



MiningWatch Canada

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New Prosperity Project Review Panel Closing Comments of MiningWatch Canada

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Thank you Mr. Chair. I'd like to begin by acknowledging and thanking the Secwepmec Nation for hosting us as well as the Town of Williams Lake for its hospitality. Greetings to the leaders and elders with us today. I'd also like to express my gratitude to the panel and the secretariat for your dedication and commitment to this process.

In my closing remarks I would like to address the following three issues:

- The extent to which Taseko's proposed mitigation measures address a subset of the adverse effects identified by the previous review panel.
- The importance of the standard of Free Prior and informed Consent in this process
- The need and justification for the project.

Given the previous rejection of this project, given the varied cultural and ecological values identified through the previous review process, given the strong rights and title assertions of the Tsilhqot'in and Secwepmec and given their strong opposition to the project – this project is not the straight forward, low risk project that Taseko likes to claim it is.

We would advocate companies look for other options and not pursue high risk projects like this but if a proponent advances one, we would expect to see extensive field work, meaningful and deep consultation and mitigation measures that provide a high degree of certainty for success. The mitigation measures would need to be well tested at comparable scales and timeframes, they would need to create resiliency by working with natural systems and minimize the risks of failure.

The resubmitted proposal and mitigation measures for New Prosperity meet none of these expectations. We have before us a proposal that has important gaps in the baseline data, feeds that into models which are only ever as good as the inputs and proposes to use engineering approaches that have not been tested at the scale or duration proposed.

When I first read the outline of Taseko's proposals for managing seepage water and especially for recirculating the water of Teztan Biny I was struck by the proponent's hubris and unbridled faith in engineering. Subsequent technical reviews by various regulators and contracted specialists have more than confirmed my concerns.

I am aware that others are going to do a more thorough review of the technical submissions so I will limit myself to commenting on the review that struck me as especially poignant – that of the BC Ministry of Energy and Mines.

The depth and extent of the concerns expressed by the MEM are, in my experience, unprecedented for a Ministry charged with both promoting and regulating the mining sector. The apex of the Ministry's concerns were expressed in their July 30 submission stating that:

MEM concludes that it is unlikely that the project can be developed as currently designed without adverse effects to the water quality of Fish Lake and its tributaries from TSF seepage. Even with expensive and long-term measures to mitigate TSF seepage, the protection of Fish Lake water quality may not be assured.

The fact that this carefully supported conclusion was modified following a complaint from Taseko is disconcerting but the MEM's revised conclusion continues to express deep concerns and points to multiple layers of uncertainty within the proposed mitigation measures. It also expresses concern about the proponent's reliance on future studies and adaptive management to deal with this uncertainty.

The reliance on future planning, permitting, monitoring and adaptive management is unacceptable for a project of this nature.

As an example, the adaptive management and monitoring plan filed by Taseko earlier this week references the federal Environmental Effects Monitoring program for metal mines as the basis for their aquatic monitoring system.

While we absolutely support rigorous monitoring and the application of adaptive management at operating mines the inherent challenges and limitations of monitoring complex ecosystems and the logistical and administrative limitations of the EEM program make it an inappropriate safety net for this project.

Following through the various steps of the EEM program takes upwards of 13 years. The structure of the program does not provide for shorter term responses that may be needed

to protect sensitive ecosystems such as Teztan Biny – especially under the proposed condition whereby the waters of the lake would be re-circulated.

The DFO's and Dr. John Stockner's analyses indicate that there is the potential for serious impacts to Teztan Biny within a decade of operations. Clearly we can not rely on a monitoring program such as the EEM program as a backstop for uncertain mitigation measures.

Even if the proponent is successful at sustaining the aquatic ecosystem in Teztan Biny, the adverse effects on the use and value of the area would be significant. Teztan Biny is more than just a fish pond. The values associated with the area for ceremony as a cultural training area, as a refuge for the spirit would all be significantly diminished.

In your deliberations the panel will have to grapple with what an acceptable level of uncertainty is and must do so in deference to the precautionary principle as indicated in CEAA 2012.

While the precautionary principle provides a certain latitude for accepting risks, the principle should ensure that all reasonable actions have been taken to reduce uncertainty and risk. The technical reviews of this project by NRCan, MEM, Environment Canada, Dr. Stockner and my many others clearly demonstrate that that is not the case.

While the mitigation measures for Teztan Biny have been found to be inadequate, other adverse effects of the project have not had any substantive new mitigation measures proposed. I refer to the destruction of Nabass (Little Fish Lake) and the adverse effects of the power corridor.

The efforts being made to identify new mitigation measures for the wildlife impacts of the corridor seem to us too little too late and it is not at all clear that these would in any way address the concerns over rights and title and over adverse effects to the Secwepemc subsistence economy.

Furthermore, the fact that mitigation measures previously proposed were dependent on the line being decommissioned indicates the need to re-evaluate the significance of the adverse effects.

To conclude on this aspect, we do not have before us sufficient information to understand the sensitive and highly valued biological and physical systems in the areas that would be adversely affected by this project. The proponent has not identified new mitigation measures for previously identified adverse effects and mitigation measures that are presented to "save" Teztan Biny are uncertain in their technical and economic viability, work contrary to natural principles, require a high degree of constant intervention, likely in perpetuity, and have not been proven at the scale or duration they are being proposed.

By any meaningful interpretation of the precautionary principle this is not acceptable.

Our recommendations related to the proposed mitigation measures are that the panel:

- 1. Affirm that the project has significant adverse effects to fish and fish habitat, to the use of resources and to Aboriginal rights and title.**
- 2. Reject the proposed mitigation measures for the management of tailings impoundment seepage and recirculation of water from Teztan Biny given the uncertainty of their technical success and economic feasibility.**
- 3. Reject adaptive management and monitoring as adequate responses to the uncertainties in the information base and mitigation measures.**
- 4. Review the findings of the previous panel related to the significance of adverse effects of the power-line corridor given the likely need to maintain the corridor in perpetuity.**

I'd like to now briefly comment on the importance of free prior and informed consent in this process. We and others have provided you with evidence that FPIC is an international standard that is gaining increasing recognition. We have submitted that there are several recent examples of Canadian projects not proceeding because of the failure to obtain consent of affected First Nations.

FPIC is more than an abstract legal standard it is also a representation of community level demands for reconciliation, self determination and respect from governments and industries that would pretend to decide what's best for them. The overall trend internationally as in BC and Canada is clearly in favour of greater recognition of the rights for Indigenous peoples, though the path has not been smooth or direct. Against a backdrop of pervasive challenges, the Tsilhqot'in have been trailblazers in the protection of their rights and title and now have 20 years of time, energy and resources dedicated to the William case.

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

Our recommendations related to FPIC are that the panel:

- 5. Affirm the project's significant adverse effects on Aboriginal rights and title;**

- 6. Acknowledge the normative standard of FPIC and note the absent of consent and strong opposition to the project;**
- 7. Consider the adverse psycho-social health effects of this project proceeding absent free prior informed consent of the affected First Nations.**

As per the Terms of Reference, the panel's final report will have to consider the need for the project and in the likely event that you find there are to be significant adverse effects, the panel is to provide information about potential justification of those effects.

We have submitted evidence by economist Dr Marvin Shaffer that shows that Taseko's portrayal of the economic development and job creation aspects of the project are exaggerated and do not account for considerable costs. In other words the proponent has provided only one side of the balance sheet.

One of the most significant costs identified by Dr. Shaffer is the estimated \$50 million a year in net costs to BC Hydro. The proponent's rebuttal of Dr. Shaffer's report focussed on the distribution of those costs, something which was not the subject of Shaffer's report. The fact remains that the costs of creating new generation capacity to supply power to the project are far and above what Taseko will pay.

Taseko has not provided the necessary supporting information to be able to assess there method for calculating their tax contributions but given the findings of the Chen and Mintz report, we submitted to the panel, which indicated a negative marginal tax rate for mining in BC, we are very sceptical about Taseko's claims

In recent years the BC mining sector has expanded and new mines are being proposed for the region around Williams Lake and throughout the province. There is not a need for this project to meet provincial objectives to expand the sector. Nor is there a need for this project to supply global demand for gold and copper. The demand for copper has fallen off in recent months and other projects within Canada or elsewhere can sustain the market.

While the arguments for local economic development provided by Mayor Cook and others are heartfelt and understandable, the reality is the economy of Williams Lake is doing well without the mine. Property values and housing starts are up and unemployment is down – in fact it's below the provincial average. The suggestion that the mine will help diversify and transition to a more sustainable economy are just that – suggestions with no substantive plans or examples provided for how this would happen. Insisting on a future need for the project to address a potential economic downturn years from now places an unjust burden on those who will certainly bear most of the costs for the project – the Secwepemc and Tsilhqotin. Any projections about proposed economic benefits to the First Nations should be considered against the costs they will bear – in perpetuity.

Our recommendations related to the need and justification of the project are that the panel:

- 8. Find that the proponent has not established a strong case of need for this project.**
- 9. Provide a balanced description of costs and benefits of the project in any information provided about the justification for the project.**

The appropriate time to deal with these fundamental issues is now, during the EA review process, not during future permitting processes. The proponent has not met the test to proceed and should not be given the opportunity to further entrench the project and expectations of it proceeding, to demand further energy and time for consultation with the Tsilhqot'in and Secwepemc on such a flawed plan, or to demand resources from regulators to further review and comment on the proposed mitigation measures.

To close I'd like to quote Anne Sam who responded to a question from the chair saying:

“I think the important thing that I've learned from our experience is that we really need to listen to the communities that are going to be directly impacted because they are the ones that are on the ground. We are the ones that can no longer fish and hunt in the area..... you can't put a dollar value on that when our identity comes from the land.”