

## **TASEKO REBUTTAL TO ORAL PRESENTATIONS MADE AUGUST 23, 2013**

**Financial Benefits** - Presenters spoke of financial benefits not flowing through to the Bands. This indicates that First Nations may be receptive to the development of New Prosperity if they believed that financial benefits would flow. Mechanisms to effectively accomplish the transfer of financial benefits to First Nations are relatively new, but they are now in place. The ECDA's are an example and we see no reason why such an agreement will not be implemented by the Province in relation to New Prosperity. The Panel should consider that, as aboriginal communities become more confident that they can and will receive a greater share of the financial benefits associated with projects like New Prosperity, their inherent opposition to those projects, and to New Prosperity in particular, will abate.

**Facilities Not Required in Perpetuity** – Several presenters consistently ignored the content of the EIS and the evidence presented by Taseko in the hearing. For example, we heard repeatedly that the pumping and recirculation of water to the TSF will be required in perpetuity and that, as a result, the transmission line will be required in perpetuity. These submissions ignore the fact that the requirement for these facilities much beyond the closure of the mine is unlikely. Taseko's expectation is that they will not be required and that is how the project will be engineered and designed. Taseko will have close to 30 years to finalize solutions to ensure that its expectations can be achieved. With developments in technology over that time, we have no doubt that we will succeed. We have referred to the possibility that the facilities could be required for a longer time, and if they are, that will be Taseko's obligation supported by its bond posted with the Province to ensure that its closure plan is executed fully. However, Taseko considers the prospect of this to be very unlikely.

**FPIC** - The concept of 'free, prior and informed consent' was referred to and it was pointed out that it is applied based on proportionality relative to the rights affected. While there is no requirement under the law of Canada for aboriginal people's consent, we note that, if any concept of proportionality were to be applied in this case, no consent would be required. We know based on the William decision that there is no impact on aboriginal title in the vicinity of the mine. We know that the transmission line will not impact in any significant way on claims of aboriginal title. There is a limited impact on aboriginal rights – the rights to hunt, trap and trade and to collect wild horses. Those rights are exercised broadly over a vast traditional territory so it simply cannot be said that the impact of the mine on those rights is material. The impact is minor and localized. In proportion to the area in which aboriginal rights can be exercised, the mine site is miniscule. Similarly, if proportionality is to be measured against the potential benefits of the New Prosperity project the impact on aboriginal rights is also not material.

**Transmission Line Corridor** – We heard complaints from Chief Robbins that Taseko did not consider alternative routes for the transmission line corridor. First, it is simply not true that alternatives were not considered – the complaint ignores the evidence. Second, the Panel's Terms of Reference directs the Panel to use to the greatest extent possible the evidence from the previous Panel proceeding in relation to components of the new project that are not expected to change and note specifically that the transmission line has not changed. While Taseko is accused of ignoring the previous Panel's finding regarding the transmission corridor, in fact, it is First Nations who choose to ignore those findings and the Panel's Terms of Reference in that regard. Taseko has relied on those Terms of Reference in its

presentations to the Panel. It would be grossly unfair and inappropriate for the Panel to ignore sections 3.3 and 3.4 of its Terms of Reference regarding its assessment of the impacts of the transmission line.

The Esk'etemc say they have aboriginal title with respect to the lands over which the transmission line will pass. That is false – no such title has been established. To the extent those particular lands are impacted by the transmission line, the treaty negotiation process will compensate for the loss of those lands. Just as private lands will not be part of any land settlement in treaty negotiations, any Crown lands that are included in a treaty settlement will be made subject to existing rights and tenures on those lands. The business of government in granting rights and in dealing with Crown lands cannot stop while it continues to deal with aboriginal claims for rights and title.

The Esk'etemc assert that the community forest will be impacted. The reality is that the transmission line has a minimal impact on that area. In this respect, Taseko refers the Panel to the map entitled “Esk'etemc Community Forest & Proposed Transmission Line” which shows that the proposed line is at the extreme southern fringe of that forest.

The suggestion that Esk'etemc aboriginal rights have been disregarded is not correct. In 1993, Taseko commissioned an ethnographic study for the area to inform the transmission line alternatives, with Esk'etemc and Canoe Creek participation. Burial sites were identified, and avoided. In 2010 during the previous review, Taseko heard that we have not conducted a thorough archaeological assessment and there were high values all along the Fraser River. Thereafter, in the summer of 2010, we initiated these studies, but the Secwepemc leadership chose not to participate. From this work, we are confident we will be able to avoid any archaeological sites of significance and we have not, to date, identified any burial grounds that would be impacted by this powerline.

**Opposition to Mining** – Ms. Baptiste declared that she is opposed to mining – period. As will be apparent to the Panel, Ms. Baptiste was prominent throughout the hearing in orchestrating presentations by community members. It is important that the Panel understand that much of the apparent opposition in aboriginal communities to the mine was manufactured by Ms. Baptiste and those aboriginal leaders who share her views. Taseko submits that the result was a distorted view of reality. Taseko also asks the Panel to understand that the attitudes reflected by Ms. Baptiste are at the root of the challenges faced by Taseko in engaging in meaningful dialogue with aboriginal communities to address their concerns. Taseko can only continue to try to engage, but to the extent that its efforts are frustrated by aboriginal leadership wishing to pursue a larger agenda, it cannot be faulted for its failure. Taseko hopes that, if the project is approved, aboriginal leadership will then relent and become cooperative partners in a constructive dialogue moving forward.

We were moved by the heart-felt submission by Ervin Charleyboy and the courage he displayed in speaking out publicly in opposition the aboriginal leaders opposed to the mine. Taseko has asserted in these proceedings that much of the opposition witness in the Community sessions was the product of a campaign by elements of aboriginal leadership. Mr. Charleyboy described in poignant terms the kinds of pressure that have been brought to bear to stifle support for the project in aboriginal communities. He indicated that there is support in those communities for the project but band members are afraid to

speaking up against the wishes of their Chiefs. This is exactly what Taseko suggested to the Panel was transpiring in those communities and we ask the Panel to bear that in mind.

**Protection of Water and Fish** – Grand Chief Phillip stated that the issue before the Panel was the protection of water and fish. We agree and ask the Panel to focus on those issues in the application of the criteria under the CEAA 2012 to determine whether there are likely to be “significant adverse environmental effects” on water and fish. We urge the Panel to maintain its focus on those primary issues and to avoid being distracted by other irrelevant concerns, issues and agendas. He suggested that Fish Lake will die and that “dead is dead”. However, this ‘sound bite’ assertion is not consistent with the evidence. First, Fish Lake is preserved and protected and speculation as to harm to the lake is largely unfounded. To the extent there is some theoretical validity to concerns regarding the company’s ability to preserve and protect the lake, they are unlikely but manageable. Second, any harm to the lake that might result will not be irreversible. In the case of the lake, “dead is not dead”; to quote from Monty Python, if it were to be harmed, it would not be dead, it would be “just restin’ “. Humour aside, it is clear that any harm to the lake would be reversible. A lake ‘at rest’ can be wakened. The restoration of water quality at the Britannia mine is clear evidence of just how effective current technology is in resolving even the most extreme water quality issues. We also refer to the presentation by Dr. Meech regarding the technology that is available and effective to deal with water quality issues. Accordingly, based on the application of CEAA’s policies and guidelines, the Panel must conclude that there will be no significant adverse environmental effect in relation to fish or water.

**Pinkosky** – Dr. Pinkosky made a passionate submission in which he misrepresented the submissions made by Taseko regarding the state of the law in Canada on aboriginal rights and title. He quoted selectively from the BC Court of Appeal decision in the *William* case and, in that respect, we ask the Panel to refer to Taseko’s previous submissions about that decision. He asserted that aboriginal rights and title issues have been ignored by Taseko. That assertion is false and ignores the record. Indeed, the New Prosperity proposal is the quintessential accommodation of established and asserted aboriginal rights. His argument ignores the fact that aboriginal title issues in the vicinity of the mine have been settled by our courts. As we have pointed out previously, the appeal to the Supreme Court of Canada will not result in any finding that aboriginal title has been established in the vicinity of the mine. It was telling that Dr. Pinkosky asserted that this process was about sovereignty. Of course, it is not, as the Panel is bound to conduct its assessment in accordance with the laws of Canada, specifically the CEAA 2012.

Dr. Pinkoski’s remarks also displayed a misunderstanding of the of the fundamental role of the EA process generally and of the Panel’s role in that process. His invitation to the Panel to seize an opportunity to ‘enlighten the path for all and cultivate relationships with one another’ suggests that the Panel is at liberty to ignore its lawful mandate. These missives are an example of the attempts we have witnessed by a number of parties to deflect the Panel from its mandate and Terms of Reference.

Dr. Pinkoski stated that Taseko is not listening to its experts, referring to Cindy Ehrhart-English’s report on the Fish Lake area. He conveniently overlooks the fact that Ms. Ehrhart-English actually completed two reports including one for the transmission corridor which is included in the record of the 2009 EIS.

In it, she concludes: 'If Taseko can, through sensitively thought-out measures, actually enhance the environment and maintain or provide improved locations for the traditional and economic activities to take place, then the proposed mine develop could be a positive opportunity for the First Nations inhabiting the region of the proposed power corridor'. We believe that our mitigation measures, including habitat compensation and access decommissioning, and opportunities for education/training, employment and contracting, are exactly those types of strategies.

**Fish Lake Alliance** – Mr. Richardson makes bald and unsupported assertions regarding implications of the discharge by Gibraltar of “effluent” (his term) into the Fraser River. He characterizes the operation of the mine as a “chemistry experiment”. That assertion reveals a fundamental lack of understanding of the processes and technologies to be used in New Prosperity, as well as a lack of understanding around the EA process. Taseko submits that, this is an example of the kind of basic misunderstanding that fuels opposition to the proposed by his organization. Its submissions should be discounted on that basis alone. Mr. Richardson’s misunderstanding of the EA process is evident with his discussion of the application of “reasonable doubt” to Taseko’s ability to maintain pumping at the mine site after the decommissioning of the transmission line. As Taseko has made clear, the requirement for the pumping of water at Fish Lake is based on a conservative modeling exercise around water quality that is not expected to occur. If, as expected, there is no requirement for the pumping of water to the TSF following mine closure, the transmission line would be decommissioned.

**Fish Lake - Cultural Value** - We have heard the Tsilhqot’in speak about the cultural value of the Fish Lake area. Taseko has examined the Xeni Gwet’in Ecosystem-based Plan and mapping recently submitted during these hearings. The mapping in the report identifies numerous sites and large tracts of land of cultural importance to the Tsilhqot’in, including: Konni Lake, Chilko Lake, Choelquoit Lake, Chunigan Lake, Skinner Creek, Niut Mountain, and Mt. Tatlow.

The mapping includes a code of “X”, which denotes areas where economic activities are excluded or severely restricted – it is interesting to note that this restriction is not mapped for the proposed mine site area when it comes to the Tsilhot’in’s own plans for the use of the area which appear to contradict claims that it must be maintained as pristine.

Several presenters mentioned the hope to develop the Fish Lake site as a cultural tourism site. It is also interesting that ecotourism is not listed as an economic activity in the area of Fish Lake. This begs the question as to what economic activity the Tsilhqot’in are contemplating for that site. It is fair to ask whether those plans include developing the mine if the Tsilhqot’in succeed to block development by Taseko through this process.

Taseko notes that based on the report, the proposed mine will not impact

1. the historical wild horse range which is mapped as outside of the proposed mine area, or
2. critical wildlife habitat,

as they have been mapped by the Tsilhqot'in for the Tsilhqot'in caretaker area.

Cascading Reliance on TNG Experts – Several of the presenters referred to the submission of a variety of the experts engaged by the TNG and others to provide reports that could be relied upon by those groups to oppose the project. This is an example of the cascading effect to which Taseko refers that helps fuel opposition and misunderstanding. It is important that the Panel disregard the evidence and submissions that are the product of that cascading effect and focus instead on the root source. Taseko invites the Panel to look carefully at those underlying reports and treat them with great caution for the reasons Taseko has outlined in its written final submission.

The Council of Canadians presentation stated that the financial and economic benefits of the project are overstated and will not flow through to the local communities. Other, more knowledgeable presenters such as Mr. Hoschstein of the Independent Contractors and Business Association of BC, Jason Ryll of the Williams Lake & District Chamber of Commerce, and Jane Wellburn of the Mining Association of BC recognize the important benefits of the project that start with direct and indirect jobs for many hundreds of people and their families who reside in local communities. They understand the importance of the tax revenues generated by those jobs and by the mine operators in supporting social programs and infrastructure that benefit thousands of people throughout the province and the country.

**Stswecem'c/Xgat'temc First Nations** – Dr. McIvor takes the position that in relation to the transmission line, the Panel must start with the findings of the previous Panel. He notes that under the Panel's Terms of Reference, the Panel can make recommendations for additional mitigation. We agree. The Terms of Reference allow the Panel to recommend measures to mitigate "adverse environmental effects" of the project where those impacts infringe on potential or established aboriginal rights or title. It is important to recognize that this analysis starts with the threshold question of whether the project will give rise to an "adverse environmental effect" as contemplated by the CEAA 2012. That exercise requires an analysis of the magnitude, geographic extent, duration and frequency, degree of reversibility and ecological context. When it comes to the transmission line, Taseko submits that that when these criteria are applied, and remembering that they are to be applied after mitigation measures are considered, there is no "adverse environmental effect". The magnitude is not great. The geographic extent is limited to a narrow corridor. It has a one-time effect and the effect is reversible. In the ecological context, the impact is minor. Absent a conclusion that there is an "adverse environmental effect", further consideration as to the impact on aboriginal rights or title is not relevant. Regardless, Taseko submits that any impact on aboriginal rights or title is minor and compensable in various ways.

Dr. McIvor suggests that Taseko's "track record" is not good. That suggestion flies in the face of the evidence which shows that Taseko has been a good corporate citizen, respectful of First Nations interests and willing to engage in discussions with First Nations.

Taseko has considered a variety of alternative routes and has committed to working in consultation with aboriginal groups to situate the transmission line in a way that will mitigate or avoid any areas of archaeological or cultural significance. When the Terms of Reference expressly state that there is no change in the transmission line such that it is open for the Panel to proceed to approve the transmission

line component of the project on the same basis, and subject to the same conditions, as the prior Panel, it is ironic that Taseko is criticized for respecting that direction.

Dr. McIvor criticized the lack of consultation and asserts that both Taseko and the provincial government do not respect Stswecem'c/Xgat'temc peoples. The allegation is ridiculous and baseless and reflects an attitude on his part that inhibits constructive dialogue. He overlooks the fact that it is not Taseko's responsibility to consult, but that of government. To our amazement, Dr. McIvor said that the First Nations door had been open to consultation. It is abundantly clear on the record that Taseko's efforts to communicate and consult with aboriginal peoples have been rebuffed. To then turn around and assert that the lack of communication should be held against Taseko is preposterous. There can be no communication without a willing participant.

### **TNG's Submissions –**

Mr. Pearce identifies the question of whether Fish Lake can be saved. He suggested that Taseko must manipulate and manage an entire water system. He identified three concerns, namely (1) contamination of ground water, (2) changes to water quality in Fish Lake, and (3) loss of water through hydraulic connection. He says the consultants hired by TNG found deficiencies in the data provided by Taseko. It was evident that the concerns to which he referred were based on reports commissioned for the TNG for the express purpose of opposing the project. Taseko's written submission sets out details of why their conclusions are unreliable or invalid.

Mr. Pearce referred to the potential for acid generation, but ignored the evidence given by Taseko that programs will be implemented to segregate PAG and ensure that it is promptly deposited in the TSF. The programs to be used by Taseko are consistent with the best practices in the industry and the evidence demonstrates that those practices, in the modern mining world, do not lead to acid generation. As a result, there is no reason to conclude that the water in the TSF will be contaminated in any material way. Moreover, it is important to remember that concerns regarding PAG should be considered after implementation of mitigation measures. As Taseko has identified, it will carefully monitor the quality of the water in the TSF and has a whole range of mitigation measures at its disposal to ensure that water quality is maintained in compliance with applicable water quality standards. This is critical because, if there is little likelihood of any material contamination of the water in the TSF and any such contamination is manageable, concerns regarding potential changes in water quality in Fish Lake and the potential loss of water through hydraulic connection are largely irrelevant.

Changes to water quality in Fish Lake are very unlikely. However, the quality of the water in the lake will be carefully monitored. If a problem does arise, again, there are a large number of mitigation measures readily available. The TNG's concerns regarding the loss of water through hydraulic connection are speculative. The evidence is that Taseko will develop a detailed design for the TSF and will adapt that design as required to address any issues that might arise once further assessment work and testing is done on site.

Mr. Pearce seeks to have the Panel apply a standard of certainty that is not appropriate for the EA stage. Consistent with Mr. Pearce's statement, Mr. Nelson asks the Panel to use a definition of the

“precautionary principle” that applied with respect to the previous Panel. However, as he effectively admitted in his presentation, that is not the principle that applies now to guide this Panel. The Taseko submission sets out the applicable standard which is the standard that has guided Taseko in the preparation of the EIS.

Mr. Nelson suggested that Taseko has failed to demonstrate that its mitigation measures are technically and economically feasible. This is an oversimplification. The Panel is required to consider whether there are “significant adverse environmental effects” after mitigation measures are taken into account. The viability of mitigation measures only becomes important if the Panel were to conclude that there is a potential significant adverse environmental effect. In that event, the Panel should proceed to consider whether mitigation measures will be effective and that, necessarily, involves a consideration of whether mitigation measures are technically and economically feasible. Taseko has shown in the EIS and in its evidence in this proceeding that the mitigation measures are in fact technically and economically feasible. Those measures are well-known, in common use and have proven effective in the industry.

It is interesting that the TNG argue on the one hand that the project will harm valuable wildlife habitat with a negative impact on populations of moose and bear while at the same time arguing that the no shooting zone around the mine will inhibit the ability of First Nations to hunt and kill wildlife. They also argue that the mine will cause wildlife to move away from the area. If that is true, the effect will be to move the hunting ground to another area such that there would be no material impact on First Nations’ ability to hunt.

Mr. Nelson stated that, taking into account the no shooting zone, the result is a reduction of 50 to 90 % of plant gathering/harvesting areas and 100% trapping of some species. Taseko notes that harvesting has nothing to do with shooting. The no shooting zone may offer better and safer opportunities for gathering and harvesting. The no shooting zone will not impact negatively on trapping.

Mr. Nelson suggested repeatedly that the impacts of the mine would be significant and immitigable. In Taseko’s view, neither of those things is true. If the Panel applies the criteria under the CEAA guidelines for determining significance, it must conclude that the effects on hunting, trapping and fishing are not significant. Part of that assessment is the degree of reversibility. Any impacts on the exercise of aboriginal rights is reversible, both in the short term and the long term.

Mr. Nelson suggests that under the *Haida* test, the consent of First Nations is required. In our view, that is decidedly not the case. We are considering potential impacts on aboriginal rights to trap, trade, hunt, fish, gather berries and medicines and collect wild horses. We are not considering impacts on aboriginal title. It is clear that while there is some impact on the exercise of certain aboriginal rights, the number of alternative sites available to the Tsilhqot’in in their traditional territory is almost limitless. The existence of those options mitigates the effect of the impact on the exercise of those rights in the area affected by the mine. Moreover, Taseko has gone to extraordinary efforts to accommodate those rights and to mitigate the effect of the mine by preserving Fish Lake and providing for ongoing access.

Mr. Nelson referred to the Cindy Ehrhart English report to suggest that ‘the most significant area of spiritual attachment is the Little Fish Lake area’. However, her statement was made in the context of a

very limited study area and was relative to the particular sites she examined in that study. It would be misleading to conclude that the area was the most significant area for Tsilhqot'in.

Mr. Nelson referred to Little Fish Lake cabins. Taseko acknowledges that while there is some evidence of an historical attachment to those cabins for those people who were raised there, but notes that no one has lived there since around the 1970s when haying use to support grazing stopped; Alice Williams lives in 150 Mile. These cabins only started to be rebuilt in 2009 when Taseko entered the EA process.

Mr. Nelson suggested that noise effects from the mine would interfere with the ability to hold community gatherings at Fish Lake. Taseko notes that one of the Community sessions took place in immediate proximity to the Gibraltar mine. Apart from three curious horses the site served perfectly well for that gathering with absolutely no noise effects from mine operations immediately adjacent.

Contrary to Mr. Nelson's statement that Fish Lake offers a 'one stop shop', Taseko notes that during the hearings and in documents within the EIS and in TNG's own submissions, it was apparent that many plants and species used by Tsilhqot'in are not available in the Fish Lake watershed.

Finally, with respect to the statement that the Fish Lake watershed is 'the last intact area east of the Taseko River', Taseko notes that this ignores the existence of Big Creek Provincial Park and the Spruce Lake protected area to the east, as well as numerous parks to the south, north and west of the Taseko River.

Chief Guichon stated that the Tsi Del Del Joint Venture logging company employs as many as the mine would. However, he ignores the Mid-Term Timber Supply Report issued last year from the province (addressed by Ms. Gizikoff in the Human Environment session) illustrating the forecast for the forest industry in the region that showed a reduction in harvestable timber in the area which is expected to lead to reduced harvesting and employment.