

CLOSING SUBMISSION

INTRODUCTION.....	2
GENERAL REMARKS.....	3
MANDATE OF THE PANEL.....	5
CEAA POLICIES	9
<i>Determining Significant Adverse Environmental Effects</i>	9
<i>Certainty</i>	10
<i>Precautionary principle</i>	11
TASEKO'S POSITION ON SUBSTANTIVE ISSUES	12
<i>Fish</i>	12
<i>Fish habitat</i>	13
<i>Aquatic species under SARA</i>	13
<i>Migratory birds</i>	14
<i>Water quality</i>	15
<i>Grizzly bears</i>	17
<i>Moose</i>	19
<i>Salmon fishery</i>	20
EXPERTS ENGAGED BY OPPOSITION ORGANIZATIONS	21
<i>Kuyek</i>	21
<i>Kuipers</i>	22
<i>Doyle</i>	23
<i>McCrary</i>	23
<i>Shaffer</i>	24
ABORIGINAL ISSUES	26
<i>Aboriginal rights and title generally</i>	26
<i>Consultation</i>	26
<i>First Nations sovereignty issues</i>	28
<i>Nemiah Declaration</i>	30
<i>Tsilhqot'in aboriginal rights and title</i>	32
<i>Secwepemc aboriginal rights and title</i>	33
<i>Current use of lands and resources for traditional purposes</i>	34
<i>Socio-economic impacts</i>	37
OTHER ISSUES	38
<i>Grazing</i>	38
<i>Navigation</i>	38
<i>Transmission line</i>	41
<i>Risk</i>	41
<i>Fear of contamination</i>	42
<i>Archaeological studies</i>	43
<i>Taseko Lake Lodge</i>	44
CONCLUSION.....	45

Introduction

It is a pleasure to be here today to offer closing submissions on behalf of Taseko Mines Ltd. (“**Taseko**” or the “**Proponent**”). Today is the final day in what has been an extensive and demanding hearing process. I wish to start by thanking all of the participants. This includes not only all of those who supported our project as well as those who brought forward different views and allowed us an opportunity to consider them and respond. We also wish to thank the Panel, the Panel Secretariat and the people who worked behind the scenes to facilitate the hearing process, including those in the communities who prepared our lunches and helped us all keep moving forward.

I would also like to thank the City of Williams Lake and to acknowledge that we are in the traditional territory of the Williams Lake Indian Band.

It is Taseko’s view, based on all its years of experience and expertise, that based on a fair and consistent application of the criteria under the CEEA 2012, the Panel should conclude that the New Prosperity mine will not result in any significant adverse environmental effects. Following the review of the previous proposal, Taseko did what it was asked to do by modifying the proposed project in very substantial ways to address the concerns identified by the previous Panel. We did this despite the fact that we believe that several of those concerns were not based on a proper application of the relevant criteria.

When the federal government declined to approve the original Prosperity Project it invited Taseko to consider submitting a revised proposal to address concerns identified by the previous Panel. Those issues were almost entirely related to the company’s initial proposal to drain Fish Lake. Taseko has done what it was asked to do and the New Prosperity project is designed to preserve and protect Fish Lake. It has done this at great expense.

This is a very significant project; one that offers enormous financial benefits, not only for the company and its shareholders, but more generally for the people of the Cariboo-Chilcotin region, the province of British Columbia and Canada. It offers many new opportunities for economic development and for employment, training and education for aboriginal and non-aboriginal peoples. The Prosperity mineral deposit cannot be moved, so the Panel has the daunting task and responsibility of sifting through weeks of presentations and thousands of pages of written

submissions to assess whether the project will, after all mitigation measures have been taken into consideration, be likely to result in significant adverse environmental effects. It is worth noting, however, that the Panel can take comfort in knowing that if this project is approved at this stage, the project will be subject to rigorous scrutiny through a permitting process and thereafter to ongoing oversight under the applicable laws of Canada and British Columbia that are designed to protect the environment and public safety, and that we expect those laws to be enforced consistently, firmly and objectively under the rule of law.

As I move through these comments today, I will make reference to some materials that Taseko has previously filed. However, I do not intend to speak about them again in detail. I will instead file with the Panel Secretariat a copy of these closing comments, which will include footnotes referencing submissions on record from Taseko or others that are relevant to the points I will be addressing. We hope that document will assist the Panel as it goes about writing its report, as there are many important pieces of evidence to address that time does not permit me to discuss in detail in this presentation.

General remarks

I want to start by mentioning a few things that Taseko has observed throughout this process and general comments that we wish to make.

First, Taseko has observed that there is an extraordinary lack of understanding of the New Prosperity Project and its potential effects in many quarters. We were discouraged to find that, over and over again through this process, presenters came forward to object to various aspects of the project or to express concerns or ask questions about the project that indicated they were badly misinformed about the project. To some extent we recognized that we needed to do a better job of getting our message out and were grateful that this process offered that opportunity. At the same time, we also realized that some of our efforts to provide information about the project were being frustrated by those elements who are unalterably opposed to the project. As well, there is no doubt that a great deal of misinformation was the product of an organized campaign designed not to inform the Panel's decision, but calculated to stop the project from proceeding.

One of the benefits Taseko saw through this process was the opportunity to speak directly to community members who approached the company in an open-minded way with fair questions. We were very encouraged to find that as we had the opportunity to engage directly and to respond to their questions, either in the hearing itself or in the hallways during adjournments, many people told us that they were happy to know that their questions could be answered to their satisfaction. Some were stunned to learn just how badly they had been misled by others. We came away certain in the knowledge that, despite claims that aboriginal peoples were united in their opposition, in fact, there was substantial support for the project.

I would also like to comment on public input, both for and against the project. While the purpose of an environmental assessment is not to conduct a plebiscite on a project, it is clear that many people expressed views either for or against the project in very general terms. I hope that the Panel saw the extraordinary degree of support for the project that existed in the general sessions and which were highly representative of the overall community. They included people from all walks of life and backgrounds, both aboriginal and non-aboriginal. That was of course not the same dynamic that occurred over the last three weeks as the sessions were held in remote aboriginal communities. While we understand the desire of the Panel to make its process available to the members of those communities, it is essential to keep in mind that this process has provided a very disproportionate amount of hearing time in aboriginal communities where leadership opposes the project as compared to those communities which generally support it. In the result, leaving aside the topic-specific sessions, only 4 days of hearings were held in non-aboriginal communities whereas 13 days were held in the aboriginal communities.

Taseko does not object to the community hearings – in fact, we valued that forum, as it allowed us the opportunity previously denied to us to speak directly to the people in those communities and to learn from them and to hear and respond to their concerns. We understand the mandate of the Panel to seek public input and, in particular to hear from aboriginal peoples and we believe the Panel has gone to extraordinary lengths to do that. However, we caution that a great deal of what the Panel heard in the community sessions was orchestrated by those elements of aboriginal leadership and their advisors who are committed to stopping the project. In saying this, we do not doubt for a moment that the vast majority of those who spoke in the community sessions spoke from the heart when describing their feelings. I will say more about that later. For now, I

want to make the point that, if and to the extent the hearing process is intended to measure overall public support or opposition, the hearing structure, schedule and choice of locations did not allow for a balanced assessment.

Finally, I would be remiss if I did not state clearly that Taseko has throughout numerous points of these proceedings had fundamental concerns about fairness of process. We have filed several submissions expressing our concern about fundamental and repeated breaches of the Panel's procedures. As this process is now virtually complete we will not dwell on them, but please know those submissions were filed only after very careful thought and only after Taseko felt it had no alternative. Taseko is fully aware that there are those who will seek to criticize any such complaints, but we learned from the last Panel process that if we did not stand up to unfairness the company would not receive a fair result.

Similarly, to the extent that Taseko has had to question the motives or genuineness of any witnesses, it is done so with considerable reservation but without choice.

Mandate of the Panel

In our opening statement we predicted that parties opposed to this project would attempt to deflect the Panel from its mandate and from its terms of reference. We have seen that prediction proved correct in technicolor.

Why would they do that? We suggest the answer is that they knew going into this hearing based on the extensive work done by Taseko in its EIS, that they could not win the day by focusing on the merits of the issues relevant to an environmental assessment under the *Canadian Environmental Assessment Act, 2012* (the "**CEAA 2012**"). Accordingly, I want to take a few minutes to review the applicable legal requirements under CEAA 2012.

An "environmental assessment" as contemplated by the CEAA 2012 is a process to gather and consider information to assess the "environmental effects" of a project in accordance with the requirements laid out in the CEAA 2012. Environmental assessment ("**EA**") is a planning tool used to ensure that projects are considered in a careful and precautionary manner in order to avoid or mitigate the possible adverse effects of development on the environment and to encourage decision makers to take actions that promote sustainable development and thereby

achieve or maintain a healthy environment, healthy communities and a healthy economy. We ask the Panel to keep this objective in mind. We also ask the Panel to note that if the project is approved at this EA stage, it will then proceed to the next phase of detailed design with further testing and analysis to verify assumptions, and finally to permitting. Through those stages, additional details and certainty will be provided and all relevant environmental issues will be addressed to the satisfaction of regulators – or the project will not proceed.

For the purposes of the CEAA 2012, and thus for the purposes of this Panel’s assessment, the term “environmental effects” has a specific meaning. The “environmental effects” to be taken into account are just those set out in section 5 of the CEAA 2012 and they relate to the following:

- (a) fish as defined in section 2 of the *Fisheries Act* (Canada);
- (b) fish habitat as defined in section 34(1) of the *Fisheries Act* (Canada);
- (c) aquatic species as defined in subsection 2(1) of the *Species at Risk Act* (Canada) (“**SARA**”);
- (d) migratory birds as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994* (Canada) (the “**MBCA**”);
- (e) any other components of the environment as set out in Schedule 2 – there are none; and
- (f) with respect to aboriginal peoples, an effect of any change that may be caused to the environment on any of the following:
 - (i) health and socio-economic conditions;
 - (ii) physical and cultural heritage; and
 - (iii) current use of lands and resources for traditional purpose or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

That is the complete list of “environmental effects” this Panel is charged to assess and to report upon by the terms of the CEAA 2012. In saying that, we also recognize that the Panel Terms of Reference include a somewhat different definition of “environmental effects” than the legislation itself. Taseko submits that a consideration of issues beyond those expressly contemplated in the CEAA 2012 and its definition of environmental effects is beyond the Panel’s authority at law, but this is a question the Panel itself will have to consider and express its own position on given the terms of reference it has been given.

In conducting its assessment in relation to these specific potential “environmental effects”, the Panel must take into account the factors listed in section 19(1) of the CEAA 2012. The relevant factors are:

- (a) environmental effect of malfunctions or accidents that may occur and any cumulative environmental effects;
- (b) significance of effects in clause (a);
- (c) comments from the public;
- (d) mitigation measures that are “technically and economically feasible”;
- (e) requirements of the follow-up program;
- (g) alternative means that are “technically and economically feasible” and the environmental effect of any such alternative means; and
- (h) any change to the project caused by the environment.

I will not address each of the considerations under section 19(1) in detail at this point as I believe they are all covered elsewhere in this submission. However, in summary, Taseko believes it has addressed all concerns regarding the potential environmental effects of malfunctions or accidents and any cumulative environmental effects as well as the significance of those considerations.

The New Prosperity proposal is very much the product of comments from the public in the previous hearing, and Taseko continues to listen and respond to public comments. The proposal before you employs mitigation measures, and Taseko is committed to utilizing all additional

mitigation measures that are technically and economically feasible if and as those measures are identified as appropriate. In addition, Taseko submits that there do not appear to be any alternative means that are currently technically and economically feasible for the development of the mine.

Finally, section 19(3) of the CEAA 2012 states that the assessment may take into account community knowledge and aboriginal traditional knowledge and in that respect, we note that the Panel has been directed by the Minister to take those factors into account. While this process has been overwhelmingly preoccupied with presentations related to aboriginal knowledge, that is certainly not the only factor to be considered by the Panel – it is one of several considerations. I will address this topic in more detail later in this submission.

An EA first identifies potential adverse “environmental effects”, i.e. the effects on fish and fish habitat, certain aquatic species, certain migratory birds and the potential effects on aboriginal peoples in relation to health and socio-economic conditions, physical and cultural heritage and current use of lands and resources for traditional purpose or on structures, sites or things of historical, archaeological, paleontological or architectural significance.

Second, an EA considers measures to mitigate adverse environmental effects.

Third, an EA assesses whether there will likely be significant adverse environmental effects – after mitigation measures have been implemented. I emphasize those words, “likely” in relation to effects and “after” in relation to mitigation – they are important. The Panel not only can, but must, consider the effects of mitigation measures, as well as adaptive management plans and subsequent permitting that will follow if this project is approved at the EA stage. Open pit mines of this type are common place. The engineering, design principles and adaptive management systems are well-understood so the likelihood of significant adverse environmental effects is low.

It is interesting and instructive to note just how far the industry has progressed in the past several decades. Almost all the examples cited by opponents of the project relate to older mines and mine operations in jurisdictions far less regulated than is currently the case in BC. Those examples are not relevant to the modern state of the industry in this province except to note just

how successful the industry has been in modernizing and in adopting new management techniques and engineering solutions to resolve historical issues. Those lessons have been learned and represent the starting point for the design and operation of this project.

Finally, we draw the Panel's attention to section 3.3 of its Terms of Reference, which directs the Panel to use, to the greatest extent possible, the information, testimony and submissions from the previous proceeding. with regard to aspects of the proposed project whose environmental effects are not anticipated to be affected by the new components of the project. With respect, in particular, to the transmission line, the access road and the load out facility, we note that the Panel's Terms of Reference state in section 3.4 that these components of the project have not changed from the previous project proposal. Taseko has relied on these Terms of Reference in its presentations to the Panel in this proceeding.

CEAA Policies

Taseko asks that the Panel conduct its assessment and produce its report in a manner consistent with CEAA's policies. We caution that, in our view, the previous Panel strayed from this path in a number of its conclusions and made findings that were not fair or justified as a result.

Determining Significant Adverse Environmental Effects

CEAA's guidelines offer a step by step prescription for assessing whether a project will be likely to result in "significant adverse environmental effects" as that term is defined under the CEAA 2012.¹

Step 1 – is the environmental effect adverse?

Step 2 – is the adverse environmental effect significant based on the application of the following five criteria:

- (i) magnitude;
- (ii) geographic extent;

¹ See *Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects*, <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=D213D286-1&offset=3&toc=show>

- (iii) duration and frequency;
- (iv) degree to which the effect is reversible or not; and
- (v) ecological context.

Step 3 – Is a significant adverse effect “likely”?

With regard to step 3, Taseko notes that CEAA policy states that the factors to consider are probability of that effect and the degree to which it is scientifically certain or uncertain. The policy states and accepts that there will always be some scientific uncertainty associated with the information and methods used in EAs.

Under CEAA 2012, this above analysis must be undertaken in terms of potential adverse environmental effects with respect to:

- (i) fish as defined under the *Fisheries Act*,
- (ii) fish habitat as defined under the *Fisheries Act*,
- (iii) aquatic species as defined under SARA, and
- (iv) migratory birds as defined in the MBCA, 1994.

As well, under the CEAA 2012, such an assessment must also take place with respect to any change caused to the environment and any resulting impact on specific aboriginal interests. These are health and socio-economic conditions, physical and cultural heritage and the current use of lands and resources for traditional purposes or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

Certainty

I would also like to speak about the degree of certainty that is required at the environmental assessment stage. On July 31, 2013 we filed a submission which included relevant quotations from various cases where the courts have made clear that certainty is not required at the environmental assessment stage, and instead the question is whether “significant adverse effects”

are “likely”.² These cases also make clear that the Panel can and should consider post-EA monitoring, adaptive management, and the role of subsequent permitting agencies that must approve the project before any construction can proceed. Here for example, is what the Federal Court of Appeal stated in *Inverhuron & District Ratepayers Ass’n. v. Canada (Minister of The Environment)*:

The essence of the environmental assessment process is to predict the environmental effects of a proposed project and then assess their significance. This process must be conducted as early as practicable in the planning stages of a project. By its very nature, then, the process is subject to some uncertainty. As this Court recognized in *Alberta Wilderness Assn. v. Express Pipelines Ltd.*, at 181. No information about probable future effects of a project can ever be complete or exclude all possible future outcomes.³

All of this case law must be duly considered when assessing whether a significant adverse effect would be likely. Taseko submits it is clear these standards have been met here and that it has provided a level of information and certainty that is wholly appropriate to the environmental assessment stage. In this regard, Taseko notes its positions on key issues were also generally supported by the two independent experts engaged by the Panel, Dr. Smith and Dr. Eberhard. Moreover, Taseko has gone further by developing, during the course of these proceedings and based on submissions of aboriginal groups and expert agencies, a number of commitments which again I will discuss shortly.

Precautionary principle

This principle is reflected in section 4 of the CEAA 2012 (the “purposes” section of the act). It is a concept, that, when properly understood, helps inform EA and responsible decision making. Unfortunately, its meaning and effect is often misrepresented and abused. We have seen a number of examples of that in this proceeding.

Those who do not properly understand the concept (or choose not to) typically refer to it as a basis to suggest that, in the absence of complete scientific certainty, there is risk and, if there is risk, a project should not proceed. That is a complete misstatement of the principle.

² See CEAR Document #825, <http://www.ceaa-acee.gc.ca/050/documents/p63928/92689E.pdf>.

³ *Inverhuron & District Ratepayers Ass. v. Canada (Minister of The Environment)*, 2001 FCA 203 at para 55.

Fortunately, the government of Canada has set out a clear and correct statement of the precautionary principle.⁴ It expressly states clearly that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm. And at the same time, it notes that environmentally protective measures should not be avoided simply because harm may be uncertain.

Similarly, the World Commission on the Ethics of Scientific Knowledge and Technology has published a paper on the “precautionary principle” that is consistent with the government of Canada’s policy.⁵ It states that “some form of scientific analysis is mandatory; a mere fantasy or crude speculation is not enough to trigger the precautionary principle.” It states that that precautionary principle is not based on ‘zero risks’ but aims to achieve lower or more acceptable risk or hazards.

In this case Taseko is clearly applying and supporting the precautionary principle. It has, through the EIS and this panel process, undertaken extraordinary amounts of study to assess an extensive number of potential (and in many cases extremely remote) risks. Yet it has proposed many mitigation measures and adaptive management strategies in respect of those risks, even when it is far from certain they would otherwise occur. This is the quintessential example of the proper application of the precautionary principle.

Taseko’s position on substantive issues

With all this in mind, I would now like to comment briefly on each of the topics specified in section 5 of the CEAA 2012.

Fish

Fish Lake is preserved. There would, over time, be fewer fish in Fish Lake, but the remaining population would still be substantial in number and would be healthier and larger in size. In our view, the magnitude of the effect on fish is not great. It is localized in geographic extent. The effect would be gradual as the result of natural attrition from the reduction in spawning habitat but mitigated by Taseko’s proposed enhancement programs. Importantly, the effect would be

⁴ *A Framework for the Application of Precaution in Science-Based decision Making about risk*, Government of Canada, at page 2.

⁵ *The Precautionary Principle*, COMEST, March 2005, <http://unesdoc.unesco.org/images/0013/001395/139578e.pdf>

neither irreversible nor permanent. Moreover, with respect to the ecological context, the implementation of the fish compensation measures both in the vicinity of the project area and distributed around the region, will provide a benefit for a number of fish species, including two species of concern. Based on the application of these assessment factors, there is clearly no significant adverse environmental effect in relation to fish.

Fish habitat

Fish Lake and much of the upstream fish habitat is preserved. Taseko acknowledged that there would be some adverse effects on fish habitat immediately below Fish Lake. However, the effect is small in magnitude and of localized geographic extent. The effects are largely reversible and not permanent. All of the loss in fish habitat would be offset by Taseko's programs for enhancement of fish habitat in other areas outside the Fish Lake watershed. Environmental effects must be assessed taking into account proposed mitigation measures. In this case, Taseko has outlined the mitigation measures it would take to minimize the effect on fish habitat and that would improve productivity of remaining habitat. Taseko's fish habitat compensation plan has been designed to satisfy the requirements of section 35 of the *Fisheries Act*. The very purpose of that section is to ensure that there is no net adverse impact on fish habitat. In our view, the magnitude of the effect on fish habitat is not great, particularly given Taseko's fish habitat compensation plan. The effect would be gradual, and it is localized in geographic extent. The effect would be neither irreversible nor permanent. Further, with respect to ecological context, there is a great deal of other habitat in the vicinity, and the affected habitat is not distinct or unique. Based on the application of the assessment factors under the CEAA 2012 and the requirements of section 35 of the *Fisheries Act*, there is clearly no significant adverse environmental effect in relation to fish habitat.

Aquatic species under SARA

With respect to the specific requirements of the CEAA 2012 regarding aquatic species at risk under SARA, we note that the only aquatic species at risk that has been identified as a potential concern during this hearing process is the Western Toad, which was mentioned briefly by Mr. McCrory in one of his presentations. However, there was no evidence adduced that the Western Toad would be adversely affected in any material way, if at all, should the project proceed.

Nevertheless, Taseko acknowledges that care should be taken to not ignore the potential impacts on that species. The evidence before the Panel indicates that mitigation measures, such as culverts and other passage ways to keep the toads off the roadways are readily available. Once again, in our view, there is no evidence to suggest that the magnitude of the effect, if any, on the Western Toad would be great, particularly after mitigation measures are introduced, including toad salvage and offsite habitat compensation. Any effect would be localized in geographic extent and is likely to be gradual. Importantly, there is no indication that any adverse effect would be irreversible or permanent. Moreover, with respect to the ecological context, the creation of and enhancement of wetland habitat as part of the Habitat Compensation Plan will result in benefit for the Western Toad population. Based on the application of these assessment factors, there is clearly no significant adverse environmental effect in relation to the Western Toad or any other species under SARA.

My comments regarding the specific requirements of the CEAA 2012 in relation to species at risk may not address all of the wildlife issues that the Panel will wish to address given the inconsistency between the definition of environmental effects in the CEAA 2012 and the Panel's Terms of Reference. So, without prejudice to Taseko's legal position on this issue which I discussed earlier, I will address certain other wildlife issues such as grizzly bears and moose either separately or in relation to our submissions related to aboriginal culture and heritage and current use of lands and resources for traditional purposes.

Migratory birds

No evidence was adduced in the hearing to indicate that there is any threat to migratory birds from the development of the mine. Migratory birds co-exist with other similar mines throughout BC with no apparent adverse effect. Indeed, Taseko suggests that the no shooting zone around the mine offers sanctuary for migratory birds. In our view, the magnitude of the effect, if any, on migratory birds would not be great. It would be localized in geographic extent. The effect would be gradual, mitigated by Taseko's proposed habitat compensation programs, and reversed upon mine closure and reclamation. There is no evidence that any adverse effect would not be reversible or would be permanent. Moreover, with respect to the ecological context, the offsite habitat compensation plus the creation of Pit Lake and TSF Lake upon the closure of the mine, habitat for migratory birds would eventually increase above baseline. Based on the application

of these assessment factors, there is clearly no significant adverse environmental effect in relation to migratory birds.

Water quality

Because so much time and concern was focussed on water quality during the hearing, I want to address that topic separately. Taseko's evidence is that there would be no material adverse effect on water quality. Any potential adverse effect is small in magnitude and geographically localized. It would also be of limited duration, reversible in any case, and in an ecological context in which there are many other similar areas, and for which the potential for impacts outside of the immediate watershed are extremely remote.

In any Tailings Storage Facility (“**TSF**”) some seepage is normal – in fact it is an integral part of the design of a TSF. While we had thought there was a convergence of views on seepage predictions between Natural Resources Canada (“**NRCan**”) and Environment Canada on these issues during the hearing we have recently – somewhat surprisingly – seen those agencies say they remain of different views. But the more important fact is that Taseko's modeling and assessments were largely supported by the Panel's independent experts. Further, Taseko has made additional commitments to gather further information and share that information with regulators before any permits would be issued by the Ministry of Energy and Mines (“**MEM**”) and the Ministry of Environment (“**MOE**”), and we have no doubt those agencies will provide to NRCan and Environment Canada with an opportunity for further engagement. Given the support of the Panel's own experts, and given the case law (discussed above) which makes clear that the Panel can and should consider the role of subsequent permitting agencies whose approval would be essential for the mine to operate, Taseko submits that there is absolutely no basis whatever to suggest this proposed project would be “likely” to cause significant adverse environmental effects because of TSF seepage.

Taseko also notes that Environment Canada provided a late submission email⁶ to the Panel which cites CEAA's “Operational Policy Statement – Adaptive Management Measures under the *Canadian Environmental Assessment Act*”. While Environment Canada notes the policy indicates commitments to adaptive management and subsequent monitoring may in some cases

⁶ See CEAR Document #1122, <http://www.ceaa-acee.gc.ca/050/documents/p63928/93584E.pdf>

not themselves be sufficient to address uncertainties, Environment Canada fails to acknowledge that Taseko's commitments go well beyond that. It also fails to acknowledge that those commitments are made expressly to inform post-EA permitting that will be undertaken by two provincial agencies (MEM and MOE) with substantial regulatory responsibilities, and without whose approval the project simply cannot proceed. Further, Environment Canada fails to discuss the case law, which Taseko has cited, which specifically says that the Panel can and should consider the implications of post-EA permitting when assessing the likelihood for significant adverse environmental effects where some degree of uncertainty exists on an issue. Finally, in addition to all that, it is simply not Environment Canada's role in this EA, as a "federal authority" under the CEAA 2012, to express an opinion on what degree of certainty is required at the environmental assessment stage and whether that has been achieved. That is exclusively for the Panel to consider – and not as a question unto itself, but rather as a factor when assessing whether the project is likely to have significant adverse environmental effects (i.e. the fundamental question under the CEAA 2012). Accordingly, in this last minute email submission Environment Canada appears to be arrogating itself to the Panel's role or at least making submissions to the Panel on matters that go beyond its proper role. That latter possibility raises serious questions about whether such officials may be misusing their public office to seek to oppose a project rather than simply providing relevant expert information.

Regardless, all this shows that, the magnitude of the effect, if any, on water quality would not be great. It would be localized in geographic extent. Any effect of mine operations on water quality would be gradual and managed – and any adverse impacts mitigated by Taseko's proposed adaptive management programs. There is no evidence that any adverse effect on water quality would not be reversible or that it would be permanent.

While the Britannia mine is an extreme circumstance and the product of antiquated mining practices that are not relevant to the New Prosperity project, it is useful to pause to consider that example. Despite extreme water contamination, far beyond anything that one could possibly associate with the New Prosperity project, that situation was reversed and corrected in the space of a few years. And, I should add, that was done at the expense of a former operator of the mine and not at the cost of the taxpayers of this province.

Moreover, with respect to the ecological context, the impacts will be contained within the Fish Lake watershed. Based on the application of CEAA's assessment factors, there is clearly no reason to expect that there would be a significant adverse environmental effect in relation to water quality.

Finally, we note that Taseko has made a number of substantive commitments during the course of these proceedings⁷ to provide the Panel with confidence that additional investigations would be undertaken before permitting, and other measures committed to, such that it can have a high degree of confidence in such finding at the EA stage.

Grizzly bears

In the 2010 Report, the Panel found that there was a significant adverse cumulative effect on South Chilcotin grizzly bear population. The Proponent submits, firstly, that under the CEAA 2012, consideration of potential impacts on the South Chilcotin grizzly bear population is outside the mandate of this Panel. The South Chilcotin grizzly bear is not a listed species under SARA and, accordingly, it is not within the ambit of the Panel's jurisdiction under section 5 of the CEAA 2012. Nevertheless, recognizing that the Panel may wish to consider and report on the potential effects of the project on the South Chilcotin grizzly bear, I will address that subject.

Despite claims from Mr. McCrory that the grizzly population is seriously threatened, the government of BC which has the responsibility for regulatory oversight apparently does not share the view that the population trend is downward. Certainly, the province has not moved to institute a recovery program. The comments submitted by the Provincial Large Carnivore Specialist clearly state his "support of their [Taseko's] conclusions, their proposed mitigation, and their proposed monitoring related to our [BC] government's Grizzly bear recovery objectives for the South Chilcotin GBPU".⁸

The Proponent has addressed the potential impact on the grizzly bear population in its EIS by proposing mitigation measures. It is important to note that the potential impacts on grizzly bears identified by Mr. McCrory and others are not the result of changes to the environment caused by

⁷ See CEAR Document #978, <http://www.ceaa-acee.gc.ca/050/documents/p63928/93249E.pdf>.

⁸ See CEAR Document #654 for the Province of BC's submissions
<http://www.ceaa.gc.ca/050/documents/p63928/91157E.pdf>

the New Prosperity project – to the extent they exist at all. The evidence makes it clear that the real threat to grizzly bears is not from mining, but from human interactions, particularly with ranchers, recreationists and hunters. The Proponent’s proposed Access Management Plan, similar to plans identified and recommended by presenters during this hearing, including Dr. Senger and Mr. McCrory, aims to address the existing impact of roads built into core wildlife habitat, including for grizzly bear and moose, along the proposed transmission line route.

The evidence also shows that fears regarding potential bear kills from traffic are speculative and not well-founded.⁹ Mines have operated for many years in BC and Alberta with no recorded instances of bear kills associated with mine activities or traffic. The evidence also showed that the bulk of the grizzly bear population in the South Chilcotin Grizzly Bear Management Unit resides to the south and west of the Fish Lake watershed, which would indicate that potential impacts are less material than would be the case if the subject area was heavily populated by bears. As a result, if the New Prosperity project proceeds and the Proponent’s mitigation measures are implemented, the net effect may be to enhance the grizzly bear population in the Unit – certainly not a significant adverse effect.

It is also relevant to recognize that the 2010 Panel Report found that, while the previous proposal would result in a relatively small loss in habitat, it would contribute to a further decline of the present situation. The previous proposal did not include mitigation measures and had a significantly larger footprint in terms of impact on bear habitat.¹⁰ As well, the 2010 Panel Report assumed that logging was expected to continue to affect habitat in the area due to the increased harvesting in response to the mountain pine beetle infestation. That is no longer the case. The evidence in this proceeding is that logging activities are in decline as economically accessible timber tracts infested by the Mountain Pine Beetle have now been logged. Looking to the future, it is reasonable to expect that logging activities will continue to decline in the area. Moreover, reforestation projects on the current clear cut areas will restore habitat over the life of the mine.

⁹ See transcript of July 31, 2013, page 185 (<http://www.ceaa-acee.gc.ca/050/documents/p63928/92704E.pdf>), for a comment by Dr. Sue Senger that it is “very rare for a bear to get hit by a car”.

¹⁰ Note the comment from Ken Dunsworth, presenting on behalf of the Fish Lake Alliance, at page 211 of the July 31, 2013 hearing transcript, that “Habitat loss is the single most significant factor effecting species decline”. Under New Prosperity habitat loss would be even smaller than that anticipated in the 2010 report.

There is no reasonable basis to expect that the changes to the environment caused by the New Prosperity project is likely to cause a significant adverse environmental effect in relation to grizzly bears.

Moose

With regard to moose, the new mine design results in no material change in moose habitat. The previous Panel's conclusion on moose was one of no significant adverse effect. With the mitigation measures and habitat compensation proposed by Taseko related to reducing road and trail access in the vicinity of the transmission line, and in light of reclamation of upland areas on the mine site to include habitat for moose, upon closure, moose habitat could be greater than what is now available at baseline. During this proceeding, we heard that the moose population in the area may be in decline. The recent Scott McNay report, which was referred to during these hearings¹¹ outlines management actions to reduce or reverse the current decline in moose for the Cariboo region, and they include:

- 1) Reducing kills of cows and calves, and the report states: by encouraging voluntary reduction in First Nations harvests of cows and calves,
- 2) The targeted management of wolf populations where cow:calf ratios continue to be low, and
- 3) Reducing vulnerability of cows and calves through reductions in accessibility to them.¹²

Taseko is encouraged to hear that our plans to work on access road decommissioning and access planning is consistent with the plans of the Tsilhqot'in in other portions of their traditional territory. This is consistent with our goal of working on access management to enable some road decommissioning during transmission line construction.

Taseko submits that there is no indication that the proposed mine will have a significant adverse effect on the moose population.

¹¹ See generally the July 24, 2013 Hearing Transcript (the Terrestrial Environment topic-specific session), <http://www.ceaa-acee.gc.ca/050/documents/p63928/91956E.pdf>

¹² See CEAR Document #1081 , <http://www.ceaa-acee.gc.ca/050/documents/p63928/93500E.pdf>

Salmon fishery

We heard many times the claim that if the mine proceeds, it would wipe out the salmon fishery all the way to the Pacific coast. Such shrill claims are unfounded and irresponsible in the extreme. The fears are based on the notion that there will be seepage from the TSF or that the TSF could fail in some catastrophic event and that the water within the TSF is itself “toxic” or “poisonous”. First, we must recognize what is in the TSF – it is water; water whose quality is monitored and either controlled or controllable so that it does not present a hazard. The evidence shows that water in other TSFs in this province, such as Taseko’s Gibraltar facility, is of sufficient quality that it sustains a healthy population of fish. Those fish are monitored and sampled and the results of the analyses show that the fish do not contain elevated levels of metals or other contaminants above levels posing concerns to fish or human health. We refer specifically to the tissue sampling at the Gibraltar TSF which shows that the fish in that facility have significantly lower concentrations of metals and contaminants than are present in fish in pristine natural lakes, with the single exception of copper, which exceeds that measure in other lakes for that parameter by a modest 8%. Considering that the background levels for copper in the vicinity of a copper mine are almost certain to be higher than in areas where copper is not present, this is hardly surprising and certainly no cause for concern. Further, it is important to keep in mind that any exceedance of a single parameter of the guidelines does not represent a significant adverse effect. To the contrary, MOE policy¹³ makes clear that these guidelines are very generic, do not account for site specific conditions, and the ministry has developed a lengthy and detailed policy for determining whether and when such guidelines can be safely exceeded in particular circumstances. This policy has been noted in submissions filed by Taseko.¹⁴

Taseko has noted that there is no reason to fear any significant adverse environmental effect even if water is discharged from the TSF. There are several reasons for this conclusion. First, the water in the TSF is not inherently toxic or hazardous. Second, the amount of water that seeps from the TSF is relatively minor and it is monitored and about 70% of it is recovered. Third, if

¹³ *Guidance for the Derivation and Application of Water Quality Objectives in British Columbia*, B.C. Ministry of Environment, http://www.env.gov.bc.ca/wat/wq/pdf/wqo_2013.pdf

¹⁴ See CEAR Document #978, <http://www.ceaa-acee.gc.ca/050/documents/p63928/93249E.pdf>

water quality in the TSF ever does become unacceptable, the company can and would institute measures to treat the water. Fourth, there is no reasonable basis to expect the TSF to fail in any catastrophic way. Fears of such a failure are pure speculation. These kinds of facilities exist around the province and around the world. They are designed and engineered so as not to fail – indeed, that is precisely why some degree of seepage is part of the design. It is not a flaw in the design as some have suggested.

Experts engaged by opposition organizations

The TNG and other organizations have put in an enormous effort to oppose this Project. The TNG engaged Mr. LaPlante, who is also a director of Raven Trust, where it is stated on its website that his primary duty is to coordinate the Tsilhqot'in's engagement and activities aimed at protecting Teztan Biny and the surrounding region from the proposed Prosperity Mine.¹⁵ It has hired experienced legal counsel. It engaged Tony Pearce to assist in planning and coordinating their efforts. The TNG and others organized a parade of presenters at the Community sessions. We heard the same fears expressed many times over, often in exactly the same words. One thing that came through was the fact that many presenters were obviously relying on information and analysis that is readily traced back to the consultants and advisors engaged by these groups. A number of organizations are engaged with the TNG to provide information to the Panel. These organizations include Mining Watch, Friends of Nemiah Valley, Wilderness Committee, the Raven Trust and the Valhalla Wilderness Society. While Taseko has hired independent, qualified and experienced professional consultants with no stake in this project, these organizations all have definite agendas that can be readily found on any of their websites.

In view of all this, I want to take a few minutes to comment on some of the analysis presented by this collection of experts and summarize Taseko's response.

Kuyek

Taseko found Ms. Kuyek's analysis and conclusions to be so far removed from what one might reasonably expect from a qualified and experienced professional, even one seeking to find fault in the project, that we wondered whether it would be worthwhile responding to it. However,

¹⁵ See <http://www.raventrust.com/aboutus/boardofdirectors.html>

because it became apparent that it had been relied upon extensively by others, we concluded that a response would be helpful. A more detailed response to Ms. Kuyek's submissions can be found in CEAR document # 869.¹⁶ Ms Kuyek presents herself as an authority on mining, but she has relied on biased and unsubstantiated information upon which to base her findings. She admitted that she was "self-taught" and that she may not have fully understood all the information presented by Taseko.¹⁷ Her comments on the viability of the project showed a complete lack of understanding of mineral economics. As well, her statements regarding the mineralization and geology of the deposit displayed her absence of knowledge of mining in general. It is regrettable that a report of this poor quality appears to be the foundation of so much of the concern expressed by others.

Kuipers

Mr. Kuipers made a presentation in which he relied extensively on the Maest Report. A full response to Mr. Kuipers' report can be found in CEAR document # 881.¹⁸ Taseko submitted that the Panel should give little or no weight to the Kuipers submission on New Prosperity nor to any conclusions by other parties that are based on or drawn from the Kuipers submission. During Taseko's review of the Kuipers Maest Report, it was discovered that the report was being cited in other contexts in a manner similar to that which was occurring in this proceeding, and that others had expressed concerns similar to Taseko's. In fact, an independent review of the report had been prepared for Northwest Mining Association by Schlumberger Water Services. Their review of the Kuipers Maest Report concluded:

- 1) That the findings were not relevant to modern day mines,
- 2) Virtually no data was presented to substantiate their conclusions,
- 3) The technical work cited is old, technically unsupportable or in some cases invalid,
- 4) The report has serious problems in the way that data are interpreted and in the way conclusions are drawn, and

¹⁶ <http://www.ceaa-acee.gc.ca/050/documents/p63928/92819E.pdf>

¹⁷ See Hearing Transcript of July 23, 2013, at pages 68 and 69.

¹⁸ <http://www.ceaa-acee.gc.ca/050/documents/p63928/92841E.pdf>

- 5) Throughout much of the report, the cited data are discussed out of context and mostly in isolation.

In our submission, the Kuipers Maest report was agenda driven and written to skew the conclusions for the purpose of undermining any EA that certain groups may want to oppose.

Doyle

A full response to Dr. Doyle's report can be found in CEAR document # 1110.¹⁹ Dr. Doyle raised a number of concerns with respect to the methodology Taseko used to identify potential human health effects related to the release of metals to the environment from the proposed New Prosperity project and presents the opinion that the Human Health Risk Assessment (“**HHRA**”) components of the EIS submission do not meet the requirements of the CEAA 2012. Taseko has responded specifically to each of these concerns, but the main problem with Dr. Doyle's report stems from its appearance to have been prepared from the perspective of addressing human health risks associated with a currently contaminated site. The ground around Fish Lake is not currently contaminated. Further, Taseko's analysis of the dust dispersion, and the Potential Human Health Risks has been carried out by experts in these fields. The conclusions are based upon conservative data, they are completely defensible and the HHRA carried out fully meets the requirements of the CEAA 2012. Moreover, as Dr. Doyle admitted, his conclusions regarding the adequacy of the EIS with respect to the requirements of the CEAA 2012 were not made with proper regard for the relevant precautionary principle.

McCrorry

It is Taseko's view that Mr. McCrorry cannot be regarded as an independent or objective expert – he is an advocate for a cause; a passionate and dedicated advocate at that. However, that passion and dedication almost certainly colours his judgment and objectivity, and we ask the Panel to bear that in mind as it considers his submissions. Moreover, we ask the Panel to be cautious in relying on his evidence because it was not subjected to appropriate challenge in cross examination by Taseko's wildlife experts or by counsel with advice from those experts.²⁰

¹⁹ <http://www.ceaa-acee.gc.ca/050/documents/p63928/93567E.pdf>

²⁰ See CEAR Document #1092 for Taseko's submission to the Panel concerning Mr. McCrorry's presentation to the Panel and multiple subsequent submissions. <http://www.ceaa-acee.gc.ca/050/documents/p63928/93513E.pdf>

I note that when Mr. McCrory was questioned briefly, he was less than forthcoming. For example, when asked if the Valhalla Society (for whom he was then speaking) had ever supported a mining project, he initially deflected, but then cited the Gibraltar mine as an example of a project that had not been opposed – he never did find an example of a mine supported by the society. However, he had to admit that the Gibraltar mine was already operating before the Valhalla Society had even been formed.²¹ Indeed, the Valhalla Society's only opportunity to take a position with respect to the Gibraltar mine arose in 2006 when it sought to appeal a permit granted for that mine. That attempt was rejected by the courts.

Mr. McCrory's evidence was to the effect that his personal desire is to maintain large tracts of the region as pristine wilderness. His conclusions are not well-supported and are clearly not endorsed by government regulators. Accordingly, Taseko considers it unfair and unfortunate that he was allowed to provide "expert" submission, late in the proceedings and at sessions when our experts could not be available, particularly since Ministry staff were also unable to respond to these late submissions.

In response to Mr. McCrory's comments regarding the authors of Taseko's submission and their professional status, it should be noted that the relevant materials submitted by Taseko in respect of this project and during this review process have been prepared by or with oversight from professionals in good standing with their respective professional associations, whether they be engineers, biologists, agrologists or other professionals having appropriate experience and expertise. Reasonable people can disagree.

Shaffer

It was suggested a number of times that if the New Prosperity project proceeds, the taxpayers of British Columbia will subsidize the project through power rates. This notion can be traced back to Dr. Shaffer's theories. Those theories do not reflect the realities of the way in which rates for electrical service are established in BC and, indeed, throughout Canada, the United States and most developed countries around the world. When questioned, Dr. Shaffer acknowledged that electricity rates in BC are established by the Utilities Commission which has the statutory

²¹ See the Hearing Transcript of July 24, 2013, pages 69 to 70.

responsibility to set rates that are “fair, just and reasonable”.²² Under the Utilities Commission Act, that means setting rates that are sufficient to allow the utility, in this case, BC Hydro, to fully recover all costs incurred in providing service plus a fair return on investment. As Dr. Shaffer also acknowledged, the Commission’s rate setting process is based on a Fully Allocated Cost of Service Study (“**FACOS**”). A FACOS is a detailed study, conducted by experts, to identify and allocate costs to the various classes of customers as appropriate. As Dr. Shaffer also conceded, rates are historically set by the Utilities Commission on a basis that industrial customers (such as Taseko) are required to pay rates that in aggregate allow public utilities to collect more than the cost of serving that class and that rates for residential customers are set on a basis that does not fully recover the cost of service allocated to that class. The reality is that residential customers benefit from ongoing subsidies at the expense of industrial customers.

Dr. Shaffer claimed that the New Prosperity project would result in a need for additional infrastructure that carried with it higher incremental costs. However, that suggestion conveniently ignores the fact that it is the growth in the residential sector that is the primary driver of new infrastructure and the costs associated with that infrastructure. As Dr. Shaffer readily admitted, utility infrastructure is installed as required to ensure that service is provided during periods of peak demand and that peaks in demand are driven by residential use. Industrial customers provide what utilities characterize and value as “base load”. That base load is steady and predictable and does not drive peaks in demand. Moreover, peaks in industrial load are often managed under tariffs that allow the utility to curtail loads. Those types of tariff arrangements thus allow utilities to avoid costs in having to construct additional infrastructure with the attendant higher incremental costs.

All this was conceded by Dr. Shaffer. In our submission, it is clear beyond debate that the taxpayers of BC, more accurately the residential and commercial ratepayers of BC Hydro, will not subsidize electrical service to New Prosperity.

²² See the Hearing Transcript of August 1, 2013, <http://www.ceaa-acee.gc.ca/050/documents/p63928/92729E.pdf>

Aboriginal Issues

Aboriginal rights and title generally

Keeping in mind the Panel's limited role with respect to aboriginal rights and title, we wish to briefly touch on these topics with respect to the New Prosperity project.

An aboriginal right is a practice, custom or tradition integral to the distinctive culture of an aboriginal community that was exercised prior to contact with the European settlers – 1793. Aboriginal title is an interest in land. In order for land to be subject to aboriginal title, it must have been the subject of regular and exclusive occupation by aboriginal people at the time of the assertion of British sovereignty – 1846 in BC. Seasonal or periodic use of land for the exercise of aboriginal rights is not sufficient to demonstrate aboriginal title.

To date, no court has made a legally binding ruling to establish aboriginal title in any area of BC. However, as I will discuss later, as a result of the *William* case, the area of the New Prosperity project is one of the few areas of BC where the courts have determined that aboriginal title does not exist.

In the *Haida* decision, the Supreme Court of Canada set out a framework for the consultation of aboriginal groups with asserted or established aboriginal rights and title. The duty to consult and potentially accommodate aboriginal groups in respect of asserted rights or title applies to the Crown, though the Crown can delegate procedural aspects of the duty to a proponent.

Consultation

Recognizing Taseko's role in assisting the Crown carrying out its duty to consult, we have engaged in an extensive and meaningful consultation process with First Nations that may be affected by the project. Consultation by Taseko around the development of the mine deposit started over 20 years ago in 1992, and throughout that process, Taseko has provided millions of dollars in support of such consultation, including in excess of \$2 million to the TNG for capacity funding to assist them with achieving a better understanding of the project.²³ These hearings are a component of that consultation process – and I note that the courts have confirmed that the

²³ See Section 2.5 at page 193 of the 2012 EIS.

environmental assessment process itself provides adequate consultation.²⁴ Taseko is committed to continuing to work with First Nations and the Crown to ensure that the Crown's duties are met.

Some examples of Taseko's extensive consultation around the mine project include:

- Offers to meet to discuss revisions to the project design;
- Offers to meet aboriginal leadership and communities to discuss issues and concerns about the project;
- Offers to meet and explain the New Prosperity Project Description; and
- Invitations to meet and discuss the First Nations' issues and concerns with the project, views on potential significant adverse environmental effects, and/or their views of the proposed project's effect or impact on aboriginal rights or title.

Extensive details about Taseko's consultation efforts may be found in both the 2009 and 2012 EIS.²⁵

As we have stated before, the redesign of the mine plan to preserve Fish Lake represents an unprecedented and significant accommodation of aboriginal rights.

Offers were extended to meet to discuss next steps on redesigning a project starting in December 2010 following the federal decision on the previous project.

Despite our efforts, Taseko has routinely faced refusals by First Nations to meet. Tsilhqot'in leadership have refused offers by Taseko to meet and discuss this project. The Tsilhqot'in have indicated that they would be willing to meet with Taseko only if the outcome of such a meeting could be that the company would not proceed with the project. Similarly, Taseko has been unable to present information about the New Prosperity project to Secwepemc leadership or community members.

²⁴ *Upper Nicola Indian Band v. British Columbia (Environment)*, 2011 BCSC 388

²⁵ See Section 2.5 of the 2012 EIS and relevant appendices and Volume 2, Section 5 of the 2009 EIS and relevant appendices.

First Nations representatives have given evidence in these hearings that they have not, at least in recent years, been prepared to engage in a meaningful dialogue.

In Taseko's view, the refusal by the TNG to meet with Taseko is part of an overall strategy to thwart Taseko's ability to proceed with the development of the Prosperity deposit.

First Nations sovereignty issues

Taseko has consistently demonstrated, not just in the submissions it has made to the Panel and the way it has conducted itself during these proceedings, but consistently through the way it operates its business, that it respects aboriginal rights, interests, culture and practices. Obviously, the relationship between Taseko and certain elements of First Nations leadership has been strained over the past several years, and it would be wrong and unfair to place the responsibility for that situation entirely on Taseko. We hope it will have been obvious to the Panel that Taseko has been trying to open the door for constructive dialogue; it has remained of that position even when baited by nasty and false accusations. We also hope that the Panel will recognize that constructive dialogue and consultation is a two-way street and that there needs to be respect on both sides. Finally, we hope the Panel will also have observed that a significant part of the opposition to Taseko's proposal for New Prosperity is driven by a larger political agenda where Taseko is a pawn in a much larger game.

It was readily apparent, and sometimes directly admitted²⁶, that aboriginal leaders are interested, not so much in the particular merits of the New Prosperity project, but in expanding aboriginal rights and title far beyond those that exist under the laws of Canada. Throughout this process we heard much from people like Councillor Marilyn Baptiste, Grand Chief Steward Phillip and other aboriginal leaders about the United Nations Declaration on the Rights of Indigenous Peoples (“**UNDRIP**”), the concept of “free, prior and informed consent” and the Nemiah Declaration. We know that elements of First Nations leadership aspire to having these things become the law in this country, but the fact is that they are not the law in this country.

²⁶ For example, when questioned as to whether opposition to New Prosperity was based on the merits of New Prosperity itself, or on other factors, Chief Russell Meyer on August 13, 2013 said “*it's both*”, and proceeded in his response to reference a “*narrative of essentially white colonial settler governments trying to steal indigenous lands*”. See Hearing Transcript of August 13, 2013, at page 92, <http://www.ceaa-acee.gc.ca/050/documents/p63928/93155E.pdf>

The UNDRIP is not the law of Canada nor is it binding even in international law. The UNDRIP was adopted by the UN General Assembly on September 13, 2007. It is neither a treaty nor convention, and accordingly, is not binding in international law. Given that this is not a binding instrument, there is no requirement for countries to “sign” or “ratify” it. Instead, countries have simply voted on it and “endorsed” it.

Canada’s eventual endorsement of the UNDRIP in 2010 was conditional and done with clear reference to our constitutional framework, which the federal government described as “the cornerstone of our efforts to promote and protect the rights of Aboriginal Canadians”.

On November 12, 2010 the federal government issued the following statement:

... In 2007, at the time of the vote during the United Nations General Assembly, and since, Canada placed on record its concerns with various provisions of the Declaration, including provisions dealing with lands, territories and resources; free, prior and informed consent when used as a veto; self-government without recognition of the importance of negotiations; intellectual property; military issues; and the need to achieve an appropriate balance between the rights and obligations of Indigenous peoples, States and third parties. These concerns are well known and remain. However, we have since listened to Aboriginal leaders who have urged Canada to endorse the Declaration and we have also learned from the experience of other countries. We are now confident that Canada can interpret the principles expressed in the Declaration in a manner that is consistent with our Constitution and legal framework.

Aboriginal and treaty rights are protected in Canada through a unique framework. These rights are enshrined in our Constitution, including our *Charter of Rights and Freedoms*, and are complemented by practical policies that adapt to our evolving reality. This framework will continue to be the cornerstone of our efforts to promote and protect the rights of Aboriginal Canadians.....²⁷

²⁷ *Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples*, Aboriginal Affairs and Northern Development Canada, November 12, 2000, <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>

The Supreme Court of Canada has made very clear that while aboriginal groups have constitutionally protected rights, that does not give them a veto over land use. On August 4, 2013, Taseko filed a submission containing extracts from numerous cases that have cited the Supreme Court of Canada's finding in Haida Nation that aboriginal groups do not have a veto over project development in areas over which they have asserted rights and title.²⁸ The concept of "free, prior and informed consent" does not apply in Canada.

We submit that the requirements of CEAA 2012, specifically those set out in section 5 in relation to aboriginal peoples, is consistent with the endorsement of UNDRIP, the requirement to include in an environmental assessment a consideration of the effect of any change that may be caused to the environment on any of the following with respect to aboriginal peoples: health and socio-economic conditions; physical and cultural heritage; and current use of lands and resources for traditional purpose or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

Nemiah Declaration

The Nemiah Declaration is an aggressive and unilateral declaration supported by a number of aboriginal leaders – many of whom have been prominent in their opposition to the New Prosperity project. Those leaders harbour ambitions of a much different and far broader vision of aboriginal rights than is the law in Canada.²⁹ Their opposition to the project is fueled by a political aspiration, not by particular concerns as to whether the project will have significant adverse environmental effects as defined under the CEAA 2012. We submit that it was very clear in their presentations that they oppose the project based on the principle that consent by aboriginal is required and, without that consent, the project should not proceed. They are dedicated to opposing the project on that basis alone.

In the *William* case, the Court of Appeal commented on "extreme positions" that attempt to reconcile aboriginal rights with Crown sovereignty by giving one or the other absolute primacy, stating:

²⁸ CEAR Document #879, <http://www.ceaa-acee.gc.ca/050/documents/p63928/92837E.pdf>

²⁹ The unilateral nature of the Nemiah Declaration, as well as the stated commitment to "enforce and defend our Aboriginal rights in any way we are able", is difficult to reconcile with the words of Canada's (then) Chief Justice Lamer in the Supreme Court of Canada case *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, that "we are all here to stay".

While these positions were not, per se, inconsistent with a basic theory of Aboriginal rights, they failed to provide a basis for genuine reconciliation of Aboriginal rights with Crown sovereignty. Such reconciliation demands not only a framework that is jurisprudentially defensible, but also one that presents a practical compromise and encourages consensual settlement of differences...³⁰

But the extreme positions reflected in the Nemiah Declaration and repeated throughout these hearing are contrary to Canadian law. They are contrary to the principle of reconciliation that underlies all our jurisprudence on the aboriginal rights and section 25 of the *Constitution Act, 1982*. Here is what the Court of Appeal said in the *William* decision after explaining its conclusion that the Tsilhqot'in do not possess title over all claimed areas (though they have rights in broader areas):

[239] It seems to me that this view of Aboriginal title and Aboriginal rights is fully consistent with the case law. It is also consistent with broader goals of reconciliation. There is a need to search out a practical compromise that can protect Aboriginal traditions without unnecessarily interfering with Crown sovereignty and with the well-being of all Canadians. As I see it, an overly-broad recognition of Aboriginal title is not conducive to these goals. Lamer C.J.C.'s caution in *Delgamuukw* that "we are all here to stay" was not a mere glib observation to encourage negotiations. Rather, it was a recognition that, in the end, the reconciliation of Aboriginal rights with Crown sovereignty should minimize the damage to either of those principles.

At this point, I feel I must make a personal observation. It was truly disheartening to see children testify in these proceedings and be brought to tears by their fears regarding the potential impacts of the project. It was sad to see those children reading from scripts prepared for them and parroting the lines they had been given. They were performers in a pageant designed to evoke sympathy. But the truth is that these children have been fed false information. Their fears and tears were genuine, but so unnecessary. I can only hope that, somehow, through this process and an effort in the future to educate them based on truth, they will one day not have to live with that kind of fear.

³⁰ *William v. British Columbia*, 2012 BCCA 285, at para. 170.

Taseko believes the project, and the training, jobs and self-esteem they bring, will benefit these children and their communities, not harm them. We can only hope that through the opportunity to engage directly with community members in these sessions, and a discussion of the many things we already do to employ aboriginal people, that we have begun to change that understanding. Today, I reaffirm Taseko's commitment to continue its effort to work to do so, by attempting to engage as much as it can directly with members of aboriginal communities wherever they are interested in doing so.

Taseko has also come to the view that there is a potential to rekindle strained relationships. While Taseko has felt that many of the presentations opposing the project were highly adversarial - and in many cases involved people or organizations with their own vested interests - we have also seen opportunities for improved relations. These include some of the comments made by various parties during the presentations, and some of the informal discussions that have occurred during these weeks together.

Of course, Taseko does not underestimate the task of healing wounds and building a common future, and it may not be possible to reach a point of complete consensus with everyone. But Taseko is, and always has been, fully committed to developing constructive relationships and we hope that this process has fulfilled the purpose that goes beyond the technical environmental assessment. We hope it serves as a turning point in the dialogue and relationships between the company and aboriginal groups. While Taseko has been compelled to work hard in these proceedings, it wants to put all fights behind it and move forward with this project in a way that benefits everyone.

Tsilhqot'in aboriginal rights and title

In terms of aboriginal rights and title (for which the Panel has a mandate somewhat different than in relation to aboriginal matters falling within section 5 of the CEAA 2012) we note the following key points:

- The project is in a location for which the court has noted the Tsilhqot'in could not meet the test for aboriginal title, and there is absolutely no reasonable basis to suggest that finding would possibly be reviewed or disturbed following the pending Supreme Court of Canada hearing in the *William* case (which does not address that issue).

- The reasonably anticipated impact on the established aboriginal rights of the Tsilhqot'in (specifically, the rights to hunt and trap, including the rights to the capture and use of wild horses and to trade in skins and pelts as a means of securing a moderate livelihood) will be extremely modest. This is because New Prosperity has a reduced footprint and thus a reduced impact on wildlife and wildlife habitat. Access will be provided to the Fish Lake area and adjacent meadows during operations. Further, offsite habitat compensation and the incorporation of key species into the reclamation plan, including those of First Nations interest, are proposed.
- With respect to other asserted aboriginal rights and title claims, impacts will be minimal having regard to the environmental assessment that has been undertaken at all of the mitigation measures proposed in relation to fisheries, wildlife and other relevant matters. Further, the modification to the mine plan to preserve Fish Lake represents probably the greatest accommodation measure ever undertaken in respect of asserted aboriginal rights. Finally, with respect to the Secwepemc claim to aboriginal rights and title, it is clear that there is no reasonable basis to believe that the transmission corridor would materially impair ongoing treaty negotiations, particularly given the commitments that Taseko has made to detailed routing in consultation with First Nations representatives.

Secwepemc aboriginal rights and title

Based on Taseko's review of its consultation records and hearing transcripts from the previous panel review, the project effects on the potential aboriginal rights of the Secwepemc arise primarily in relation to the proposed transmission line. All components, features and activities associated with the transmission line are the same as those described in the previously assessed project. During the public hearings for the previous project, the Secwepemc indicated that the proposed transmission line would negatively affect their aboriginal rights to hunt, harvest plants, and fish and could potentially negatively affect areas of cultural importance to the Secwepemc.

The previous panel concluded that, provided the planned mitigation to avoid construction in sensitive locations would be applied in cooperation with the Secwepemc, the project would not result in a significant adverse effect on established or potential Secwepemc rights.

Taseko remains committed to implementing the planned mitigation measures and is open to working with both Secwepemc and Tsilhqot'in First Nations in finalizing the alignment of the transmission line if the project proceeds. As a result, we submit that the effects of New Prosperity on potential Secwepemc aboriginal rights are minimal.

The Secwepemc nation and member bands claim aboriginal title to areas that would be impacted by the proposed transmission line. No finding of Secwepemc title has been established by any court.

The previous Panel did not make any findings related to the asserted title claim of the Secwepemc nation generally. However, it did find that the project would have a direct effect on the aboriginal title claims of the Esk'etemc and the Canoe Creek Band, as the transmission line would reduce the potential availability of land for selection during the treaty process. Ultimately, the previous Panel concluded that, depending on the size of the land settlement through the treaty process, the project may result in a significant adverse effect on any such title that could be granted to the Esk'etemc and the Canoe Creek Band.

In making these findings, the Panel did not identify any specific information concerning the exclusive occupancy of particular areas as of 1846 (the relevant legal test). Further, the previous Panel did not indicate the basis upon which a reduction in land available for treaty negotiations would constitute a direct effect on a title claim.

Any impact of the transmission line on asserted aboriginal title would need to be assessed by the Crown, using the *Haida* analysis, including the balancing of interests that this test requires. Ultimately, the Crown would need to satisfy itself that the honour of the Crown has been met in relation to any such decision.

Current use of lands and resources for traditional purposes

The Tsilhqot'in have asserted that the land and resources of the Fish Lake and Fish Creek watershed areas are currently being used by the Tsilhqot'in for traditional purposes such as hunting, fishing, and gathering of berries, plants and medicines. However, we submit that use of the area has shifted over time away from those traditional activities. Currently, use of the area

by First Nations is relatively infrequent and limited in scope to recreation, ceremonial gathering and teaching.

With the change in the mine plan we have preserved more areas for gathering and trapping and we have committed to providing access. Considering the preservation of Fish Lake, the reduced impact on total hectares of water and land, including fish and fish habitat, vegetation and wildlife habitat, coupled with fish and habitat compensation and the continued commitments for environmental management and reclamation, the effect of the New Prosperity project on the current use for traditional purposes is substantially reduced from the previous proposal.

The New Prosperity project not only preserves Fish lake, and the island in the lake, but it also preserves the majority of the areas archaeological resources. Taseko completed a comprehensive archaeological investigation across the proposed mine site with a qualified archeologist of the Tsilhqot'in's choosing and with their participation in the field work. Where there is fear that unidentified sites will be disturbed, Taseko accepted the previous Panel's recommendation for a chance-find procedure to avoid or minimize damage to archaeological finds.

With respect to the cabins at Little Fish Lake, Taseko is open to discussing with the Tsilhqot'in, or specifically, the William family, the means by which impacts can be further minimized.

Given the limited area of the mine footprint in the context of the vast expanse of the traditional territory, and considering all the mitigation measures, Taseko submits that the effect of the mine on current and future use of the land and resources on traditional uses is not significant. Fish Lake will remain, and access will be provided and enhanced to allow it to continued to be used by First Nations for traditional purposes. Even accepting some negative impact on the current and ongoing use of Fish Lake for cultural purposes, those effects are relatively minor, they are temporary, they are reversible, and they will last for only a limited time. In terms of context, Fish Lake is one of between 8,000 and 13,000 lakes in the area. There are many other lakes available to the Tsilhqot'in to use for traditional purposes, and the Nemiah Declaration makes very clear that the entire traditional territory is considered culturally and spiritually important - no one area more so than others. For all these reasons, Taseko submits that there is no basis to find a significant adverse environmental effects as it relates to current use of the Fish Lake area for traditional purposes.

Much has been said about the special or spiritual nature of Fish Lake. Taseko does not want to be placed in a position of having to challenge assertions of spiritual significance, but the Panel has heard that the company did, for a number of years, have discussions ongoing with the TNG which clearly contemplated the development of a mine in that area, which occurred within the framework of a letter of understanding. Taseko provided extensive funding to support those discussions over several years. While the TNG had not reached the point of supporting the mine when talks broke down, it is difficult to reconcile any discussions about that with the recently asserted spiritual specialness of the place. There is simply no evidence to suggest that Fish Lake has become more important as a spiritual place since 2008. Indeed, we heard Chief Archie say that there's not one place that's more important than the others – that they're all important.³¹

We do not envy the Panel's task of having to determine whether spiritual significance of a place falls within the Panel's mandate under the CEAA 2012, but in any case, the claims of spiritual specialness that the Panel has heard simply are simply not supported by evidence of the TNG and others.

Finally, we note that Fish Lake area would be used almost not at all except for the existence of the exploration road opened to facilitate the development of the mine. Even then, that road is virtually impassible for much of the year. The Panel will have witnessed for itself just how difficult the journey is to Fish Lake even in ideal conditions.

With respect to Little Fish Lake, there was virtually no evidence that the area is currently used for traditional purposes. That area is and remains largely inaccessible. Taseko submits that while there is evidence of occasional use historically of Little Fish Lake for traditional purposes, that use was relatively infrequent and that the current use of that area for traditional purposes remains very limited. The fact that no site visit to the Little Fish Lake area could be arranged speaks volumes as to just how remote and inaccessible that area is and has been. Put simply, and using the relevant test, the magnitude and geographic extent of any such impacts are extremely small, the frequency of any such impact is very minimal given the infrequent use of the area, and while the duration of impacts are longhand or irreversible, the ecological context is such that there are and will remain many other places for which current use of lands is much more

³¹ See the Hearing Transcript of July 24 at page 149, <http://www.ceaa-acee.gc.ca/050/documents/p63928/91956E.pdf>

significant. For all these reasons, Taseko also submits that there is no basis for a finding of significant adverse environmental effects concerning the use of land and resources in the Little Fish Lake area.

Socio-economic impacts

In relation to aboriginal peoples, the Panel must consider not only the potential impact of the project on current use of the land for traditional purposes, but the socio-economic impact as well. We heard a number of presenters assert that with jobs and money come drugs and alcohol. We heard that some people acknowledge that the mine will bring prosperity, but that they fear that the prosperity will be temporary – they expressed fear as to what would happen when the mine is closed.

It was obvious as we visited the communities throughout the region that social conditions are extremely poor. We heard much sad testimony about unemployment, health problems, housing problems, drug and alcohol abuse and the terrible impacts they have had on families and communities. There can be no doubt that current conditions are abysmal. It is fair to ask whether the development of the mine could possibly make the situation worse.

While these concerns should not be ignored, Taseko submits that it is far better to move forward with the mine, to create jobs and opportunities for training and education, and to provide the financial resources to the communities to build infrastructure, to improve housing, to create access to health care and community services and to provide the funds to invest in new businesses and economic activity that can be sustained into the future. We say that, while there may be challenges, it is far better to create hope and opportunity through the development of the mine than it is to live in fear and to condemn the aboriginal peoples in the area to continued poverty and hardship. We say that there are significant social and economic benefits to be had and Taseko is confident that, given the financial resources that will come with the development of the mine, aboriginal leaders in these communities can and will have the means to bring about substantial social and economic benefits for their people, if they will take up that opportunity.

We also heard many community members speak of returning to their culture and that because of a lack of economic opportunity, many rely on the land and waters for sustenance. Many spoke of a balance between a traditional lifestyle and mainstream society. Taseko respects the aboriginal

communities seeking this balance, and we would like to provide economic opportunities while minimizing our impact on the environment which provides traditional resources to the people. We have stated that we will support social programs in the communities to assist those employed at or contracted to the mine, ensuring any individual, family or community adjustments in lifestyle or economics remains positive.

Other aboriginal groups in BC have prospered by welcoming economic activity while at the same time preserving and enhancing their heritage and cultural values. We see no reason the aboriginal groups in this area cannot do the same.

Other issues

Grazing

The previous Panel concluded that the Prosperity project would, at the local, have significant adverse effects on the users of the meadows within the Fish Creek watershed.

We heard concern about where the cattle will go. With New Prosperity, more of the tenure area for the grazing of horses or cattle is preserved; however, grazing would require fencing to enable efficient use of the remaining tenure area. Should the project be approved, Taseko has committed to work with the province and those users of the meadows in the Fish Creek watershed to discuss further mitigation, potential replacement opportunities in adjacent areas, and compensation for any lost forage productivity that cannot be mitigated.

Navigation

In the 2010 Panel Report, the Panel found a significant adverse effect on navigation. That conclusion was based primarily on the loss of Fish Lake. Transport Canada noted that the previous project as proposed would eliminate all boating, fishing and recreation activity in the Fish Lake watershed. The New Prosperity project preserves Fish Lake which effectively addresses Transport Canada's previous concerns.

It should be noted that there is virtually no evidence of the record of this or the previous proceeding that Little Fish Lake is or was used on anything other than on a very infrequent basis for navigation or other cultural purposes. The area around Little Fish Lake is not conveniently accessible by vehicles and is not accessible by boat. Accordingly, to the limited extent Little

Fish Lake was used in the ordinary course for navigation, it was for rafts that were constructed on site.

Other than the photographs submitted by Transport Canada of a canoe being used on Little Fish Lake during a site visit (the canoe having been brought to that site expressly for that purpose), there is no evidence of any boating on Little Fish Lake, an observation which is supported by Mr. Dennis Christianson who stated during his presentation at the New Prosperity General Sessions on July 23, “My charter company flies over there quite regularly and to be honest for the last nine years we’ve yet to record a boat on that lake”.³²

The absence of evidence of current use of Little Fish Lake and Upper Fish Creek for navigation is somewhat surprising given the repeated invitations in the form of leading questions about the use of boats in either Fish Lake or Little Fish Lake from the Transport Canada official who attended the community hearings. Despite these repeated invitations to describe their use of Little Fish Lake for navigation, the responses provided by community members do not support Transport Canada’s conclusion that Little Fish Lake is used currently for navigation. The evidence of the use of Little Fish Lake for navigation was limited to the following:

- The general reference Ms. Lulua made to her parents using a raft for fishing while they lived in Nabas³³;
- The references Ms. Setah, Ms. Cook and an unidentified youth made to children using a raft built by Cecil Grinder while attending a gathering³⁴;
- Ms. William’s statement that boats, canoes and rafts were used in Fish Lake and Little Fish Lake for fishing³⁵;

³² See page 169, <http://www.ceaa-acee.gc.ca/050/documents/p63928/91323E.pdf>

³³ See the Hearing Transcript of August 7, 2013 at page 230, <http://www.ceaa-acee.gc.ca/050/documents/p63928/92937E.pdf>

³⁴ See the Hearing Transcripts of August 8, 2013 at page 122 and 187, (<http://www.ceaa-acee.gc.ca/050/documents/p63928/92943E.pdf>) and of August 13 at page 198, <http://www.ceaa-acee.gc.ca/050/documents/p63928/93155E.pdf>

³⁵ See the Hearing Transcripts of August 8, 2013 at page 166, (<http://www.ceaa-acee.gc.ca/050/documents/p63928/92943E.pdf>)

- An ambiguous reference to the possibility that boats and rafts were used at Fish Lake or Little Fish Lake made by Mr. Otis³⁶; and
- An ambiguous comment made by Mr. Myers that Little Fish Lake may have been used for fishing and maybe duck hunting.³⁷

Taseko submits that this evidence does not demonstrate that Little Fish Lake is currently used for navigation, and we have previously provided this view to the Panel.³⁸ This conclusion is consistent with the fact that Little Fish Lake is virtually inaccessible and with the fact that it would be difficult to transport a canoe or other boat to the lake. In our respectful submission that is not evidence of current use for navigation. Moreover, we submit that the staged uses of Little Fish Lake for the benefit of Transport Canada or to create evidence for this proceeding should not count as evidence of actual current use.

Based on the information I just mentioned, Taseko acknowledges that there is an impact on potential use of Little Fish Lake for navigation during the period in which the mine is operating. However, even that modest potential impact is temporary. Following closure, the creation of Pit Lake and TSF Lake will result in a substantial increase in navigation opportunities in the watershed.

With respect to the potential impacts of the loss of Little Fish Lake on navigation or use for cultural purposes, we note that the magnitude of the impact is small and limited in geographic extent. The impact happens once, but is of limited duration during the life of the mine. The effect is reversible and not permanent and limited in ecological context. Accordingly, we submit that there is no basis for the Panel to conclude that the loss of Little Fish Lake will result in a significant adverse environmental effect.

³⁶ See the Hearing Transcripts of August 12, 2013 at page 140 , <http://www.ceaa-acee.gc.ca/050/documents/p63928/93073E.pdf>

³⁷ See the Hearing Transcripts of August 13 at page 152, <http://www.ceaa-acee.gc.ca/050/documents/p63928/93155E.pdf>

³⁸ See CEAR Document #1093, <http://www.ceaa-acee.gc.ca/050/documents/p63928/93514E.pdf>

Transmission line

The previous Panel concluded that the proposed transmission line would not have a significant adverse effect on aboriginal rights of the Secwepemc provided that the planned mitigation to avoid construction in sensitive areas was carried out in cooperation with the Secwepemc.

Taseko notes that nothing in the proposed project has changed in that regard and that it remains willing to implement the planned mitigation measures in cooperation with the Secwepemc. The hearing provided very little evidence to indicate that the area in which the transmission line is to be situated is currently used for traditional purposes. The Esk'etemc did provide a map that showed areas claimed to be of cultural significance. The shaded areas on that map highlighting those areas run generally on a relatively long but narrow north – south axis. The proposed transmission line runs generally east – west across that axis and, in relative terms, affects only a tiny portion of that area.

Taseko has committed to working with the Esk'etemc to select a final routing in the proposed corridor that will avoid specific sites of cultural or archaeological significance. As a result, Taseko submits that there will be very little impact, if any, on the current use of the area for traditional purposes and minimal impact on sites of cultural or archaeological significance.

Risk

During the course of the hearing there was a great deal of speculation about potential risks associated with the development of the New Prosperity mine. With respect to this speculation, we remind the Panel that the appropriate test under the precautionary principle is not one of certainty or zero risk. An assessment of risk and of the potential consequences of unexpected events must rest on science. The emphasis must be on whether there is a sound and credible case that a risk of serious or irrevocable harm exists. In our submission, the claims advanced about risk during the hearing and in argument do not meet that test. Moreover, the evidence adduced in the hearing is to the effect that the proposed mine will use technology and processes that are in common use and well-established. The risk of a significant failure is very small. Mine operations are subject to ongoing monitoring by the company which obviously has a vested interest in the safety of its employees and in maintaining a productive operation. As well, the operation will be subject to permit requirements and rigorous regulatory oversight.

Taseko asks the Panel to keep in mind that the mine is developed in an evolutionary process. This gradual, step by step process allows ample time for the company, and regulators, to adjust plans and operations to respond to unexpected or changing conditions. As Taseko has testified, it will utilize an adaptive management program to monitor and respond to risks. All this combines to lead to the conclusion that risks are small and manageable.

With respect to potential risk, it is important to note again that we are only at the EA stage. If the project is approved, it will move to detailed design. Many of the questions that are currently outstanding and which have been referred to as risks, will be answered in that stage. The design of the mine will be adjusted to respond as required to the more detailed knowledge that will be developed. Then, after that, the project will proceed to permitting where Taseko's detailed designs, coupled with more in-depth information will be carefully scrutinized by regulators who will have the ability to attach conditions to the issuance of permits to further mitigate potential risks. Finally, it is important to remember that the permitting process is dynamic and ongoing over the life of the mine and that it is accompanied by regulatory oversight and enforcement.

Fear of contamination

During the course of the hearing we heard that even if the water in the TSF is clean and within applicable water quality standards and the mine operates safely and exactly as forecast, aboriginal peoples will not eat the fish downstream of the mine because of fears of contamination. This is a hard issue to address as it is not based on reality. Moreover, it is largely a self-induced concern and a self-fulfilling prophecy. First Nations have been so filled with false information that, of course, they will have some concern about eating fish downstream of the facility. This concern defies science and the facts. Among other things, it ignores that the salmon that return to the area each year to spawn and that are so valued by aboriginal peoples are not ingesting food as they return to spawn so they are not absorbing potential contaminants from the mine even if those contaminants were present – which they are not.

The irrational fear of contamination of fish is something that will have to be addressed through education, but opponents to the mine need to first stop their campaign of fear. It is illogical to be worried about the health of fish in the Taseko River or Chilco River downstream from the mine

when aboriginal peoples will still harvest and eat fish taken from the Fraser River which is far from the influence of the mine and far less pure than the water in those tributaries.

Archaeological studies

In 2006 and 2007, a detailed Archeological Impact Assessment (“**AIA**”) was completed for the mine site of the previously proposed Prosperity project in accordance with both provincial guidelines and the terms and conditions of the Inspection Permit issued under the authority of the *Heritage Conservation Act* (“**HCA**”).

To accommodate First Nation’s concerns, the maximum disturbance area at the proposed mine site was subject to intensive archaeological survey. The archaeological consultant used for the work, Terra Archaeology Limited (“**Terra**”), was based on the TNG’s recommendation. As well, to ensure that local First Nations communities were involved in and comfortable with the work being conducted, aboriginal representatives from appropriate communities participated in the entire program.

The AIA conducted over the Fish Lake area was considered to be of a comprehensive nature rarely seen over so large an area. A total of 3476.5 ha were assessed resulting in the confirmation of 79 protected (pre-1846) archaeological sites. The artifacts and features identified indicate that the area was used for a range of activities including hunting, fishing, plant gathering and processing.

During the community session in Nemiah, the TNG presented a report authored by Emily Benson and Darcy Mathews (the “**Benson Mathews Report**”). The Benson Mathews Report summarized a walk-about conducted by the TNG using a camera and note pad, with the support of a student archaeologist, to investigate portions of the project area and areas outside the project area over a period of two days in July, 2013. The sites identified in the Benson Mathews Report in the footprint of the previously reviewed project, and now avoided with the new mine design, were already identified in the AIA. Because of the lack of testing and physical evidence, all other sites proposed in the Benson Mathews Report should be considered ‘possible’ or ‘potential’. No new ‘possible’ burial sites were identified, other than one site which is located on the extreme perimeter of the maximum mine footprint and in an area that can be avoided through

minor adjustments during final engineering design and field fitting. The ‘possible’ burial sites located outside the mine footprint are not relevant to this assessment.

The TNG assert that the Benson Mathews Report is a basis upon which to conclude that there are many more sites of archaeological significance in the area of the mine footprint. Taseko submits the opposite is true. The AIA was a comprehensive report prepared by experienced professionals and informed by First Nations elders. The fact that the Benson Mathews Report, which was, as the TNG admitted, prepared expressly in contemplation of this hearing, managed to identify just one burial site that was not included in the AIA confirms rather than contradicts the AIA.

While it is possible that there may be additional burial sites in the vicinity of the New Prosperity mine site, as TNG suggests, our ‘particularly thorough’ AIA did not identify any evidence of human burials around the Little Fish Lake cabins or in the remainder of the AIA study area, either through survey or subsurface testing. As previously stated, the assessment was comprehensive and included representatives from local Tsilhqot’in communities. As a result, the study was informed by and benefited from the local knowledge of First Nations participants and as such Taseko does not believe that it is likely that any previously unidentified burial or cremation sites will be impacted by the Project. However, Taseko will have a Chance Find Procedure in place in the event that additional archaeological resources may be identified during construction and operation of the mine.

Taseko Lake Lodge

The previous panel found that Taseko Lake Lodge (“**TLL**”) might be adversely impacted by the mine. It is unclear to us just how that conclusion was reached. In Taseko’s view, such a finding was not supported by the evidence. There is no evidence in this proceeding other than the unsupported assertions of Mr. Reuters, that the mine will have a negative impact on the business. Taseko suggests it is more likely that the mine will have a positive impact on that business. In any case, we submit that it is not within the scope of this Panel’s mandate under the CEAA 2012 to make any sort of finding regarding a potential significant adverse environmental impact to the TLL.

Regardless, Taseko asks the Panel to note that current owners of the TLL knew, or certainly ought to have known, that a mine would be opened in the area at some point. Mr. Reuters knew that there were mining claims around the area and having purchased the property in 2002 should have known about both the mine proposal and the *William* case. The TLL has no secure tenure. It operates based on a number of licenses or permits, each of which is temporary in nature and expressly subject to other competing rights that may be granted by the government – including, the mining lease held by Taseko.

Taseko notes that the mine site is located in the very fringe of the area covered by TLL's permits and licenses. The mine footprint is a tiny fraction of that area. Taseko recognizes that Mr. Reuters uses the area on the fringe and adjacent to Little Fish Lake for day trips. Further, we note that in 2012, the TLL only made five or six trips to the Fish Lake and Little Fish Lake area.³⁹ With regards to the remainder of the license area and his remote pack trips, Mr. Reuters argues that the mine site will be an eye sore. The mine's footprint will be relatively small by comparison and is on the very periphery of the area covered by the TLL's permits. Moreover, while some might consider the mine to be undesirable, others may be interested in seeing and learning about mining. As a result, on a net basis, there may well be no impact on the TLL business even while the mine is operating but rather, economically, a positive impact.

Conclusion

In summary, it is Taseko's view, based on all its years of experience and expertise, that based on a fair and consistent application of the criteria under the CEEA 2012, the Panel should conclude that the New Prosperity mine will not result in any significant adverse environmental effects. Taseko did what it was asked to do by modifying the proposed project in very substantial ways to address the concerns identified by the previous Panel – and despite the fact that Taseko believes that several of those concerns were not based on a proper application of the relevant criteria.

However, just as Taseko made changes to address those concerns, so too did those opposed to the development of the mine (at least those opposed to its development by Taseko). They shifted

³⁹ See Hearing Transcript of August 8, 2013, page 95, <http://www.ceaa-acee.gc.ca/050/documents/p63928/92943E.pdf>

their focus to raise as concerns, issues that were previously not material concerns. Suddenly, the small, remote and virtually inaccessible Little Fish Lake has been elevated in status and importance. Taseko values and appreciates aboriginal culture and heritage and has demonstrated its willingness to accommodate those interests by modifying its proposed development of the Prosperity deposit at an incremental cost of about \$300 million. However, Taseko believes that opponents to the mine in aboriginal communities have used culture and heritage inappropriately as a weapon by exaggerating the value of the areas that will be impacted by the mine and their use of those particular lands and resources for cultural purposes. We hope and trust the Panel will see through those tactics. Regardless, we believe that the negative implications of the project with respect to aboriginal culture, heritage, and archaeological sites is relatively small. Moreover, we firmly believe that the positive aspects of the development of the mine in creating jobs and opportunities for training and education for aboriginal peoples, and in providing sources of revenue, directly and indirectly for aboriginal communities, will carry with them important socio-economic benefits and improved health care for the aboriginal communities.

We say, give the mine a chance as it will benefit the community at large and, in particular, give the aboriginal people hope and a chance to overcome their current circumstances. Taseko is committed to working with all communities to allow them to benefit from this opportunity. This project offers so much to so many in the local communities, in the region, across the province and for Canada. Let us move forward and build something positive. We will all be better off.