experiences, and the experiences of close relations.”

Based on the information compiled by Ehrhart-English from the numerous interviews she conducted in 1993, it can be concluded that while the Fish Lake area has been used historically, in more recent years use by First Nations has become periodic, and that the Fish Lake area is not the only area used by local First Nations for fishing, hunting or gathering.

## **Summary of *William* case Evidence Reviewed**

Plaintiff's Reply in the *William* case was reviewed, starting at page 149 of Appendix 1B<sup>6</sup> and the associated footnote material was obtained and also reviewed. Following the Plaintiff's Reply which referred to specific evidence that appeared relevant, one expert report and the direct and cross-examination, or affidavit evidence, of six witnesses were examined for specific information on current use.

The Reply contains numerous assertions to the effect that "prior to, at and well after Crown sovereignty the Tsilhqot'in regularly used the claim area lands east of the Taseko Lakes as hunting and gathering grounds, as well as for trapping and fishing". However, a review of all of the evidence concerning the mine development area referenced in the Reply did not disclose any material information relating to current use.

What little information there was spoke only to historical use rather than present, regular or frequent use and what little regular use there was tended to diminish with time.

Historical references to the use of the Fish Lake area also appear to be limited in relation to many other areas which appear to hold a much higher importance for the Tsilhqot'in.

Pertinent extracts of text from the material reviewed have been extracted and are found in Appendix 1 attached to this document.

In the *William* judgment, Mr. Justice Vickers commented on his finding of historical and current use of specific areas within the Eastern Trapline Territory, including the area of "Teztan Biny" (Fish Lake).

He commented on the evidence of the use of the Fish Lake area in the twentieth century as follows:

- [900] Tsilhqot'in witnesses have testified to the use of Teztan Biny in the twentieth century as a fishing and hunting camp. Francis William said there are also smaller lakes in the area around Dasiqox Biny where sabay and dek'any could be caught. He also spoke of killing a mus near Teztan Biny, along the road to Dasiqox Biny. Cecelia Quilt said that that Old Seymour had a cabin near Teztan Biny. She recalled that her husband once stayed there all winter taking care of cattle and he said that an old Tsilhqot'in lady was buried there.

## **Additional information from others**

Between 1996 and 1997 Taseko operated an extensive exploration program at the Prosperity site, followed by a smaller program in 1998. The Site Manager at the time kept a log book over this period, which she has reviewed. Her recollection, supported by her log book, is that First Nations individuals were observed coming to the lake and fishing on occasion. However, she does not recall ever seeing First

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<sup>6</sup> <http://www.woodwardandcompany.com/media/pdfs/Appendix1B.pdf>

Nations people in the area gathering berries, trapping or hunting during that period, much of which involved a full time presence at the site. She did recall that non-First Nations persons hunted in the area for moose. Her recollection was that when hunters came, they camped away from the exploration camp and left within one or two days of arriving. She noted that individuals who hunted in the area would generally drop by the exploration camp to let Taseko know that they were in the area.

Detailed information on sites frequented or volumes harvested could not be obtained from our efforts to canvass others. In general, anecdotal information only was held by regulatory agencies indicating the lack of such specific data. Health Canada indicated that while funding is made available and some local First Nations have made use of these resources to study their food sources and its quality, the Xenigwet'in had not applied for such a study. Comments provided by individuals and members of recreational and hunting groups concerning First Nations' current use, or lack of current use, were conflicting and therefore not considered appropriate for including in this assessment. In addition, all individuals contacted preferred anonymity and either declined to comment or to go on record as providing information.

### **Summary of Document Review – Transmission Line**

In the 1993 Report *An Overview of the Heritage Significance of the Proposed Power and Transportation Corridor Servicing the Fish Lake Project*, Ehrhart-English identifies areas along the 3km wide transmission line corridor that were used for hunting and fishing, and to a lesser extent, trapping and gathering. This knowledge was based upon interviews with representatives from the bands located along the alignment (the exception being the Toosey Band who did not provide any information toward the study).

While some bands provided more detailed information on location of current use than others, given that this work was preliminary in nature and intended to provide an initial overview of current land use, the details related to frequency of use, by how many, and quantities and species harvested, was not collected.

Taseko Mines Ltd. has completed a detailed environmental impact assessment for a 500m wide route within the original 3km wide corridor area and has undertaken a constraints analysis incorporating available archaeological and environmental information to guide the selection of the final 30 to 80 metre wide transmission line right-of-way. Prior to construction, should more site specific information concerning current use of lands and resources in the right-of-way area become available Taseko will look at ways to modify the disturbance associated with the line, or relocate poles, so as to avoid significant environmental impacts to identified uses and resources.

### **Assessment of Environmental Effects on Current Use**

When Taseko receives additional information concerning First Nations current use of land and resources, if that information contains details concerning specific locations, numbers and species harvested, Taseko is confident that an assessment of any potential environmental effects can be completed utilizing the existing and comprehensive baseline data detailed in our EIS.

If necessary for an assessment of effects on vegetation there are four approaches that could be used to assess any new issues related to current First Nations use of plant species or ecosystem types that may be brought forward to the Panel. The first is to review the detailed spatial data and associated analyses of effects included in the vegetation section of the EIS to determine if effects to the ecosystem or species of interest have already been assessed to some degree. Secondly, the two approaches included in the supplemental report submitted by Taseko Mines Limited in September (i.e., using regional data sets to extend the assessment of vegetation KIs to other areas of interest to the TNG, and linking the 52 plant species of concern to TNG to the vegetation KIs) could be extended to other ecosystems or plant species. Lastly, if required, the spatial data developed for the project could be used in concert with other regional data sets to examine other questions that may be posed relating to habitat quality.

With respect to wildlife two general approaches are available if necessary for assessing the potential effects of the Project on current use of wildlife by First Nations: reference to the assessment already presented in the EIS and use of information and methods presented in the ‘Supplemental Report to Taseko Mines Ltd. Prosperity Gold-Copper Project Environmental Impact Statement: Local and Regional Environmental Effects on Wildlife and Vegetation Resources of Importance to the Tsilhqot’ in National Government at the Proposed Mine Site’. More specifically, an effects assessment related to wildlife current use would be derived from the following:

- Six William Case species (moose, mule deer, California bighorn sheep, grizzly bear, black bear and fisher) were identified as wildlife KIs and assessed in detail in the EIS. For the remaining William Case species not identified as KIs, the assessment of mine site area effects is considered to be inferable from the results of the effects assessment for an appropriate “umbrella KI” or for a KI that is related or similar in behaviour and habitat use pattern or for an appropriate vegetation (i.e., habitat type) KI. These linkages are presented in a table in the supplemental report.
- The supplemental report presented an assessment of habitat loss for six William Case species (moose, mule deer, fisher, black bear and grizzly bear) for two areas (the Eastern Trapline Area and the Rights and Title Study Area (including the Eastern Trapline Area)). This assessment could be extended if necessary, using similar methods (i.e., PEM-based habitat ratings), to include other KIs that may be identified as species of concern and of significance to the Panel with respect to TNG current use.
- The supplemental report includes predictions of local (mine site) population effects for 22 species. Six of these are William Case species (moose, mule deer, California bighorn sheep, grizzly bear, black bear, and fisher). The objective of this analysis was to provide an estimate of the number of animals potentially affected and where possible to characterize the nature of any effects. This analysis could be extended if necessary to include any additional species considered of significance to the Panel.

# **Appendix 1:**

**Extracts of relevant material**

Using the Plaintiffs reply as the primary reference, Taseo obtained copies of all footnoted material and reviewed that material for pertinent facts related to the current use of Fish Lake and surrounding areas.

What follows is a précis of all the pertinent information found during this review.

Beginning on page 149 Section F of Appendix 1B the Plaintiffs Reply speaks to the Claim Area Lands of the Taseko Lakes and East of the Taseko Lakes (Taseko Lakes, Fish Lake, Little Fish Lake (Wasp Lake), and Onion Lake, Beece Creek: “Snow Mountains” to the East and South of Taseko Lakes.)

At para 264 the Plaintiff states “Together these lands are defined by what is today known as the Xeni Gwet’in First Nations Government’s Eastern Trapline, and within it regions can be identified as follows:

- a) The coast mountains and the upper headwaters of creeks and rivers issuing into the Taseko Lakes,
- b) The Taseko Lakes and its outlet,
- c) The Beece Creek watershed,
- d) The “Nabas” area, encompassing as it does the Fish Lake and Little Fish (Wasp) lake system, and
- e) The Onion Lake watershed.

Referring to Appendix 1D to the Plaintiffs Argument, Summary of Traplines it states “On December 20, 1977, the Nemiah Valley Indian Band signed a band council resolution amalgamating individual band members’ traplines into a single line. The band trapline was an amalgamation of 12 individual traplines: Andy George (#15), Jimmy Sammy William (#14), Captain George (#13), Little George Setah (#9), William Setah (#8), Francis Setah (#10), Sam William (#4), Felix Lulua (#11), Eagle Lake Henry (#12), Eugene William (#3), Lashway Lulua (#2) and Tommy Lulua (#1). In November 1984, the Band trapline boundaries were finalized with only part of the Eagle Lake Henry line included, and the lines originally registered to Fred Cyr (#05) and Jimmy Sam William (#06) included “A review of the maps enclosed in Appendix 1D shows that only (#14) previously registered to Jimmy Sammy William includes Fish Lake, Little Fish and Wasp Lakes area.

At para 265 the Plaintiff cites the Expert Report of Ken Beasley as a footnote to the statement “ In the northern portion of these lands, Nabas Dzelh towers over the Bisqox watershed, the meadows of Nahas, and the fish bearing lakes of Yanah Biny (Wasp Lake) and Teztaun Biny (Fish Lake) and Jididzay Biny (Onion Lake).”

At para 266 the Plaintiff states “ Prior to, and well after Crown sovereignty the Tsilhqot’in regularly use the claim area east of the Taseko Lakes as hunting and gathering grounds, as well as for trapping and fishing. Further, the northern lowlands of the eastern trapline were winter homelands for the Tsilhqot’in dating back centuries. These facts are established by a coherent set of evidence derived largely from expert opinion and oral history.”

Exhibit 0240 Expert Report by Ken Beasley - a review of Exhibit 0240 revealed the following:

Beginning at page 69

- Fish Lake – “This was an important fishing camp. Archaeological excavations have exposed 18 roasting pits and/or pit depressions in this area.”
- Little Fish Lake – “This site, which presently “has several log buildings that were built at various points in time” was an important freshwater fishery.”
- Taseko Lakes – “There are almost no early contact period references to this lake but it clearly lay in Tsilhqot’in country. The region to the immediate east was mapped by Cox in 1864 as a “refuge in times of danger” and its importance was inferred by Morice who noted that Stone Chilcotin often hunted in the Lillooet Mountains.”
- Taseko River – “While documentary evidence of its use or occupancy during the early contact period is thin, archaeological work in the 1970’s and 80’s confirms that this river clearly lies well within Tsilhqot’in territory.”

Para 267 states “The scheduled pattern of land use in the Eastern Trapline that has carried on for many generations since a time before sovereignty echoes that of other parts of the claim area: winter homes are situated in the northern lowlands around the base of Nabas Dzelh and in around Bisqox (Beece Creek), as well as the meadows adjacent to the lakes of Teztaun (Fish Lake), Jididzay (Onion Lake), and Yanah Biny (Wasp Lake), and serve as bases for winter trapping.”. Reference is made to the Plaintiff’s Argument, Appendix 2 which states in part:

- Para 174. “Teztan, place name #93, (Fish Lake), is a site of ancient and continuing Tsilhqot’in occupation.” A dense cluster of archaeological site inventory forms filed in Victoria reflect the work done by Tyhurst around Fish Lake.”
- Para 175. “In the 20th century this has been an important fishing and hunting camp for the Tsilhqot’in people, and there have been Xenigwet’in gatherings there in recent years”
- Para 176. “Francis William recounted that this area was an important fish camp for the Tsilhqot’in people. Cecelia Quilt said that that Old Seymour had a cabin near Teztan, close to where Jimmy Bulyan stayed. She recalled that her husband Dick once stayed there all winter taking care of Jimmy’s cattle, and an old Tsilhqot’in lady was buried there.”

Para 267 continues by stating “ In the summer and fall, while Tsilhqot’ins continued to use the northern region to fish in Jididzay Biny and Teztaun Biny for rainbow trout, whitefish, and dolly varden, to and to hunt, others moved into the mountainous areas of Nabas Dzelh (Anvil Mountain), Gwetex Natel’as, the mountains around Ts’I Ts’elhts’ig and Taylor Windfall to take advantage of deer migration, as well as to harvest other resources of the mountains, including groundhog, medicines, berries, mountain sheep, mountain goat, pine nuts, mountain potatoes and Indian hellebore. The footnote supporting the reference to the use of the northern region to hunt (para 213 of Plaintiff’s Argument , Appendix 3) states:

- Deer are hunted as they migrate down from the mountains and cross at **Nadilin Yex** at the north end of Dasiqox Biny (Taseko Lake). Tsilhqot'ins have hunted throughout the area, including the areas around **Jididzay Biny** (Onion Lake), **Bisqox** (Beece Creek), **Chita Creek** and **Chita Meadow**, since the time of the ʔesggidams. Tsilhqot'ins also hunt for ducks and geese in the fall around **Jididzay Biny** (Onion Lake). The fall hunt also included squirrels, cougars, lynx and rabbits around Onion Flats in the fall. In the same vicinity, Tsilhqot'ins also hunt deer and more recently, moose, below **Nabas** where there is another underground house village site at **Teztan Biny** (Fish Lake).

At Para 282 it states that “ Expert and oral history evidence establish that ancestral resident Tsilhqot'in populations existed in winter villages of underground houses in the West Taseko region at Taseko, Lastman, Tuzcha and Fishem Lakes and Yohetta Valley and in the East Taseko region at the foot of Anvil Mountain and at Fish Lake (the “Southeastern Resident Population”). It is from these bases, and using Tsilhqot'in ancestral trail and crossing network that the Southeastern Resident Population physically occupied and used the lands surrounding the Taseko Lakes, as circumscribed by the Claim area to their east.” Citing reference to the Plaintiff's Argument, Appendix 3 paras 155-160 further elaborate as follows:

- Para 155. “With respect to the south eastern portion of the Claim Area, Dr. Brealey stated that at Fishem Lake (located at the eastern end of Yohetta Valley) "several housepit depressions ... confirm that this was a base camp where extended families would exploit floral, fish and big game resources and so [was] one of the more important Tsilhqot'in encampments in the Yohetta Valley.,,Dr. Brealey, citing Dr. Magne, also stated, "Archaeological work in [the east Yohetta Valley] in the 1980's has revealed at least 16 discrete heritage sites, and has been estimated as containing anywhere from 150 to 2000 depressions. This suggests it was an exceedingly important hunting, gathering and freshwater fishing area for the Stone Chilcotin. ,,Dr. Brealey also concluded that Tsilhqot'in traditional land use patterns endured well into the post-contact period.”
- Para 156. “ Joseph William, born 1933, and Gilbert Solomon also described ancestral Tsilhqot'in underground winter residences in the region at Fishem Lake, Tuzcha Lake, Lastman Lake, Yuyetah (Yohetta Valley) and Teztaun (Fish Lake). Joseph William, reported how his family, and Tsilhqot'ins before their time, moved into the southern and eastern portion of the Claim Area during summer to hunt, gather and harvest plants, some of which would be roasted in dug out pits. Mr. William described how Tsilhqot'ins moved into the mountains, such as T'ox T'ad, Yuyetah (Yohetta Valley) and Nabas (Anvil Mountain), to hunt, dry meat, chase wild horses and harvest medicines, mountain potatoes and beartooth.”
- Para 157 “Lloyd Myers explained that while he was growing up all Tsilhqot'in families continued the traditional practices of the ʔesggidam and gathered food in the spring, summer and fall to make sure that they were ready for winter. Fish, game, berries, plants and medicines were gathered and dried because deep freezes did not exist, and even today many Tsilhqot'in people have deep freezes but they still dry their food. Mr. Myers further explained that since the time of the ancestors, continuing through to recent times, Tsilhqot'ins have been moving into Yuyetah

(Yohetta Valley) and Dzelh Ch'ed (the Snow Mountains), including Nabas (Anvil Mountain), Gwetex Natel?as (Red Mountain), the mountains east of Taseko Lakes and the Taylor Windfall area, during summer and fall, to fish, hunt, dry meat, gather berries, medicine, mountain potatoes, beartooth, wild onions, silverweed, sunflower roots and other plants. Mr. Myers continues to take his grandchildren and other Tsilhqot'in children to these places every year to teach them these Tsilhqot'in traditional practices."

- Para 158 "Cecelia Quilt, born 1924, stated that she is from Nabas (Anvil Mountain) and that many other Tsilhqot'in families lived around Nabas too. According to Mrs. Quilt, Tsilhqot'ins have been living at Nabas since before her parents time and they stayed "up in Dzelh Ch'ed (the Snow Mountains) all summer and fall hunting, gathering berries, plants and medicines and drying meat for the winter. Then they would move back down around Nabas during the winter." Mrs. Quilt explained that Tsilhqot'in ancestors lived in underground houses and that her father lived in one at the foot of Nabas not too far from where he built his cabin. According to Mrs. Quilt, when she was a child she saw her husband's great grandmother leading a horse into the Snow Mountains, behind Nabas, to trap groundhogs. She also reported that the ?esggidam lived, hunted and trapped all around in the Nabas area and the Snow Mountains towards Taseko Lakes and towards Lillooet."
- Para 159 "Norman George Setah echoed the other Tsilhqot'in witnesses and described deer and groundhog hunting and berry and mountain potato harvesting in the eastern Claim Area at Gwetex Natel?as (Red Mountain) and Nabas (Anvil Mountain) since the time of the ?esggidams. Julie Quilt described numerous Tsilhqot'in families moving up to Gwetex Natel?as (Red Mountain) during summer, during her lifetime, to hunt deer, groundhog and moose, and harvest pine nuts, medicine, mountain potatoes and berries."
- Para 160 "Francis William explained that Tsilhqot'ins on their way to Lillooet to trade would harvest beartooth and hunt groundhog and deer in the mountains east of Taseko Lake and the Taylor Windfall area. Mr. William also stated that his family hunted deer and harvested mountain potato in Tchaikazan Valley and Yohetta Valley while he was growing up."

At Para 296 the Plaintiff refers to Joseph William's evidence related to Tsilhqot'in use of the northern plateau section of the Eastern Trapline, including Teztan Biny (Fish Lake). A review of Exhibit 0355, an Affidavit of Joseph William sworn on December 17, 2004, reveals the following details:

- Para 28. "I went to St. Joseph's Mission School when I was 12 years old [1945], and I was there until I was 16. Even when I was in school, I came back home in the summer to be with my parents. Each summer, I would go all over on horseback, and we did some fishing at places like Teztan (Fish Lake) and Nadilin Yex."
- Para 74. "In summertime, I fished for trout in Teztan (Fish Lake). My mom and my sister Doris also went there to set gillnets."

- Para 92. “ As an adult, I have hunted east of Dasiqox all around Teztan (Fish Lake), Jididzay (Onion Lake), Anvil Mountain, Bisqox (Beece Creek), Gwetex Natel?as (Red Mountain), Chita Creek, Chita Meadow and Taylor Windfall. I have also hunted west of Dasiqox Biny (Taseko Lakes) in the T’ox T’ad area, and around Gex Gunlin, Lastman Lake, Fishem Lake and Tuzcha Lake.”
- Para 104 “ I started guiding when I was about 21 years old. I guided hunters and mountaineers for thirty years. I guided for Johnny Murdock and for some others. I also used to guide for Tom Smith around Nabas and Teztan (Fish Lake).”
- Para 110 “In the wintertime we trapped. I trapped for muskrat and beaver at Teztan (Fish Lake). One time when I was trapping at Teztan I went through the ice and froze my pants. I went into the bush and found some red needles from chendi (lodgepole pine) to start a fire to warm myself back up. My family and I used dry chendi needles all the time to start fires.”
- Para 111 “Most of my trapping was around Teztan (Fish Lake) and around our cabin at Nabas, but I trapped in lots of other places too.”
- Para 112 “I trapped muskrat, beaver, squirrel, marten, weasels, rabbits, lynx and coyotes. I went trapping all around Dasiqox and Dasiqox Biny (Taseko River and Taseko Lakes), Teztan (Fish Lake), Jididzay (Onion Lake), Bisqox (Beece Creek) and Tchaikazan. We used snowshoes to get around to check our traps.
  - a) My father and I would usually hunt and trap a total of over 100 muskrat in a year. I trapped muskrat at Teztan (Fish Lake) and my father told me he trapped them at Jididzay (Onion Lake).
  - b) My father and I would usually trap or hunt a total of 40 to 50 beaver in a year. We trapped beaver at Anvil Mountain and along Bisqox (Beece Creek).
  - c) I usually hunted and trapped lots of squirrels in winter. Sometimes I would hunt them everyday. I hunted squirrel all around the meadows at Nabas.
  - d) I trapped about five marten one year. One winter I spent a month trapping from a cabin at Fishem Lake. I got marten and squirrel. My dad helped me set the traps and then he went back home to Nabas.
  - e) I once trapped a weasel around the house at Nabas. My brother Billy used to feed a weasel around our house. He fed the weasel until it got fat. The weasel ate the mice around the house.
  - f) In winter-time, I hunted rabbits out in the meadows near Nabas. I saw my dad snare rabbits as well. There were lots of rabbits around Nabas. We hunted them when we needed some meat.
  - g) I sometimes took around ten lynx in the winter. I trapped lynx in the spruce area about a mile from our cabin at Nabas, in the direction of Teztan (Fish Lake). In a good week I caught three lynx. I also trapped lynx around Nadilin Yex on the Nabas side.

- h) I've chased and killed coyote from horseback in the area between Dasiqox (Taseko River) and Delgi Chosh (Big Lake). I've also shot some on the hillside near Jididzay (Onion Lake).
- i) Once in a while my family got a wolverine. Once when I was getting the horses on Yohetta Valley with my dad and my brother Billy, Billy shot a wolverine there.
- j) Just once I shot a cougar. I went after it with snowshoes. That was near our cabin at Nabas, in the direction of Dasiqox Biny (Taseko Lakes). My dad didn't want that cougar hanging around the cabin."

At Para 296 (j) the Plaintiff's Reply states " Joseph William's father Jimmy William acquired a trapline in 1954 in the area encompassing areas including Nadilin Yex, Teztan (Fish Lake), Jididzay (Onion Lake), Y'anah Biny (Wasp Lake), Gwetex Natel'as, Beece Creek, Anvil Mountain, and the eastern shore of Dasiqox Biny and part of Dasiqox River. This trapline now forms part of the Nemiah Band Trapline." [See previous reference to Trapline #14 above.]

At Para 304 (d) the Plaintiff's Reply states " Cecelia Quilt averred that her family fished at Teztaun (Fish Lake) and her parents and Yellicy taught her that Tsilhqot'ins had been doing that since the time of the ?esggidams. Her aunt Madeline Hance taught her that an old Tsilhqot'in lady who used to fish at the lake is now buried there. She also reported that Old Seymour had a cabin near Teztaun, close to where Jimmy Bulyan's family and Henry Solomon's family later stayed."

Referring to Exhibit 0439, Affidavit #1 of Cecelia Quilt it states:

- At Para 46 " A Tsilhqot'in from the west side of Nabas, Old Seymour, had a cabin not too far from Teztan (Fish Lake), close to where Jimmy Bulyan stayed. My parents and Yellicy taught me that the ?Esggidam used to fish there a long time ago. My family fished there too – you can catch big trout there. My husband Dick once stayed there all winter taking care of cattle for Jimmy Bulyan by himself. He was happy that Judz (George) Myers came by and helped him."
- At Para 47 "I was told about an old Tsilhqot'in lady that used to fish around Textan (Fish Lake). She's buried there at Teztan. That's what my aunty Madeline Hance told me; she could name the person too. Madeline told me that the old lady's husband buried her there and he put some dried fish in with her and he said: "you really liked fishing".

At Para 305 ( c ) the Plaintiff's Reply states " Her [Christine Cooper] mother fished for dek'any (trout) at Teztan (Fish Lake) and trapped all winter when living around Nabas.

At Para 306 it states " Gilbert Solomon testified that he had seen house pits at Teztaun Biny (Fish Lake) and had been taught by his father Henry Solomon, William Setah, Jimmy Bulyan's wife Amelia, Eugene William and other elders that the ?esggidams lived, hunted and fished at Teztaun Biny."

At Para 307 the Plaintiff's Reply states "Chief Roger William testified that Tsilhqot'ins were living in the Eastern Trapline full-time until the 1980s and explained that the Solomon family still goes into the area each year."

At Para 308 it states “ Harry Setah testified that William Setah taught him that the whole area from Teztaun (Fish Lake), Nabas, Nabas Dzelh (Anvil Mountain), Gwetex Natel?as (red Mountain) right down through Taylor Windfall were Tsilhqot’in summer and fall hunting grounds for deer and moose.”

A review of the transcript of Direct Evidence of Harry Setah given at Trail Day 141 states the following:

- On page 0005 beginning at line 16 in response to a comment “And you’ve told us that you also hunted on the other side of Taseko” Harry Setah states “ On the other side, right from Lhiz Bay, we hauled the horses towards Davidson Bridge. We hauled the horses to White Water Lodge. We drop off the horses there. And we would bring the horses up towards Red Mountain, and that’s where we would hunt for moose and deer. And I also brought them towards Anvil Mountain.”
- On page 0007 beginning at line 25 in response to a question “Now, when you have gone to the east side of Taseko Lakes for moose and deer hunting, who, if anyone, have you gone with?” Harry Setah states “ There are some times we’ve gone as two or three families, not only myself. I used to go up there with Roger William, Chief Roger William. There are times when David came with us on that trip towards Red Mountain.”
- On page 0008 beginning at line 07 in response to a question “Can you tell us if there is others – other than moose and deer, are there other animals that you and the people you are with make use of?” Harry Setah states “Fish Lake – Fish Lake, we go fishing up there. Fish Lake. That’s for trouts. Fish Lake, that’s good for small little trouts.”
- On page 0010 beginning at line 05 in response to a question “Mr. Setah, still staying with this area around Jididzay and Teztan, or Fish Lake, are there any other animals other than you’ve described, lake trout, moose and deer – are there any other animals that you have harvested from this area, or caught in this area?” Harry Setah states blue grouse and “ Gex. That’s rabbit in English: gex in Tsilhqot’in. “Can you tell me how you catch gex, or rabbit?” to which Harry Setah replied “With rabbits it’s the same: snares or with a .22.” In response to a question “Where else, Mr. Setah, have you shot blue grouse, or hunted for blue grouse?” Harry Setah states “On this side, it’s just like I said: it’s right around all in Fish Lake, Jididzay, Red Mountain and down towards Taylor Windfall.
- On page 0011 beginning at line 24 in response to a question “Mr. Setah, the areas that you’ve just described, have you personally hunted blue grouse in these areas?” Harry Setah states “Yeah I still do. I pretty well hunt them every year. I love blue grouse. It’s still staying with my family, yet. We eat blue grouse often. We have blue grouse every year.”