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PROSPERITY GOLD-COPPER MINE PROJECT
CANADIAN ENVIRONMENTAL ASSESSMENT REGISTRY #09-05-44811

FEDERAL REVIEW PANEL PUBLIC HEARING

PURSUANT TO:

SECTION 34 OF THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT

PROCEEDINGS AT HEARING

CLOSING REMARKS

May 3, 2010

Volume 35

Pages 7229 to 7476

Held at:

Big Mama's Steakhouse
Williams Lake, British Columbia

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APPEARANCES

FEDERAL PANEL:

Mr. Robert (Bob) Connelly, Panel Chair
Mr. Bill Klassen, Panel Member
Ms. Nalaine Morin, Panel Member

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY (CEAA):

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Mr. Livain Michaud

APPLICANT

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Mr. Brian Battison)
Mr. Rod Bell-Irving)
Ms. Sonia Meili)
Ms. Katherine Gizikoff)
Mr. Scott Jones)
Mr. Russell Hallbauer)

INTERESTED PARTIES AND PRESENTERS:

(In order of appearance on the record):

CLOSING REMARKS BY:

The City of Williams Lake: (Mayor Kerry Cook)

Mr. and Mrs. Siegfried Reuter

Canoe Creek Band: (Dr. Bruce Stadfeld, Chief Marilyn
Camille, Councillor Gertrude Harry)

Tsilhqot'in National Government: (Chief Marilyn Baptise,
Mr. Sean Nixon, and Grand Chief Stewart Phillip)

Tsilhqot'in National Government Chiefs: (Chief Ivor
Myers, Yunesit'in; Chief Francis Laceese, Toosey;
Chief Percy Guichon, Tsi Del Del (Redstone); Chief
Marilyn Baptiste, Xeni Gwet'in; Chief Bernie Elkins
(Presented by Chief Marilyn Baptiste); Chief Joe
Alphonse, Tl'etinqox (Anaham))

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OPENING REMARKS BY THE CHAIRMAN:

1
2 THE CHAIRMAN: Good morning, Ladies and
3 Gentlemen, I just want to make sure you can hear me.
4 Good morning.

5 Given that this is our final day of
6 hearings, we will open with a short drumming ceremony
7 and then close at the end of the day with a drumming
8 ceremony as well in recognition of the fact that we
9 are holding these hearings within the traditional
10 territory of the First Nations.

11 So, with that, I will ask for the
12 drumming ceremony to start and then we'll open the
13 day's proceedings.

14 **(DRUMMING CEREMONY)**

15 **(PRAYER)**

16 MR. GRINDER: (Aboriginal Language Spoken).
17 All my relations.

18 THE CHAIRMAN: Good morning. Again, welcome
19 Citizens of Williams Lake and the Cariboo-Chilcotin
20 Region, Ladies and Gentlemen, Chiefs, Elders, Members
21 of the Tsilhqot'in First Nation and the Secwepemc
22 First Nation within whose traditional territory we're
23 holding these hearings today, Members of the
24 Secretariat, Taseko Mines Limited.

25 We welcome you to this final day of our

1 session on closing remarks and the final day of these
2 hearings.

3 Before I outline the Procedures we're
4 following, I will just take a moment to introduce
5 ourselves. I think most of you know us, but there may
6 be some new people in the audience.

7 My name is Bob Connelly. I'm Chair of the
8 Environmental Assessment Panel.

9 On my right is Nalaine Morin.

10 And on my left is Bill Klassen.

11 And I'll turn immediately to Taseko Mines as
12 well to introduce their people before we proceed.

13 MR. BATTISON: Good morning, Mr. Chairman,
14 Panel Members. My name is Brian Battison,
15 Vice-President of Corporate Affairs for Taseko Mines.

16 Good morning to residents of Williams Lake,
17 First Nation Members and First Nation Chiefs.

18 On my left is Sonia Meili, Sonia a
19 geoscientist-in-training at the Gibraltar Mine. She's
20 also working on the permitting issues related to
21 Prosperity.

22 Next to me on my left is Mr. Rod Bell-Irving.
23 Rod is Manager of Environmental Assessment for
24 Prosperity and responsible for the Prosperity Project
25 in these hearings.

1 On my right is legal counsel to Taseko,
2 Mr. Keith Clark.

3 THE CHAIRMAN: Thank you, Mr. Battison.

4 MR. BATTISON: Mr. Chairman, I unavoidably
5 have to step out for a few minutes just around 25
6 after, or so, of this morning at 9 o'clock. So if
7 anybody is speaking, it's not out of disrespect, it's
8 just unavoidable. I put that on the record.

9 Also we'll be joined later today by Katherine
10 Gizikoff with Taseko, and by Mr. Scott Jones, who
11 missed the flight this morning and is scrambling to
12 get up here. Thank you.

13 THE CHAIRMAN: Okay, thank you,
14 Mr. Battison, for providing that further clarification
15 of members of your team as well.

16 Now for just a few opening remarks on the
17 Procedures for this final session.

18 As you know, we've held general sessions,
19 we've held community sessions, we've held
20 topic-specific sessions, and this is the final session
21 for concluding remarks held both on Saturday and
22 today.

23 The closing remarks session is designed to
24 provide an opportunity for individuals and
25 representatives of organizations that have previously

1 appeared before the Panel to briefly summarize their
2 position on the Project's effects and to provide a
3 rationale for that position.

4 The hearing record is now closed other than,
5 of course, the concluding remarks and supporting
6 information we receive today in support of those
7 concluding statements.

8 We wanted to ensure that we could accommodate
9 concluding remarks within the two days that we had
10 established for this purpose, and therefore we did set
11 specific time limits for that purpose.

12 First Nations and other organizations that
13 received participant funding from the Canadian
14 Environmental Assessment Agency to participate in the
15 review have been given a longer time to make closing
16 remarks.

17 And individuals and groups that are not
18 represented by any of those groups are given a maximum
19 of about 10 minutes.

20 I thought also I should introduce a new
21 procedural rule here this morning, given that, as I
22 look at the room, there is a disco ball at the back.
23 I wanted to make sure that people realized that
24 dancing was not allowed during these procedures today,
25 so I'm not sure that this is a coincidence that we

1 have the disco ball on the last day of our hearings,
2 but it turned out that way.

3 In terms of our order of proceeding, I'll
4 just go through the order.

5 We have first of all Mayor Kerry Cook, who is
6 the first presenter this morning.

7 Then Mr. Siegfried Reuter.

8 Then the Canoe Creek Band, Bruce Stadfeld.

9 And Tsilhqot'in National Government,
10 Jay Nelson.

11 We expect that will take us through to about
12 lunch and then, after lunch, we have short
13 presentations by various Tsilhqot'in Chiefs.

14 We will then end with Taseko Mines' response,
15 their final concluding remarks, and then close, again
16 with a drumming ceremony in recognition of the fact
17 that we're meeting within the traditional territory of
18 First Nations.

19 And I would like, before we proceed, to also
20 thank First Nations for the opening drumming ceremony
21 this morning.

22 So, with that, we will proceed immediately to
23 hear from our first presenter. And I'll ask
24 Mayor Cook to come forward, please.

25 Mayor Cook, we look forward to hearing from

1 you again. We, if I recall, heard from you on the
2 second day of our proceedings here in Williams Lake,
3 it seems like a long time ago, but it's actually not
4 that long ago as it turns out.

5 Please proceed.

6 **CLOSING REMARKS BY THE CITY OF WILLIAMS LAKE,**

7 **BY MAYOR KERRY COOK:**

8 MAYOR COOK: Thank you, and good morning.

9 I just wanted to recognize at this point the Shuswap
10 People for just allowing us to be here today and a
11 special thank you goes out to Cecil Grinder and his
12 drummers and for his prayers this morning.

13 So good morning, Panel, Taseko Mines,
14 representatives, we meet again.

15 As Mayor of The City of Williams Lake, I
16 would like to thank you for this opportunity to offer
17 some closing remarks.

18 In preparing for this morning, I was reminded
19 of the fact that there's probably little I could add,
20 as you have probably heard just about everything.

21 Some of the points I would like to highlight,
22 though, are from my first presentation, and these
23 would be how important our past working relationship
24 with our First Nations neighbours has been to this
25 Council. We recognize the need to continue to build,

1 strengthen, educate ourselves and our community around
2 the history and culture that has shaped our past.

3 As Mayor, I'm committed to doing this and
4 want to share that just a few weeks ago I was invited
5 to a Grade 12 classroom and was reminded once again
6 about the lack of knowledge around this subject. The
7 good news was that they were open to listening and
8 learning so that they could try to understand. And
9 that is the beginning, that is always the beginning.

10 Just last week I was also encouraged, as I
11 was approached by a First Nations leader who wanted to
12 work together to provide cross-cultural education for
13 both sides. Emotion is running high, and regardless
14 of the outcome of the hearings, this needs to be done.

15 Treating people with disrespect and
16 oppression is never okay and I'm committed to trying
17 to correct this. But we can't go backwards. We need
18 to learn from the past and move forward.

19 In my first presentation, I was surprised to
20 feel the emotions that stirred within me as I gathered
21 the stats that I presented:

22 - The job loss; a third of a
23 workforce lost jobs last year
24 which resulted in a loss of a
25 million dollars a week to our

1 local economy.

2 - The unemployment rates
3 increasing from 6.5 to 12 percent,
4 almost double the provincial
5 average.

6 - Consumer bankruptcies
7 increased by 70 percent.

8 - Increased vacancy rates up
9 700 percent to 13 percent.

10 - And, of course, the 500 to
11 600 percent increase of families
12 accessing our local food bank.

13 Realizing that we have over 750
14 families in need and that we are
15 adding to this number by 30
16 families a month was shocking.

17 That this need represents a cost
18 of over \$30,000 a month, a cost
19 that is not sustainable.

20 We just received the first-quarter crime
21 stats for 2010. And we hit an all-time high, as I
22 mentioned earlier, in 2008 with crime, hit the number
23 one spot nationally, so we were pleased to see in 2009
24 that those numbers were dropping remarkably. Nothing
25 short of a miracle. The good news is that for 2010

1 first quarter, we are continuing to see reductions in
2 most areas, even over our 2009 numbers.

3 The only areas that show an increase are
4 drunk and disorderlies, false alarms, and spousal
5 assaults.

6 Spousal assaults saw an increase of
7 20 percent over last year. Addictions and violence
8 increase where there is economic strife. Parents are
9 anxious and our children are feeling the nervousness.

10 We are clearly a community in need. We need
11 hope and we need new opportunities.

12 It is for all of these reasons that the City
13 has chosen to support the mine.

14 The City has chosen to work with Taseko to
15 ensure that Williams Lake is considered when decisions
16 are made around work shifts and purchasing supplies,
17 and although the details haven't been decided, we will
18 continue to pursue these discussions as they are in
19 the best interests of our community.

20 As a Panel, I don't know how you sift through
21 all of the material that you have heard or how you
22 weigh the arguments for and against. Your job is
23 certainly not easy.

24 How you separate the outstanding historical
25 land issues from the current Project at hand.

1 Sifting through the polarized views from both
2 sides is critical. Finding the common ground and
3 bringing both parties to a point where we can work
4 together to find solutions that are in the best
5 interests of everyone is a must.

6 This is the challenge that I am committed to.

7 The people, all of our people, our youth and
8 our grandchildren, we need this, we need this hope.
9 Our future depends on it.

10 Thank you.

11 THE CHAIRMAN: Thank you, Mayor Cook, for
12 your overview of your previous remarks and also the
13 new emphasis that you have placed on matters since you
14 spoke just before. We appreciate your closing remarks
15 and thank you again for your presentation. We've been
16 warmly received here in Williams Lake and have enjoyed
17 our stay here, I might add, as well. So thank you
18 very much.

19 MAYOR COOK: Thank you.

20 THE CHAIRMAN: Our next speaker is
21 Mr. Siegfried Reuter, please. I should say
22 Mr. and Mrs. Reuter.

23 Good morning, please proceed.

24 **CLOSING REMARKS BY MR. AND MRS. SIEGFRIED REUTER:**

25 MRS. REUTER: Good morning, Panel,

1 Taseko Mines, community of Williams Lake, I'm glad to
2 be able to be here again. I'm a little bit nervous.
3 I'm not a speaker. Just one second.

4 I'm writing quite personally here, so just
5 give me a second here. I would like to be able to say
6 it, but I'll forget it, so I have to write it.

7 Each morning before we begin school we walk
8 with our children on the hillside and in the valleys
9 along the waterways of the Beece and Taseko. It's our
10 daily exercise and it's just time to experience and
11 enjoy the freshness of a new day in our back yard and
12 appreciate the handiwork of the Creator. But each day
13 we get away from this, we can't get away from this
14 overwhelming feeling of being trapped. We have asked,
15 "Where should we go?" And this, the greatest place on
16 earth. Who can we turn to?

17 The stress and frustration in our home at
18 this time is overwhelming.

19 Sieg and I try to address the business issues
20 of websites, advertising, finishing of woodwork,
21 maintenance, organizing books, making preparations for
22 the upcoming season, and all along we bear the
23 pressure of keeping involved with this mine review
24 process and the torture of not knowing and no one
25 caring.

1 We have been burdened to the point of
2 physical illness and mental exhaustion. And don't
3 think for a moment this has not impacted the lives of
4 our four children. The older two feel they are
5 helpless, while the younger are only aware that the
6 home is not as happy as it used to be. And they
7 escape to the outdoors.

8 What do you think would happen to us out
9 there?

10 Really, what's the point, if both the B.C.
11 Government and the mining company have made it clear
12 that we are here or how we will experience this
13 impingement.

14 The B.C. Government, by siding with this
15 mine, demonstrate enmity to not only the First Nations
16 Rights, Titles and Peoples, in effect toward all
17 people.

18 And the mining company, acting as a pampered
19 bully sticking their middle finger up in our faces,
20 hiding behind their faulty Environmental Impact
21 Statement and Provincial Certification. Like this is
22 their turf now and so much for environmental
23 sustainability. So much for Prosperity. Welcome to
24 B.C.

25 We are the sacrifice they are willing to make

1 to dig their gold.

2 As I write this, I find myself considering
3 how frank I should be and fear rose up in my throat.
4 Fear of having to find a new home to replace the one
5 that we've loved and we've worked so hard for.

6 I cannot live under a mine.

7 I have fear of the personal repercussions of
8 revealing inadequacies and inconsistencies of those in
9 authority, fear of retribution by government that
10 holds our licences and our tenures, and they give me
11 no other option or explanation.

12 There's no one stepping up to address our
13 social or economic concerns.

14 I for one have learned a great deal during
15 this process about the history of government in
16 British Columbia towards First Nations People and of
17 their recurring pattern of neglect and abuses through
18 the posts on the Canadian Environmental Assessment's
19 website, through hearing documents and comments. And
20 it seems to me it is still happening. And now it's
21 not only to Natives, they are levelling their
22 indifference at third party people and we are a prime
23 example of that again, and they refuse to do what is
24 right and responsible.

25 I wonder if there's anyone here who would

1 like to have this mine as their closest neighbour.
2 Anyone in this room who would choose to live under a
3 mine.

4 If we do not speak up for ourselves, we lose.
5 And further we are weakened by silence and fear. I am
6 proud of all the people who have stood up to oppose
7 this mine and the courage that they have displayed to
8 explain and reveal the airs and shortcomings of this
9 government/big business/industry parity. Good for
10 you. And good for us all.

11 A ray of hope shone on us as I read the
12 presentations by Dr. Kevin Morin, Dr. Ann Maest, and
13 the whole team from Stratus Consulting, Rick Holmes,
14 MiningWatch, Wayne McCrory, Shari Hughes (sic),
15 Federal Fishery. And too many to explain. But I'm
16 reading this from home, I'm not in town every day.

17 The specialists who are beyond the reach of a
18 job or a boss and on principle have stood up here for
19 others who yet can't, I thank you, and you've paved
20 the ways for others to be courageous and I bless you
21 all.

22 Not much of a flicker was coming from B.C.
23 and their Environmental Impact Statement -- or
24 process. They didn't hear or see very much wrong. We
25 should all just accept that.

1 And thank you Taseko Mines and your team for
2 now confirming one of my worst realizations, that
3 there are Canadian mining companies and people as
4 narrow, selfish and calculated who think it is
5 perfectly acceptable to misinform people in government
6 in order to have your way, even to the point of
7 purposely putting your stupid millions/billions of
8 dollars first over the lives and safety of our
9 children and everyone else. Very nice. And for your
10 continued look of concern and responsibility for your
11 hugely obvious encroachment on our lives, our home,
12 our business present and planned.

13 In the spirit that Cecil was speaking this
14 morning, I want to stay that way. I don't want to be
15 a warmonger. I don't want to be against my
16 neighbours.

17 But we are asking that Prosperity Mine not be
18 allowed to destroy Fish Lake and this whole mine be
19 rejected. We are pleading that this Panel that has
20 the gifts of listening, and thank you for your
21 patience, that you will notice the gross negligence of
22 both the B.C. Government's Environmental Impact
23 process and its certification of Taseko Mines Limited,
24 along with the underhanded treatment of all local
25 peoples here on the ground by Taseko Mines and the

1 B.C. Government.

2 Once again, you have not dealt honourably and
3 people need to hear about this and understand, this
4 could happen to them.

5 And further, I would like to ask you if you
6 would let the Canadian Federal Government know that we
7 must have an Environmental Assessment Process in order
8 to keep both industry and government honest and
9 accountable.

10 Without these opportunities to bring the
11 miners under the scrutiny of other geologists,
12 hydrologists, biologists, environmentalists and the
13 public, we are forced by government to just accept
14 things that are not acceptable.

15 In doing away with this process would be
16 going backwards.

17 Maybe the miners, however, should have to pay
18 the bill for all the government hours and the
19 technical specialists.

20 If this mine goes ahead, we lose. And I'm
21 speaking for all of us. We lose our clean air, our
22 fresh water, we lose our peaceful surroundings, our
23 home, and sustainable business and security. And not
24 only do we lose our present life but the mine will be
25 allowed to steal our future.

1 Canada, this world, cannot afford another
2 paradise lost.

3 Sincerely, I'm signing it for my family,
4 Sieg, Kelly, Justin, Jesse, Kelsey and Kara Reuter.

5 THE CHAIRMAN: Thank you, Mrs. Reuter, for
6 your presentation and for appearing before us
7 previously as well. We appreciate your views and
8 thank you for contributing to the Review Process.
9 Thank you.

10 MRS. REUTER: Don't forget about us here.

11 THE CHAIRMAN: Our next speaker is the Canoe
12 Creek Band and I believe it's Bruce Stadfeld and
13 Chief Camille.

14 Please proceed when you're ready.

15 **CLOSING REMARKS BY CANOE CREEK BAND, BY DR. BRUCE**

16 **STADFELD, CHIEF MARILYN CAMILLE, COUNCILLOR GERTRUDE**
17 **HARRY**

18 CHIEF CAMILLE: Good morning.

19 Chief Marilyn Camille, Canoe Creek Indian Band. And
20 I'd like to introduce my Councillor here, Gertrude
21 Harry. She's going to sit here with us. As you've
22 already said, Bruce Stadfeld is our legal counsel.

23 First of all, I want to acknowledge the
24 T'exelcemc People, Williams Lake Indian Band, for whose
25 lands we are meeting on today.

1 I want to acknowledge the prayer and the
2 drumming this morning, that's so important to set
3 things right for today.

4 I thank the Panel once again, as I said when
5 you were in Dog Creek, to hear our People's concerns.
6 You've heard our members, you know, the use of the
7 land, their beliefs in the land, and the history of
8 what has happened to them over the years with no say
9 in what happened on their lands.

10 And today they have stood up, or last week
11 and spoke for the first time, many of them, on what
12 their thoughts are, and I appreciate you being there
13 to hear what their direct thoughts are.

14 So, with that, I will let Bruce do his
15 presentation of all the work we've gathered and
16 hearing from our members last week.

17 THE CHAIRMAN: Thank you, Chief Camille.

18 Mr. Stadfeld.

19 **CLOSING REMARKS BY DR. BRUCE STADFELD:**

20 DR. STADFELD: Good morning, Chair, Panel,
21 Members. I've handed up, and you should have before
22 you, a copy of an outline of Canoe Creek's
23 presentation for today, as well as a book of
24 authorities, and a book of documents. And I'll be
25 referring to both of those.

1 Now, I'll refer you, first, to my outline of
2 summary today, and you'll see that I have a total of
3 six points that I'll go through.

4 I'll go through first a statement of Canoe
5 Creek's position on the Project.

6 Second, I'll move to the Panel's mandate and
7 role.

8 Third, I'll go to an overview of the Canoe
9 Creek evidence.

10 Fourth, I'll discuss the Provincial
11 Environmental Assessment Certificate.

12 Fifth, I'll move to Taseko's conduct in
13 pursuing this Project.

14 And sixth, I'll end with our suggested
15 findings and recommendations for the Panel.

16 I'll start with Canoe Creek's position.

17 The Canoe Creek Indian Band opposes the
18 Proposed Prosperity Project due to the significant
19 effects of the Project, including the mine and the
20 transmission line on the environment and on Canoe
21 Creek's Aboriginal Title and Rights, which either
22 cannot or have not been accommodated.

23 I'll move now to the Panel's mandate and
24 role.

25 My intention at first was not to get into

1 this in detail, but I have to say, attending the first
2 day of these closing remarks on Saturday, I was a bit
3 taken aback and surprised by the Chair's comments in
4 reply to a submission from my friend Ms. Hunt. And I
5 took the Chair at the time to say that, quote:

6 "This is not the process by
7 which the Crown will honour its
8 duty to consult and accommodate."

9 End quote. And that, quote:

10 "This is a different issue."

11 Now, I know those were comments in the
12 moment, but they did raise concern with Canoe Creek.
13 And I know that you're aware that this has been a
14 concern with Canoe Creek from day one. I appeared
15 before you on the very first day of the hearings
16 expressing our concerns regarding the Panel's
17 understanding of the scope of its mandate and
18 obligations.

19 And so what I want to do now is I want to
20 take you back quickly and outline for you three
21 documents which we say identify the scope of your
22 mandate and your serious obligations in this review.

23 I want to start, first, with what the Supreme
24 Court of Canada had said about the role of a Panel
25 doing a review under the **Canadian Environmental**

1 **Assessment Act.** And you can find this at Tab 1 of my
2 Book of Authorities. I would like to take you to
3 paragraph 95.

4 Now, the Supreme Court has said that (as
5 read):

6 "Environmental Assessment in its
7 simplest form is a planning tool
8 that is now generally regarded as
9 an integral component of sound
10 decision-making."

11 And then it goes on to identify its
12 fundamental purpose. And it identifies it as (as
13 read):

14 "Early identification and
15 evaluation of potential
16 environmental consequences of a
17 proposed undertaking."

18 And I stress here "early identification" and,
19 second, "decision-making role".

20 Then if you go down to the next part of the
21 paragraph, the Supreme Court said (as read):

22 "As a planning tool, it has to be
23 both an information-gathering and
24 a decision-making component which
25 provide the decision-maker with an

1 objective basis for granting or
2 denying approval for a proposed
3 project."

4 Now, the purpose here is that you're playing
5 an integral role in the Minister's decision. There
6 are certain issues which, by your Terms of Reference,
7 are outside of your mandate. And I'll get to those.
8 But that does not mean that you do not have an
9 expansive mandate in playing a role in deciding. The
10 Minister will make the ultimate decision, but he will
11 be relying on you.

12 Now, while we have my Book of Authorities, if
13 we could go to Tab 7. And I know you're familiar with
14 the sections of the **Canadian Environmental Assessment**
15 **Act** that you're operating under. But I want to take
16 you back and emphasize certain aspects of the Act.
17 We're at Section 16. This is at Tab 7. And, again,
18 Section 16(1) starts with:

19 "The Panel shall include a
20 consideration of..."

21 And then it lists a series of factors:

22 "1. The environmental
23 effects and cumulative
24 environmental effects."

25 Next, this is sub (b):

- 1 "(b) the significance of
2 the effects;
3 (c) comments from the
4 public;
5 (d) ..."

6 This is a very important point:

7 " measures that
8 technically or
9 economically feasible,
10 and that would mitigate
11 any significant adverse
12 environmental effects."

13 Now, I'll come back to this again. And
14 fourth -- or fifth, I'm sorry, (e), this is a very
15 important point:

16 "(e) Any other matter
17 relevant ..."

18 And then we turn the page, this is to the
19 Panel:

20 "... regarding the need
21 for the project,
22 alternatives to the
23 project, that the
24 Minister, after
25 consulting with the

1 Responsible Authority,
2 may require to be
3 considered."

4 Now, this, of course, is what takes you to
5 your Terms of Reference, what did the Minister tell
6 you you must do.

7 Now I want to go down to 16(2) and there's
8 two points here that I want to emphasize. It's (b)
9 and (c). Again:

10 "Shall include a consideration
11 of ..."

12 Certain factors, and then in (b) we find:

13 "(b) alternative means of
14 carrying out the project
15 that are technically and
16 economically feasible and
17 the environmental affects
18 of any such alternative
19 means."

20 And then (c):

21 "(c) The need for and the
22 requirements of any
23 follow-up program in
24 respect of the project."

25 And I'll come back to these two points.

1 These are very important points: First, that the
2 alternative means must be technically and economically
3 feasible; and second, it's within the scope of your
4 mandate to identify required follow-up programs.

5 We turn the page to go to 16.1, of course,
6 and you heard a lot about this:

7 "Include community knowledge
8 and Aboriginal traditional
9 knowledge."

10 These may be considered in conducting your
11 assessment. And, of course, you've heard a lot over
12 the last month and you're specifically mandated under
13 the Act to consider it.

14 Last, I'll take you to the next page, which
15 is Section 34, and this is regarding to your report,
16 how you shall set out your report.

17 Now I'll take you to 34(c), and again I
18 emphasized this on the first day. I'll take you back
19 again, because we have continuing concerns about this.
20 Your report, you shall include, "... rationale,
21 conclusion and recommendations". That's at (c)(i),
22 "... including mitigation measures", and, again,
23 "follow-up programs".

24 Now while I have you here, I want to take you
25 back to Tab 2. With all that in mind, what we just

1 reviewed for Section 16 and 34, at Tab 2, you'll find
2 the Federal Court decision in **Pembina Institute**. And
3 this, again, was to do with an Environmental Review
4 under CEAA.

5 I'll turn you, first, to page 5, which is
6 paragraph 15. I won't take you through this into
7 detail, but this is where the Federal Court refers
8 back to the Supreme Court of Canada's decision in
9 **Friends of Oldman River**, identifies the broad scope of
10 your mandate as an "early planning tool".

11 The important point I want to emphasize from
12 this, there's two. First, I'll take you to
13 paragraph 19, if I could. So that's on the next page.

14 At the bottom of paragraph 19, you'll find a
15 reference to the Terms of Reference there. Now, the
16 Terms of Reference -- this is the very last line,
17 paragraph 19 (as read):

18 "The Terms of Reference shall
19 determine the scope of certain
20 factors that may be taken into
21 consideration by a Review Panel in
22 its assessment. These Terms of
23 Reference may significantly
24 increase the obligations incumbent
25 on the Panel."

1 So, of course, you're not just acting
2 under 16 (34), you're acting under a Terms of
3 Reference, and we'll go there and we'll see how that's
4 exactly the case, the obligation on you is much
5 broader than a Terms of Reference which was crafted in
6 a different way to exclude the issue of Aboriginal
7 Title and Rights. It's not the case here.

8 And the final point that I want to make with
9 this case is at paragraph 25. And I won't take you
10 through it all, but this goes back to the issue in
11 Section 16 about economically and technically feasible
12 mitigation.

13 And the point here comes up at the very end
14 of paragraph 25. And this is in referring to what is
15 actually feasible, what's a feasible mitigation? And
16 what the Court says here is that it can't be something
17 vague and general, it can't be a future plan, it has
18 to be something concrete. So this is what the Court
19 says (as read):

20 "Since the Minister did not
21 identify any known technologies
22 but only vague hopes for future
23 technology, it is not possible to
24 consider that the recited adverse
25 water quality effects are

1 mitigable."

2 And the Court goes on to say (as read):

3 "Thus, in the context of a
4 panel assessment, the
5 possibilities of future research
6 and development do not constitute
7 mitigation measures."

8 And I'll take you back to this as we go
9 through our presentation today, because what you'll
10 find is, we submit, most of the so-called mitigation,
11 accommodation measures, that have been put to you so
12 far by Taseko, fit into this category. They are vague
13 and general. They are not concrete. They do not
14 count as mitigation under the Canadian Act.

15 Now, I've included in my outline the relevant
16 sections again from your Terms of Reference. I won't
17 take you there. I took you there on the very first
18 day. I've put them here just for ease of reference.
19 And, of course, the Terms of Reference do say that you
20 shall fully consider and include in your report
21 information regarding strength of claim of Aboriginal
22 Title and Rights, and adverse effects on Aboriginal
23 Title and Rights. And at the end, when you get to the
24 section of your Terms of Reference which refer to the
25 scope of the report, it sets out that: "The report

1 shall include, but not limited to...", and then it
2 goes on, conclusions, recommendations and rationale.

3 Now, the third document that I want to take
4 you to can be found in my Book of Documents at Tab 2.

5 Now, this is a letter. It's on the Registry.
6 It's document 1916. And this was sent on February
7 9th, 2010 from the Federal Government to all the
8 affected First Nations for this Project.

9 And we submit that you have to have a mind
10 for the content of this letter when you're writing
11 your report, because what this shows, and I'll go into
12 it, is that contrary to what I understood the Chair to
13 say on Saturday, in fact, no, you're playing an
14 integral role, at least Canada thinks you are, you're
15 playing an integral role in the fulfillment of the
16 Crown's duty to consult and accommodate First Nations.
17 If what the intent of your comments were was that you
18 weren't going to fulfil them yourselves or make an
19 ultimate decision, of course that's correct. But you
20 are definitely playing an integral role and Canada has
21 told all the affected First Nations exactly that. And
22 they have encouraged the affected First Nations to
23 take part on that basis.

24 So I won't belabour this point. You can go
25 down to the bottom of the first page, halfway down the

1 last paragraph, begins with, "These Terms of
2 Reference...", that's referring to the Panel:

3 "... require the Panel to consider
4 and include in its report
5 information provided by First
6 Nations regarding the manner in
7 which the Project may adversely
8 affect the potential or
9 established Aboriginal Rights or
10 Title. This information, as well
11 as other relevant information,
12 will be used by the Federal
13 Government to determine the
14 validity of Aboriginal Rights or
15 Title claims in relation to the
16 Project, the scope of the Crown's
17 duty to consult, and whether
18 Canada has met its duty to consult
19 and accommodate."

20 And if you turn to page 2, the second full
21 paragraph, what Canada's done here is they have
22 attached a proposed consultation framework. They
23 refer to that. Again, Canada goes on to say, this
24 framework:

25 "Has been prepared to provide

1 further information on how
2 Aboriginal consultation will be
3 integrated into the review panel
4 and regulatory processes."

5 Go down to the next paragraph, the second
6 line, this is Canada speaking to the affected First
7 Nations:

8 "We encourage you to present
9 to the Panel information related
10 to the nature and scope of
11 potential or established
12 Aboriginal Rights or Title in the
13 area of the project, as well as
14 information on the potential
15 impacts or potential infringement
16 that the project may have on
17 potential or established
18 Aboriginal Rights or Title."

19 Go down to the next paragraph, I won't read
20 this out, but Canada says that the Panel process will
21 provide a fair, efficient and effective means of
22 bringing your concerns forward.

23 And then it goes on and on in this vein.

24 So there's no doubt at all, of course, that
25 Canada is relying on the Panel to, partly, fulfil its

1 obligations to First Nations.

2 So what we want to make clear here is that we
3 see that the Panel has two options:

4 - You can either state at the
5 outset of your report that you
6 never considered that part of your
7 mandate was playing an important,
8 significant and central role in
9 the fulfillment of the Crown's
10 duty to consult and accommodate,
11 and that's the Federal Government
12 should not rely on your report for
13 that purpose. That's one option.

14 - Or, you can assume that
15 obligation. And when you do, I
16 want to stress how important that
17 obligation is.

18 These First Nations, Canoe Creek and others,
19 have spent energy and time, they have poured out their
20 hearts to you, on the assumption, on the understanding
21 that you will be seriously considering their
22 information, their concerns, their position, and that
23 you will be coming to conclusions and recommendations.

24 Now, this is the next section of my summary.
25 We set out what Canoe Creek's position on the Panel's

1 mandate is. And it is that you must consider and make
2 conclusions and recommendations on all relevant issues
3 before you, excepting specific determinations which
4 are excluded by your Panel's mandate. And I want to
5 stress that. Those are determinations. We're not
6 asking you to make determinations that are excluded.
7 You have to fall short of that.

8 But, as the Supreme Court decision in ***Friends***
9 ***of Oldman*** show, you're playing an integral role in the
10 Minister's decision-making. And part of that, I want
11 to start with this, is the scope of your
12 considerations, before we get to conclusions and
13 recommendations, and I realize that these are
14 categories that cannot be easily compartmentalized,
15 they flow into each other, but you have to consider
16 what your considerations mean and what the scope are.
17 And so when you turn to a dictionary, what is
18 "consideration"? It means to think deliberately and
19 carefully. It's more than summarizing. And it's a
20 necessary prelude to decision-making. So they are
21 interconnected.

22 The way the Federal Government is proceeding
23 is that they are making a, the Minister is making a
24 decision, but he's relying on your considerations.
25 And you always have to have that in mind, what

1 considerations do you have to make in order for him to
2 make an informed decision? He's not here. You are.

3 So in regards to the strength of claim of
4 Aboriginal Rights, Canoe Creek says that the Panel's
5 considerations must include a weighing of the evidence
6 in advance of a final determination by the Minister.

7 So it's more than just summarizing it. You
8 have to weigh it. What does it show you?

9 You must include a consideration of the
10 evidence before you of strength of claim of
11 established or unrecognized Aboriginal Title and
12 Rights.

13 Second, in regards to accommodation of those
14 Title and Rights, again, you have to weigh the
15 evidence before you. And this includes considering,
16 assessing, any accommodation or mitigation measures
17 that have been proposed.

18 Now, we get next to the conclusions that you
19 will make. And when we come to the end of my
20 presentation, I'll suggest what they should include,
21 what some of them should be. But I just want to get
22 straight here what Canoe Creek says the scope of your
23 conclusions involve. In that there must be
24 conclusions regarding the significance of the effects
25 of the Project on Aboriginal Title and Rights. You

1 can conclude on that.

2 That's not outside of your mandate. That's
3 specifically within it. And the Minister will rely on
4 that. If not, how is he supposed to fulfil the
5 Crown's duty to consult? He's relying on you.

6 Second, it's within the scope of your mandate
7 to make conclusions on whether there are technically
8 and economically feasible measures that would mitigate
9 the effects of the Project on Aboriginal Title and
10 Rights.

11 Again, your obligation is to draw conclusions
12 from what's before you.

13 And third, conclusions on whether there is a
14 need for any follow-up programs. This is why I
15 referred you to that section of the **Canadian**
16 **Environmental Assessment Act**, Section 16.

17 What follow-up programs would you conclude
18 are necessary in respect to the potential adverse
19 effects on Aboriginal Title and Rights and what are
20 the specific requirements of those programs?

21 Now, third, recommendations. It's clear it's
22 within your mandate to make an overall recommendation
23 to the Minister on whether or not the Project should
24 be approved.

25 Second, again, there's no solid line

1 sometimes between conclusions and recommendations, but
2 recommendations on what technically and economically
3 feasible measures are available to mitigate?

4 And again, I draw you back to Madam Justice
5 Lamer Tremblay's comments in *Pembina*. They have to be
6 real. They can't be vague. They can't be best
7 practices in the future, make best efforts. They are
8 not those. Those do not qualify under the Act.

9 And last on this section, I have
10 recommendations for follow-ups.

11 Now, I want to stop here for a moment because
12 what this says is that you are playing, of course, a
13 vital role, and I want to emphasize the obligations
14 that you've taken on here. Because the Minister has
15 to fulfil a constitutional obligation. It's the
16 highest law in the land. He has to fulfil a
17 constitutional obligation to ensure that every
18 affected First Nation is consulted and accommodated.
19 If he cannot do that, then he cannot approve the
20 Project.

21 Now, this is, as you've heard for the last
22 month, not just the great issue here in B.C., but one
23 of the great issues, outstanding issues in Canada.
24 You heard from all the First Nations affected here.
25 They have never signed a treaty. The Crown, 150 years

1 ago, unilaterally took control of their lands and they
2 have been acting as de facto owners of those lands for
3 150 years, making decisions about them that are
4 detrimental to the fundamental constitutional rights
5 of First Nations. And that's the great question that
6 you've become involved in here, is that one.

7 So it's not, with all due respect, what the
8 Mayor of Williams Lake was emphasizing to you earlier
9 today, "How do you separate the past from your
10 decision?" That is not the correct way to proceed.
11 The past is the present and the future for these First
12 Nations and it's integral to your decision.

13 Now, with that in mind, what I wanted to do
14 next was go to what's on the record regarding the
15 strength of claim of Canoe Creek's Aboriginal Title
16 and Rights. And we submit that Canoe Creek's
17 Aboriginal Rights, let's start with that, include a
18 recognized right to hunt and a recognized right to
19 fish, and uncontested rights to trap and harvest
20 plants. That's not all of their Rights, but for the
21 purposes of today, these are the ones that we're going
22 to emphasize.

23 And what I want to start with is the right to
24 fish. And this is central that, from Canoe Creek's
25 position, this is not an unproven right. This is a

1 recognized right. And legally that's important for
2 the Minister to know, because it affects his
3 obligations, his legal obligations to Canoe Creek.

4 So I wanted to start here with my Book of
5 Documents. And this is Tab 3. What I've put in here
6 is just a backgrounder from the B.C. Treaty Commission
7 regarding the law of the Aboriginal right to fish.

8 And I think this is helpful for the Panel
9 because it sets some context that is the accepted
10 understanding in B.C. And I'll take you to, I believe
11 it's page 3. Page 3, there's a section called Fish
12 and the Law. So that's my Book of Documents, tab 3,
13 page 3.

14 Fish and the Law, in the second paragraph of
15 this document, you'll read, it says:

16 "The Supreme Court of
17 Canada's decision in **Sparrow** was a
18 major turning point for Aboriginal
19 Rights and specifically Aboriginal
20 fishing Rights."

21 Now, this dates from 1990. And then we jump
22 down to the next paragraph in this document:

23 "**Sparrow** defined Aboriginal
24 People's right to fish for food,
25 social, and ceremonial purposes, a

1 right that takes priority over the
2 uses of the fishery, except
3 conservation."

4 And then the next paragraph:

5 "Responding to *Sparrow*, the
6 Aboriginal Fishing Strategy was
7 launched in 1992 to recognize the
8 Aboriginal right to fish."

9 This is a policy of the Federal Government.

10 "The strategy applies where
11 the Department of Fisheries and
12 Oceans manages the fishery and
13 where treaties or other agreements
14 are not already in place."

15 So that sets the context for the fact is that
16 there's an accepted right for Aboriginal People in
17 B.C. to fish. It's accepted by the Federal
18 Government. They don't have to go off to court to
19 prove that right. If they want a commercial right to
20 fish, yes, they do. But this is a right to fish for
21 food, social and ceremonial purposes. It's
22 uncontested.

23 And I'll take, just if there's any doubt
24 about that, I'll take you to my Book of Authorities.
25 And this is Tab 3. This is the Supreme Court of

1 Canada decision in *Kapp*, 2008. And I've not included
2 the entire decision here, but I'll take you to
3 paragraph 4. And the third sentence in paragraph 4,
4 it says:

5 "In the last two decades,
6 court decisions have confirmed
7 that the pre-contact fishing
8 practices integral to the culture
9 of Aboriginal People translate
10 into a modern-day right to fish
11 for food, social and ceremonial
12 purposes."

13 And then we turn the page to paragraph 7, and
14 the second sentence in paragraph 7, and here, this is
15 where the Court refers back to the same policy that I
16 took you too in the handout just before. And it says:

17 "Introduced in 1992, the
18 Aboriginal Fisheries Strategy had
19 three stated objectives ensuring
20 the Rights recognized by the
21 *Sparrow* decision are respected."

22 So we submit, there's no question that
23 there's a recognized right to fish, and it applies to
24 the Canoe Creek Indian Band.

25 Now, second, recognized right to hunt. Same

1 thing here. This is not the case of a prima facie or
2 unproven right. There's a recognized right to hunt.
3 And for this, I'll take you first, if you have my Book
4 of Authorities, this is paragraph, sorry, this is
5 tab 4. This is a decision from the B.C. Court of
6 Appeal in 1993. So we're talking 17 years ago. This
7 is the **Alphonse** decision. And for this, this was a
8 case where there were charges under the **Wildlife Act**
9 against a Secwepemc man for hunting deer. And you go
10 to paragraph 5, identifies who the person was,
11 William Alphonse. He was a Shuswap and a member of
12 the Williams Lake Band.

13 Then it goes down to paragraph 6, and I think
14 this is important information for the Panel to keep in
15 mind. These are points 1, 2 and 3 in paragraph 6 (as
16 read):

17 "The Shuswap have a history
18 of an organized society going back
19 long before the coming of the
20 White Man.

21 Hunting deer was an integral
22 part of their life.

23 And, third, deer have both
24 cultural and material importance
25 for the Shuswap."

1 Now I want to turn it over to paragraph,
2 let's go to the end of this, paragraph 85. So that's
3 on page 22. Here's the Court's decision. And the
4 Court decided that:

5 "Mr. Alphonse was exercising his
6 unextinguished Aboriginal Right when he shot a deer."

7 Now, that decision stands. It's never been
8 overturned. That's the law.

9 Now, I want to take you to the point,
10 Alphonse was a member of the Williams Lake Band, but
11 he was a Shuswap, he was a Secwepemc. And as you've
12 heard, I think, you've probably heard a lot in the
13 last month about Justice Vickers' decision in the **Xeni**
14 **Gwet'in** case. And Justice Vickers there set out the
15 law on who the proper rights holder would be. And
16 he'd said it's not a Band. The rights, Aboriginal
17 Rights rest in a Nation. And what that means is this
18 decision confirms the right to hunt for the Secwepemc
19 Nation, not just the Williams Lake Band.

20 And if there's any doubt possible about this,
21 I'll take you to Tab 8 of this same Book of
22 Authorities. What I've included here is the Hunting
23 and Trapping Synopsis 2009/2010 from the Provincial
24 Government.

25 So this sets out the Provincial Government's

1 statement on the **Wildlife Act**. And if you can turn to
2 the very last page of that tab, on the very last page
3 on the left-hand column, there's a section entitled
4 "Aboriginal Hunting." And the second full sentence of
5 that says:

6 "The Ministry also recognizes
7 that Indian people have Aboriginal
8 Rights to harvest wildlife for
9 sustenance, that's food, social,
10 and ceremonial purposes, in their
11 traditional areas."

12 Now there's no doubt about this. It's a
13 recognized right. It's recognized by the Provincial
14 Government, by the Provincial Crown. Under the law,
15 the Crown is indivisible. If the Provincial Crown
16 recognizes the right, we say it applies the same to
17 the Federal. And vice versa.

18 And this, of course, is not just for the,
19 this goes not just for Canoe, and not just for the
20 Secwepemc, for all First Nations in B.C.

21 Now, my next point here is we've discussed
22 the Aboriginal Rights. Now we're going to discuss
23 Aboriginal Title.

24 And as you heard during the two days in
25 Dog Creek on April 16th and 17th, Canoe Creek is at

1 Stage 4 of the six-stage B.C. Treaty process. They
2 have negotiated a Framework Agreement. And they are
3 currently negotiating an Agreement in Principle. The
4 two remaining stages are finalization and
5 implementation. Canoe Creek submits that that in
6 itself establishes a strong prima facie case for
7 Aboriginal Title.

8 Now, next I want to take you to -- we've put
9 to you what our position is on recognized established
10 Rights and on Aboriginal Title.

11 Now I want to move to the second part of
12 this, which is the adverse effects. What you've
13 heard.

14 Now, I won't review all the evidence before
15 you. I urge on you to closely review:

- 16 - The expert reports of Gary
17 Runka, who appeared before you,
18 his Assessment of the
19 Environmental Impact Statement;
- 20 - The report from Ms. Kooy on
21 the potential for tourism;
- 22 - And the testimony that you
23 heard over two days in Dog Creek.

24 And what I've done with that is I've prepared
25 an excerpts document, because I realize there's

1 several hundred pages of testimony. Now, I urge you,
2 of course, to read it all. It was powerful testimony,
3 it was sincere, and it was from knowledgeable people
4 about how they use the land, why it's important to
5 them, and what the potential effects of the
6 transmission line and mine are on them.

7 Now, as you know, there are certain factors
8 that kept coming up time after time:

9 - There was increased access
10 due to the transmission line. And
11 we say it's clear that this will
12 have a significant adverse effect
13 and interfere with the exercise of
14 Canoe Creek's Aboriginal Rights
15 and Title.

16 - That there are serious
17 concerns about invasive plants.

18 - That there are concerns about
19 water, about possible erosion and
20 contamination.

21 - That there are serious
22 concerns about how the
23 transmission line will devalue and
24 interfere with the potential
25 Aboriginal tourism industry.

1 - And that there are serious
2 concerns about how it will
3 interfere with their treaty
4 negotiations, including treaty
5 land selections.

6 Now, as I say, I can't recount it all, but I
7 will go through some of the testimony that you heard
8 just to remind you of what you heard and pick up on a
9 few points that I think require further elaboration.

10 And what we began with was the testimony from
11 Gary Runka, and his report. I excerpted some of the
12 relevant parts for the document that you have before
13 you.

14 I want to pick up on one point, though, that
15 came up recurring here. And this was his suggestion
16 that the archaeology for the transmission line should
17 not be confined to the 80-metre corridor. That that
18 simply was wholly insufficient and there should be a
19 proper archaeological study done on the 500-metre
20 width within which the 80-metre right-of-way would be
21 located.

22 And what you heard from Taseko at the time
23 was that, well, that makes, you raise some very
24 important points here, these are valid and specific
25 concerns, but, referring back to look to the Terms of

1 Reference for our Environmental Impact Statement, it
2 says in there that this is what we're supposed to do.
3 And, in fact, the Chair, yourself, you referred to
4 that. But what I want to take you to is my Book of
5 Documents in Tab 10. And my point here is that this
6 concern was raised by Canoe Creek two years ago before
7 the Terms of Reference were finalized. So what you
8 have at Tab 10 and then following at Tab 11 or what
9 were termed at the time, a gap analysis of both the
10 Provincial Terms of Reference, and, this is at Tab 11,
11 the Federal Draft EIS. And the point that I want to
12 make is at Tab 10. If I can turn you to page 6.

13 Gary Runka on behalf of Canoe Creek raised
14 this issue before the Terms of Reference were
15 finalized. This is what you'll find here at paragraph
16 9. It's not new. It's been an outstanding issue for
17 Canoe Creek all the time.

18 Now, I want to emphasize here the Panel's
19 role in assessing the Project is not limited to the
20 Terms of Reference for the Environmental Impact
21 Statement. It's no answer to turn to the Impact
22 Statement, Terms of Reference, and say, well, that's
23 all that Taseko was told they had to do.

24 Your mandate is under the Act and it's under
25 your Terms of Reference. And so it's perfectly within

1 your mandate to make recommendations and come to
2 conclusions that this was inadequate, that something
3 else needed to be done.

4 And that's especially the case because, as
5 I've emphasized to this point, you're actually wearing
6 two hats here. You're playing the role of the Panel
7 under the Act, but you're also playing a very
8 important central role in the Minister's decision on
9 whether or not the duty to consult has been fulfilled.

10 So this information is integral to the
11 Minister's decision and your consideration of it and
12 any recommendations that you would make.

13 Now, as you see, I'm checking my BlackBerry
14 but it's not for e-mails, it's just to keep track of
15 time.

16 I'll go through some of the powerful
17 testimony that was before you on those two days
18 April 16th and 17th in Canoe.

19 You heard from Mildred Kalelest.

20 And she talked how important it was for her
21 to hunt and fish, pick berries, get their medicines,
22 the deer, the moose, the endangered species, including
23 the badger, the importance of the porcupine.

24 You heard from Phil Anderson about what the
25 effects have been for all the increased access into

1 their territory.

2 He told you:

3 "We just don't find very many
4 places anymore that are isolated
5 and where we can teach our youth."

6 You heard from Kelyn Paul. And this was the
7 testimony that came forward about their annual camping
8 trip where adults and Elders in the community take
9 them out for weeks at a time, take children out on to
10 the land and show them the land and teach them their
11 traditions, pass on their culture, and Kelyn testified
12 how important that was. That it was only from going
13 out there that she began to learn about her people,
14 who they are, how important the land is, and it made
15 her want to pass this on herself.

16 She said:

17 "We have to have our children
18 learn from this. It's really
19 important that we continue that or
20 else we're not going to have it."

21 And I want to pause here for a second to go
22 back to this. This is a fundamental purpose of
23 Section 35 of the Constitution from which the duty to
24 consult and accommodate comes from. It's not
25 backward-looking. It's forward-looking. The whole

1 purpose is to preserve these distinct cultures, these
2 distinct Nations on the land. To perpetuate them into
3 the future. And that's done through taking the
4 children out and showing them the land and what they
5 do and how important it is.

6 You heard from Councillor Gerald Duncan. You
7 heard a lot about this, how important Little Dog is.
8 That area on the Fraser where the transmission line
9 will go right through, how it's a valuable hunting
10 place. And that he himself had hunted there his
11 entire life.

12 And he also testified about the importance of
13 remoteness. And, again, where this came up a lot was
14 in people talking about why they go to the west side,
15 why they go to the west side of the Fraser. Because
16 there, in comparison to on the east side, they have
17 more likelihood to find remote locations. And the
18 line will go right through there. The line will be
19 one more thing that opens it up.

20 Councillor Duncan told you it's very
21 important to go to these remote locations:

22 "Because that's where you
23 learn, out there in the remote
24 areas, that's where everything
25 comes together for you."

1 You heard from Larry Emile. He was the man
2 who organized these trips, takes those children out
3 every year, year after year. That he's been doing it
4 for he thought over 20 years, taking them out. Some
5 of those children now were adults. And he said how
6 important it was for him, because this is what he
7 could do, he could do this and he knew that it was
8 important for his community.

9 You heard from Phyllis Jack, a member of the
10 Band and someone who is very involved in trying to
11 develop tourism. And that how the Churn Creek
12 location is referred to as "the Grand Canyon of B.C."
13 It's a spectacular place. You saw that yourself on
14 your site visit.

15 And the important point here is that, and she
16 made this point very well, Aboriginal tourism is not
17 simply about economics. It's a vehicle for cultural
18 learning. It's how they build their own identity and
19 pride. That's all tied up with their hopes to develop
20 a tourism industry. And that they are actively doing
21 this. They have a business plan. They are working
22 towards it. It's not some pie-in-the-sky thing they
23 just came up with.

24 And you heard from Rick Phillip. And Rick
25 made a point of saying that this was difficult for him

1 to get up here and, get up there and testify, but one
2 of the things that he wanted to really emphasize for
3 you was that how fragile the soil is there. When it's
4 moved, when it gets wet, in his words, it just goes,
5 it just washes all over. And that what he said was,
6 the idea that you could simply put in the poles from a
7 helicopter was simply just unreasonable. You were
8 going to have people on the land affecting the soil.

9 And on this point, you don't have to go here,
10 but I wanted to take you to this, because this was a
11 recurring theme in what we heard from Taseko on this
12 point and I think that it sums up the way that they've
13 conceptualized their responsibilities when it comes to
14 the transmission line. And that is we'll really give
15 a lot of thought to exactly where we place the poles.
16 It's about placing poles and you'll find this, just
17 for the record, it's at page --

18 THE CHAIRMAN: Excuse me, if I could
19 interrupt for a moment, Dr. Stadfeld, apparently we've
20 lost power on this side of the room and that means our
21 court reporting has shut down. I don't think this has
22 anything to do with your presentation, I might add.

23 (BRIEF BREAK DUE TO POWER LOSS).

24 THE CHAIRMAN: Ladies and Gentlemen, I think
25 we are ready to resume again. If you wouldn't mind

1 taking your seats and we'll start the hearing process
2 again.

3 Thank you. We are ready to resume again.
4 Hopefully the electrical problem has been corrected.
5 And apologies to you, Mr. Stadfeld, for the
6 interruption. Hopefully it didn't affect the flow of
7 your presentation. And I'll let you resume, then,
8 from the point where we were cut off.

9 DR. STADFELD: Thank you. And based on my
10 calculations, I believe I still have a half an hour
11 with that delay.

12 THE CHAIRMAN: That conforms with my watch
13 as well, so I think we're, I think you're on track by
14 the sound of it. So thank you for checking on that as
15 well.

16 DR. STADFELD: Thank you.

17 So the point that I was making was, step back
18 for a second, conceptualize what you heard from Taseko
19 about how they have approached the effects of the
20 transmission line. And I think what you can find is
21 it's fair to say that it can be summed up in the words
22 of Mr. Bell-Irving, which you can find, and I won't
23 take you there, but this is at page 4,080 of the
24 transcript. And he said:

25 "And our disturbance of the

1 lands will be limited to the
2 footprints of the poles that we
3 will be digging and placing in the
4 ground."

5 And that's largely how they have approached
6 this. It's about where do we put the poles. Do we
7 put it here or do we shift the pole five feet this way
8 or ten feet that way to avoid an Arc site or to avoid
9 an important cultural tree.

10 Well, that's not the way that mitigation and
11 accommodation is supposed to occur. And I'll go back
12 to that. But this, I think, underlines the wholly
13 deficient process that Taseko has been going through
14 to date.

15 Now I'll go back a bit to the testimony that
16 you heard, because it was so powerful, and I think
17 it's important to remind you, and I really do urge you
18 to read through carefully these extracts that I've put
19 before you. You heard from Elder Dave Archie and he
20 told you that fantastic story about being a child and
21 the first time that he caught a fish. And he told you
22 what his concern was. He's worried about his
23 grandson, a boy in the future won't be able to have
24 that experience that he had.

25 And that sums up the concerns about what the

1 future might hold for Canoe Creek. So much might be
2 lost. Not just for the people that are there today,
3 but for their children and their children's children.

4 You heard a lot of really important testimony
5 from Clara Camille, who spoke to you about the use of
6 plants. And importantly she spoke to you also about
7 what their experience have been with the existing
8 transmission line, about what the effects have been,
9 and how they now have to travel so much farther to
10 find a lot of the berries and plants that they used to
11 be able to gather within their territory.

12 She told you about wanting her grandson to
13 come out and testify. But, like a lot of the people
14 at Canoe, he was just too shy to come up there and
15 talk to you. But she wanted to tell you what he said.
16 And he wanted to tell you, just tell them that it's my
17 favourite hunting ground. And he was talking to you
18 about Little Dog and where the transmission line will
19 go.

20 You heard powerful testimony from
21 Racelle Kooy. And I'll urge on you to go back -- I
22 see -- do we have a technical?

23 THE CHAIRMAN: I think we're okay. It's
24 just the phone went dead so I just looked around in a
25 bit of a panic to see if we still had power. But I

1 think we're okay. Go ahead and continue, please.

2 DR. STADFELD: I urge you to go ahead and
3 review the testimony of Racelle Kooy and her report.
4 She gave you powerful testimony of not just the
5 potential for Aboriginal tourism, but the importance
6 of it, that it's through it, Aboriginal People can
7 preserve their voice, preserve their lands, and
8 celebrate their culture. And, as I said, that is a
9 central aspect of Section 35 and a central aspect of
10 the duty to consult.

11 And that these were impeccable views you
12 can't find anywhere else. And that a power line was
13 completely the antithesis of this. That's not what
14 people would be paying to come up to see.

15 You heard from Louise Harry. And she summed
16 up for you what it means to her to be able to go out
17 on to the land. She said:

18 "It has sustained our family.
19 Without the land, we wouldn't have
20 accomplished what we have. It's
21 not only for food, but it's for
22 mind, body, and spirit."

23 And then she read you a poem that she had
24 written about the Prosperity Mine and what it would
25 mean.

1 You heard from Larry Harry, and he was one of
2 many people who appeared before you and emphasized
3 what the effects currently of increased access to
4 their territory has meant. The ATVs, the 4x4s,
5 hunters, how it's dangerous at times to go out in the
6 fall. And you heard that over and over again.

7 You heard from Sandra Archie. And she got up
8 and she gave you an impassioned plea. And I can't
9 summarize it all, but I want to go to one point that
10 she made. And that was about she was talking about
11 how there was a child protection agency that they
12 wanted to open up in Williams Lake. And people nearby
13 didn't want it. They thought it was going to devalue
14 their property.

15 And I want to stop here and emphasize this
16 point. Well, that transmission line, it will devalue
17 the Aboriginal Title of Canoe Creek. There is an
18 economic component to their Title and their Rights,
19 and the line will devalue it. And that is
20 significant.

21 You heard from Charlie Louis and his
22 7-year-old daughter, Charlize. She told you about
23 fishing and how she fed the fish to her cats. But the
24 important point there was how important it is as a
25 family for them to go out on the land. They go to

1 Brigham Lake and they fish, they camp out, they hunt.
2 That's where they learn about the land and who they
3 are.

4 You heard from Harold Harry, Councillor
5 Harold Harry. And he emphasized to you how important
6 it is to save the land, to save the people that they
7 have buried there, to save the archaeological sites.

8 He talked about for himself and for his
9 family about going out and having time alone. You go
10 out on the land and that's where you have peace. He
11 said, "I find peace out there."

12 And this is something you heard over and
13 over. All this is in the context of people who were
14 raised in Residential Schools, who were deprived of
15 the ability of the comfort to learn from their
16 families, from their mothers and fathers for ten
17 months of the year. You heard that over and over
18 again. And that's why this is even more important.

19 They are struggling, they are hanging on to
20 regain that connection with the land and with their
21 culture. And the presence of more people in their
22 territories and 4x4s and ATVs bombing down a power
23 line undermines that.

24 You heard from Councillor Patrick Harry about
25 the archaeological work and about how he showed you a

1 map, all the sites along the Fraser, there were very
2 few sites exactly where the line is going through or
3 is intended to go through, and his testimony was that
4 that's because they simply haven't done the work.

5 And I want to take you to this. I won't take
6 you there, but, for the record, this is Appendix 7-2-A
7 sub 1. And this is the 1993 Archaeological Survey
8 that Taseko has been relying on for 17 years. They
9 keep referring back to this. We've done this. We've
10 done this work.

11 When you have time, take a look at what this
12 says about the work they did on the line.

13 It was an aerial overview of the line.
14 That's how they began the work. They flew over it.

15 And they spent a total of 10 days in
16 September of 1993, on the entire line.

17 There's nothing in here about working with
18 Canoe Creek or any of the First Nations to identify
19 the important archaeological sites.

20 And it's that kind of overview, we'll fly by,
21 that's the approach that Taseko has taken.

22 Mr. Bell-Irving told you that he's been
23 involved in this Project for years and years. I think
24 17 years. I stand to be corrected on that. When you
25 went for the site visit to Little Dog on April 16th,

1 2010, that was the first time he'd actually been
2 there. He'd flown over it numerous times. That was
3 the first time that he was actually there.

4 And you heard from Chief Camille, and she
5 emphasized how important this was for her community,
6 both to be involved in and have real input on what the
7 effects of the line would be. And that how they have
8 lacked the capacity to date to meaningfully engage on
9 that.

10 So I urge you again to go back and reread the
11 testimony.

12 Right now, what I want to do now is I want to
13 turn to this issue of the Provincial Environmental
14 Assessment Certificate. Because you've heard over and
15 over from Taseko that, don't worry, you can take
16 comfort in the fact, we've gone through the Provincial
17 review, we have a list of commitments, legal
18 obligations in our Certificate as long as your arm.
19 Well, we're here to say, those mean next to nothing.
20 You cannot rely on those and Canada cannot rely on
21 those, because it was a deeply flawed process.

22 And I won't take you to this right now, but I
23 draw your attention to Tab 8 of my Book of Documents.
24 And this was a document that Chief Camille handed up
25 to you at the hearing at Dog Creek. And this is the

1 Environmental Assessment and First Nations in B.C.
2 It's a critique by the First Nations Energy and Mining
3 Council of the Provincial Environmental Assessment
4 process, and it dates from last August 2009.

5 And I urge you to look closely at Part 3.
6 Pages 19 to 49. Because it does a good job at setting
7 out the fundamental flaws with the Provincial process.

8 One of the things that it sets out is that
9 there's really no meaningful engagement here for First
10 Nations. They don't have input on how they will be
11 consulted with. And there's a perfect example of that
12 in this case. And, again, I won't take you right now,
13 but you can find this at Tab 12 of our Book of
14 Documents.

15 Canoe Creek went to the time and expended the
16 resources to make up their own proposed consultation
17 process for the Provincial Review. And they tabled
18 this with the Environmental Assessment Office. It was
19 rejected. And Canoe Creek was told, "We won't enter
20 into any kind of consultation process with you."
21 Period. "We will not do that. We have complete
22 confidence in our own."

23 Well, it comes as no surprise to you, First
24 Nations in B.C. do not have that confidence. And it's
25 important for you to report back to the Minister why

1 that is.

2 One of the things is that B.C. continues to
3 claim this is a process that was reviewed and approved
4 by the Supreme Court of Canada in 2004 in the **Taku**
5 decision. The fact is, that is not correct. The Act,
6 the **Environmental Assessment Act** that was reviewed
7 then is not the one that operates now in B.C.

8 In fact, it wasn't even operating in B.C. at
9 the time of the Supreme Court of Canada's decision.

10 And the Act now has been wholly gutted of the
11 potential that was in the previous Act to properly
12 deal with First Nation concerns. And you can find
13 this, you can find this critique of the Act, the
14 current day Act, in my Book of Authorities, and it is
15 at Tab 5.

16 This is the **Kwikwetlem** decision from the B.C.
17 Court of Appeal in 2009. So it was only last year.

18 And I urge you to review paragraphs 51 and
19 54. This is where the Court goes through and says,
20 well, you know what, that Act that the Supreme Court
21 of Canada reviewed in **Taku**, that's not the one in
22 place now. And then the Court goes through at 51 to
23 54 and outlines how the important parts that did have
24 a possibility to deal with First Nation concerns had
25 been taken out of the Act. They are not there.

1 And I draw your attention to paragraph 54
2 here. Because the Court at that time said, well, the
3 Supreme Court of Canada said there's also this
4 Provincial policy for consultation with First Nations.
5 We don't have information about that here before us.
6 But perhaps that's a possibility that they can rely on
7 that and that helps to inform and ensure that there is
8 meaningful consultation.

9 I take you to Tab 12 of my Book of Documents.
10 No, Tab 9. Sorry. And Canoe Creek had the same
11 question. And this is e-mail correspondence between
12 myself and the Provincial Attorney-General's Office
13 inquiring, in fact, into whether that Provincial
14 policy referred to in **Taku** is still active. And the
15 reply that I received back was, "No, it's no longer
16 current and has been withdrawn."

17 So that's not there to direct the Provincial
18 Environmental Assessment Agency.

19 Now, my last point on this is that you've
20 heard so much from Taseko about these commitments in
21 the Provincial EA Certificate. And I'll take you to
22 some of those. But what I want to say first is that
23 they are exactly the kind of thing that Madam Justice
24 Tremblay-Lamer said do not qualify as mitigation under
25 the **Canadian Environmental Assessment Act**. They are

1 vague. They are forward pie-in-the-sky good-feeling
2 best-efforts type of language.

3 And I won't take you through them all, but
4 you can find these at Tab 17 of my Book of Documents.
5 I think a perfect example here, this is in Schedule B,
6 it is not numbered, the pages, but it's where their
7 commitments begin in Schedule B. And I'm looking at
8 2.0, Consultation with First Nations.

9 And this is indicative of the type of
10 language you find in these things.

11 At 2.2:

12 "Recognize and take into
13 consideration the value and
14 significance of First Nations
15 places."

16 Second, 2.3:

17 "Promote the development of
18 mutually beneficial partnerships."

19 Well, that's not a concrete, solid commitment.
20 2.5: "Provide opportunities." They go on and on in
21 this vein. At 2.8, this is one that, this is the only
22 one that's in here that I think actually refers to the
23 transmission line. And here we go to the end of this,
24 and this is:

25 "Taseko will make reasonable

1 efforts to avoid or mitigate
2 impacts."

3 That's it; "reasonable efforts".

4 6.0, this is regarding the environmental
5 management system. And my point here is that they
6 emphasize that:

7 "There are important
8 environmental management plans,
9 but these will be further
10 developed and finalized prior to
11 construction."

12 They don't have them now. That's not
13 accommodation, when you've promised to do something
14 vague in the future.

15 And now in contrast to this, I want to take
16 you to just a couple of examples of what the
17 commitments used to be like under the old Act, under
18 the Act that the Supreme Court of Canada reviewed in
19 **Taku**.

20 And I have two examples of them in my Book of
21 Documents. Tab 14 is the Environmental Assessment
22 Certificate from the **Taku** Project. And I urge you to
23 look at that and compare it to the commitments that
24 Taseko has made under the current Act.

25 I take you to Tab 15, because I think this

1 one is very telling. This is the Environmental
2 Assessment Certificate for the Melvyn Creek Cayoosh
3 Mountain Resort. This dates from the year 2000.
4 This, again, is under the old Act. I won't take you
5 through it in detail, but I urge you to read it
6 through and compare it to the Taseko commitments.
7 These, to a large extent, are detailed, concrete,
8 specific commitments that go to issues of access,
9 hunting, and economic development. They are specific.

10 In fact, when you get to Section 27 of this
11 Certificate, they outline accommodation effects, which
12 is not a section you find in the Taseko Project. And
13 it goes through and it lists specific programs to deal
14 with the affected First Nations.

15 So to sum up our point here is, there's no
16 confidence that either the Panel or Canada can take in
17 the fact that Taseko has gone through the Provincial
18 Environmental Assessment Certificate or process. It
19 does not result in meaningful consultation and
20 accommodation.

21 One last point to make on here, and this is a
22 really important one. It goes back to the point of
23 what you have to consult about and what you have to
24 accommodate for. What I've done at Tab 13 of my Book
25 of Documents, I've included correspondence back and

1 forth between myself on behalf of Canoe Creek, and the
2 Attorney General's Office of B.C. regarding the
3 central issue of: Does the Environmental Assessment
4 office have the capacity, mandate, and intent, to
5 accommodate for the economic component of Aboriginal
6 Title and Rights.

7 And if you review this correspondence, you'll
8 see that the answer we received was: No, we don't do
9 that and we don't intend to do that.

10 Now, before I get to our suggested findings
11 and recommendations, I want to make a few points about
12 Taseko's conduct in pursuing this Project, because I
13 think it's very important that the Panel consider this
14 and report back to the Minister.

15 And from Canoe Creek's position, Canoe Creek
16 has no confidence that Taseko is willing to engage in
17 sincere and meaningful discussions to identify,
18 mitigate, or accommodate the impacts of the
19 transmission line. And this is based not on what face
20 they have shown to you during the last 30 days, but on
21 their conduct for the last 16 years. And this is on
22 the record. And as an example of this, I refer you to
23 Appendix 8-2-1, which is what's termed a Consultation
24 Log. This is Taseko's, this is part of Taseko's
25 Application where they set out their engagement with

1 First Nations.

2 And I read, the very first entry, this is
3 July 29th, 1992, and this is in regards to the
4 Northern Secwepemc, they are told that there were
5 concerns about increased access to hunting and
6 trapping territories, that there are important fishing
7 sites near the proposed transmission line.

8 In June 1996, there are concerns about the
9 needs for additional archeology and that the Band does
10 not feel comfortable with the work done to date and
11 that there has to be something detailed about where
12 the line will be.

13 December 1998, there's an entry here for a
14 meeting with Canoe Creek. What are the concerns
15 raised then? If you go through, there are concerns
16 about what will the impact be on their treaty
17 negotiations. The same thing you heard now in 2010.

18 Again there are concerns about the need for
19 archaeological work.

20 There are specific concerns about where the
21 power line will cross the Fraser. That this was an
22 important site and that there are important
23 archaeological sites there.

24 There were concerns about what the effects
25 will be on Brigham Lake. This is 1998. This isn't

1 new.

2 And there are concerns about increased
3 access.

4 That was 12 years ago. What have they done
5 since? They still rely on the same report from 1993,
6 the overview.

7 I want to take you to Tab 16 of my Book of
8 Documents. This is 2008. And I've included documents
9 here that I think reflect the mentality of Taseko
10 towards First Nations. And you should have this in
11 mind.

12 The first is a March 2, 2008 letter that
13 Taseko sent to all the affected First Nations. And
14 this was an issue about funding. And I won't get into
15 the details about how much is enough. But I want to
16 take you to the last paragraph of this on page 2.

17 After they say all they are willing to
18 contribute is 75,000 and the First Nations can decide
19 amongst themselves as to how to divide that up, they
20 say in the last paragraph:

21 "Our hope is that, once
22 allocated, these funds do not end
23 up being consumed by lawyers and
24 consultants in efforts to merely
25 oppose and duplicate the work

1 already being undertaken by
2 government regulators. Otherwise,
3 the funds will provide no benefit
4 to either First Nations or to the
5 Prosperity Project."

6 And we say that this is indicative of the
7 mentality.

8 This is the type of thing you would have
9 expected to see in the 1950s when Indians were denied
10 the right to even hire a lawyer. When they didn't
11 even have the right to vote. This isn't the type of
12 thing you expect from a corporation in 2010.

13 And then I take you to the next page. This
14 is May 2008. This was Taseko's reply to the
15 possibility that, in fact, there would be a Joint
16 Review, the Provincial and Federal Review would be a
17 Joint Review. And they outline their reasons why they
18 are opposed to this.

19 And I take you to the first one, the last
20 line, and the first one they say:

21 "Elected officials should be
22 able to make an unfettered final
23 decision on whether or not the
24 Project proceeds."

25 That's what they want. And then the third

1 reason they give here is:

2 "The proposed process places
3 an excessive emphasis on
4 consideration of established or
5 asserted Aboriginal Rights or
6 Title."

7 And they say that these should be dealt with
8 elsewhere, outside of the Environmental Assessment.
9 They don't want to have to get into this. They don't
10 want to deal with this.

11 And just so that you're aware, the next
12 document is a letter that Chief Camille sent to the
13 Provincial EA on September 16th, 2008, raising these
14 very concerns that Taseko does not appear to be
15 sincere and committed to working with Canoe Creek and,
16 therefore, the Provincial Environmental Assessment
17 Agency should not delegate any consultation procedures
18 to Taseko because they are not sincere about
19 fulfilling them.

20 I have a couple more points on this. One is
21 something that came up when we were at the hearing in
22 Dog Creek. Taseko referred you to their schedule.
23 And this you can find at IR 6.2. I don't have it
24 there, but you've seen it. And so they put up showing
25 you where they are on the transmission line. And it

1 indicates that, even before your report is written,
2 they will have completed the preliminary design and
3 started the final design. They are not waiting for
4 your report. They are going ahead based solely on the
5 Provincial EA. And after they refused, they said they
6 didn't want a Joint Review process.

7 And this is the same thing with the issue of
8 the centre line. You've heard about this the last
9 two, April 16th and 17th, where the centre line will
10 be located for the transmission line.

11 And Taseko has said they are going out and
12 they are in fact identifying it right now. For the
13 record, I refer you to page 4095 of the transcript.
14 And they said:

15 "We're currently engaged in
16 various activities related to
17 finalizing the centre line."

18 They are showing complete disregard for this
19 process. It is high-handed of them to proceed on the
20 basis that your report will not have any significant
21 affect on where that line will go.

22 And for the record on this point, I also
23 refer you to pages 4163 here in the transcript. They
24 told you that they are in fact right now out there
25 speaking to landowners about where the centre line

1 should go. They are not speaking to Canoe Creek.

2 And the last point on this is they said,
3 well, we really can't move that line outside of the
4 corridor established under the Provincial EAC, because
5 if we did, we'd have to go back again and revisit that
6 EAC. And that's found at page 4164. Well, that is no
7 answer. They took the risk of proceeding with the
8 Provincial EA before the Federal Review. That was
9 their choice. If there is a need to change the
10 location of the line, that's the recommendation that
11 should be there. There's no answer to say "we're
12 confined by the Provincial EA and that we're locked
13 in".

14 So I know my time is short. I'll sum up on
15 what our recommendations are and they are in detail in
16 the summary that I've put before you.

17 And we're not saying that these are all the
18 recommendations and conclusions that the Panel should
19 make, but they should include these. And you should
20 conclude that:

- 21 - Canoe Creek has proven or
22 acknowledged Aboriginal Rights to
23 hunt and fish and a strong case
24 for Aboriginal Title;
- 25 - That there are significant

1 adverse effects on Canoe Creek

2 Title and Rights;

3 - That neither Taseko or B.C.

4 has committed to the necessary

5 significant and concrete

6 mitigation accommodation measures

7 required;

8 - And, finally, that Taseko has

9 not made a meaningful good-faith

10 effort to mitigate or accommodate

11 Canoe Creek's legitimate and

12 serious concerns.

13 Now, regarding recommendations:

14 - We recommend that you

15 recommend to the Minister that the

16 Project not proceed, that it not

17 be approved, because the possible

18 economic and social benefits are

19 outweighed by the significant

20 adverse environmental, social, and

21 cultural effects and the serious

22 adverse effects on Aboriginal

23 Title and Rights;

24 - You should go on to recommend

25 that if the Minister does decide

1 that it might be possible to
2 accommodate Canoe Creek Aboriginal
3 Title and Rights, then the
4 following things should be done
5 first, and this is important,
6 these things have to be done
7 before there's any final decision
8 by the Minister:

9 - there should be an
10 archaeological assessment of the
11 500-metre-wide corridor that has
12 the involvement of affected First
13 Nations;

14 - there should be a
15 cost-benefit analysis of the
16 possibility of burying the line
17 through the Dog Creek Fraser River
18 crossing. We don't know if that's
19 economically or technologically
20 feasible, but there should be a
21 review. Because then that will
22 put a cost on what the savings is
23 to Taseko to not do that;

24 - there should be an Access
25 Management Plan developed with the

1 participation of the affected

2 First Nation;

3 - there should be specific
4 studies done of the affects of the
5 line on both the Brigham Creek
6 watershed and Little Dog. Those
7 came up as serious concerns over
8 and over again;

9 - there should be a study
10 done on the affects of invasive
11 plants;

12 - there should be a proper
13 cumulative affects analysis done
14 first;

15 - And finally on this
16 point, there should be a plan
17 developed with First Nation
18 participation for monitoring the
19 transmission corridor if it does
20 go through.

21 Now, I want to conclude to emphasize again
22 the important role you're playing here. You're
23 playing an important role in the assurance of
24 recognition for Aboriginal Title and Rights. The
25 Courts, the Supreme Court of Canada, has emphasized

1 over and over again reconciliation is necessary. And
2 you're playing a role in that. And it's a very
3 serious one.

4 We've heard from Taseko over and over again
5 about how they have this economic or jobs proposal
6 called Mining Your Future. Well, Canoe Creek is here
7 to say, in fact, that's exactly what Taseko is
8 proposing to do, they are proposing to mine the future
9 of every First Nation affected by the mine and the
10 transmission line. That's what you heard from those
11 people in Dog Creek day after day; what about the
12 future of our children? And that they are not opposed
13 to Prosperity. Prosperity's a good concept. They
14 would like some of it. But it's a two-way street.
15 And what you've seen is that, right now, this Project
16 is a one-way prosperity for Taseko. There is little
17 to nothing flowing to Canoe Creek and other First
18 Nations.

19 Subject to your questions, those are
20 Canoe Creek's submissions.

21 THE CHAIRMAN: Thank you, Chief Camille, and
22 Mr. Stadfeld for your presentation.

23 I don't think we have any questions. But I
24 did want to refer to a couple things.

25 First of all your reference to our Terms of

1 Reference in particular on Aboriginal Title.
2 Appreciate your provision of your views and the
3 arguments in this regard. I think that's important
4 and that's the purpose of this particular concluding
5 session.

6 I'd note also that we did provide some
7 further elaboration to you in our letter to you of
8 March 28th on this very matter.

9 You've also reminded us of who and what we
10 heard in the community of Dog Creek when we were
11 there. And we very much appreciated hearing from the
12 people there directly. And thank you for reminding us
13 of the various views that we heard while we were
14 there.

15 You've also summarized the position of Canoe
16 Creek, I think quite clearly, and also have given us
17 your views on what we should include in the report and
18 what our recommendations should be. And we fully
19 understand that and assure you that we will look
20 carefully at those matters as we will with other
21 presentations we're receiving.

22 So I thank you very much for the concluding
23 remarks.

24 And I note, in part because of the break we
25 had with the power, that we did get somewhat behind in

1 our time. And I think I may have given you a little
2 bit more time as a consequence, but that was quite
3 understandable and not a problem from our regard.

4 But I think right now, if this is not a
5 problem for the Tsilhqot'in National Government
6 presentation, which we had originally scheduled for
7 this morning, if you're okay to have a break for lunch
8 and come back to do it then? Is that something that
9 is acceptable? I think it's Mr. Nixon that might be
10 involved in that, is that okay with you? I would be
11 prepared to go right through if that's important. You
12 have that flexibility.

13 MR. NIXON: Yes, thank you.

14 THE CHAIRMAN: Thank you for clarifying
15 that. In which case we'll break and begin at
16 1 o'clock to begin the Tsilhqot'in National Government
17 presentation. Thank you, and have a good lunch.

18 **(NOON BREAK)**

19 **(PROCEEDINGS ADJOURNED AT 11:50 A.M.)**

20 **(PROCEEDINGS RECONVENED AT 1:00 P.M.)**

21 THE CHAIRMAN: Good afternoon, Ladies and
22 Gentlemen, I'd ask you to take your seats, please, and
23 we'll get started again, shortly.

24 I'll just welcome everybody again to the
25 continuation of the closing remarks session today.

1 Very quickly I'll introduce ourselves once
2 again in case there are new people in the room. My
3 name is Bob Connelly, Chair of the Environmental
4 Assessment Panel, on my right Nalaine Morin, on my
5 left, Bill Klassen.

6 And Taseko's table has expanded somewhat too,
7 so I'll ask Taseko to introduce their People as well,
8 please.

9 MR. BATTISON: Thanks Mr. Chairman. On my
10 right, Keith Clark, legal counsel to Taseko. Myself,
11 Brian Battison, Vice-President Corporate Affairs for
12 Taseko. On my left, Rod Bell-Irving, Manager of
13 Environmental Assessment. Next to him, Katherine
14 Gizikoff, Manager of Government and Environmental
15 Affairs, and next to Katherine, Russell Hallbauer,
16 President and Chief Executive Officer of Taseko Mines.

17 THE CHAIRMAN: Thank you, Mr. Battison.
18 Then we'll proceed in a moment with the Procedures.
19 Just by way of schedule, we did have a bit of a power
20 problem this morning which in part caused us to have a
21 bit of a delay and an extended lunch. I hope we've
22 got that all fixed. It seems to be functioning well
23 afterwards.

24 So we're actually starting with the
25 Tsilhqot'in National Government presentation and that

1 is scheduled for 90 minutes. After that we will
2 proceed to the final speakers, which are the Chiefs
3 from the Tsilhqot'in First Nation, and they have been
4 allocated ten minutes apiece. Followed by that, we'll
5 have Taseko's closing remarks.

6 So, as I mentioned earlier, this is the
7 opportunity for final closing remarks at these
8 hearings and it is the intention to see summaries,
9 overviews, a summary of the position of the groups,
10 the arguments that they wish to make in terms of how
11 we ought to be considering our conclusions and
12 recommendations as we come to the completion of these
13 hearings.

14 So, with that, I'll turn to the Tsilhqot'in
15 National Government presentation, and I think,
16 Chief Baptiste, you are going to introduce the people
17 who will be speaking on behalf of the TNG.

18 Please proceed.

19 **CLOSING REMARKS BY TSILHQOT'IN NATIONAL GOVERNMENT, BY**
20 **CHIEF MARILYN BAPTISE, MR. SEAN NIXON, AND GRAND CHIEF**
21 **STEWART PHILLIP**

22 CHIEF BAPTISTE: Good afternoon. And I
23 would just like to welcome everybody here. Of course,
24 I'm Marilyn Baptiste, Chief Xenigwet'in. And I was
25 thinking that perhaps you were all safe enough from

1 Ts'yl-os but, as you've seen the snow, you're not
2 quite that far away.

3 And on my left, of course, is Sean Nixon from
4 Woodward & Company. And on my right is Grand Chief
5 Stewart Phillip from the Union of BC Indian Chiefs.
6 And they will be covering our 90 minutes.

7 And after they are done with their
8 presentations, we will go through the Tsilhqot'in
9 Nation Chiefs. Chief Ivor Myers from Yunesit'in, and
10 Francis Laceese, Chief of Tl'esqox, Toosey,
11 Percy Guichon, Chief Tsi Del Del, Redstone, or Alexis
12 Creek Indian Band, and myself, Chief Xeni Gwet'in, and
13 then on behalf of Chief Esdilagh, Bernie Elkins, I
14 will be presenting for him, and then Chief Joe
15 Alphonse, Chief Tl'etinqox from Anaham.

16 THE CHAIRMAN: That sounds fine. We might
17 take a break so that you can re-establish the table
18 afterwards. And, by the way, I did learn when I was
19 in Xeni Gwet'in not to point at Ts'yl-os, so it's not
20 me that caused the snow today.

21 With that then, please proceed.

22 **CLOSING REMARKS BY MR. SEAN NIXON:**

23 MR. NIXON: Good afternoon, Mr. Panel
24 Chair, other Panel Members, Taseko Mines Limited,
25 Members of the audience.

1 I'm going to present some final submissions
2 on behalf of the Tsilhqot'in National Government.
3 We've presented a more lengthy written submission that
4 gets into significant detail. It's not as bad as it
5 looks. It's a 60-page document, but it's all
6 information the Panel has seen before, and what we've
7 tried to do is just extensively reference through
8 footnotes back to transcripts and documents that are
9 on the Panel's record already.

10 And I guess the primary purpose of that is
11 just so that the Panel, in making its final
12 determinations, has a helpful, hopefully, compilation
13 of the various submissions that Tsilhqot'in National
14 Government has made and of how those relate
15 specifically to the record before you.

16 Now, I plan to go through four major areas
17 today.

18 First I'll talk a bit about the mandate of
19 the Panel.

20 Second about the cultural and ecological
21 effects of the mine Project.

22 Third about the Justification Test that the
23 Panel's required to look at if there are significant
24 environmental effects of this mine Project.

25 And fourth, Tsilhqot'in Aboriginal Rights and

1 Title.

2 And before I get into the mandate, I'll
3 perhaps give just an introduction and an outline of
4 the overall submission. I'll come back at the end and
5 wrap up some of the major themes as well.

6 Now, as you know, I gave submissions at the
7 Xeni Gwet'in community sessions and we've outlined
8 several of TNG's primary positions already at those
9 hearings.

10 And one of the points that I was making at
11 that hearing is that in TNG's submission, in spite of
12 all the complexities of this Panel process, in spite
13 of the complex technical issues that are before the
14 Panel, in a way, the Panel's mandate or primary
15 mandate is very simple. It's just to consider and
16 provide conclusions about whether the Prosperity Mine
17 Project will have significant environmental effects.
18 And, of course, the Panel's required to assess the
19 significance of residual environmental effects, what's
20 left over at the end of the day after technically and
21 economically feasible mitigation measures have been
22 implemented.

23 And TNG's central position has been from the
24 outset and remains that the permanent destruction of
25 Teztan Biny, of Little Fish Lake, of Nabas, and of

1 other areas in the Fish Creek drainage, would be a
2 significant cultural loss for the Tsilhqot'in.

3 The TNG submits it would also be a
4 significant ecological loss and that neither that
5 cultural nor ecological loss can be adequately
6 mitigated by replacing Teztan Biny with an artificial
7 fish reservoir.

8 I'll be speaking in more detail about the
9 Tsilhqot'in Aboriginal Rights and Title, but I think
10 as an important framing comment, one of the most
11 important and one of the most unique things about this
12 particular mine proposal and about this process is
13 that the Tsilhqot'in Nation actually has a proven
14 Aboriginal Right to hunt and trap birds and animals
15 throughout the claim area that was claimed in the
16 **Tsilhqot'in Nation** case. And that includes the area
17 of the proposed mine Project.

18 Now, Justice Vickers of the B.C. Supreme
19 Court also expressed the opinion that the Tsilhqot'in
20 Nation has Aboriginal Title to the Brittany Triangle
21 which borders the Taseko River downstream of the
22 proposed mine Project.

23 The Tsilhqot'in Nation also asserts
24 Aboriginal Rights to fish in the very lake that would
25 be destroyed by this mine proposal, in Teztan Biny, to

1 gather plants in the area around Fish Lake and Nabas,
2 and to conduct spiritual and cultural ceremonies at
3 Teztan Biny.

4 Now, these proven and asserted Rights stand
5 to be impacted negatively and infringed in a variety
6 of ways, including through impacts on the population
7 and the habitat of birds, wildlife, fish, and plants,
8 that support the exercise of Tsilhqot'in Rights, the
9 decades long displacement of Tsilhqot'in People from
10 the area around Fish Lake, Little Fish Lake, and
11 Nabas, that would be during mine construction and
12 operation, and permanent displacement from some of
13 these same areas because of the loss of Fish Lake and
14 Little Fish Lake itself, at least permanent
15 displacement in the sense that they won't be able to
16 use it in the way that they did before.

17 We've also heard throughout the community
18 hearings about the likely Tsilhqot'in avoidance of
19 areas that are potentially impacted by the mine
20 Project due to serious concerns about ongoing
21 contamination.

22 And in TNG's submission, that's not merely a
23 perception. As you've heard in this last week of
24 technical hearings, there's at least reasonable
25 scientific basis for thinking that there may be

1 contamination issues in the long-term.

2 The TNG's also concerned about the
3 Proponent's general failure to identify feasible
4 mitigation measures that would address impacts on
5 Aboriginal Rights and Title and on Tsilhqot'in current
6 use and cultural heritage in the mine area. And as I
7 go through the Panel's mandate today, I thought I'd
8 focus in particular on the Panel's duties to identify
9 feasible mitigation.

10 So, as I said, the first major area I'll take
11 you through is the Panel's mandate. I won't repeat
12 submissions that I've already presented to the Panel
13 at the Xeni Gwet'in community sessions, other than to
14 provide some further details and clarification on a
15 couple of issues that have come up in the course of
16 this hearing process.

17 So I guess taking the 50,000-foot overview of
18 the purposes and general principles of Environmental
19 Assessment, the key purpose of Environmental
20 Assessment is to look before you leap, to carefully
21 consider a project's potential environmental
22 consequences before you decide whether to go ahead
23 with it.

24 And this idea of doing Environmental
25 Assessments probably extends back to the 1960s, the

1 1970s, at least as Environmental Assessment is
2 currently set out in Federal legislation in Canada and
3 the U.S. and in various provinces.

4 But the idea is that the economic benefits of
5 proceeding with development Projects are usually very
6 obvious. All of them will at least offer some
7 short-term employment, some short-term cash flows.

8 Environmental Assessment is meant to give us
9 the other side of that picture, to tell us what costs
10 we're likely to pay, what environmental costs, what
11 socioeconomic costs, what cultural costs, we're likely
12 to pay.

13 And we've quoted a decision of the
14 Newfoundland and Labrador Court of Appeal that just
15 commented about some of these basic purposes of
16 environmental assessment. It was a case of 1997, the
17 ***Labrador Inuit Association***.

18 And I'll just take you to a sentence in the
19 middle of the first paragraph that we've quoted there
20 (as read):

21 "If the rights of future
22 generations to the protection of
23 the present integrity of the
24 natural world are to be taken
25 seriously and not to be regarded

1 as mere empty rhetoric, then care
2 must be taken in the
3 interpretation and application of
4 the legislation. Environmental
5 laws must be construed against
6 their commitment to future
7 generations and against the
8 recognition that in addressing
9 environmental issues we often have
10 imperfect knowledge as to the
11 potential impact of activities on
12 the environment.

13 One also must be alert to the
14 fact that governments themselves,
15 even strongly pro-environment
16 ones, are subject to many
17 countervailing social and economic
18 forces, sometimes legitimate and
19 sometimes not. Their agendas are
20 often influenced by
21 non-environmental considerations.

22 The legislation, if it is to
23 do its job, must therefore be
24 applied in a manner that will
25 counteract the ability of

1 immediate collective, economic and
2 social forces to set their own
3 environmental agendas."

4 We've set out the initial letter from the
5 Federal Fisheries Minister that requested this review
6 panel. I've reviewed this before, but the only thing
7 I'll point out here is that there are essentially
8 three areas that triggered this Federal Assessment:

9 One was proposed approvals under the
10 ***Navigable Waters Protection Act.***

11 And the second was various approvals
12 contemplated under the Federal ***Fisheries Act.***

13 Now, I'll come back to that when I talk about
14 feasible mitigation when I talk in more detail about
15 some of what happened in the technical hearings this
16 week. But I think, given that navigation has been an
17 issue from the outset, and impacts to fish and fish
18 habitat have been an issue from the outset, it's the
19 very reason that this Panel process first began, that
20 puts additional pressure on this assessment process to
21 assess effects on those things and to ensure that
22 feasible mitigation measures are in place to address
23 impacts to navigation, to address impacts to fish and
24 fish habitat.

25 We've also set out some of the key terms that

1 are used in the Panel's mandate and in the Federal
2 **Environmental Assessment Act**. I've gone through
3 current use before. I won't go through it again.

4 We also went through the definition of
5 cultural heritage. And, of course, as the Panel
6 knows, the definition of environmental effect under
7 the **Canadian Environmental Assessment Act** includes
8 impacts on traditional, on the current use of lands
9 for traditional purposes by Aboriginal People and it
10 includes impacts on cultural heritage. And the only
11 thing I'll say about cultural heritage is that, based
12 on what the Panel has heard, the TNG submits that
13 cultural heritage has to at least include the cabins
14 at Nabas, at Little Fish Lake. It has to include the
15 cremation sites, even if they have left no discernible
16 physical traces. That would be an example of
17 intangible cultural heritage. It has to include
18 burial sites, archaeological sites, and the island in
19 Fish Lake.

20 The loss of these cultural heritage sites and
21 the places around them that are imbued with cultural
22 and spiritual meaning for the Tsilhqot'in, would
23 represent a significant irreversible and permanent
24 environmental effect of the mine project that, in the
25 TNG's submission, can't be mitigated.

1 Now, in a way, that would take us immediately
2 to the Justification Test. If the cultural impact by
3 itself is a significant environmental impact, as
4 defined under the Act, then, in a way, the Panel can
5 jump forward and, in TNG's submission, and start
6 considering directly whether this Project is justified
7 in the circumstances.

8 But I will take you through some of the
9 technical and environmental issues that we say are in
10 addition to significant environmental effects as that
11 term is used in the Federal **Environmental Assessment**
12 **Act.**

13 I've also included here a section on
14 precautions. This is at page 11 of our submissions.
15 We've set out in detail there, but I think the
16 important thing for the Panel is that their Terms of
17 Reference set out that the Panel's required to
18 consider the extent of the application of the
19 precautionary principle to the Project, and
20 precautionary principle is actually a defined term in
21 the Terms of Reference, meaning:

22 "The application of prudent
23 foresight, the recognition of
24 uncertainty, and, when decisions
25 must be taken, to err on the side

1 of caution."

2 And as I'll discuss in more detail, TNG
3 submits that the Panel should do just that, should err
4 on the side of caution, particularly when making its
5 key determinations about the feasibility of mitigation
6 and the significance of relevant environmental
7 effects.

8 I'll talk as well here about mitigation
9 follow-up and adaptive management. And I've gone into
10 some detail about this in our written submissions.
11 Because the TNG submits that here, particularly the
12 feasibility of mitigation, and what adaptive
13 management means to the feasibility of mitigation or
14 how it interrelates with feasibility of mitigation,
15 are key issues before this Panel.

16 The Panel's Terms of Reference set out a
17 total of 18 factors that the Panel's meant to
18 consider. I've pulled out the ones that relate
19 directly to environmental effects and how they are
20 mitigated.

21 The first factor, the Panel is to consider
22 the environmental effects of the Project.

23 The second is the significance of those
24 effects.

25 The fourth, the Panel is to consider measures

1 that are technically and economically feasible and
2 that would mitigate any significant adverse
3 environmental effects of the Project.

4 We submit to you that word "would" is
5 important by itself. These are measures that "would"
6 mitigate, not "could" or "might" or "may". There
7 needs to be some concreteness to the proposed
8 mitigation measures.

9 We've also talked a bit about follow-up
10 programs, because I think it's important to recognize
11 the distinction between mitigation and follow-up
12 measures. And the Act is clear, in our submission,
13 that a follow-up program for a project is not a
14 substitute for considering and identifying feasible
15 mitigation measures at the Environmental Assessment
16 stage.

17 We've set out some of the case law in Canada
18 that discusses mitigation and, in particular, Panels
19 duties for how they are to assess the feasibility of
20 mitigation.

21 I've started with the 1999 **Cheviot** case,
22 Alberta Wilderness Association, a decision of Justice
23 Campbell of the Federal Court. Justice Campbell
24 described a Review Panel's duty to consider
25 technically and economically feasible mitigation

1 measures in the following way, he said:

2 "If a defined and described
3 environmental affect is considered
4 adverse and significant, that is
5 substantial, then mitigation of
6 this effect by practical means is
7 important to consider."

8 I've also quoted the 1996 **Express Pipelines**
9 case of the Federal Court of Appeal. In that case,
10 the language of the Court of Appeal about the required
11 certainty for relying on mitigation measures was as
12 follows, they said, you can certainly rely on
13 mitigation measures, quote:

14 "When it is known and
15 proposed that such effects can and
16 will be mitigated by appropriate
17 measures."

18 And I believe my friend, Mr. Stadfeld, this
19 morning went through **Pembina Institute for Appropriate**
20 **Development**, a decision of March 2008. And Justice
21 Tremblay Lamer in that case referred to some of the
22 case law under the predecessor to CEAA, the EARPGO,
23 E-A-R-P-G-O.

24 And in particular she referred to a decision
25 of Justice Muldoon, **Canadian Wildlife Federation**. And

1 said that the language from these cases that refers to
2 EARPGO is still useful in discussing a panel's duties
3 under the **Canadian Environmental Assessment Act**.

4 Justice Muldoon in the **Canadian Wildlife**
5 **Federation** case said that:

6 "Vague hopes for future
7 technology cannot constitute
8 mitigation."

9 And that was quoted with approval by Justice
10 Tremblay Lamer in the **Pembina Institute** case.

11 Justice Muldoon also said that:

12 "Monitoring plans for the
13 future cannot constitute
14 mitigation."

15 So as a matter of law, we have this series of
16 statements from the Courts saying that feasible
17 mitigation measures have to be practical means, that's
18 the **Cheviot** case, they have to be measures that are
19 known and proposed and that can and will mitigate
20 environmental effects, that's the **Express Pipeline**
21 case, and we have some idea from **Canadian Wildlife** and
22 **Pembina** of what mitigations measures are not, they are
23 not vague hopes for future technology, they are not
24 monitoring plans for the future.

25 We've also outlined there's a Federal Policy

1 Statement on Adaptive Management that came out in 2009
2 a little bit after the *Pembina Institute* case.

3 And it's an Operational Policy Statement on
4 Adaptive Measures under the *Canadian Environmental*
5 *Assessment Act*. Justice Tremblay-Lamer made some
6 comments in the *Pembina Institute* case about adaptive
7 management and where it is and is not appropriate.
8 And TNG submits that this is in part the Federal
9 Government's response.

10 Now, there's a helpful section, in our
11 submission, of that policy statement that outlines
12 when it might not be appropriate, when it might not be
13 appropriate, to be clear, to incorporate adaptive
14 environmental management into Environmental
15 Assessment.

16 And TNG submits that there's two of those
17 factors that are highly relevant to the present
18 assessment. One is where mitigation is not
19 identified.

20 I'm quoting right from the Operational Policy
21 Statement here:

22 "Commitment to adaptive
23 management is not a substitute for
24 committing to specific mitigation
25 measures in the Environmental

1 Assessment prior to the course of
2 action decision."

3 The next factor that we've set out in this
4 Operational Policy Statement where it would not be
5 appropriate to use adaptive management is where there
6 is uncertainty about significant adverse environmental
7 effects. And here, again, I'm quoting from the
8 policy:

9 "If taking into account the
10 implementation of mitigation
11 measures there's uncertainty about
12 whether the project is likely to
13 cause significant adverse
14 environmental effects, a
15 commitment to monitor project
16 effects and to manage adaptively
17 is not sufficient."

18 Now, TNG submits that the feasibility of
19 proposed mitigation is a key issue before this Panel.
20 And, in particular, TNG submits that there has to be
21 enough information before the Panel prior to the time
22 that it closes its record so that the Panel can
23 consider and determine whether proposed mitigation
24 measures are technically and economically feasible
25 and, because of that, whether residual Project effects

1 are significant.

2 In TNG's submission, the **Canadian**
3 **Environmental Assessment Act** is clear, the mandate of
4 this Panel is clear, that if you're weighing
5 environmental effects, if the scale gets pushed down
6 by a significant environmental effect, it can only be
7 balanced out by a feasible mitigation measure on the
8 other side.

9 So if you're presented with a significant
10 environmental affect and there's some discussion of
11 potential measures but they aren't feasible, they
12 aren't known technologies, they aren't economically
13 feasible, they cannot be applied to rebalance the
14 scale. You're left with a significant environmental
15 affect.

16 And in TNG's submission, that's an
17 intentional purpose of Parliament in the way that they
18 set out the **Canadian Environmental Assessment Act**,
19 because if we do want to go forward with a project
20 that has significant environmental impacts, the point
21 of Environmental Assessment is to do so with our eyes
22 open. So there needs to be a strong statement from a
23 Panel in the event that significant environmental
24 effects remain, there needs to be a strong statement
25 so that the subsequent public discussion, the

1 subsequent decision by Cabinet, the subsequent
2 regulatory processes, are all fully informed about the
3 state of the project as it's currently proposed.

4 Otherwise, in TNG's submission, there's
5 really very little purpose in Environmental Assessment
6 Processes. If these issues get repeatedly deferred to
7 the regulatory process, they are going to go through
8 the regulatory process anyway. So if that ball gets
9 passed off without some kind of declaration from a
10 panel about where things are right now, without some
11 kind of determination about whether you have feasible
12 mitigation measures as the project is currently
13 proposed, then that's a problem that needs to be
14 identified in Environmental Assessment.

15 As I say, that's the primary purpose of a
16 Review Panel under the Federal Act.

17 I think it's important to say here that the
18 panel's determination that a mine project has
19 significant environmental effects does not stop a
20 project. It doesn't by itself keep the project from
21 going forward. It just ensures that that future
22 discussion is informed discussion and ensures that the
23 future decision about whether you go ahead or not,
24 based on the project as proposed, is informed by a
25 full understanding of the likely environmental

1 consequences of the project as proposed at the time of
2 the Environmental Assessment.

3 Now, I know there's been some discussion on
4 the record that this is a grey area. The Panel
5 certainly doesn't need to see the absolute final
6 product of various mitigation measures that have been
7 proposed. They can certainly be, in TNG's submission,
8 tweaked after the Panel has seen them, but it has to
9 at least have some conceptual idea of how they might
10 work, it has to have some idea of how the various
11 elements of mitigation might work together to create a
12 feasible mitigation measure.

13 And again, in TNG's submission, if that's
14 deferred to the regulatory process, then the
15 Environmental Assessment isn't that useful in and of
16 itself.

17 Crudely speaking here, we have a proposal to
18 eliminate a lake. It's a mine project that will
19 result in the elimination of a lake. The primary
20 mitigation measure proposed for that primary
21 environmental effect, the primary mitigation measure
22 proposed is the fish compensation measure.

23 So if that's the primary environmental
24 effect, that's the primary proposed mitigation, then
25 it's incumbent on the Panel to look very, very

1 carefully at whether there actually is a feasible
2 measure in place, because the scale's been weighed
3 down very heavily by that effect, in cultural terms
4 and ecological terms, and if you don't have something
5 feasible to counterbalance it, then you're passing a
6 problem on to the regulators. And it's not even a
7 problem you're passing on to the regulators, I think
8 the Panel's duty is just to point out that the scale
9 is currently tipped this way.

10 The third major area I was going to discuss
11 is the cultural and ecological effects of the mine
12 Project.

13 As I said at the outset, TNG's primary
14 position is that the permanent destruction of Teztan
15 Biny and area is a significant cultural loss by
16 itself. It's a significant cultural loss and then by
17 itself it's a significant environmental effect because
18 of the profound cultural loss that it represents for
19 Tsilhqot'in People.

20 Now, the Panel has heard evidence over the
21 last several weeks of the cultural and spiritual
22 importance of these areas to the Tsilhqot'in Nation.
23 They have heard about the deep ancestral connection
24 that people feel to Nabas, to the Little Fish Lake
25 area, and to Fish Lake itself.

1 As I referenced when discussing cultural
2 heritage, among the significant cultural heritage
3 sites that stands to be affected is the island in
4 Teztan Biny. That, to the Tsilhqot'in Nation, is a
5 site of spiritual power where present-day and previous
6 generations of Tsilhqot'in People have conducted
7 ceremonies to receive their spiritual powers.

8 During the socio-economic session this past
9 week in Williams Lake, Ms. Patt Larcombe presented on
10 behalf of the TNG and she presented in significant
11 detail about the cultural impacts on the Project. And
12 I won't repeat that there. I'd just say that TNG
13 adopts those as part of its final submissions. We
14 hope that that's the same kind of helpful review of
15 parts of the transcript that will help the Panel over
16 the next couple of months.

17 We'll just add a few things here as part of
18 these final submissions.

19 The first point I'll make is that the
20 importance of the eastern trap line territory that
21 includes the mine Project, the importance of that area
22 to the Tsilhqot'in is demonstrated by the explicit
23 reference to the mouth of the Taseko Lake, which the
24 Tsilhqot'in know as Nadilin Yex. I hope I haven't
25 mangled that pronunciation, Chief Marilyn. She's

1 smiling which might mean, she's being polite.

2 But that place, Nadilin Yex is found in the
3 foundational Tsilhqot'in legend. And this is a hard
4 word for a non-Tsilhqot'in speaker to say, but the
5 name of the legend is Lhin Desch'osh. I'm getting
6 nods of approval, but the spellings is L-H-I-N, new
7 word, D-E-S-C-H'O-S-H.

8 Now, that legend is the Tsilhqot'in creation
9 story. It describes their origins as a people and the
10 formation of their homeland.

11 And as set out in the *Tsilhqot'in Nation*
12 decision, we've referenced the specific paragraphs.
13 There's a helpful summary by the judge at paragraphs
14 654 to 657 and 655 to 666.

15 As described by Justice Vickers:

16 "Key events occur in this
17 legend occur at Nadilin Yex and
18 along the Taseko River."

19 I'll also point out that the Department of
20 Fisheries and Oceans stated that they understand Fish
21 Lake to be an important alternate source of fish for
22 the Tsilhqot'in in times of shortage.

23 They have said that, we've quoted this at
24 page 19 of our written submissions:

25 "DFO has learned that the TNG

1 view Fish Lake as a reserve food
2 supply in the event of poor salmon
3 runs. The TNG can net large
4 numbers of fish from the lake on
5 an annual basis."

6 I'm skipping a bit here.

7 "At this time, DFO is unable
8 to determine if the proposed
9 Compensation Plan would provide a
10 sufficient fishery for the TNG."

11 And we've given the reference in our written
12 submissions there to CEAA document number 1769.

13 I'll also give a brief summary here of some
14 of the environmental and ecological impacts. This
15 starts at page 22 of our written submission.

16 The TNG's position is that the permanent
17 destruction of Teztan Biny and the area around Teztan
18 Biny and Nabas must also be considered a significant
19 environmental effect purely based on the scale of
20 ecological disruption that's involved.

21 And that's because there'll be the
22 irreversible loss of fisheries and ecological systems
23 that have been in place since the time of the last
24 Ice Age.

25 In TNG's submission, Taseko has drastically

1 understated the potential magnitude and reach of the
2 proposed mine's environmental effects.

3 And we've set out various summaries of what
4 the TNG takes to be the key issues coming out of this
5 last week of technical hearings. The first is acid
6 rock drainage and metal leaching. The second is that
7 water quality concerns will require perpetual
8 treatment, maintenance and funding.

9 The third is that the Project poses
10 unacceptable risks to the Taseko River salmon run.

11 And as I'll get into more detail further on,
12 when I talk about the significant environmental
13 effects after mitigation, TNG has huge unresolved
14 concerns about the proposed Fish Habitat Compensation
15 Plan and its feasibility.

16 So I'm wary of the time here. I'll just
17 briefly cover some of these technical issues. I'm
18 probably the wrong person to be talking to you about
19 them. If you have any questions about them, I'll just
20 give you a blank look and refer to our consultants,
21 but they have said they are available if you have
22 specific questions about any of the positions that TNG
23 takes, they can come up to the microphone at the front
24 here.

25 But the first is as acid rock drainage and

1 metal leaching and TNG presented two experts on this,
2 Dr. Kevin Morin and Dr. Ann Maest, M-A-E-S-T.

3 And the primary conclusion of both Dr. Morin
4 and Dr. Maest was that acid rock drainage and metal
5 leaching will be a problem at the Prosperity Mine
6 site. In their view, potentially acid-generating rock
7 was not correctly characterized. And there will be a
8 greater quantity of waste rock, low-grade ore and
9 overburden than Taseko has predicted.

10 TNG's consultants also felt that water
11 treatment of mine-site waters is a very real
12 possibility and that perpetual treatment will cost
13 millions of dollars annually and will need to continue
14 in perpetuity, that is forever.

15 TNG has strong concerns about the
16 responsibility for and the liability of maintaining
17 the water treatment system after the life of the mine.

18 TNG also has strong concerns about
19 contaminants that may travel off the mine site through
20 surface and ground water and affect the Big Onion
21 drainage, Beece Creek and the Taseko River.

22 As I said, TNG's second major technical
23 concern related to water quality concerns and
24 perpetual treatment. This came primarily from Dr. Ann
25 Maest. She is an internationally renowned expert and

1 is presently the main geochemist consultant to the
2 U.S. Environmental Protection Agency. She based her
3 analysis on the data that Taseko had provided in its
4 Environmental Impact Study.

5 Dr. Maest is one of the principal authors of
6 a report that compared versus actual predicted mine
7 water quality impacts and found that, pretty much
8 across the board, mine companies and Environmental
9 Assessments of mining projects do a pretty bad job of
10 predicting impacts and particularly of predicting
11 acid-rock drainage issues.

12 Dr. Maest and Stratus concluded that there
13 were some fundamental issues with the modelling of
14 environmental effects. I'll just take you to a couple
15 of them.

16 Dr. Maest and Stratus concluded that
17 downstream and down-gradient contamination
18 concentrations will be up to ten times higher than
19 predicted and that water treatment will be necessary.

20 They also found that uncertainty remains
21 about the site water balance and about Taseko's
22 ability to ensure that submerged tailings in the
23 tailings storage facility had sufficient water cover.

24 They also had concerns about seepage from the
25 Tailings Storage Facility towards the Big Onion

1 drainage.

2 Now, during the hearings, the Proponent was
3 continually relying upon their commitments from the
4 B.C. Environmental Assessment Process. But in TNG's
5 submission, they failed to provide the Panel with a
6 technically and economically feasible plan to ensure
7 that the mine operations will not lead to substantial
8 water quality and environmental contamination
9 concerns.

10 Overall, Stratus concluded that the pit
11 water, the Tailings Storage Facility, and seepage, has
12 been improperly characterized and that there will be a
13 need for perpetual treatment.

14 The next major issue, major technical issue,
15 in TNG's submission, is that the Project poses
16 unacceptable risks to the Taseko River salmon.

17 And those risks come from mine site seepage
18 and from the possibility of accidents or malfunctions,
19 equipment malfunction or the possibility that the
20 Tailings Storage Facility dam would fail at some time
21 in the future. Those pose perpetual risks to the
22 livelihood, health and culture of the Tsilhqot'in
23 People.

24 Now, the Tsilhqot'in very clearly have the
25 right to fish in the Taseko River. And that's in part

1 because Justice Vickers of the B.C. Supreme Court was
2 very clearly of the opinion that the Tsilhqot'in have
3 Aboriginal Title to the Brittany Triangle along the
4 western bank of the Taseko River downstream of the
5 proposed mine Project.

6 We know from *Delgamuukw* that Aboriginal Title
7 includes the right to use and occupy lands for a
8 variety of purposes and in TNG's submission that has
9 to include the right to fish in adjacent waters like
10 the Taseko River.

11 We also know that the Taseko River is
12 currently in stress. The 2009 sockeye escapement into
13 the Fraser River was about 10 percent of predicted
14 levels. 2009 sockeye counts in the Taseko River only
15 totalled 40 salmon, while historically runs have
16 numbered up to 30,000.

17 TNG's fish toxicologist Dr. Jeff Morris
18 talked during the technical hearings about fish
19 toxicology, of course. And, in his view, there's
20 little margin for error, and thresholds for
21 toxicological effects on organisms like fish are close
22 to being reached.

23 Dr. Morris and Federal Government agencies
24 also expressed concern about other potential
25 contaminants such as selenium.

1 Taseko asserted in response that it's
2 possible that new technologies may be developed in the
3 future to treat selenium contamination. And TNG
4 submits both this exposes the Tsilhqot'in to an
5 unaccessible risk, and is precisely the kind of thing
6 the Court said is not a mitigation measure. That's a
7 vague hope for future technology. It's not a
8 feasibility mitigation measure.

9 TNG would add that in light of the recent
10 declines in the Fraser River salmon or Fraser River
11 salmon fishery or the Fraser River Basin salmon
12 fishery, which includes the Taseko River, there'll be
13 additional pressures on lake fisheries such as the one
14 at Teztan Biny.

15 All of these risks are further amplified by
16 Taseko's stated intention to proceed with an expanded
17 mine Project that would dig deeper, would extract more
18 ore, it would operate for 13 additional years.

19 And in TNG's view, Taseko has generally
20 declined to assess the implications of an expanded
21 Project for hydrology and water balance issues at the
22 mine site. And that's a significant ongoing concern.

23 TNG would point out that, while the Proponent
24 has insisted that this is an Environmental Assessment
25 for a 20-year Project, in a way their alternatives

1 assessment only makes sense if you think of this as a
2 33-year Project.

3 TNG also submits that there will be
4 significant environmental effects after mitigation and
5 that neither of the cultural or ecological impacts can
6 be mitigated by replacing Fish Lake with a fish
7 compensation reservoir or through any of the other
8 mitigation measures proposed by the Proponent.

9 Taseko has conceded in its own reports that
10 trapping and fishing have a deep spiritual
11 significance to individuals that use the mine
12 development area.

13 They have also conceded that Tsilhqot'in
14 members have continued spiritual and emotional ties to
15 Little Fish Lake and to the entire study area.

16 The loss of that connection to places that
17 are of spiritual and historical significance can't be
18 fully mitigated. It's hard to think of how you would
19 mitigate the loss of that connection to a place where
20 your ancestors lived, to a place where your ancestors
21 did the same kinds of activities that you're doing, to
22 the kinds of places that you hope where your
23 grandchildren will continue the tradition of what
24 you're doing now and of what your grandparents before
25 you and their grandparents before them have done.

1 It's just impossible to imagine how you might mitigate
2 for the loss of that connection.

3 The loss of the island in Teztan Biny, in
4 particular, would represent a loss of cultural
5 heritage that's almost impossible to fathom.

6 The English-Ehrhardt Study that was included
7 as Volume -- I think it's Appendix 8-2-B of the
8 Proponent's Environmental Impact Study, talked in some
9 detail about the loss of the cabins in the areas of
10 historical settlement near Little Fish Lake.

11 Ms. English-Ehrhardt described Little Fish
12 Lake and the surrounding area as "symbols of
13 Tsilhqot'in culture". She said they represent part of
14 what Natives speak about when they say "their land is
15 their culture".

16 And Ms. English-Ehrhardt in the report that
17 was attached to the Proponent's Environmental Impact
18 Study, she concluded that loss of the Little Fish Lake
19 area, that's what has been described as the Nabas area
20 or Nabas Central by Ms. Larcombe will significantly
21 impact the Xenigwet'in.

22 The proposed mine site area is rich in
23 archaeological sites, includes pit houses, cultural
24 depressions, burial and cremation sites. And again,
25 TNG submits that loss of these archaeological sites,

1 notwithstanding the mitigation measures that have been
2 proposed by the Proponent, would significantly impact
3 the intangible but powerful connections that
4 Tsilhqot'in People have to that area.

5 And, of course, it's not just the connection
6 of the Xeni Gwet'in People. The Xeni Gwet'in People
7 was the focus of Ms. English-Ehrhardt's study, but
8 you've heard the connections that people from
9 Yunesit'in in particular also have to the Nabas area,
10 to the Fish Lake area, by virtue of their own family
11 ancestral connections to the area.

12 Here I'm speaking primarily the Xeni Gwet'in
13 because I'm summarizing Ms. English-Ehrhardt's study,
14 but the Panel has heard evidence from other
15 communities of the importance that it has to them as
16 well.

17 As I flagged at the outset, one of TNG's
18 biggest concerns about this Project is the proposed
19 Fish Habitat Compensation Plan and that it's not a
20 feasible mitigation measure.

21 We heard this past week in some detail about
22 the fish compensation measure. And what we've tried
23 to do, starting at page 28, is to summarize at least
24 TNG's views of where we're left at the end of the
25 discussion of the fish compensation measure.

1 Now, in deciding how to compensate the loss
2 of Fish Lake and that area, I guess it's important to
3 understand what the components are of the area that
4 you're going to be losing. And there are four of them
5 essentially, two fish-bearing lakes that are of high
6 productivity, interconnecting streams and tributaries
7 that are of high value fish habitat, and the riparian
8 zones, the zones next to the streams and lakes, and
9 wetlands that are connected with lakes and streams,
10 they produce source waters, they produce nutrients,
11 they produce seasonal habitat or contain seasonal
12 habitat for fish, as well as important habitat for
13 migratory birds.

14 DFO has told the Panel about their views that
15 it is an important fishery, a rich fishery. From the
16 Tsilhqot'in perspective, the Fish Lake area is an
17 important component of Tsilhqot'in land use and
18 cultural identity. When you talk about losing Fish
19 Lake, you're not talking about losing just a First
20 Nation fishery, you're talking about the permanent
21 loss, permanent material loss, permanent spiritual
22 loss of a richly productive part of the Tsilhqot'in
23 land based economy.

24 Its value to the Tsilhqot'in can't be
25 quantified and its loss cannot be mitigated or

1 compensated for.

2 Now, the Proponent has taken a habitat
3 compensatory approach to offsetting this impact. And
4 TNG submits that the key question for the Panel is, is
5 this proposed Fish Compensation Plan an economically
6 and technically feasible means of offsetting the loss
7 of Fish Lake and the Fish Creek aquatic ecosystem.
8 And Little Fish Lake as well.

9 The answer to that question, in TNG's
10 submission, is clearly, no, you don't have a
11 technically and economically feasible mitigation
12 measure before you.

13 All the expert reviewers, Dr. Hartman,
14 Department of Fisheries and Oceans, and Dr. Levy,
15 agree on this.

16 There's no credible technical or economic
17 analysis for the Fish Compensation Plan.

18 The TNG submits that there's nothing before
19 you that can demonstrate the compensation (sic)
20 Project's viability.

21 It's important to note as well that if we're
22 looking at the feasibility of the Fish Compensation
23 Plan, the values being proposed by Taseko Mines
24 Limited to be compensated include only the physical
25 loss of the lake and stream fish habitat. There's no

1 compensation measures proposed by the Proponent for
2 any other values that are lost. For example, wetland
3 and migratory bird habitat. The cultural landscape
4 that's important to the Tsilhqot'in. And some of the
5 wilderness recreation values that are important both
6 to the Tsilhqot'in and to non-Aboriginal people in the
7 area.

8 These will be lost forever in that particular
9 part of the Tsilhqot'in territory.

10 Now, the Proponent admitted in this past week
11 of technical sessions that reconstructing the lost
12 ecosystem is not possible. So its approach to
13 compensation is reduced to attempting to construct a
14 few specific components of an engineered fish support
15 system that the Proponent believes are technically and
16 economically achievable and that will or would have to
17 function as an enduring rainbow trout population.

18 The Proponent, however, has not produced any
19 evidence to show that the works will perform as
20 intended.

21 Now, the Panel heard from Dr. Hartman.
22 Dr. Hartman's primary conclusion was that the problem
23 with the Fish Habitat Compensation Plan wasn't just
24 one of feasibility. It was in part that there were
25 major conceptual problems with the Fish Compensation

1 Plan. We aren't even in the zone of feasibility.
2 We're at the point of basic foundational difficulties
3 with the Fish Compensation Plan.

4 Because the Fish Compensation Plan is
5 comprised of several different component parts that
6 are all interrelated with one another and all depend
7 on one another, it's very important that each of those
8 components work, because failure of any one of them
9 can lead to a failure of the entire system.

10 Dr. Hartman raised a number of concerns about
11 the technical feasibility of each one of those four
12 components. The headwater collection system, the
13 headwater retention pond, the spawning channels, and
14 Prosperity Lake itself.

15 Dr. Hartman was not convinced that any of
16 these components on their own would function reliably
17 for very long.

18 Now, trying to view those components together
19 as an integrated sustainable trout ecosystem was even
20 more problematic in Dr. Hartman's view. He submitted
21 that the likelihood of constructing a multicomponent
22 integrated and durable fish sustaining aquatic system
23 of this scale and complexity is extremely remote if
24 not impossible.

25 His evidence was consistent with the expert

1 reports submitted by Department of Fisheries and
2 Oceans and MiningWatch Canada.

3 Now, these foundational difficulties with the
4 Fish Compensation Plan are not new. They extend back
5 to 1999 to some of the early Department of Fisheries
6 and Oceans review of this mine proposal.

7 And Department of Fisheries and Oceans set
8 out, for example, as early as 1999 that a risk
9 analysis should be done for the proposed works. Risk
10 analysis is critical to understand how the
11 Compensation Plan might fail and what the consequences
12 might be.

13 The outlook for success is even more
14 worrisome when the complexity of the compensation
15 works is examined.

16 And the evidence from both Dr. Hartman and
17 MiningWatch showed clearly, that with increasing
18 levels of complexity, uncertainty and risk are
19 compounded compared to complexity, uncertainty and
20 risk in simpler systems.

21 In TNG's view, there's no information in
22 front of the Panel about the costs of the compensation
23 project or of its overall economic feasibility,
24 regardless of the technical issues. As you know,
25 there are two parts to the feasibility test and the

1 TNG submits that it fails both of them independently.

2 There's no explanation or assessment in
3 addition of how the expanded 33-year Mine Plan would
4 affect the Fish Habitat Compensation Plan,
5 particularly Prosperity Lake.

6 Now, the Panel has indicated that the
7 extended mine life would be viewed as a reasonably
8 foreseeable new project and would be included in the
9 Panel's assessment of the cumulative effects of the
10 Project.

11 In TNG's submission, there should be doubt
12 that the 33-year Project is the one that the proponent
13 was contemplating from the start.

14 We agree entirely with the Panel that the
15 expanded 33-year Project needs to be included in the
16 assessment in some meaningful way.

17 Taseko Mines Limited has also presented no
18 evidence pertaining to the sustainability of the Fish
19 Habitat Compensation Plan.

20 The Proponent's stated views that it will be
21 responsible only for ensuring that the Provincial
22 objectives and the constructed compensation works are
23 achieved and maintained for what they call the "life
24 of mine". By the end of the hearings, life of mine
25 was confirmed by the company to represent the point at

1 which commercial production stops. It does not
2 include the following decades of pit flooding and
3 other reclamation activities required for closure or
4 the post-closure future. The Proponent could not tell
5 the Panel, could not assure the TNG, who would assume
6 responsibility for the works and bear the costs of
7 doing so.

8 Whatever adjectives you might use to
9 characterize the proposed fish compensation measure,
10 "sustainable" is not one of them.

11 In the end, the Panel does not have in front
12 of it anything remotely representing a demonstrably
13 viable and sustainable Fish Habitat Compensation Plan.
14 In Dr. Hartman's words, it only has a concoction of
15 ideas. And it's for that reason the TNG urges the
16 Panel to reject the Fish Habitat Compensation Proposal
17 in its entirety and for all the reasons set out above.
18 And because of that, in the TNG's view, you're very
19 clearly left with a significant effect on fish and
20 fish habitat.

21 And while TNG certainly does not adopt or
22 endorse any of the conclusions of the BC Environmental
23 Assessment Office, it's interesting to note that that
24 was their final conclusion as well that there would be
25 a significant impact on fish and fish habitat in the

1 Fish Lake area.

2 Now, we also heard from Transport Canada in
3 this past week of technical sessions.

4 Transport Canada set out its conclusion for
5 the Panel that the mine Project as proposed will have
6 a significant residual impact on navigation. And they
7 spoke specifically of the loss of Fish Lake, which is
8 used by the Tsilhqot'in to move from the lake shore by
9 boat to the island in the centre that has high
10 cultural and spiritual significance.

11 Transport Canada also talked about the
12 possibility of continued navigation in the newly
13 proposed Prosperity Lake. In TNG's view, it's not
14 realistic to believe that the Tsilhqot'in People ever
15 used this waterbody. TNG members, for a variety of
16 reasons, have stated that they will not use Prosperity
17 Lake.

18 So if we're to re-establish a navigation
19 benefit here, it would be completely meaningless to
20 the Tsilhqot'in and it certainly can't be used to
21 navigate to the now non-existent island in the lake
22 that's been permanently destroyed.

23 As I said when I was discussing the key
24 triggering events for this Panel, there were, I mean,
25 in a sense, three major areas of Federal jurisdiction

1 that first triggered this Panel review: Effects on
2 fisheries, effects on navigation, and the NRCan
3 permit.

4 Here it's really the first two that we're
5 concerned about.

6 TNG's submission is that the Proponent's
7 failure to identify any mitigation at all, let alone
8 feasible mitigation for impacts and navigation, means
9 that it's failed to address impacts related to one of
10 those the key Federal regulatory approval processes
11 that first triggered the assessment under CEAA, and,
12 in a way, it's symptomatic of the more general failure
13 to identify feasible mitigation in relation to the
14 other major CEAA trigger, that is the contemplation of
15 approvals under the **Fisheries Act** and under the Metal
16 Mining Effluent Regulations.

17 In summary on this issue, TNG says that the
18 Proponent has failed to identify feasible mitigation
19 measures, and further, that from the Tsilhqot'in
20 perspective, the loss of Fish Lake would at any rate
21 be immeasurable and cannot be mitigated.

22 Now, the fourth main issue that I said I
23 would speak about -- sorry, the third main issue is
24 justification.

25 THE CHAIRMAN:

Mr. Nixon, just to note,

1 we're at about an hour now just in terms of gauging
2 your time.

3 MR. NIXON: Thank you. I understand I'll
4 be speaking for about another 15 minutes and then
5 Grand Chief Stewart Phillip will be speaking for the
6 final 15 minutes.

7 Thank you, I am coming to the end. I'm the
8 warm-up show for Grand Chief Stewart Phillip.

9 THE CHAIRMAN: There's pressure now, Grand
10 Chief Phillip.

11 MR. NIXON: As the Panel knows, if it
12 finds that the mine Project would result in
13 significant residual environmental effects, it has a
14 mandate to collect information relevant to the
15 Justification Test under Section 37 of the **Canadian**
16 **Environmental Assessment Act**.

17 The TNG has already presented some of its
18 views during the Xeni Gwet'in community session. I'll
19 just add a few others here. But we know that the
20 Proponent's main position is that justification flows
21 from the mine Project's potential contribution to
22 government revenues, to jobs and to the local economy.

23 We've set out some additional factors that
24 TNG says are relevant to the Justification Test. The
25 first being that TNG has made it clear since the start

1 that the Tsilhqot'in People and communities are not
2 necessarily opposed to mining activities. What they
3 are opposed to is the Prosperity Project so long as it
4 requires the destruction of Teztan Biny and the
5 surrounding lands and waters.

6 TNG reiterates that it's very important for
7 the Panel to consider who will share in the benefits
8 that will flow from the mine Project and who will bear
9 the costs.

10 Both Native and non-Native people who live
11 closest to the mine Project in and around the Nemiah
12 Valley overwhelmingly oppose it.

13 And there's no reason to conclude, in TNG's
14 view, that the economic benefits of the mine Project
15 will reach the Xeni Gwet'in, will reach the
16 Yunesit'in, will reach the Tsilhqot'in Nation, in any
17 real way, and certainly not on a scale that could
18 compensate for the loss.

19 Taseko Mines Limited, in its opening
20 presentation in Williams Lake, spoke of the fact that
21 they'd had 17 years to get it right. And TNG just
22 points out that after 17 years of having the
23 opportunity to develop policies and programs to
24 enhance First Nations' share of the benefits of the
25 proposed mine, Taseko has offered little more than

1 vague assertions that First Nations will benefit
2 economically. It could not point to any concrete
3 programs or policies specific to the proposed
4 Prosperity Mine that it would implement to monitor and
5 enhance Aboriginal employment.

6 In addition, despite years of operating the
7 Gibraltar Mine, the Proponent has no agreements in
8 place that they bring First Nations to share in its
9 economic benefits.

10 The Proponent has also brought up this notion
11 of Provincial revenue sharing. In the TNG's
12 submission, that cannot be considered a mitigating
13 factor because the Panel has absolutely no details
14 before it. It's hopelessly vague. It's a vague
15 Provincial policy that does not provide any details.
16 Does not provide any firm commitments. No one from
17 B.C. showed up to talk to this Panel about what this
18 policy meant or provided any direction to the Panel
19 about how it might be implemented.

20 The Proponent, of course, presented a slide
21 show of B.C. materials. That slide show showed that
22 not a single agreement has been reached yet with a
23 First Nation in British Columbia despite the fact the
24 policy was announced in 2007.

25 Further, Taseko has made no commitment to

1 enter into a benefit and impact agreement with any of
2 the Tsilhqot'in communities.

3 The Tsilhqot'in have their own vision for
4 sustainable economic development. They have talked to
5 you at various times about that. They want economic
6 development in their territory. They're not opposed
7 to it. They want economic development that is
8 consistent with their culture and with their core
9 values.

10 And finally, I spoke about this in the
11 community hearings as well. The TNG submits that the
12 notion of reconciliation, the notion that the Federal
13 Government, the Provincial Government, have to come to
14 terms with the fact of First Nations Rights, the fact
15 of First Nations Title, the fact of prior occupation,
16 that's an important factor that needs to feed into the
17 Panel's role in setting out its report and in setting
18 out advice to the Federal Government, to the relevant
19 Ministries, and to the public at large.

20 The fourth major area that I was going to
21 talk about briefly is the potential and established
22 Aboriginal Rights of the Tsilhqot'in Nation. I've
23 gone through this at the community session, so I'll
24 just skip ahead and say that at least under proven
25 Aboriginal hunting and trapping rights, the Panel has

1 heard specific evidence about impacts on wildlife
2 populations that support Tsilhqot'in hunting and
3 trapping, including impacts on wild horses, deer,
4 moose, grizzly bears, and migratory birds. And we've
5 set out the conclusions of Dr. McCrory and of
6 Environment Canada at pages 33, and 44.

7 The Panel also heard about the critical deer
8 migration route across the Taseko that runs into the
9 Fish Lake area. It does not appear to have been
10 mitigated in any way.

11 The failure to date to identify feasible
12 mitigation measures to address impacts on wildlife and
13 wildlife habitat is a major concern for the
14 Tsilhqot'in National Government.

15 The Proponent has merely referenced a vague
16 BC Environmental Assessment Office commitment to,
17 quote:

18 "Develop and implement a plan
19 for achieving compensation for
20 adverse effects to wetlands
21 habitat, recreation values,
22 wildlife, wildlife habitat, and
23 the critical habitat of species at
24 risk."

25 As already noted in the community sessions,

1 in TNG's view, this is not a feasible mitigation
2 measure, that is just a plan to come up with a plan.
3 It's a plan to, at some in the future, sit down and
4 develop something that may or may not mitigate the
5 adverse impacts on the various species that are relied
6 on by the Tsilhqot'in for the exercise of their
7 rights.

8 But again going back to this idea of
9 balancing. If there's a significant effect on
10 wildlife, there's nothing to balance it other than a
11 vague BC EAO commitment that has no teeth to it
12 whatsoever.

13 Now, the Tsilhqot'in also has noted, asserted
14 Aboriginal fishing rights to Fish Lake itself.

15 Just prior to the close of the record, we
16 submitted an additional document, the plaintiff's
17 reply to the defendant's statement of defence in that
18 action. It's CEAR, CEAA Registry number 2323.

19 I won't take you through this in any detail
20 other than to -- Mr. Stadfeld covered much of this
21 this morning, but this is a summary of the
22 Tsilhqot'in's views about the B.C. Environmental
23 Assessment Process and whether it is an adequate
24 vehicle for addressing some of their major concerns
25 about the mine Project. And that's set out in some

1 detail starting at paragraph 5 of that document.

2 I'm running a bit short on time, so I'll skip
3 ahead a bit here.

4 We've set out in the written document the
5 asserted Aboriginal Gathering Rights, asserted
6 Aboriginal Ceremonial Rights. We've talked about
7 Aboriginal Title.

8 There's an additional section we've put in
9 starting at section, sorry, at page 50, these are our
10 comments on the need for Tsilhqot'in "approval," quote
11 unquote, of the mine Project.

12 Taseko has stated throughout this
13 Environmental Assessment process and prior to it that
14 the Tsilhqot'in People do not have a veto in respect
15 of this proposed Project.

16 It's not the Panel's mandate, of course, to
17 determine the scope of the Crown's duty to consult
18 First Nations or whether Canada has met its duty to
19 consult with and accommodate First Nations. But we've
20 set out some points here to give the other side of
21 that picture. In particular, that in some
22 circumstances the full consent of First Nations is
23 actually required, particularly for Provincial
24 infringements of Aboriginal Title.

25 The Proponent had quoted some cases to

1 **Delgamuukw** and **Haida Nation**. There are other parts to
2 those judgments that we've brought to your attention
3 that do not, in TNG's submission, support the
4 statements that the Proponent was trying to make on
5 the basis of them.

6 In particular, I'll just draw your attention
7 to one of the unusual circumstances here. And that's
8 that essentially from the start, the Tsilhqot'in have
9 been presented with one option. Presented with a fait
10 accompli. Given that we were meeting on top of a
11 restaurant today, I thought it might be appropriate to
12 give a restaurant analogy. In a way, from the start,
13 the Tsilhqot'in have been given a menu that has just
14 one item on it. Usually the process of consultation
15 and accommodation has a period of reasonable back and
16 forth where different options are considered,
17 different plans for the mine, different strategies for
18 how to deal with wastes. From the start, the
19 Tsilhqot'in Nation has been presented with a single
20 option, which is the permanent destruction of the
21 lake.

22 If there was, as the company claims, some
23 consultation about the alternatives assessment, in the
24 Tsilhqot'in Nation's view, that consultation was
25 grossly inadequate, and happened, at any rate, before

1 some of the Supreme Court of Canada cases that
2 clarified the extent of the Crown's duty to consult
3 and accommodate First Nations, including the *Haida*
4 *Nation* case, including the *Mikisew Cree* case. There's
5 been a whole host of cases since that time that have
6 further amplified and developed the Crown's duty to
7 consult.

8 In TNG's view, it's the Proponent and not the
9 Tsilhqot'in that have created a situation with no room
10 for compromise or accommodation and give-and-take.
11 The Proponent has essentially said that you can have
12 the mine or Teztan Biny, but not both. This was the
13 range of options that were presented to the
14 Tsilhqot'in People.

15 I'll just conclude here briefly before I pass
16 you over to the more exciting part of the show.

17 THE CHAIRMAN: You must be paying his
18 salary, that's all I can conclude.

19 MR. NIXON: As I said at the outset, TNG
20 submits that in a way this Environmental Assessment is
21 simple: There's a significant cultural effect that
22 can't be mitigated. That by itself is enough to get
23 us into the discussion of the Justification Test.
24 There's a significant ecological effect that can't be
25 mitigated with feasible mitigation measures. Again,

1 that by itself is enough to get us into the
2 Justification Test.

3 TNG submits, if we're into the Justification
4 Test, that this mine Project cannot be justified in
5 the circumstances, it comes at the wrong time, while
6 the land question and the eastern trap line territory
7 is still unresolved, it uses the wrong technique, the
8 sole alternative offered by the end of the process was
9 the permanent destruction of two lakes that have
10 important ecological, cultural and spiritual values,
11 and, with respect, it's proposed by a company that has
12 nothing but a steadily deteriorating relationship with
13 the Tsilhqot'in Nation to show after 17 years of
14 mine planning.

15 I don't mean this at all as a personal
16 attack, but mine projects can go ahead with a
17 respectful relationship between First Nations and the
18 mine company. It's not required to take an
19 adversarial stance at every step along the way. And
20 TNG respectfully submits that mine companies would do
21 better if they showed respect from the outset for the
22 First Nations that they are dealing with. And that
23 that's part of what's led us to the present impasse.

24 Further, in TNG's view, the vague possibility
25 of Provincial revenue sharing can't fix the impacts of

1 the mine Project, can't fix the impacts it would have
2 on the Tsilhqot'in People. You've heard from various
3 witnesses that no amount of money can compensate for
4 the loss of the culturally and spiritually important
5 areas around Teztan Biny and Nabas.

6 Now, the Panel has been to Teztan Biny. The
7 Panel has been to the Nemiah Valley. The Panel has
8 been throughout this part of the Chilcotin. And I
9 submit to you that the situation here is unique.
10 We're talking about a unique area. We're talking
11 about a fairly unique circumstance of a healthy and
12 intact Nation that could serve as a model for other
13 First Nations in Canada. The Tsilhqot'in Nation has
14 proven Aboriginal Rights to hunt and trap in the area.
15 They have Aboriginal Title in the B.C. Supreme Court's
16 opinion to land and waters immediately downstream.
17 The Tsilhqot'in claim the right to fish in the very
18 lake that will be permanently destroyed by the mine.
19 And Fish Lake and Nabas are of deep cultural and
20 spiritual importance to the Tsilhqot'in people.

21 TNG submits that in this unique situation, if
22 the Prosperity Mine Project can be justified in the
23 circumstances because of its purported short-term
24 economic benefits, then it would seem that the impacts
25 of virtually any Project anywhere in Canada under any

1 circumstances could be justified in the circumstances.
2 And if that's the case, then in TNG's submission,
3 there's no possibility of a long-term reconciliation
4 between Canada's First Nations and the settler
5 culture.

6 The Tsilhqot'in Nation needs to see respect
7 for the hopes and dreams they have for their culture
8 and for their traditional lands. They respectfully
9 ask this Panel to help effect an honourable
10 reconciliation for the Tsilhqot'in People by writing a
11 strong report that draws the Federal Government's
12 attention to the significant environmental effects of
13 this Project.

14 TNG submits this Project is unfixable. It
15 cannot be fixed. It's flawed. Deeply flawed. It's
16 like dropping a bomb on a cathedral and then proposing
17 to replace it with a cathedral-shaped shopping mall.

18 That perhaps is a blunt way to end, but the
19 Tsilhqot'in National Government, the Tsilhqot'in
20 People feel that this mine is ripping the heart out of
21 their territory, out of their culture, and that cannot
22 be mitigated. I'm trying to give some kind of analogy
23 that makes sense to the settler culture.

24 I close by giving my thanks to the Panel for
25 your patience through this process, for your

1 independence, and my thanks to the Panel Secretariat
2 for their courtesy and professionalism throughout.

3 Thank you.

4 That takes you to the more interesting part
5 of the presentation.

6 THE CHAIRMAN: Thank you, Mr. Nixon. I'll
7 hold my remarks until after we've heard from
8 Grand Chief Phillips. Please proceed, sir.

9 **CLOSING REMARKS BY GRAND CHIEF PHILLIPS:**

10 GRAND CHIEF PHILLIPS: (Aboriginal Language
11 Spoken).

12 Respected Elders, traditional, spiritual and
13 Hereditary leaders, Chiefs, Members of Council,
14 brothers and sisters, Members of Panel, Taseko Mining
15 officials, municipal officials, and People of Williams
16 Lake.

17 I would just like to say that the Union of
18 B.C. Indian Chiefs in general and myself in particular
19 are greatly honoured to be back in Williams Lake to
20 have the opportunity to participate in this incredibly
21 important and significant dialogue that has taken
22 place not only here but throughout the Indigenous
23 communities of the Tsilhqot'in People and the
24 Secwepemc People of Esketemc and Canoe Creek for the
25 last several weeks.

1 I would just like to offer a brief
2 observation that, regardless of the outcome of this
3 particular exercise, I can't help but think that all
4 of our lives will be changed as a result of being
5 exposed to the dialogue and what we have come to learn
6 about each other in terms of our interests, our hopes,
7 our aspirations, and our fears and concerns.

8 We know and understand that the Tsilhqot'in
9 People and the Secwepemc People have lived within
10 their territories for thousands upon thousands of
11 years. And we know that they are people of the land.
12 That has been their history. That is reflected in
13 their present lifestyle. And that is the future. And
14 that's what's been referenced time and time again
15 throughout this very emotional discussion and
16 dialogue.

17 The Indigenous land rights commonly referred
18 to as Aboriginal Title and Rights of the Tsilhqot'in
19 and the Secwepemc People is well-known and understand
20 as unextinguished. Both groups have chosen different
21 paths to reconcile their Indigenous land rights with
22 the existing rights and interests of, flowing from the
23 Crown.

24 The Tsilhqot'in People have chosen a path
25 through the courts. And the Secwepemc People have

1 looked toward the B.C. Treaty process to resolve the
2 outstanding issues that arise as the result of quite
3 often, if not most often, conflicting interests as it
4 relates to the unresolved land question in the
5 Province of British Columbia, which I maintain is the
6 elephant in the room.

7 Our Rights, our Indigenous Rights, our Human
8 Rights, and our land Rights, are recognized at the
9 international level through the UN Declaration on the
10 Rights of Indigenous Peoples. That was a 20-year
11 battle. And I just want to read Article 32 (as read):

12 "1. Indigenous Peoples have the
13 right to determine and develop
14 priorities and strategies for the
15 development or use of their lands
16 or territories and other
17 resources.

18 2. States shall consult and
19 cooperate in good faith with the
20 Indigenous Peoples concerned
21 through their own representative
22 institutions in order to obtain
23 their free and informed consent
24 prior to the approval of any
25 project affecting their lands or

1 territories and other resources,
2 particularly in connection with
3 the development, utilization, or
4 exploitation of mineral, water, or
5 other resources."

6 And finally:

7 "3: State shall provide effective
8 mechanisms for just and fair
9 redress for any such activities
10 and appropriate measures shall be
11 taken to mitigate adverse
12 environmental, economic, social,
13 cultural or spiritual impact."

14 I would like to offer a quick word about the
15 so-called B.C. Environmental Assessment Process. I
16 would like to know -- I would like the Panel to know
17 and understand that this process is widely rejected by
18 the First Nations of British Columbia given the fact
19 that it's not recognized or does not take into
20 consideration our Aboriginal Title and Rights
21 interests. Rather, it is a process and a mechanism
22 designed for stakeholders to give expression to their
23 various views relative to proposals being brought
24 forward by Proponents with respect to land and
25 resource developments.

1 The B.C. Environmental Assessment process has
2 found its way into the courtrooms throughout British
3 Columbia on many, many occasions because of the fact
4 that it's a fatally flawed process.

5 Similarly, the **Canadian Environmental**
6 **Assessment Act** and process does not recognize
7 Aboriginal Title or Rights. And we've heard that
8 conversation in this room time and time again.

9 The process has inherent inequities. And
10 unfortunately, by its very nature and dynamics it's
11 divisive and pits one group against another with
12 respect to the issues at hand.

13 And since my time in Williams Lake, I
14 couldn't help but notice the inequities of the
15 Tsilhqot'in People and the Secwepemc People struggling
16 to find resources to bring in desperately needed
17 expertise to be able to convey and give expression to
18 the very deep concerns that they have with respect to
19 this proposed Prosperity Mine Project being advanced
20 by Taseko.

21 So there's no proper resourcing to have a
22 fair and level playing field.

23 I would like to talk briefly about the
24 so-called "New Relationship" that was heralded by
25 Premier Campbell as a means to address and reconcile

1 Aboriginal Title and Crown interests of British
2 Columbia.

3 The hallmark of the so-called "New
4 Relationship" was empty promises and empty
5 announcements.

6 And that pertains to this notion that I've
7 heard from time to time centring on so-called revenue
8 sharing. It's something that the Provincial
9 Government has paid lip service to on many occasions
10 when it's politically convenient, but there is no
11 legislative mechanism in place and there is no policy.
12 It remains to be one of the things that the government
13 likes to trot out from time to time when it's
14 convenient.

15 In terms of the revenue sharing aspect from
16 the corporate side, the time that I've been here, I
17 haven't heard any significant offerings in that
18 regard. And I believe I referenced this point the
19 last time I was here that, to my knowledge, I know
20 that there has been instances, proposals about an
21 equity share in the company itself, profit sharing,
22 training, and a whole package of those types of
23 business and economic benefits, and I didn't hear
24 that.

25 What I did hear was the vagueness of Mining

1 our Future. And I think there was adequate commentary
2 to that this morning.

3 But I didn't hear anything of any substance
4 other than, if you want any benefits, step up to the
5 plate, pilgrim, and I'm only going to tell you the
6 once. But there was nothing substantive offered from
7 Taseko in that regard.

8 One of my major concerns that I have about
9 what I've heard throughout this hearing process is the
10 power line. We are aware that there are many, many
11 similar projects that are being formulated on the
12 corporate drawing boards with similar mining proposals
13 in the area of Taseko. I've heard that Taseko is
14 connected to some of these conglomeration of
15 companies. And, in our view, the pipeline in many
16 ways is the umbilical cord to Howe Street and Bay
17 Street and Wall Street, to the stockmarkets, to
18 generate capital, to not only bring forward this
19 particular proposal but many more to follow.

20 And we are gravely concerned about that, that
21 consideration.

22 I was absolutely astonished at the mitigative
23 measures being offered by Taseko with respect to the
24 destruction of the lake. And, in my view, the offer
25 represents a corporate-branded outdoor aquarium that

1 has been shown to be incredibly difficult, if not
2 impossible, to sustain and maintain.

3 And I don't consider, nor, I surmise, would
4 any reasonable person consider that to be an
5 appropriate mitigative measure.

6 When I consider the essence of what's
7 happening with respect to the Taseko Mine proposal,
8 and the power line, and the potential that that
9 represents for further large-scale industrial
10 development in Tsilhqot'in territory, I can't help but
11 wonder what the proposal of mitigation will be in the
12 future in terms of mitigating the cultural and
13 spiritual losses, the loss of habitat, the loss of
14 lifestyle. And I must say, the only thing that I can
15 envisage as part of that corporate dream is an area
16 out in the Tsilhqot'in akin to a theme park similar to
17 Barkerville which would be known as Prosperityville,
18 and that's where the general public could go and the
19 Tsilhqot'in and the Secwepemc People could go to see
20 the remnants of a once proud culture and heritage.
21 And I think we have to consider what we're dealing
22 with here within the scope of this hearing process.

23 The last thing that I want to talk about is
24 the fundamental truth that we're all here to stay.
25 And that's inescapable. That's the reality. And

1 we've heard that countless times about the 17-year
2 history of this Project. And I offered the view when
3 I first sat before you that, in my mind, this was,
4 this process was 17 years too late.

5 And I heard the Mayor talk about the want and
6 the need to establish a cultural awareness
7 reconciliation process.

8 And I can't help but think if there were
9 different paths taken 17 years ago that we wouldn't be
10 in this spot that we are here today. But
11 unfortunately, those opportunities were lost
12 opportunities, and we find ourselves in the position
13 where we have a room full of people that half of the
14 room supports the Project for the reasons that we've
15 heard, and the other half is absolutely opposed to
16 this Project for all of the reasons that have been
17 brought forward to the Panel.

18 And it's a very, very -- not a good place to
19 be. I think we can do better than this. I certainly
20 think our children deserve better than this.

21 And those are some of the things that need to
22 be considered when the Panel makes its decision.

23 I know that this fight will not end here. I
24 know that this is merely a skirmish, that this will go
25 to the Minister's office, it will go to Cabinet, and

1 our alliances will continue to build on both sides.

2 And at some point in time we need to know and
3 understand the need to ensure governments bring
4 forward processes that are not fatally flawed and
5 deficient, such as the B.C. Environmental Assessment
6 Process and the CEAA, and develop something that lends
7 itself to reconciliation. Because that's the only
8 path that's going to get us out of these conundrums
9 that we find ourselves in.

10 I've seen this movie many times where a group
11 of investors come into a community and offer a
12 wonderful vision and dream and divides the
13 communities. Sometimes the projects proceed.
14 Sometimes they don't get off the ground. And this
15 group of investors leaves and we're left to pick up
16 the pieces. And I think we have to learn from that
17 experience also.

18 So there's a tremendous amount of
19 responsibility here, undeniable liability, and the
20 decisions that come out of this are going to affect
21 and impact the lives of many, many people.

22 So I'm just hoping that we can learn, we can
23 learn from these deficiencies, and look toward
24 developing processes that are more just, that are
25 fair, that are equitable, and allow ourselves to, if

1 at all possible, undertake these in a joint fashion as
2 opposed to the division of camps that we have here
3 today.

4 So with that, I would just like to say it's
5 an honour to be here. Like last time, I will drive
6 back to the Okanagan with a great deal of anxiety and
7 concern, worrying about the outcome of this process.

8 The last thing I want to say is, one of my
9 nieces, when she was a young girl, many years ago
10 wrote a simple poem about our People, and it goes:

11 "We're tired of being gawked
12 at but never seen.

13 We're tired of being listened
14 to, but never heard."

15 So with that, I thank you for this
16 opportunity. (Aboriginal Language Spoken).

17 THE CHAIRMAN: Thank you, Grand Chief
18 Phillip, Chief Baptiste and Mr. Nixon.

19 We will, as I'll note in my closing remarks,
20 will certainly be considering all of these issues
21 carefully, of course, as we move through to our
22 deliberations.

23 But I wanted to thank you for your concluding
24 remarks.

25 Mr. Nixon, your presentation, of course, is

1 more detailed obviously than you were able to
2 completely read into the record, but I can assure you
3 that we will be looking carefully at it as well as the
4 remarks you made in the transcripts.

5 Appreciate, obviously, your summary of the
6 issues that the TNG consider important, your
7 arguments, your characterization of it from your
8 perspective to our Terms of Reference, and the
9 arguments you've used or the rationale behind them to
10 outline the position of the TNG, and the specific
11 recommendations you've included in there, which, of
12 course, we will consider as we will consider all of
13 the other submissions that are before us.

14 So we have certainly at this point a lot of
15 information that has been drawn to our attention.

16 So with that, I thank you again.

17 And I think this is an appropriate time to
18 take a short break and we'll reconfigure the table to
19 allow the TNG Chiefs to make a brief presentation to
20 us, thank you.

21 **(BRIEF BREAK)**

22 THE CHAIRMAN: Ladies and Gentlemen, I'd
23 like to start again, so I'd ask if you could take your
24 seats to the extent you can. I recognize we're short
25 of a few chairs. We'll see if we can get ready to get

1 started again, please.

2 Thank you, everybody. I recognize, as I said
3 a moment ago, we seem to be short of a few chairs.
4 Apologies for that. More people than we had expected
5 this afternoon.

6 In any case, we are getting ready to proceed
7 again with a short overview from the Tsilhqot'in
8 National Government Chiefs and -- or Tsilhqot'in
9 Chiefs, I should say. And I'll call I think on Chief
10 Baptiste, initially, to perhaps start things off when
11 she's ready. She had the honour, I think, of trying
12 to assemble all of you here, so we'll wait until she's
13 ready.

14 I was just talking about you, Chief Baptiste.
15 Just waiting until you get here to perhaps start this
16 presentation, so please proceed.

17 CHIEF BAPTISTE: Chief Yunesit'in will be
18 first. Ivor.

19 **CLOSING REMARKS BY THE TSILHQOT'IN NATIONAL GOVERNMENT**

20 **CHIEFS: CHIEF IVOR MYERS, YUNESIT'IN; CHIEF FRANCIS**
21 **LACEESE, TOOSEY; CHIEF PERCY GUICHON, TSI DEL DEL**
22 **(REDSTONE); CHIEF MARILYN BAPTISTE, XENI GWET'IN;**
23 **CHIEF BERNIE ELKINS (PRESENTED BY CHIEF MARILYN**
24 **BAPTISTE); CHIEF JOE ALPHONSE, TL'ETINQOX**
25 **(ANAHAM)**

1 **CLOSING REMARKS BY CHIEF IVOR DENEWAY MYERS, YUNESIT'IN**

2 **CHIEF:**

3 CHIEF MYERS: Good evening. It's a
4 wonderful evening. My name is Ivor Deneway Myers,
5 Yunesit'in Chief.

6 I'm happy to be here to express the final
7 closing remarks. I got some copies here for you,
8 Panel hearing members.

9 I just want to let you know that I'm a
10 descendant from one of the Tsilhqot'in War Chiefs
11 Lhats'as'in. What he did in the past was not meant to
12 be, but it was. He wanted to correct a wrong. So he
13 did what he can in order to protect his people.

14 So the closing remarks is:

15 It was shared that Taseko River crossing and
16 Teztan are within the migration corridor for deer and
17 moose.

18 Duane Hink said that Teztan is the last
19 habitat for moose within the Yunesit'in's Caretaking
20 Area.

21 It has been shared by a number of speakers
22 that there are already numerous graves within the mine
23 footprint. We really do not know how many graves
24 exist within our territory. Some of them are no
25 longer visible. The archaeological studies are not

1 complete yet for the proposed transmission corridor,
2 the headwater pond, and Fish Creek.

3 I just wanted to add another paragraph.
4 Teztan is a key cultural area. It is a qiyex; fish
5 camp. Spelt Q-I-Y-E-X. Qiyex are places where
6 Tsilhqot'in live for a time to fish, hunt, trap, and
7 to gather plants.

8 It was mentioned at Stone that logging has
9 destroyed the community's Labrador tea harvesting
10 area. This community will rely on Teztan for this
11 traditional resource.

12 You have heard that Teztan provides us with
13 the most powerful medicines and has the most sacred
14 places for ceremonies and Rights.

15 It is our spiritual nature which needs to
16 survive on rainbow trout, salmon, deer, moose, roots
17 and berries. We need these for food and for
18 ceremonial uses. We cannot live without these basic
19 resources.

20 Prosperity Mines Limited will destroy all
21 this.

22 Who's to say that all people will not be
23 dependent on traditional resources again? The
24 prophecies speak to this.

25 The adverse effects of the proposed mine have

1 already gone across the land. The ancestors feel it.
2 The land, Teztan Biny, and the rainbow trout feel it.
3 The salmon, the deer, the grizzlies, the plants, and
4 the people feel it.

5 To us, water is like a human being. It is
6 alive. It is vital. Just as we cannot abuse our own
7 bodies by polluting them with chemicals and not suffer
8 devastating effects on our health, so we cannot
9 pollute our lakes, rivers and watersheds without
10 destroying the whole environment.

11 If Prosperity Mine goes ahead, it would take
12 only one accidental spillage to pollute all the fish
13 and the other species clear to Vancouver.

14 We have been shown no respect by Prosperity
15 Mine. In the early stages, they came into our country
16 by stealth, sneak, sneak around digging holes without
17 informing us about what they were doing. Taking out
18 claims. And then after the fact, 17 years later, we
19 finally received mine environmental impact submission
20 binders.

21 Even last year we had to drive out an
22 exploration team from Tsintsans, Newton Mountain.

23 I have no faith in their promises. They have
24 shown us nothing except for contempt for our rights
25 and disrespect for our culture.

1 What is also particularly disturbing to me is
2 that the Provincial Environmental Assessment places no
3 significance upon the flooding of burial sites,
4 ceremony sites, ceremonial sites, and spiritual
5 places.

6 If this happens, we are destroyed culturally.
7 Tsilhqot'in will be diminished and denied their right
8 to be who they are as intended by the Creator.

9 We agree to this mine, we are committing
10 cultural suicide.

11 The Tsilhqot'in are in a fragile state. The
12 world is on the brink of destruction. Our land, our
13 traditional resources, our language, our culture have
14 already been devastated.

15 Our language is close to extinction. We need
16 this language to become whole, to fully understand our
17 culture, to communicate with the species, to enjoy the
18 benefits of good health.

19 These things should be seriously considered.
20 Too much will be lost.

21 Tsilhqot'in spiritual laws are being
22 infringed. Such laws were created to ensure that
23 human generations would continue to exist. It is our
24 sacred duty to uphold such laws. It is our ancient
25 duty to ensure the survival of the future's 7th

1 generation.

2 It is the Tsilhqot'in's oldest instinct to
3 protect the land and its species; to cherish the
4 Creator spirit in all things, to protect life.

5 First Nations welcome the first newcomers.
6 And these late arrivals have brought tragedy to our
7 generations of People, to the land, to the water, to
8 the species.

9 First Nations welcome them because it was
10 their belief that people share one's spirit, that we
11 are all related.

12 We know that if we hurt even one of the
13 smallest of the species, that this will have a
14 negative effect on all.

15 All along it has been the intention of
16 outside governments that First Nations did not have a
17 voice. It was their intention that we didn't succeed
18 so as not to compete with the newcomers.

19 The governments did not want us to oppose
20 progress. We have not been given the essential tools,
21 the resources, or the capacity to protect our sacred
22 rights.

23 We were denied the right to have legal
24 assistance. Can you believe that, by law, we were not
25 allowed to hire a lawyer in 1927 or to raise funds to

1 pursue Aboriginal Title in the courts.

2 Adverse changes have been imposed upon us, to
3 our culture, to our rights to exist as we wish, to the
4 right to honour our ancient ways.

5 Tsilhqot'in, young and old, have shared what
6 is in their hearts. You have seen tears and anger.
7 You have heard many speakers who represent the
8 7th generation. Seven generations since contact.
9 This is significant. The Tsilhqot'in Warriors died
10 for our generations and this 7th generation completes
11 that period.

12 We are in this intermission of time and
13 future circumstances wait for our decisions, our
14 actions, our willingness to support the future
15 generation.

16 Our present generations feel threatened by
17 the proposed mine. They are willing to put their own
18 lives in danger to protect what we have left rather
19 than subject future generations to the devastating
20 effect of an open pit mine.

21 The Tsilhqot'in choose to protect their
22 future. And we hope the Panel will do the same.

23 I would like to thank each and every one of
24 you for your patience. And I hope that the members of
25 the Panel hearing will make a fair, honest and

1 truthful decision.

2 Thank you.

3 THE CHAIRMAN: Thank you, Chief Myers.

4 I believe Chief Laceese is next in the order.

5 **CLOSING REMARKS BY CHIEF FRANCIS LACEESE, TOOSEY INDIAN**

6 **BAND:**

7 CHIEF LACEESE: (Aboriginal Language Spoken).

8 With that, I just repeat just my name is Francis
9 Laceese, Chief at the Toosey Indian Band. I'm also an
10 executive, I sit on the Executive with Chilcotin
11 National Congress.

12 I was just saying that water is our life,
13 Tsilhqot'in is who we are, and that we don't want our
14 waters poisoned. And everything that's out there will
15 get poisoned and that's not what we -- that's our
16 life. And that's -- I guess back then it was, you
17 know, when they did genocide amongst us with the, you
18 know, the measles and the smallpox, now it's the
19 threat of poisoning our very existence, you know.

20 We are strong a strong Nation, Tsilhqot'in.
21 I could make reference to the power line. Both to the
22 power line and to the proposed mine in Fish Lake, I
23 oppose as a leader and as a Chief, as an executive
24 from the CNC. I believe the power line will bring in
25 not just the power to the proposed mine at Fish Lake

1 but other mines in that area that are proposed mines
2 in our territories and other major development.

3 Like our People say, we're not against
4 companies that come into our territory, it's the -- we
5 don't want the environmental damage that -- to damage
6 our lands and our waters because that's how we
7 survive.

8 And I also, also like to thank everyone that
9 made submission on our behalf, on behalf of the
10 Tsilhqot'ins, the Shuswap Nation that -- and all the
11 rest of the Nations that are supporting the
12 Tsilhqot'in, and all the people that helped us in
13 every way that they did. And I think there's more
14 support that's not just in B.C., I think it's right
15 across Canada. And I think there's a lot of people
16 out there who are just as concerned, maybe more
17 concerned than we are because I think the governments
18 have to, you know, they have to deal with us. And our
19 land. Because they have been living a lie too long,
20 you know, that's -- I think it's gone on long enough;
21 the B.C. Governments and the Federal Governments, they
22 have to deal with those land Rights and Title because
23 we're not going to go nowhere. This is where we live.
24 And our futures are going to be living there also.

25 So I'd like to stress to the Panel that they,

1 you know, the Ministers, Federal, whoever it is that
2 makes those decisions, that they say no to this
3 proposed Project. And to the other proposed mining
4 activity in our territory, we don't want the -- if
5 it's going to damage our water, we don't want it.

6 I'd just like to thank everyone.

7 Sechanalyagh.

8 THE CHAIRMAN: Thank you, Chief Laceese.

9 Chief Guichon, please.

10 **CLOSING REMARKS BY CHIEF PERCY GUICHON, TSI DEL DEL**

11 **(REDSTONE) :**

12 CHIEF GUICHON: Good afternoon, everyone.

13 My name is Percy Guichon, newly elected Chief of Tsi
14 Del Del, also known as Redstone. I have to ask my
15 peers how long I have to use the word "newly elected."

16 I just want to recap my presentation in my
17 community a couple weeks ago. And, specifically, I
18 gave a real example of the social and economic
19 impacts, negative impacts that we had to endure from
20 the forest industry and how it impacted the lives of
21 the people of Tsi Del Del.

22 I spoke about the people of the Tsi Del Del
23 who worked in the local mill in our area back in the
24 1960s and '70s. And the people worked there until the
25 mill burnt down.

1 Many of the Tsi Del Del community members
2 moved from the northern Reserves to the current
3 Reserve now known as Redstone, IR No. 1. And it was a
4 result of the members chasing long-term jobs, and many
5 gave up their ranching lifestyle for the much easier
6 way to make a living, which was to collect a regular
7 pay cheque every two weeks, and this resulted -- this
8 had a very negative result to the family units of
9 these members.

10 And some of these negative impacts included,
11 of course, the increase in the use of alcohol and also
12 greatly increased alcohol-related deaths, and the
13 neglect of our children, and the decrease in the
14 practice of our cultural tradition, and the loss of
15 pride, and many other negative issues that seemed to
16 follow the abuse of alcohol.

17 The Tsi Del Del people then moved to the main
18 Reserve which only increased the social problems that
19 are still evident today.

20 The Tsilhqot'in People have never really
21 truly benefitted from all the trees that were removed
22 from our territory.

23 I mentioned in my presentation in my
24 community that, when I first came home, that I saw
25 some new outhouses that were built along Highway 20.

1 Is that all we get; some new outhouses that don't
2 flush?

3 As usual, all the benefits from these
4 industries such as forestry and the potential mine
5 that's being proposed in our territory, we never see
6 the benefits. The benefits go to Williams Lake. The
7 benefits go to the Federal and Provincial governments.

8 And that also brings me to the topic of the
9 New Relationship that the Provincial Government is
10 proposing and Grand Chief Stewart spoke about it.

11 The New Relationship Agreement proposes that
12 First Nations get a share of the mining revenues. And
13 I'm not sure how it works, but I believe it's in the
14 form of a tax. And it seems to me that if Taseko was
15 serious about working with First Nations, they would
16 have offered First Nations an equal partnership in
17 some form within this Project. But that has not
18 happened. And I don't see it happening.

19 Taseko does not want to share any revenue but
20 will pass the buck to the B.C. Government which will
21 offer First Nations peanuts.

22 Taseko's gambling. And gambling big. Taseko
23 wants to use the process we are in now in hopes of not
24 having to deal with First Nations directly. And get
25 Williams Lake residents on side by promising jobs and

1 spin-offs.

2 It's a fairly easy call that Williams Lake
3 residents will climb on board in the current state of
4 the economy. Taseko is playing on people's fears and
5 hopes. The people of Williams Lake must realize that
6 we, the people of the Cariboo-Chilcotin, are much more
7 resilient, innovative, and also proud of how we take
8 care of ourselves. Surely we can find other
9 industries in order to create jobs by not having to
10 resort to destroying sacred lakes and creating
11 potential disasters to the environment.

12 We must give ourselves credit and not to
13 depend on companies coming in and destroying the
14 environment forever and promising us unsustainable
15 jobs.

16 Just a quick note, and I want to pass along
17 because I said I would say so, I met a non-First
18 Nation person outside there at coffee break this
19 morning, and he just wanted me to pass along that he
20 went and applied for a job at Gibraltar Mine and was
21 turned down because he didn't have Grade 12 education.
22 And that he was frustrated with that. And he had over
23 15 years of experience in operating a piece of
24 equipment but they wouldn't look at him because he
25 had -- he didn't have his Grade 12.

1 So it just goes to show you, I guess, any
2 company can come in and promise us jobs, but I see
3 that a lot of these jobs will be offered to the people
4 from outside the community.

5 I just want to talk a bit about Aboriginal
6 Title and Rights.

7 I don't know how much clearer it can get.
8 The Xenigwet'in has proven Rights and Title. This
9 gives the Tsilhqot'in People the jurisdiction to make
10 decisions on how the land will be used. Both levels
11 of governments and Taseko seem to have their heads
12 buried in the sand and do not want to accept this.

13 Tsilhqot'in People do have jurisdiction. And
14 we will continue to have jurisdiction. You need our
15 permission in order to build a mine in our territory.

16 And a couple comments about Teztan Biny where
17 the proposed mine development will take place.

18 Does everyone here know that Taseko is
19 proposing to dig the second biggest hole in Canada?
20 Just think about that for a moment. The second
21 biggest hole in Canada.

22 Along with this is the potential of leaching
23 of harmful metals and acid rock drainage into a major
24 river that provides a food fishery for not only the
25 Tsilhqot'in First Nations, but other First Nations

1 downstream. And even sustains fishing lodges on the
2 West Coast of B.C.

3 And to top it off, this lake is a sacred lake
4 that has spiritual and cultural connection for the
5 Tsilhqot'in People which has been developed over
6 thousands of years. Teztan Biny was a place of refuge
7 when Tsilhqot'in People were in a time of war or
8 uncertainty. It was a place to regroup and a place to
9 be safe from a foreign society. And it continues to
10 be a safe place where Tsilhqot'in People can gather
11 and practice their traditional activities.

12 In conclusion, I must echo the people of
13 Tsi Del Del who gave emotional presentations. A lot
14 of them have never spoken in public and had the
15 courage to speak to the Panel in front of large
16 groups. And for that, I commend them.

17 I must also echo the Tsilhqot'in People with
18 their presentations throughout other Tsilhqot'in
19 communities, and all the supporters, including the
20 Shuswap communities and other groups that have stood
21 behind us.

22 And the Panel must make a recommendation that
23 the Prosperity Mine must not go ahead. The mine must
24 not go ahead because the mine will cause environmental
25 negative impacts and the Tsilhqot'in People's

1 spiritual and cultural connection to the area will be
2 lost forever.

3 We are making this decision not only on
4 behalf of today's Tsilhqot'in membership, but also the
5 unborn who have the right to use this area in the
6 future. And we're also making this decision to say no
7 to Prosperity Mine in respect to our ancestors who
8 have died protecting Tsilhqot'in territory.

9 Thank you.

10 THE CHAIRMAN: Thank you, Chief Guichon.

11 And I'll turn next to Chief Baptiste. I
12 think you indicated at the beginning that you had a
13 presentation on behalf of the Xeni Gwet'in but also
14 one for Chief Elkins, so please proceed.

15 **CLOSING REMARKS BY CHIEF MARILYN BAPTISTE, XENI GWET'IN:**

16 CHIEF BAPTISTE: Sechanalyagh.

17 Before I get started here, I'd like to call
18 up my council, Former Chief Roger William, our
19 Councillor, Councillor Chris William and Councillor
20 Lois William. Just either come up and sit behind us
21 here or stand and fill up the room. And also I would
22 like to ask former Councillor David Setah to come
23 forward if he would like to. I know he's here.

24 Thank you, everyone, and, of course, thank
25 you very much to the Panel for your stamina through

1 this all. And to the Secretariat. As well as Taseko
2 Mines Limited. And all of the people who have been
3 here throughout the hearings.

4 I would like to say, first of all, how
5 convenient; we started out with this process on
6 March 22nd here in Williams Lake at the Gibraltar
7 Room, World Water Day. And we end here this week, as
8 I note in the newspaper, is Drinking Water Week here
9 in B.C.

10 So this is just -- it speaks a lot to me.
11 And that is tremendous. I think that shows a
12 responsibility for everyone, not just us as Aboriginal
13 People, to protect and take care of our waters.

14 And in addition to that, we have also the
15 April edition of the *National Geographic*, a special
16 issue on "Water, Our Thirsty World." It is entirely
17 on water. And not just here in B.C.

18 So those are some important notes to take;
19 that the world is waking up and realizing that we
20 don't have as much fresh water left in Canada, never
21 mind just Canada but the world.

22 And I will not be speaking just as a leader
23 for Xeni Gwet'in. I am speaking from the heart. I am
24 speaking from the heart of our youth, of our Elders,
25 of all of our People, of our land and our ancestors,

1 our water, our fish, our plants, and our future
2 generations.

3 For us, Aboriginal Title and Rights is
4 something we're born into. We have never given up our
5 Title and our Rights.

6 Our Title and Rights have been recognized
7 through not only the Tsilhqot'in case, it has been
8 recognized through many cases in B.C., such as the
9 ***Delgamuukw***.

10 And for us as well, not setting aside our
11 Tsilhqot'in case, but our Title and Rights go beyond
12 that court case area. And I want to make that clear,
13 because sometimes I feel that companies, and as many
14 questions had arose from Taseko Mines Limited with
15 respect to the court case area, the decision area, the
16 proven Title area, and the Rights area, we have never
17 given up our Rights and our Title. Therefore, our
18 Title and Rights are throughout the entire Tsilhqot'in
19 territory.

20 And that has been proven time and time again
21 in the Tsilhqot'in War of 1864. Our war leaders stood
22 up for our land, our Title and our Rights, protected
23 our People, our waters and our fish, our future
24 generations. And we are those future generations for
25 them.

1 And we carry on that duty and that
2 responsibility. And we do not take it lightly.

3 We also have the appeal in the Tsilhqot'in
4 **William** case, which is moving forward as you're all
5 well aware, going through the Supreme Court of B.C.
6 And, of course, we all expect that that will carry on
7 to the Supreme Court of Canada.

8 So we have to wonder, our Elders have asked,
9 our People have asked continuously, our People have
10 testified, have given affidavits, interviews time and
11 time again to protect, to stand up our land, stand up
12 who we are and how we're connected to our lands. And
13 yet we sit here in this process once again.

14 This process, not being adequate, not enough
15 time, and this is only a very small piece of
16 information. Only a small number of the Tsilhqot'in
17 have been able to actually give their voice to this
18 process.

19 It's not a fair process.

20 But I am very honoured and I'm very proud of
21 every single one of our members who stood up and who
22 put their voice forward. Their emotions. Their
23 anger. And their frustrations.

24 And, of course, as Sean also mentioned, yet
25 another case filed in the B.C. Supreme Court will be

1 the Aboriginal right to fish.

2 And even though this process, the European
3 process we are before here, as well as the Title case,
4 goes through the process to recognize and assert our
5 Title, our Rights.

6 We as Tsilhqot'in People have always agreed,
7 we still agree, we move forward in every inch of our
8 being, that we have never ceded nor surrendered our
9 Title nor our Rights. We have never given up our
10 Title or our Right to fish, so why do we have to go
11 through court yet again?

12 And, of course, you've heard all of those,
13 those words, in every fashion you could imagine. But
14 if we had another six weeks, I'm sure you would hear
15 several different -- much more testimony to exactly
16 that. And how we never gave up our land. We never
17 sold our land. And we do not intend to.

18 In our Nemiah Aboriginal Wilderness Preserve,
19 in 1989, our People stood together in the fight
20 against the destruction of our lands in clearcut
21 logging.

22 And our People set forth the direction for
23 our leadership. And that's what we have been
24 following for many years, even before that
25 Declaration.

1 And that is to protect our waters, our land,
2 our fish, our future generations.

3 We will do what we have to to protect our
4 land and our future generations.

5 And also our People have, in the courts, in
6 the Title and Rights, and other testimony, and
7 interviews, we have not set out a lot of information
8 on our sacred and spiritual ways and a lot to do with
9 our medicines, because that is a part of our way as
10 Tsilhqot'in People, to protect those things. They are
11 not for us to share with just anyone. They are a part
12 of how we protect our People and our future
13 generations.

14 As I had noted in my presentation in Xeni
15 Gwet'in, there is a medicine that I found on the
16 island at Teztan that I am not willing to share with
17 you, the company, for the sake that, I mean, I know
18 that's your full intent to destroy. And that's just
19 simply a part of our way. And that medicine is not
20 found just anywhere. And, unfortunately, I can't tell
21 you what it's called because I'm not sure. My sister
22 did not tell me what it was called.

23 Our People, the Tsilhqot'in, the First
24 Nations, quite frankly, everywhere in the world have
25 come forward a long way with working with government

1 and industry.

2 An example in the Tsilhqot'in territory is
3 the Tsilhqot'in Framework Agreement which Margaret
4 Lulua had referred to in her presentation in Xenii.
5 And that process is working with the governments. And
6 exploration Amark is one of the first projects. That
7 is a project owned by Hunter Dickinson. That will be,
8 I guess, our test to see if governments are honestly
9 and honourably wanting to work with the Tsilhqot'in.

10 And I haven't heard too much for honest
11 working relationships. I hope to get a positive
12 update on that.

13 And the other thing with regards to this
14 process that we agreed to work forward, again with the
15 governments, now we are being invaded by such projects
16 on the major fish-bearing waterways in our territory,
17 in the Tsilhqot'in territory. Of course, the first
18 being Fish Lake, Little Fish Lake, Fish Creek, Taseko,
19 the Chilko, Chilcotin. And, of course, all of -- we
20 have to also respect all of the people down river on
21 the Fraser, the Secwepemc and the Stl'atl'imc and on
22 down.

23 With the Environment Canada's responsibility
24 in the terrestrial or wildlife habitat, you have heard
25 very good information set forth by Wayne McCrory; that

1 is prime grizzly territory up in that area of Taseko.
2 The grizzly's habitat in the entire Chilcotin is
3 threatened and that is from clearcut logging and all
4 of the roads that have impacted their habitat. Except
5 in the Xeni Gwet'in's Caretaker Area. Because, of
6 course, going back again, our Title case had protected
7 our territory as well as our animals and our waters
8 from destruction and impacts.

9 And with DFO and their responsibility for the
10 fish habitat, the new lake, our People, our youth, our
11 Elders all cannot imagine -- they do not accept that
12 as a possible mitigation. They can't imagine how our
13 wild trout that have sustained themselves for many
14 hundreds of years will be able to survive in a new
15 location.

16 And one concern that I would definitely have
17 to bring to light again here is the talk about the
18 85,000 trout in Fish Lake, there's no mention of
19 saving any of the fish in Little Fish Lake, unless I
20 missed that, but the mention of the 20,000 trout will
21 be maintained and used to maintain that genetic
22 species. 85,000 compared to 20,000. And what was the
23 comment? A rude comment, I must say that I heard
24 somewhere through these processes from Taseko Mines,
25 and a barbecue. I can't imagine what our Elders would

1 feel if they heard that.

2 That is a part of who we are. That is our
3 life. That is what feeds our People.

4 You may -- many people, including the
5 company, may think that the trout being small is not
6 important. Very untrue. It's food. It's life.

7 And I also have to refer back to Norman
8 George Setah in Yunesit'in and his statement regarding
9 some of the smaller impacts. This was in regards to
10 something that's helping trying to save wetlands, with
11 the Ducks Unlimited, ponds and dams. That has been a
12 big concern to him. You might not think it important
13 in this process. It's very important. Our Elders
14 don't look at only the huge impacts; they look at all
15 of the small impacts that create a very substantial
16 loss. That has created loss for him and people that
17 he knows that utilize that fishery.

18 NRCan and the water quality and quantity, I
19 want you to know not just because -- not just
20 recently, but always, our People, as well as
21 Yunesit'in, and many of our People who live in
22 Williams Lake and other areas, draw on those waters
23 from Taseko as drinking waters. That's our running
24 water; from Taseko River.

25 And the Xeni Gwet'in has given several

1 presentations in regards to a lot of the work that we
2 have been doing, planning, and management projects for
3 the Xeni Gwet'in's Caretaker Area, such as the water
4 quality projects that we've done in the past. And, of
5 course, there is the cultural tourism. There's the
6 Ecosystem Based Planning. Unfortunately, the
7 Ecosystem Based Planning submission did not get into
8 your records, and I will refer to that shortly.

9 But there are several other workings that the
10 Xeni Gwet'in have been doing for several, several
11 years, along the same lines as Canoe has put forth as
12 well with regards to tourism.

13 And with Xeni Gwet'in, over many, many years,
14 we have been piece-mealing these projects in
15 development together, because we live under the **Indian**
16 **Act**, and that is something that is not as easy as you
17 think to get off under.

18 And, of course, with our limited resources,
19 it's not always easy to have successful applications
20 piece-mealing all these projects together. But I say
21 we have done an excellent job. And that has been
22 carrying on through leadership throughout several
23 years with Xeni Gwet'in.

24 And you've heard some of those with the
25 Visitor Info Centre that will be doing a grand opening

1 for the summer.

2 We've had the traditional village site down
3 on Chilko Lake which had the grand opening in 2008.

4 And plans for the Destination Lodge is being
5 completed, the design.

6 And, of course, there is a lot of other
7 things that our community is working towards such as
8 value-added project to more respectfully manage the
9 forests in our territory.

10 With Transport Canada, and navigable waters,
11 that one is very interesting to me because I just
12 automatically assumed that Transport would be also
13 responsible for roads. But that is not so.

14 However, Transport Canada, as stated in their
15 presentations this past week, have noted that this is
16 a very unusual project. It's not something that they
17 have dealt with in the past.

18 And, of course, again, part of that is due to
19 the fact that the island at Fish Lake has the pit
20 house. Not just a cache pit. I need to repeat that.
21 A pit house. Not just a cache pit. I've seen with my
22 own eyes. As well the medicines and the Indian tea
23 and the medicine that I noted. As well as other
24 medicines.

25 And I have to mention again, from my

1 presentation in Xeni Gwet'in, the huge ant piles.
2 They are just very intriguing to me. Because you
3 don't see them anywhere else. If you do, I'd like to
4 know where. And to me, that's not just small. Some
5 people also talked about the ants. People think that
6 they are insignificant. But they are not to our
7 People. They tell you a lot.

8 THE CHAIRMAN: Chief Baptiste, just a
9 reminder, in terms of time, that this is supposed to
10 be an overview of all of the various views that we've
11 received. I wonder if you might be able to summarize,
12 please.

13 CHIEF BAPTISTE: Yes. And I have to note that
14 the, not only the Tsilhqot'in, but I've been advised
15 that also the Okanagan Indian Band have also had huge
16 concerns with the archaeological work with the IR
17 Wilson. That has been noted in this past week. So,
18 for the record, again, the archeology consultants, IR
19 Wilson, is not acceptable to the Tsilhqot'in Nation.

20 The Tsilhqot'in territory is our home. And
21 Teztan is a part of it. Teztan is a village of
22 cathedral and fish camp, a sanctuary, a place of
23 safety, and a place to retreat when the final
24 prophecies take place, as Ivor has mentioned.

25 I have also given you a brief overview that I

1 had hoped to go into more detail on for the Ecosystem
2 Based Plan; that planning that did not get into the
3 submissions. But, of course, I take you back to the
4 David Setah, former Councillor's submission in Xeni
5 Gwet'in, and he did cover some of the Ecosystem Based
6 Planning.

7 And two of the books that were referenced in
8 that review, *"Seeing the Forest Among the Trees; a*
9 *Case of Holistic Forest Use, 1991."* And also
10 *"Maintaining Whole Systems on Earth's Crown:*
11 *Ecosystem-Based Conservation Planning for the Boreal*
12 *Forest 2009, Silva Forest Foundation."*

13 And I also had submitted information to you,
14 or a copy to you regarding the road, Taseko Lake Road,
15 as the Ministry of Transport refers to it. That is a
16 very big concern to our health and safety for our
17 People. And George Colgate had raised that concern.
18 As well, Wayne William did a written submission and
19 has raised that concern as well. And our Elders still
20 drive that road. I can't imagine the simple thought
21 of having to compete on that road with these big
22 mining trucks and their health with that.

23 And I have to also very quickly reflect on
24 the Health Canada, the Country Foods Study that Taseko
25 has committed to undertaking. And, of course, I guess

1 a part of that would be the Human Health Risk
2 Assessment factors. I'm not sure.

3 And just a small message from my mom from all
4 mothers is:

5 "Save the water.

6 Be careful how you use the
7 water.

8 That is what is told to us
9 poor folks.

10 But what the large companies
11 and governments are doing is
12 destroying our major waterways."

13 And also I have to submit, and I have to
14 voice on behalf of a youth that presented in Alkali
15 had asked me to simply put to you today on behalf of
16 Dina Johnson:

17 "On April 21st, while the
18 Panel hearings took place in
19 Alkali Lake, our community felt
20 disrespected by Taseko Mine's
21 closing response, which was pretty
22 much telling our Elders, our
23 community, and community members
24 to read what was recorded at
25 previous Panel hearings.

1 Taseko Mines has answered a lot of
2 the same questions, so they should
3 have the answers engraved in their
4 minds. If they agree with the
5 mining. But they chose to be
6 disrespectful saying, 'Read what
7 was recorded.' Because our
8 community members freely expressed
9 how they felt about the
10 transmission line."

11 And to end my little piece, and, of course, I
12 must mention I was not able to cover a lot, as all of
13 us are not able to cover a lot, but I'm ending with a
14 poem from my nephew, 11 years old, who is living in
15 Chilliwack. And he did a poem:

16 "Canada Poem.
17 I saw an angel on a mountain in Nemiah.
18 It reminds me of Fish Lake.
19 Fish Lake needs a guardian.
20 They want to drain it.
21 They want to mine it for gold.
22 They want the gold 'cause gold's money.
23 But we want Fish Lake.
24 Because it's my future.
25 And part of my Nation.

1 And my Canada."

2 (Ryland Connerly Baptiste) (phonetic).

3 And again, I have to state, on behalf of the
4 Xeni Gwet'in and Tsilhqot'in, we do not and will not
5 agree to destroy the headwaters and major fish-bearing
6 waters, waterways which includes Fish Lake, Little
7 Fish Lake, and Fish Creek.

8 THE CHAIRMAN: Okay, thank you, Chief
9 Baptiste. Now, you said you had a written
10 presentation by Chief Elkins. I'm wondering if that
11 can just be tabled as part of the record?

12 CHIEF BAPTISTE: Actually, it is not very
13 long. And I know that we are -- I don't know what the
14 time is exactly, but I would prefer to present it. I
15 asked Bernie to do this. He's not able to be here.

16 THE CHAIRMAN: Okay, go ahead, then, please.

17 **CLOSING REMARKS BY CHIEF BERNIE ELKINS (PRESENTED BY CHIEF**
18 **MARILYN BAPTISTE) :**

19 CHIEF BAPTISTE: Thank you.

20 "On behalf of Chief Bernie, please give this
21 short statement on ?Esdilagh behalf. I, Chief Bernie
22 Elkins, am at the First Nation Interior Health
23 Governance meeting in Kelowna today. The Tsilhqot'in
24 health is at the bottom of any scale or indicators and
25 I need to be heard.

1 Historically, ?Esdilagh has not received much
2 benefit from Gibraltar Mine. The Prosperity Federal
3 Panel must consider whether the mine will seriously
4 impact the surrounding Teztan Biny and power line
5 environments and consequence to our surrounding First
6 Nations.

7 Remember from the Tsilhqot'in court case,
8 Teztan Biny has the potential to be encumbered by
9 Tsilhqot'in Title and proven Rights. The judge said
10 Title could be proven both in and outside of the
11 Nemiah Valley Title area.

12 I have included a map of Mountain Pine Beetle
13 to demonstrate the cumulative impacts to be included
14 for Panel consideration on water, erosion, loss of
15 habitat, both wildlife and fish, and Tsilhqot'in
16 dependence on local environment if Chilko salmon stock
17 declines like the Fraser River stock.

18 I have also included a map of Gibraltar and
19 ?Esdilagh's Reserves.

20 I have met with some success with Taseko to
21 secure funds from Health Canada or any other source to
22 determine metal content in ourselves as ?Esdilagh
23 members and local wildlife plants we consume.

24 I encourage both the Panel and Federal
25 Ministers to consider the potential economic value,

1 tonnage, and grade and to justify further work at
2 Prosperity.

3 Any mining related permit or tenure must
4 include conditions to limit further work if there are
5 negative impacts to the Project area.

6 Written into the Federal Environmental
7 Assessment Certificate is the guarantee of long-term
8 production of use of Teztan for the Tsilhqot'in and
9 Secwepemc along the power line.

10 Conversely, Taseko should guarantee use of
11 modern and leading edge environmental technology, thus
12 limit liability for shareholders as well as
13 governments when Taseko moves on to another project or
14 if a disaster happens.

15 Some leading mining companies who seek a
16 social contract with neighbouring First Nations are:

- 17
- 18 1. The EBA (Economic Benefit
19 Agreement) provides Blueberry
20 River First Nations with a share
21 of economic benefits from oil and
22 gas development within their
23 traditional territory and a solid
24 foundation for increased
25 participation in the regional

1 economy.

2

3 2. The Mining and Minerals

4 Protocol Agreement with the Upper

5 Similkameen Indian Band

6 established an effective means for

7 communication and

8 information-sharing between the

9 Province and the Band. The

10 agreement also ensures that mining

11 development will be done in an

12 environmentally and culturally

13 sustainable manner.

14

15 3. Located near Port McNeill,

16 B.C., on Vancouver Island's

17 northern coast, the Orca Quarry is

18 jointly owned by Polaris Minerals

19 Corporation (88 percent) and the

20 'Namgis First Nation (12 percent).

21 Orca started commercial production

22 in early 2007 and is expected to

23 become Canada's largest sand and

24 gravel quarry by the time it

25 reaches full production.

1
2 Note: 'A Toyota prius contains 30 more
3 pounds of copper than a regular car,' McPhie said.
4 There are 9,000 pounds of copper in an electric bus.
5 Prosperity is a low-grade deposit, right? The
6 Tsilhqot'in feel the current Prosperity decision is in
7 a boom period. Taseko has benefitted from the B.C.
8 Mining Flow-Through Share Tax Credit and likely other
9 initiatives.

10 The Cariboo Regional District receives a
11 benefit from putting waste at Gibraltar.

12 My community cannot even afford more than
13 \$1,000 per month to pay me as Chief, yet there is no
14 revenue-sharing agreement between us and the Taseko at
15 Gibraltar Mine.

16 I am trying to be reasonable when meeting
17 with Taseko representatives, but this is my reality.

18 As ?Esdilagh Chief, I believe Taseko and the
19 subsidiaries should share revenues out of their
20 pockets with local First Nations. B.C. has given
21 Taseko their Environmental Certificate before current
22 Aboriginal victories in courts in protecting Rights
23 and Title. I believe the public wants Taseko to set a
24 higher standard here in the Cariboo-Chilcotin with
25 Tsilhqot'in, Shuswap, and the Southern Carrier First

1 Nations.

2 The BC Mineral Tax revenue is not enough for
3 local First Nations. Impact Benefit Agreement,
4 Consultation Agreement, Participation Agreement,
5 Shared Decision Agreement, and Revenue Sharing based
6 on tonnage of ore leaving our area should be
7 considered. Gibraltar has been here for 20 years and
8 will be for another 20. I have heard Taseko officials
9 state using state-of-the-art technology, but in terms
10 of revenue sharing, or ?Esdilagh have a Gibraltar
11 service contract, it's the ice ages.

12 I noted under the Prosperity's EIS Statement,
13 they wish to offer jobs and some service agreements --
14 Taseko shareholders have no social contracts with
15 Tsilhqot'in.

16 Taseko officials state destroying Teztan is
17 the only option, at the price they are willing to pay.
18 If the grade was better, or their stocks went up, then
19 would they consider the alternatives?

20 Has there been enough time allotted on this
21 Project for innovation for any alternatives?

22 Thank you. Chief ?Esdilagh, Bernie Elkins,
23 Acting Tsilhqot'in Tribal Chair."

24 THE CHAIRMAN: Thank you, Chief Baptiste,
25 for presenting Chief Elkins' views.

1 And I guess the last speaker, the last Chief
2 is Chief Alphonse, please.

3 **CLOSING REMARKS BY CHIEF JOE ALPHONSE:**

4 CHIEF ALPHONSE: (Aboriginal Language Spoken).

5 Good afternoon. I would like to acknowledge
6 first and foremost the fact that we're here today on
7 Shuswap land.

8 We thank that they allow us to come here and
9 speak and help with this process to move forward.

10 I'm Chief Joe Alphonse, Tl'etinqox, the
11 Tl'etinqox Government office, and Anaham Indian
12 Reserve. Tlinqox, the meadow people by the river,
13 from our community. I'm from the Chief Anaham line,
14 fifth generation leadership in my community. Chief
15 Anaham being the Grand Chief of the Tsilhqot'in
16 Nation, 1800s, during the time of the Tsilhqot'in War.

17 I think there's been a lot said here today
18 and there's no real need to rehash a lot of what's
19 already been said. However, I just want to recapture
20 some issues I think only, only because I feel that,
21 regardless of this issue of Taseko Mine, Prosperity
22 Project, as First Nations People, we're not going
23 anywhere, we're going to remain here.

24 And it's important as first, as People in
25 this area that we look at issues and we look at issues

1 together. The underlying issue here, I think this has
2 gone from an issue looking at a business issue and
3 looking at environment to a rights issue. And that's
4 not something that I feel entirely comfortable with.

5 As a First Nation Person, maybe my process is
6 not the best process in the world, but I guarantee
7 you, you as within your European process, you don't
8 have all the answers.

9 When we look at issues, all issues, if we can
10 get as many different sides to look at that issue and
11 work together, we're going to come out with a better
12 resolution. When you don't -- when you -- there was a
13 time as First Nation People we didn't have a say. And
14 that isn't the case today. We know this is our land.
15 And we will -- and we will do what we have to to look
16 after the best interests of our People.

17 If I don't bring this voice forward, my
18 community will simply elect somebody else to come
19 forward and bring that message. And I want -- so I
20 want to make that clear.

21 But as the leader within my community, I want
22 to state this; that through this process, we have been
23 led that, as leaders, we're speaking at individuals.
24 I want to remind the Panel here that I think what
25 we've gone through, the exercise we've been through, I

1 think it's been very clear that that is not the case.
2 That as First Nation people, as Tsilhqot'in People, as
3 Shuswap People, that we've all stated the same thing
4 over and over again. And I want to make that point
5 that, when we spoke, as leaders were -- didn't speak
6 as individuals, we spoke as Nations, as united
7 Nations, First Nation People.

8 I think I want to make that very clear. I'm
9 disheartened that we are where we're at today. I
10 remind Taseko right from -- right from day one, we've
11 made it very clear; we're willing to sit down, we're
12 willing to talk, but if your plan is going to call for
13 the destruction of Fish Lake, we cannot support your
14 proposal. And that hasn't changed today.

15 People may think and believe that this is the
16 only proposal we have in the Tsilhqot'in.

17 Amark. Amark has two proposals. One on the
18 Newton property. It's come late. The other on Puntzi
19 Creek (phonetic).

20 We have another mining company, Altoll
21 (phonetic), that has just recently bought property in
22 the Chilcotin as well.

23 This Project, Taseko group, is not the only
24 mining company coming into our territory. And I think
25 the impression is that that is the case.

1 The impression is that Taseko is going to
2 save the economy. We have some very real concerns in
3 Williams Lake. The forest sector has taken a big hit.
4 We feel it. As First Nation People, Sigurdson
5 Brothers shut down in Hanceville, 65 of our members
6 walked away, no jobs, 60 families.

7 We feel we're going to have a future and the
8 economy is going to turn around regardless of whatever
9 happens with Taseko. I want to make sure. Some of
10 our families are three, four generation loggers. And
11 that is the area where we're, where the economy's
12 going to turn.

13 I think the Tsilhqot'in, we have a lot to
14 offer, the Tsilhqot'in country. Fish Lake, top 10
15 fishing lake in B.C. I want to remind you guys of
16 that. The Chilko Lake run, the largest most
17 consistent sockeye run left in B.C. We have the
18 farthest steelhead run, the Chilko Lake steelhead, in
19 North America.

20 We have a very large healthy population of
21 woodland caribou.

22 We have very healthy bear and wolf
23 populations. I believe the Tsilhqot'in is the best
24 kept secret in B.C.

25 If you want to manage wildlife, you manage

1 people. You manage people and you will meet your
2 management goals.

3 We've never been supporters of fish
4 hatcheries. We have played a vital part in the
5 management of a lot of the fish stocks in the
6 Tsilhqot'in. We promote the management of wild stock.

7 I think you know as a young child on Lava
8 Canyon fishing hole called quiggly holes, it's on the
9 White Mile, very narrow part of the Chilko River.
10 Chilko, you can see right through that river. You can
11 see the rocks on the bottom. During salmon, the
12 salmon run, the water is so, flows so fast, shoots
13 right through there. So the salmon shoot from back
14 eddie to the next back eddie, just jumping, jumping.

15 And as a 12-year-old boy, me and my cousin
16 Paul Grinder, a fishery worker, we would go upstream
17 and we would stick our finger in the water and we
18 would count, one, two, three. And you'll see that
19 pool of salmon there just dart off. So we would go a
20 little farther upstream and we would stick a finger in
21 the water again, and this time we would count one,
22 two, three, four, five. And then the salmon would --
23 we've been taught that from a very young age that the
24 salmon, our fish stocks, are very sensitive.

25 In most cases, because you can't see that

1 resource, you don't think it's there. It's there.
2 And if one finger can have such a negative impact,
3 bringing in a mine is going to destroy that run, is
4 going to be a real threat to them.

5 I don't want to take up too much more time.
6 I still have a ways to travel. And we're in game 2 of
7 the Stanley Cup race here. So I thank you for
8 listening to me. (Aboriginal Language Spoken)

9 THE CHAIRMAN: Thank you, Chief Alphonse. I
10 expect there are a few others that are interested in
11 that game this evening as well, so.

12 Chief Myers, Chief Laceese, Chief Guichon,
13 and Chief Baptiste, and Chief Alphonse, I thank you
14 again for your overview presentation. We appreciated
15 the reception we had in your communities when we
16 visited them and the hospitality and the opportunity
17 to hear from many people in the community about their
18 views towards the Project, and that has been very
19 helpful to us, so we thank you for that. And, again,
20 thank you for your presentation here today.

21 We turn next and to the final opportunity for
22 closing remarks today, and that is to Taseko Mines
23 who, according to our procedures, have the final
24 opportunity to respond to a lot of information that
25 has been gathered over the course of these six weeks

1 of hearings. So I turn to Taseko for their closing
2 remarks, please.

3 **CLOSING REMARKS BY TASEKO MINES LIMITED, BY**

4 **MR. BELL-IRVING:**

5 MR. BELL-IRVING: Thank you, Mr. Chairman. I
6 acknowledge the Shuswap land.

7 Mr. Chairman, Members of the Panel, Grand
8 Chief, Chiefs and Elders, citizens of Williams Lake,
9 and the Cariboo-Chilcotin, it is my honour, on behalf
10 of Taseko Mines Limited, to be speaking to you today.

11 We begin these closing comments by thanking
12 the Panel for how these hearings have been conducted.
13 A lot of work lays ahead for you in the writing of
14 your report and in the preparation of your
15 recommendations. And we fully appreciate your
16 determination to complete that report in the next
17 60 days.

18 Today is the end of more than six weeks of
19 public hearings. During that time, the Panel has
20 heard a lot. You've openly received anyone wishing to
21 step forward and express their views and thoughts.
22 You have allowed the public and, in particular, all
23 interested First Nation members in multiple First
24 Nation communities every opportunity to participate.

25 The public has been given the opportunity to

1 follow every detail of the proceedings online. They
2 have had the opportunity to both listen and to read
3 every word that has been spoken on the public record
4 over this long period of time.

5 This effort to make these proceedings fully
6 and publicly transparent is an extraordinary
7 undertaking. And you and your able Secretariat are to
8 be congratulated for it.

9 Throughout all aspects of both the Provincial
10 EA and the Federal Panel Review process leading up to
11 these hearings, it has been our commitment and
12 intention to answer every question that was presented
13 to us. We think that you will agree that we have done
14 so.

15 Throughout the now completing public hearing
16 phase of your review, we carry forward this same
17 commitment and answered every question brought forward
18 by all participants in a fully transparent and public
19 way. The effort made by you to make this possible was
20 an extraordinary undertaking and you are to be
21 congratulated.

22 My task today is to offer you our final
23 closing comments.

24 The purpose of these remarks is to both
25 briefly summarize Taseko's position on the

1 environmental effects of the proposed Project and to
2 summarize Taseko's position on the evidence and
3 information brought before the Panel respecting those
4 environmental effects.

5 We also intend to set out Taseko's
6 understanding of what we believe to be next steps and
7 make some comments on legal issues that were raised
8 during the hearing process.

9 By way of Introduction:

10 Before summarizing the details of our
11 specific conclusions concerning the environmental
12 effects of our proposed Project, a little background
13 is offered for your consideration.

14 Our conclusions in this EIS are based not
15 just on the opinion or conclusions of our independent
16 consultants reflected in the April 2009 EIS, they are
17 also based on:

18 - The fact that throughout this
19 17-year review, three Terms of
20 Reference, 1995, 1998, and 2008
21 were developed and they
22 progressively reflected updated
23 policies, standards, and changing
24 priorities.

25 - The fact that review and

1 input from the public, government,
2 and First Nations (if they chose
3 to participate) was incorporated
4 along the way.

5 - The fact that review and
6 approval of baseline reports were
7 undertaken by government in 2008
8 before the final guidelines for
9 the EIS were finalized and issued.
10 The significance of all this
11 background is that the Panel
12 didn't face the difficult job of
13 assessing the adequacy of baseline
14 information and, instead, focused
15 on the adequacy of our assessment
16 and the significance of
17 environmental effects.

18
19 Summary of Taseko's Position:

20 With respect to the Alternatives Assessment,
21 after completing three separate Alternatives
22 Assessments directed and reviewed by government, the
23 public, and First Nations, and reflective of a sincere
24 effort by Taseko to avoid the loss of Fish Lake,
25 Taseko concluded each time that there was only one

1 technically, environmentally, and economically
2 feasible option. This option results in the
3 unavoidable loss of Fish Lake. We wish it were
4 otherwise.

5 The Provincial EAO noted in their assessment
6 that the analysis supplied by Taseko during the EA
7 exceeds that which is typically required or presented
8 in the EA of a mine project; that they accept the
9 other two options considered would have substantially
10 had greater costs and they noted that the Ministry of
11 Energy, Mines and Petroleum Resources found that the
12 proposed Mine Development Plan and Alternatives
13 Assessment were sound.

14 Taseko accepts this assessment.

15 Neither NRCan nor Transport Canada commented
16 on the Alternatives Assessment.

17 Environment Canada noted that all three
18 alternative Mine Development Plans were technically
19 feasible but stopped short of reaching conclusions
20 concerning the economic viability of any option.

21 DFO noted that the Alternatives Assessment
22 lacked detail when considering the effects on fish and
23 fish habitat, amongst all three options.

24 Taseko understands and accepts these comments
25 and acknowledges that Taseko and Taseko alone must

1 determine what is economically feasible and
2 achievable.

3 The environmental effects of our assessment
4 are long and many. I don't propose to take you
5 through them all; they are a matter of record. I will
6 summarize the key points.

7 Sixteen Valued Ecosystem Components, or VECs,
8 and 62 Key Indicators were identified to be assessed
9 in this assessment -- in the guidelines.

10 The table I have attached to this submission,
11 Table 1, provides you with a summary and a listing of
12 those 16 VECs and 62 Key Indicators that were
13 assessed. It summarized the key conclusions of
14 Taseko, the Provincial EAO, and the Federal RAs and
15 FAs on all of these. Here we will summarize only a
16 few highlights as follows.

17 - For all VECs and KIs, with
18 the exception of the effects on
19 cultural heritage, Taseko
20 concluded there were no
21 significant residual environmental
22 effects following the
23 implementation of planned
24 mitigation.

25 - Concerning the assessment of

1 effects on the atmospheric
2 environment, both the EAO,
3 Environment Canada, and Health
4 Canada were in agreement with
5 Taseko's conclusions. Taseko
6 agrees with their findings.

7 - Concerning surface water
8 hydrology and groundwater quality
9 and quantity, the Provincial
10 assessment and the EAO was in
11 agreement with Taseko's
12 conclusions. NRCan assessed
13 various issues and made comments
14 and recommendations. As stated in
15 the topic-specific hearings,
16 Taseko takes issue with much of
17 the assessment undertaken but will
18 consider their recommendation.

19 - Concerning water quality and
20 aquatic ecology, again, the
21 Environmental Assessment office,
22 Environment Canada, and NRCan
23 accept Taseko's conclusions.
24 Health Canada is satisfied that
25 there are no human health effects.

1 Taseko agrees with these findings.
2 - Concerning fish and fish
3 habitat, after applying mitigation
4 in the form of a Compensation
5 Plan, Taseko concluded that there
6 were no significant environmental
7 effect. The Environmental
8 Assessment office concluded that
9 the loss of Fish and Little Fish
10 Lakes was a significant
11 environmental effect then
12 considered the Compensation Plan
13 as part of their justification
14 considerations. DFO has
15 identified various risks and
16 policy-related gaps in the present
17 form of a Compensation Plan.
18 Taseko continues to work with DFO
19 to resolve these gaps and risks.
20 - Concerning terrain and soils,
21 vegetation, and just to point out
22 with respect to vegetation, we're
23 talking here the effects on
24 old-growth, the effects on wetland
25 ecosystem, the effects on riparian

1 ecosystems, the effects on
2 grassland ecosystems, on rare
3 plants, on ecological communities
4 of concern, and on forest
5 capability, and on 21 wildlife
6 species from California Bighorn
7 sheep, mule deer, and moose,
8 grizzly bear, black bear, badger,
9 bats, blue heron, mallards,
10 Goldeneye, sand hill crane,
11 woodpeckers, Sage Brush sparrows,
12 grouse, prairie falcons,
13 flamulated owls, and amphibians,
14 to name a few, the EAO concluded
15 that there were no significant
16 effect. Taseko agrees with these
17 findings. With the exception of
18 consideration of wetlands and
19 riparian habitats, Federal RAs and
20 FAs made no assessments. Taseko
21 understands Canadian Wildlife
22 Service' view concerning the
23 unavoidable loss of migratory bird
24 habitat and is committed to
25 implementation of a Habitat

1 Compensation Plan as outlined in
2 our EA Certificate.

3 - Concerning human and
4 ecological health, the EAO and
5 Health Canada concluded no
6 significant effect. Taseko agrees
7 with these concerns.

8 - Concerning archaeological and
9 heritage resources following
10 completion of Taseko's AIA, the
11 Branch developed recommended
12 mitigation measures. And the EA
13 concluded with the implementation
14 of those measures, no significant
15 effect. Taseko agrees with this
16 conclusion. No assessment on
17 these resources were undertaken by
18 the Federal RAs or FAs.

19 - The Provincial assessment
20 concluded that the effects of the
21 Project will have a significant
22 positive economic benefit that
23 would flow for 22 years and would
24 accrue to both the present and the
25 next generation. They also

1 concluded that there is no
2 expected cost to future
3 generations, except the loss of
4 Fish and Little Fish Lake.
5 Although Taseko wasn't asked and
6 didn't undertake an economic
7 analysis, Taseko agrees with these
8 conclusions. Federal RAs and FAs
9 undertook no assessment of these
10 effects.

11 Largely, in response to the requirements of
12 the Federal legislation, Taseko assessed cumulative
13 effects, the effects of the environment on the
14 Project, and accidents and malfunctions and
15 sustainability.

16 Cumulative effects were found not to occur
17 for most VECs due to the geographic isolation of the
18 Project. Where they do occur, they were found to be
19 either not significant or they were positive.

20 A request from the Panel to undertake a
21 Cumulative Effects Assessment of a theoretical 13-year
22 extension to the mine life was responded to. The
23 Provincial Certificate was issued for a 20-year Mine
24 Plan, as proposed. And that would require amendment
25 should Taseko decide at some time in the future to

1 extend mining operations.

2 Concerning the assessment of the effects of
3 the environment on the Project, both the Provincial EA
4 and the Federal RAs and FAs considered these effects
5 but did not comment.

6 A range of environmental effects that might
7 occur in the unlikely event of an accident or
8 malfunction was also considered. No comments were
9 offered by either Provincial or Federal agencies. So
10 Taseko assumes they took no issue with our conclusion
11 that effects would be minor and manageable with the
12 application of Emergency Response Plans and mitigation
13 as specified.

14 Now turning to summarizing Taseko's position
15 on the information brought before the Panel, in two
16 parts.

17 First of all, concerning those matters, in
18 our view, properly brought before this Panel, dealing
19 with the assessment of environmental effects as
20 defined in the ***Canadian Environmental Assessment Act***.

21 We heard that things have been difficult in
22 this part of the country. Kerry Cook, the Mayor of
23 Williams Lake, spoke powerfully twice to this very
24 point, saying, amongst other things, consumer
25 bankruptcies in the Cariboo Regional District have

1 increased. This is an increase of over 70 percent
2 over the previous year. Unemployment rate in the
3 Cariboo has increased 84 percent in 2009. Williams
4 Lake residential rental vacancy rates have increased
5 700 percent in the last year. And she concluded twice
6 that the City of Williams Lake is supporting this mine
7 Project because:

8 "We desperately need a boost to our
9 local economy. We need to provide
10 jobs and opportunities to turn the
11 situation around. In January,
12 with the Provincial green light
13 given, there was a new hope, an
14 optimism in our community that I
15 haven't felt for a long time. We
16 need that hope. We all need that
17 hope."

18 End of quote.

19 The South Cariboo consists of a number of
20 small unincorporated areas surrounding the district of
21 100 Mile House and has a population of greater than
22 20,000.

23 Councillor Dave Mingo, speaking on behalf of
24 the District of 100 Mile, and in support of Prosperity
25 echoed similar sentiments as those of Mayor Cook, and

1 I quote:

2 "Our forest industry has been
3 significantly impacted by global
4 economic factors and by the pine
5 beetle. Our ranching and
6 aquaculture industry is
7 struggling. Our commercial
8 businesses, because of other
9 aspects, are also struggling. Our
10 commercial property vacancies are
11 increasing. Workers and families
12 and especially the young are
13 leaving our community. They are
14 searching for employment
15 elsewhere. We see the mining
16 industry as a major supporter of
17 our economy in this area."

18 Turning to another elected official, in
19 Alexis Creek, the Panel heard from Rick Mumford, local
20 area director for the Cariboo Regional District. He
21 said, and I quote:

22 "In a nutshell, the local economy
23 in Chilcotin is a shadow of its
24 former self. There's not one
25 community in the Chilcotin, and

1 this includes First Nations, that
2 don't need an economic boost. The
3 Prosperity Project has the
4 potential to give our communities
5 that economic boost we need."

6 End of quote.

7 We also heard from experts brought before us
8 to offer expert opinion. I'm referring to Stratus,
9 the MiningWatch, Dr. Morin, Dr. Shaffer.

10 And we conclude that their presentation
11 either misrepresented the information contained within
12 our EIS, or it lacked the benefit of a full
13 understanding of all of the analysis and assessment
14 that was undertaken by Provincial experts in these
15 matters, or, alternatively, was raising matters that
16 were clearly outside of the approved Terms of
17 Reference. And, therefore, we submit their evidence
18 should be given little weight in the Panel's
19 deliberation.

20 In the area of First Nations culture and
21 heritage values, we heard a lot of very valuable new
22 information during the 17 days of community hearings.
23 Unfortunately, even with this additional information,
24 we submit that there's no basis by which the Panel can
25 reach a different determination of significance of

1 effects than that reached previously by both Taseko
2 and the Province.

3 This determination was reached using
4 quantifiable information characterizing the effect in
5 terms of spatial extent of disturbance to the land and
6 resource base and this remains to date the only
7 available sound and defensible approach.

8 One issue raised by many presenters during
9 the community hearings related to the spiritual
10 significance of the area around Fish Lake, including
11 the island within the lake. The relevance of this to
12 an Environmental Assessment, in our respectful
13 submission, would be to attempt to measure the
14 significance of the loss of spiritual or sacred values
15 that may result from the biophysical changes to the
16 area resulting from the proposed mining activity.

17 Taseko has attempted to understand the nature
18 of the spiritual or sacred values of the Tsilhqot'in
19 by examining the comments made by the presenters. One
20 of Taseko's conclusions was that the nature of the
21 Tsilhqot'in belief system is that all things, or
22 virtually all things, are sacred throughout their
23 traditional territory. And presumably beyond. Some
24 examples are as follows:

25 Doug Johnny, and I quote:

1 "And in a Native traditional
2 culture, we look at everything as
3 being sacred."

4 "And everything in the land
5 has a spirit. Everything is
6 sacred."

7 Chief Francis Laceese, and I quote:

8 "Our land is full of spirit,
9 as you know, as we all are.
10 Everything else out there is
11 connected to us in different ways.
12 If you're out there, that's where
13 we feel as one with the land. And
14 that's where our legends come
15 from, is from the land and from
16 the waters. We have a lot of
17 legends and a lot of stories that
18 are passed down to us."

19 End of quote.

20 Ms. Naomi Setah reports:

21 "The destruction of Teztan Biny is
22 bad because it will kill us
23 inside. We won't have all our
24 land anymore because of this
25 proposed mine development. I love

1 to camp. One of my favourite
2 places to camp is Teztan Biny
3 because of the scenery. It looks
4 like heaven. Teztan Biny is
5 sacred and special to me because
6 it's a part of me. The whole
7 Tsilhqot'in land is a part of me."

8 Mr. Sami-Joe Perry, I quote:

9 "We see our lands as sacred and
10 valuable as it is."

11 Mr. David Williams from the Friends of Nemaiah
12 Valley, and I quote:

13 "I've come to see that every plant,
14 every stone, and tree is known.
15 And has value. And is imbued with
16 the significance for life and
17 survival that I can only describe
18 as spiritual."

19 Following Patt Larcombe's presentation during
20 the technical hearings, Taseko brought the Nemiah
21 Declaration of 1989 to her attention. Ms. Larcombe
22 expressed that it was her understanding that the
23 Declaration referred to the whole of the Eastern and
24 Western Trapline areas as well as the Brittany Lake
25 Triangle.

1 Taseko noted that the Declaration states, and
2 I quote:

3 "This area," that's the area, the
4 Eastern and Western Trapline, as
5 well as the Brittany Lake
6 Triangle, "This area is the
7 spiritual and economic homeland of
8 our People and describes that the
9 area is set aside 'to practice our
10 traditional Native medicine,
11 religion, sacred and spiritual
12 ways.'"

13 When Patt was asked by Taseko to:

14 "Give us or the Panel any
15 context that puts the
16 significance, the value, of
17 central Nabas (that is, the area
18 of the mine) in the context of
19 this broader area, previously
20 mentioned, which you declare is
21 the spiritual economic homeland?"

22 Mrs. Larcombe's answer was as follows, and I
23 quote:

24 "And so the work that's been,
25 doesn't allow you to say, one, you

1 know, relatively what is one area
2 more important than the other.
3 And I would argue that the
4 Tsilhqot'in People don't say one
5 place is, it's not within their
6 cultural belief system to call one
7 place more important than another.
8 You can't compare is one place
9 more spiritual than another. Like
10 that's impossible."

11 In conclusion, and without intending to be
12 disrespectful in any way to the Tsilhqot'in People,
13 it's Taseko's conclusion that the Fish Lake area has
14 fond memories and spiritual significance to many
15 Tsilhqot'in People, but taking into account the
16 assessment of Mr. Justice Vickers in the *William* case,
17 it may not have any more or less spiritual
18 significance than other land throughout the area
19 described in the Nemiah Declaration of 1989.

20 On the subject of current use, the position
21 of Taseko is that the temporal meaning of "current
22 use" is its ordinary definition, meaning how is it
23 being used now -- its current modern day use?

24 According to the text "Canadian Environmental
25 Assessment Act, an Annotated Guide", and I quote:

1 "This definition is also designed
2 to capture any changes to the
3 environment caused by the Project
4 that result in changes to the
5 modern day use that Aboriginal
6 People make of the flora, land,
7 fauna, and other natural resources
8 for traditional purposes such as
9 fishing, hunting, trapping,
10 gathering and ceremony."

11 This part of the definition from CEAA's own
12 guide has been crafted to focus on any changes in the
13 current use of the land and natural resources
14 resulting from the environmental effects of the
15 project and not on whether the land and natural
16 resources were, in fact, historically used for
17 traditional purposes by Aboriginal People.

18 What Taseko heard of its modern day use was
19 that it is used primarily for camping and for fishing
20 trips with the family. It was recently used for an
21 organized event where traditional values were taught.
22 This took place at Onion Lake in 2009 but appears to
23 have been taken place at Fish Lake in about 2007.

24 And the area is also used for organized
25 outings to allow children to experience nature.

1 It's also used by some people as a place to
2 gather plants and to seek to gain spiritual powers.

3 It's also used for hunting.

4 It appears that it's not currently used for
5 trapping, probably since that activity is uneconomic
6 in recent times.

7 It also appears that there appear to be many
8 other areas nearby, including Onion Lake, which have
9 similar values for the Tsilhqot'in People.

10 Moving to other matters that were introduced
11 to the Panel. Focusing for a minute on some legal
12 questions that were raised in the hearings.

13 There were a number of comments throughout
14 the hearing concerning legal positions that were being
15 taken by a number of the presenters opposed to the
16 Project. And Taseko will briefly comment on some of
17 these.

18 The first question, what were the findings of
19 the **William** case concerning the area around Fish Lake?

20 This case was frequently referred to in the
21 hearings. And there appeared to be a great deal of
22 confusion amongst some of the presenters about what
23 the findings in the case were.

24 From Taseko's perspective, the most relevant
25 findings of the Court were as follows:

1 1. The Court would have been
2 prepared to find Aboriginal Title
3 to approximately half of the land
4 that was subject to the claim if
5 there was not a defect in the
6 pleadings. Most of the land where
7 Aboriginal Title would have been
8 found was in the area known as the
9 "Brittany Triangle".

10 2. The Court determined that no
11 portion of the Eastern Trapline,
12 which is where Fish Lake is
13 located, was subject to Aboriginal
14 Title because the Tsilhqot'in
15 People did not have a significant
16 connection with the land. The
17 words after that lengthy trial
18 used were as follows, and I'm
19 quoting from paragraph 893:

21 "I'm satisfied Tsilhqot'in
22 People were present in the
23 Eastern Trapline Territory at
24 the time of first contact.
25 The area has been used by

1 Tsilhqot'in People since that
2 time for hunting, trapping,
3 fishing, and gathering of
4 roots and berries. I am not
5 able to find that any portion
6 of the Eastern Trapline
7 Territory was occupied at the
8 time of Sovereignty assertion
9 to the extent necessary to
10 ground a finding of
11 Tsilhqot'in Aboriginal
12 Title."

13
14 3. In finding that the Fish Lake
15 area was not subject to Aboriginal
16 Title, the Court had to make an
17 assessment of the relative
18 cultural significance of the land
19 to the Tsilhqot'in People. The
20 Court noted:

21
22 "Aboriginal Title arises out
23 of the claimant's connection
24 to their ancestral lands.
25 The particular lands must

1 have been occupied by the
2 claimants prior to
3 sovereignty, although the
4 Court notes that the group's
5 connection with the land must
6 have been integral to the
7 distinctive culture of the
8 claimants, Lamer C.J.C., also
9 directed that any land that
10 was occupied pre-sovereignty,
11 and which the parties had
12 maintained a substantial
13 connection with since then is
14 sufficiently important to be
15 of central significance to
16 the culture of the
17 claimants."

18
19 He also explained at paragraph 149 that:

20
21 "The standard of occupation
22 required to prove Aboriginal
23 Title may be established in a
24 variety of ways ranging from
25 the construction of dwellings

1 through cultivation and
2 enclosure of fields to
3 regular use of definite
4 tracts of land for hunting
5 fishing or otherwise
6 exploiting its resources.
7 In considering whether
8 occupation sufficient to
9 ground title is established,
10 one must take into account
11 the group's size, manner of
12 life, material resources, and
13 technological abilities and
14 the character of lands
15 claimed."

16
17 "The cultural relationships
18 between the claimant
19 Aboriginal group and the land
20 and the ceremony and cultural
21 significance of the lands
22 will also be relevant to this
23 inquiry."

24
25 By finding that the Fish Lake area was not

1 subject to Aboriginal Title, the Court was implicitly
2 concluding that the area was of lesser ceremonial and
3 cultural significance to the Tsilhqot'in People than
4 the Brittany Triangle area where the Court would have
5 been prepared to find Aboriginal Title.

6 The second question: Should the Project be
7 put on hold pending the determination of Aboriginal
8 Rights and Title and the settlement of treaties?

9 There is no legal basis for such a
10 proposition.

11 The recent decision of the Supreme Court of
12 Canada in **Haida Nation** was intended to address exactly
13 this issue. The answer is the duty of consultation.
14 A key extract of the **Haida Nation** decision is as
15 follows:

16 "The answer, once again, lies in
17 the honour of the Crown. The
18 Crown acting honourably cannot
19 cavalierly run roughshod over
20 Aboriginal interests where claims
21 affecting those interests are
22 being seriously pursued in the
23 process of treaty negotiation and
24 proof. It must respect these
25 potential but yet unproven

1 interests. The Crown is not
2 rendered impotent. It may
3 continue to manage the resource in
4 question pending claims
5 resolution. But, depending on the
6 circumstances discussed more fully
7 below, the honour of the Crown may
8 require it to consult with and
9 reasonably accommodate Aboriginal
10 interests pending resolution of
11 the claim."

12 One very part of the above passage is that
13 the Crown will continue to manage the resource in
14 question pending claims resolution. This is at the
15 heart of what was a repeated theme of who should
16 control the land use decisions; the Crown or the First
17 Nations. The Supreme Court of Canada has
18 unequivocally answered this question. The Crown
19 manages the resources prior to the conclusion of a
20 treaty or a determination of legal claims which might
21 alter that management.

22 Related to the issue of who has control over
23 the land use decision is what should happen if
24 consultation with First Nations does not result in the
25 support of First Nations for the Project.

1 The answer of the Supreme Court of Canada on
2 this manner is also unequivocal. Consultation does
3 not give rise to a veto by First Nations. Quoting
4 from paragraph 165:

5 "This process does not give
6 Aboriginal groups a veto over
7 what can be done with land
8 pending final proof of the
9 claim."

10 The third question: What is the relevance
11 advance of the comments that the **William** case is
12 currently under appeal?

13 Whether the **William** case is actually
14 proceeding to an appeal is irrelevant to this
15 environmental assessment.

16 Firstly, the law is clear, that the law is
17 what the Court has decided, not what some other court
18 might decide on appeal in the future. Our system of
19 justice would not operate if it were otherwise.

20 Secondly, the law is also clear that, even if
21 a subsequent ruling were to determine that the Eastern
22 Trapline Territory were subject to Aboriginal Title,
23 that would not prevent the government from approving
24 the Project without the consent of the Tsilhqot'in
25 People.

1 This is discussed in the decision of the
2 Supreme Court of Canada in *Delgamuukw* in the context
3 of how to justify an infringement of Aboriginal Title.
4 Basically, the Court recognized that the Crown could
5 authorize certain types of development on lands
6 subject to Aboriginal Title, although it would require
7 justification, which would include consultation with
8 the First Nation holding said Aboriginal Title.

9 And I quote from paragraph 165:

10 "In my opinion, the
11 development of aquaculture,
12 forestry, mining and
13 hydroelectric power, the
14 general economic development
15 of the interior of B.C.,
16 protection of the environment
17 or endangered species, the
18 building of infrastructure,
19 and the settlement of foreign
20 populations to support those
21 aims are the kinds of
22 objectives that are
23 consistent with this purpose
24 and in principle can justify
25 the infringement of

1 Aboriginal Title."

2 A determination of Aboriginal Title in the
3 Eastern Trapline Territory might assist the
4 Tsilhqot'in in a claim against the Crown for
5 compensation but would not prevent the Crown from
6 justifying an infringement of Aboriginal Title for the
7 purpose of developing a mine.

8 Concerning Adequacy of Consultation.

9 A number of presenters suggested that Taseko
10 should have started consultation earlier or done more.
11 We submit there was an enormous amount of consultation
12 with First Nations that took place in connection with
13 this Project. And, as you're aware, that's summarized
14 in detail in the consultation record that is included
15 in our application.

16 However, one additional observation is
17 appropriate here; which is that the obligation of
18 consultation is owed solely by the Crown. Although
19 some procedural aspects of consultation may be
20 delegated to the Proponent, the legal responsibility
21 for consultation rests with the Crown.

22 This is set out as follows in the **Haida**
23 **Nation** decision at paragraph 53, which states in part:

24 "... the duty to consult and
25 accommodate, as discussed above,

1 flows from the Crown's assumption
2 of sovereignty over lands and
3 resources formerly held by the
4 Aboriginal group. This theory
5 provides no support for an
6 obligation on third parties to
7 consult or accommodate. The Crown
8 alone remains legally responsible
9 for the consequences of its
10 actions and interactions with
11 third parties, that affect
12 Aboriginal interests. The Crown
13 may delegate procedural aspects of
14 consultation to industry
15 proponents seeking a particular
16 development; this is not
17 infrequently done in environmental
18 assessments... However, the
19 ultimate legal responsibility for
20 consultation and accommodation
21 rests with the Crown."

22 Throughout this assessment, Panel assessment,
23 we've noticed different approaches being taken by the
24 different Federal departments. Taseko noticed and
25 appreciated the approach taken by both DFO, NRCan,

1 Health Canada, and Environment Canada throughout their
2 involvement in both the Federal and Provincial review.

3 DFO provided advice and explained their
4 interpretation on matters of policy preferring to
5 leave it up to the Panel and Federal Cabinet to make
6 any recommendations and provide direction on the fish
7 and fish habitat matters before DFO exercised their
8 course of action decisions. Taseko will continue to
9 work with DFO to narrow any remaining gap and risks.

10 Health Canada, although they didn't
11 participate in either of the community hearings or the
12 topic-specific hearings, participated in the review
13 and provided their assessment of effects within their
14 jurisdiction and expertise.

15 Environment Canada and NRCan both went beyond
16 their specific areas of mandate and jurisdiction in
17 assessing areas within their expertise. Taseko
18 appreciates this and even though there were some minor
19 areas of disagreement.

20 Transport Canada, however, provided the Panel
21 with what can only be described as a very unusual
22 submission. They reached a conclusion concerning
23 significance not on the issue of interference of
24 navigation, which Taseko understands to be their
25 mandate, but on the acceptability of Taseko's

1 mitigation measure. In our view, they reached the
2 determination of significance before applying
3 mitigation and having acknowledged publicly that they
4 had not considered various aspects associated with
5 First Nations use of the area.

6 Taseko has serious questions arising out of
7 this submission and will look for the earliest
8 opportunity to seek clarification.

9 Concerning Impact Benefit Agreements.

10 A number of presenters commented on the fact
11 that Taseko has not entered into an Impact Benefit
12 Agreement with First Nations. Some even suggested
13 that it should be a pre-condition of Taseko proceeding
14 with the Project.

15 The evidence disclosed in the hearings that
16 Taseko raised the subject of Impact Benefit Agreements
17 with the TNG at an early stage. And the position of
18 the TNG at that time was that they did not wish to
19 have such a discussion until after the Environmental
20 Assessment Process was concluded.

21 There is no legal requirement or even a legal
22 definition in British Columbia of what constitutes a
23 benefit sharing agreement, often referred to as an
24 impact benefit agreement between a proponent and a
25 potentially-affected First Nations.

1 The policy of the Province concerning benefit
2 sharing agreements, as expressed in the service plan
3 of the EAO is, and I quote:

4 "The EAO encourages proponents to
5 explore benefit sharing agreements
6 with First Nations where the
7 parties consider that to be in
8 their mutual interest. The Office
9 will consider any information it
10 receives regarding such agreements
11 when assessing the social and
12 economic impacts of a proposed
13 project. However, such agreements
14 are not considered pre-conditions
15 to completion of the EA Review
16 Process or a decision by the
17 responsible ministers."

18 It's worth noting that the Province did
19 require certain legal commitments from Taseko in its
20 Certificate which address subject matters that are
21 frequently considered to be key components of an
22 impact benefit agreement, including preferential
23 provisions for First Nations for jobs, job
24 notifications, contracting opportunities, training,
25 and input on certain environmental considerations.

1 In addition, the Province has introduced the
2 Revenue Sharing Policy that will apply to this Project
3 which addresses the revenue sharing component that has
4 been a feature of a number of Impact Benefit
5 Agreements.

6 As a result, whether or not Taseko ultimately
7 enters into one or more Impact Benefit Agreements with
8 First Nations, most or all of the categories of
9 benefits that would normally be found in such an
10 agreement have already been incorporated into this
11 Project by a combination of both legal commitments and
12 Provincial Government policy.

13 One of the common themes that the Panel heard
14 from the TNG was that ideally Taseko should have
15 developed the Project in a joint venture agreement
16 with the Tsilhqot'in People and, in any event, the
17 Project should not proceed without their consent.

18 However, when the approval process that was
19 the model for the Tsilhqot'in was described by David
20 Setah, former Councillor with Xeni Gwet'in, it became
21 apparent how practically impossible that would have
22 been.

23 Former Councillor Setah's model required that
24 a company wishing to do business with Tsilhqot'in
25 should arrive with no plans whatsoever. The model

1 would then require a long joint process of the
2 development of a business plan with 50 percent of the
3 business being owned by Tsilhqot'in with the
4 Tsilhqot'in contribution apparently based on
5 acceptance of their ownership of the land base.
6 Control of all aspects of the development of the plan
7 would be in the hands of the Tsilhqot'in. At the end
8 of the development, of the business plan, through this
9 process, the Tsilhqot'in People would then hold a
10 referendum to determine whether or not the project
11 would actually proceed.

12 The evidence appeared to be that the
13 experience with the only forest company that had
14 actually got through a process of this kind was that
15 the community rejected it at the referendum stage.

16 As appropriate as this consultation model may
17 appear to the Tsilhqot'in, it is completely unworkable
18 in the context of this mining development. The costs,
19 risks, and timing issues surrounding a project like
20 Prosperity would mean that, if following that model
21 were a requirement of development, then no mine would
22 ever be built or even attempted.

23 In our submission I summarize more of former
24 Councillor Setah's evidence on that point, which I
25 won't go through.

1 Turning now to the last component of our
2 remarks and speaking to what we consider to be the
3 next steps.

4 Taseko's position is that there are no
5 significant environmental effects after taking
6 mitigation measures into account.

7 However, if this Panel were to find, as the
8 province did, that the loss of Fish Lake was a
9 significant adverse environmental effect, then the
10 issue of justification arises.

11 Under the Terms of Reference, if the Panel is
12 likely to cause -- if the Project, sorry, is likely to
13 cause a significant adverse environmental effect, then
14 the Panel should also ensure that information with
15 respect to the justifiability of any significant
16 adverse effects is obtained.

17 Under this Panel process, the determination
18 of whether an adverse environmental effect may be
19 justified will ultimately be made by the Responsible
20 Authority - the Minister of Fisheries and Oceans -
21 following a consideration of both -- of the Panel's
22 report by Cabinet.

23 In reaching a determination on justification,
24 the Minister may take into account policy
25 considerations it considers appropriate. This is

1 noted in the recent *Imperial Oil* case where Justice
2 Tremblay-Lamer of the Federal Court stated,
3 paragraph 74:

4 "Should the Panel determine that
5 the proposed mitigation measures
6 are incapable of reducing the
7 potential adverse environmental
8 effects of a project to
9 insignificance, it has a duty to
10 say so as well. The assessment of
11 the environmental effects of a
12 project and of the proposed
13 mitigation measures occur outside
14 the realm of government policy
15 debate, which by its very nature
16 must take into account a wide
17 array of viewpoints and additional
18 factors that are necessarily
19 excluded by the Panel's focus on
20 project related environmental
21 impacts. In contrast, the
22 responsible authority is
23 authorized pursuant to
24 Section 37(1)(a)(ii), to permit
25 the project to be carried out in

1 whole or in part even where the
2 project is likely to cause
3 significant adverse environmental
4 effects if those effects can be
5 justified in the
6 circumstances. Therefore, it is
7 the final decision-maker that is
8 mandated to take into account the
9 wider public policy factors in
10 granting project approval."

11 Many important issues were raised by this
12 Panel process, including:

- 13 - The state of the economy in
14 the Cariboo-Chilcotin.
- 15 - The balancing of interests
16 between various economic
17 components of the economy, such as
18 the cost of generation of
19 electrical power and the benefits
20 attributable to resource
21 development.
- 22 - The likely impact of the pine
23 beetle on the forest industry
24 sector and what that will mean to
25 the Cariboo-Chilcotin.

- 1 - Why it's important that the
2 Project proceed now as opposed to
3 sometime in the future.
- 4 - The opposition of the
5 Aboriginal Peoples who appeared
6 before the Panel to the Project.
- 7 - The role of Aboriginal People
8 in land use decisions in British
9 Columbia.
- 10 - The adequacy of the Crown's
11 consultation that is required in
12 this case.
- 13 - The role of the Crown in the
14 reconciliation process with
15 Aboriginal Peoples of Canada.
- 16 - The respective roles of the
17 Provincial and Federal Governments
18 in Environmental Review Processes
19 and the future of those roles.
- 20 - And societal concerns with
21 respect to the balancing of
22 interests between economic
23 development and the preservation
24 of wilderness values.
- 25 These issues, we submit, have little or

1 nothing to do with the Panel's determination of
2 significant environmental effects but that the final
3 decision-maker may consider all of these matters and
4 other wider public policy factors in reaching a
5 determination in whether a significant adverse effect
6 may be justified in the circumstances.

7 Taseko prepared our Environmental Impact
8 Statement in accordance with agreed-upon guidelines.
9 The guidelines did not require a justification
10 analysis and Taseko did not prepare one.

11 Taseko's view is that, should there be a
12 finding of significant adverse environmental effect,
13 then that can be justified by the economic benefits
14 that will arise from the Project and the particular
15 need for the Project at this point in the history of
16 the Cariboo-Chilcotin.

17 In summary, on the issue of justification, if
18 the Panel concludes that the Project is likely to
19 cause significant environmental effects, the Panel
20 should forward the information on justifiability that
21 it has obtained with the expectation that the Federal
22 Government will make a determination of
23 justifiability, taking into account that information,
24 and whatever other information and public policy
25 factors it considers appropriate in the circumstances.

1 Taseko remains confident that the Project is
2 both environmentally responsible and technically
3 viable. Taseko and its shareholders are preparing to
4 invest \$800 million to develop this Project, but it
5 can only be built if two things happen: The Federal
6 Government makes a positive decision, and following
7 that positive decision, the Taseko Board of Directors
8 makes a positive decision to build the Project.

9 Through our work and investment at the
10 Gibraltar Mine, and through our significant investment
11 in preparing the plan for Prosperity, which reflects
12 the very best in scientific work, in engineering
13 design, and in technical and environmental expertise,
14 Taseko has proven itself to be a responsible corporate
15 citizen.

16 We want to continue to invest in the Cariboo
17 for the benefit of our shareholders and for the
18 benefit of others. That is our intention with
19 Prosperity and what Prosperity means to us.

20 Prosperity is a large and important project.
21 People hold strong views on its future. There is
22 clear and significant value and benefit for the
23 country.

24 Whether the Project is approved or not will
25 have lasting ramifications for the Province as a place

1 to invest. B.C. is currently the largest copper
2 producer in Canada. The eyes of the international
3 mining and mining investment communities are squarely
4 focused on how the Federal Government handles this
5 decision.

6 Let there be absolutely no misunderstanding;
7 The stakes here are very high. Not only for Taseko,
8 and Prosperity, but for this community, and for the
9 Cariboo, for the Provincial Government, the Province,
10 and for this country and its people.

11 Rarely does an opportunity like Prosperity
12 come along. Rare, indeed, is an opportunity to build
13 a large metal mine with the strength and power to
14 deliver lasting value for people.

15 For the better part of 17 years, this
16 Project's been undergoing an Environmental Assessment.
17 The examination of our work and the science behind it,
18 the technical merits of our engineering and the high
19 degree of confidence that we have in it, the economic
20 value and the social benefit that will be delivered to
21 local and regional communities, the need for this
22 Project at this particular time in our history, all of
23 this has led the Province, after lengthy detailed and
24 careful examination of all the facts by each of their
25 responsible Ministries and agencies to approve

1 Prosperity for development.

2 The decision by the Province of B.C. was the
3 right and proper course of action to take.

4 And for all these reasons, we submit it is
5 the right and proper course of action for the Federal
6 Government to take as well.

7 A number of factors influenced the decision
8 of when to build a mine: Commodity prices,
9 availability of capital, investor confidence, public
10 attitude, and need. The need for metals, the need for
11 wealth, and the need for opportunity.

12 Now is the time to build this mine. For now
13 is the time that these factors are aligned. Only if
14 this mine is developed will it be able to create the
15 wealth by which First Nation communities can be given
16 new local opportunity to rise above the poverty and
17 despair that so many of them in their remarks to the
18 Panel spoke so passionately and emotionally about.
19 Now is the time for a decision by the Federal
20 Government which will allow this mine to proceed. Put
21 your faith in us. Have confidence in our findings and
22 in the decision of the Provincial Government. Have
23 confidence in the Federal departments, in Natural
24 Resources Canada, Environment Canada, Department of
25 Fisheries and Oceans, and in the future decisions that

1 they will make. Put your confidence in our plan.
2 Have confidence in our people. Have confidence in our
3 abilities and determination to deliver a sound, safe,
4 and beneficial Project. Have confidence in our future
5 conduct and in the commitments that we have made to
6 First Nations and others. Have confidence in
7 Prosperity.

8 Mr. Chairman, Panel Members, good luck with
9 the work before you and the execution of your
10 remaining duties.

11 Thank you.

12 (Applause)

13 **CLOSING REMARKS BY THE CHAIRMAN:**

14 THE CHAIRMAN: Thank you, Mr. Bell-Irving,
15 for your closing remarks and, on behalf of Taseko
16 Mines, your response to many issues and views that you
17 have heard and we have heard over the course of these
18 six weeks or so.

19 Also your views on our Terms of Reference and
20 the way in which, from your perspective, we should
21 interpret them and also, from your perspective, on the
22 nature of the conclusions we should reach.

23 That is the purpose of the closing remarks
24 and we have heard, not surprisingly, different views
25 from others and we will have to, of course, take all

1 of that into consideration in our deliberations.

2 And in that respect, we are now at the point
3 where it's time to close these hearings and I would
4 like to take the opportunity to thank all of the
5 participants for their input in this Review Process.
6 Your submissions and presentations will be of great
7 benefit to us in our work towards reaching a
8 conclusion and making recommendations on this very
9 important matter that is before us. We certainly
10 understand the importance of the issue from all
11 perspectives.

12 We've noted that some have raised concerns
13 about the process that we have before us. And I think
14 it's fair to say, and it's not surprising, that some
15 have expectations of an environmental assessment to
16 deliver more than it may be able to deliver.

17 I want to point out that our job, of course,
18 was not to design an environmental assessment process,
19 but, rather, to carefully follow the rules that we
20 were given, namely our Terms of Reference, and we've
21 tried our best to do that in a manner that was fair to
22 all of the people who are involved in this process.
23 And we hope that we have achieved that.

24 In accordance with our Terms of Reference,
25 this Panel will now review all of the evidence that

1 has been submitted to us and prepare our report.
2 We've received -- we have a lot of work to do, as you
3 can all appreciate, and many of you have expressed
4 that. We have a lot of work to do, as I say, given
5 the amount of information that we have received
6 through the hearings themselves and also through all
7 of the various background documents and submissions
8 that have been tabled through the process. All of
9 this is available, of course, on the Agency's website.
10 All of the transcripts are available. The whole
11 hearing and its audio recording is also available on
12 that website.

13 Our Terms of Reference require us to make
14 recommendations to the Minister of the Environment and
15 to the departments of Fisheries and Oceans, Transport
16 Canada, and Natural Resources Canada who are
17 Responsible Authorities under the **Canadian**
18 **Environmental Assessment Act.**

19 The ultimate decision, as has been mentioned,
20 will be taken by the Federal Cabinet of Ministers
21 based on the conclusions we reach and the
22 recommendations we reach -- we make to them. Our
23 report will set out the rationale, the conclusions,
24 and recommendations of the Panel relating to the
25 overall Project.

1 The Panel report we fully expect to issue
2 within 60 days of the close of the hearings, so if I
3 look at my calendar, 60 days from today takes us to
4 July 2nd. Now I hope we might be able to take
5 July 1st off as a holiday, but I'm not sure about that
6 at this stage. All I have to say is that we're going
7 to do our very best to try to follow the Terms of
8 Reference, as we have tried throughout the hearings,
9 and it is our intention to complete our work within
10 that period of time.

11 Copies of the Panel's report will be
12 forwarded as soon as the report is completed certainly
13 to all of the main parties that have participated in
14 this hearing process, to Taseko Mines, of course, to
15 the various departments that have participated in the
16 process, to the First Nations, and, in addition,
17 although you may not receive a printed copy right
18 away, those of you who are perhaps I would call
19 members of the public at large, the report will also
20 be available electronically on the website the day it
21 is issued.

22 And at this point I would note that the
23 record is closed for the receipt of any further
24 submissions or letters of opinion or documents on the
25 Project.

1 And, finally, I would like to express my
2 thanks and appreciation to a number of people here;
3 obviously to all of the participants that I mentioned
4 earlier who have been extremely helpful in bringing
5 forward all kinds of information, their views on the
6 Project, background information to assist us in
7 reaching our decisions.

8 I'd also like to thank the Panel Secretariat,
9 our numbers are somewhat depleted today, but there are
10 two remaining, and in particular, Colette Spagnuolo
11 who is the Panel Manager who has assisted all of you
12 in many ways in providing information, explaining the
13 process, making information available, but also doing
14 the phenomenal job of arranging all of the logistics
15 to keep this whole process running in a way that was
16 very smooth and generally on time, and she can't be
17 blamed for some of the late hearings, that was my
18 responsibility, but generally for handling all of the
19 logistics to enable us to proceed quite smoothly.

20 I'd also like to thank our court reporters
21 and, in particular Nancy Nielsen, and of course her
22 team behind the scenes for the verbatim transcripts
23 that are helpful to us and, in fact, essential to us
24 in reviewing all of the material that has been brought
25 forward. Those transcripts become very important for

1 us, as many of you have mentioned, to review what it
2 is we have heard.

3 I would also like to thank our sound
4 technician, Alex Barber, for the technical support in
5 providing the recordings and allowing the
6 communication that we've had throughout these
7 hearings.

8 And without the assistance of all of these
9 dedicated people, these hearings would not have been
10 possible.

11 And finally, I would like to thank Taseko
12 Mines Limited for their efforts, their patience in
13 responding to all of the many questions that have been
14 raised by the many participants in this process, and
15 also by us, the Panel.

16 And I think others have mentioned -- the word
17 I'm searching for here is our ability to -- our
18 endurance, I guess, was the word I was searching for.
19 And I would also like to note that that honour or that
20 note should probably go to Rod Bell-Irving, in
21 particular, on the other side of the table for his
22 endurance in continuing to respond to the questions
23 that have been raised and continuing with us through
24 the late nights that we've had in some of the
25 hearings.

1 And there are many of you in the audience who
2 have endured along with us. And I think there are two
3 in particular I'd like to mention, and that's Chief
4 Baptiste and Former Chief Roger William who have
5 accompanied us throughout the hearing process. And we
6 appreciate your interest in following us as we
7 proceeded from hearing to hearing from meeting room to
8 meeting room.

9 So Ladies and Gentlemen, I would like to
10 close the hearing. I would note that we will have a
11 closing ceremony with First Nations. And I would ask
12 in respect to our procedures that we don't deal with
13 any further closing remarks in the conduct of those
14 closing drumming ceremony this evening.

15 So with that, Ladies and Gentlemen, I would
16 like to say that the hearing on the Taseko Prosperity
17 Mine Project is now closed and I thank you very much
18 for your attendance and I would now ask First Nations
19 to assist us in recognition.

20 (Applause).

21 And I thank you for that applause. The final
22 note is the closing ceremony, of course, is in
23 recognition that we're holding these hearings in
24 traditional territory of First Nations. And I thank
25 you once again for your involvement in this process.

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(DRUMMING CEREMONY)

(HEARING CONCLUDED AND CLOSED AT 5:45 P.M.)

REPORTER'S CERTIFICATION

I, Nancy Nielsen, RCR, RPR, CSR(A), Official
Realtime Reporter in the Provinces of British Columbia
and Alberta, Canada, do hereby certify:

That the proceedings were taken down by me in
shorthand at the time and place herein set forth and
thereafter transcribed, and the same is a true and
correct and complete transcript of said proceedings to
the best of my skill and ability.

IN WITNESS WHEREOF, I have hereunto subscribed my
name this 5th day of May, 2010.

Nancy Nielsen, RCR, RPR, CSR(A)
Official Realtime Reporter

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