

INTRODUCTION

Mr. Chairman, Members of the Panel, and citizens of Williams Lake and the Cariboo Chilcotin.

We begin these closing comments by thanking the Panel for how these hearings have been conducted.

A lot of work lays ahead for you in the writing of your report and in the preparation of your recommendations and we fully appreciate your determination to complete that report in the next 60 days.

Today is the end of more than 6 weeks of public hearings. During that time the Panel has heard a lot. You have openly received anyone wishing to step forward and express their views and thoughts.

You have allowed the public -- and in particular all interested First Nation members in multiple First Nations communities -- every opportunity to participate.

The public has been given the opportunity to follow every detail of the proceedings on-line. They have had the opportunity to both listen and to read every word that has been spoken on the public record over this long period of time.

This effort to make these proceedings fully and publicly transparent is an extraordinary undertaking and you and your able Secretariat are to be congratulated for it.

Throughout all aspects of both the provincial EAO and the federal Panel review process leading up to these hearings it has been our commitment and intention to answer every question that was presented to us.....we think that you will agree that we have done so.

Throughout the now completed public hearing phase of your review we carried forward this same commitment and answered every question brought forward by all participants in a fully transparent and public way. The effort made by you to make this possible was an extraordinary undertaking and you are to be congratulated for it.

My task today is to offer our final closing comments.

PURPOSE OF THE CLOSING REMARKS

The purpose of these Closing Remarks is to both briefly summarize Taseko's position on the environmental effects of the proposed project, and to summarize Taseko's position on the evidence and information brought before the Panel respecting those environmental effects. We also intend to set out Taseko's understanding of what we believe to be next steps and make some comments on legal issues that were raised during the hearing process.

SUMMARY OF TASEKO'S POSITION ON THE ENVIRONMENTAL EFFECTS OF THE PROPOSED PROJECT

INTRODUCTION

Before summarizing the details of our specific conclusions concerning the environmental effects of our proposed project a little background is offered for consideration:

Our conclusions are based not just on the opinion or the conclusions of our independent consultants as reflected in the April 2009 EIS but also on:

- The fact that throughout this 17 year EA **three** terms of reference (1995, 1998 and 2008) were developed and they progressively reflected updated policies, standards and changing priorities
- The fact that review and input from the public/government and First Nations (if they chose to participate) was incorporated along the way
- The fact that review and approval of Baseline Reports was undertaken by government in 2008 – before the final EIS Guidelines were finalized and issued. The significance of this is that the Panel didn't face the difficult job of assessing the adequacy of Baseline information and instead could focus on the adequacy of our assessment and the significance of environmental effects.

SUMMARY OF POSITION

1. Alternatives Assessment

After completing three separate alternative assessments, directed and reviewed by government, the public and First Nations, and reflective of a sincere effort by Taseko to avoid the loss of Fish Lake, Taseko concluded each time that there was only one technically, environmentally and economically feasible option. This option results in the unavoidable loss of Fish Lake. We wish it were otherwise.

The Provincial EAO noted in their assessment that the analysis supplied by Taseko during the EA exceeds that which is typically required or presented in the EA of mine projects, that they accept that the other two options considered would have substantially greater costs and noted that MEMPR found the proposed mine development plan and alternatives assessment to be sound. Taseko accepts this assessment.

Neither NRCan nor Transport Canada commented on the alternatives assessment. Environment Canada noted that all three alternative mine development plans were technically feasible but stopped short of reaching conclusions concerning the economic viability of any option. DFO noted that the alternatives assessment lacked detail when considering the effects on fish and fish habitat amongst all three options. Taseko understands and accepts these comments.

2. Environmental Effects Summarized as per attached Table

Sixteen Valued Ecosystem Components (VECs) and sixty-two Key Indicators (KIs) were identified to be assessed in the EIS Guidelines. The attached Table 1 summarizes the key conclusions of Taseko, the provincial EAO and Federal RAs and FA's on all of these. We will summarize only a few highlights as follows:

- Taseko concluded for ten of the VECs and 49 of the KI's that there were no significant environmental effects.
 - i. Concerning the assessment of effects on the atmospheric environment the EAO, Environment Canada and Health Canada were in agreement with Taseko's conclusions. Taseko agrees with these findings.
 - ii. Concerning surface water hydrology and ground water quality and quantity the EAO was in agreement with Taseko's conclusions. NRCan assessed various issues and made comments and recommendations. As stated in the topic specific hearings Taseko takes issue with much of the assessment undertaken but will consider the recommendations.
 - iii. Concerning water quality and aquatic ecology the EAO, Environment Canada and NRCan accept Taseko's conclusions. Health Canada is satisfied that there are no human health effects. Taseko agrees with these findings.
 - iv. Concerning Fish and Fish Habitat after applying mitigation in the form of a Compensation Plan Taseko concluded there was no significant environmental effect. The EAO concluded that the loss of Fish and Little Fish Lakes was a significant environmental effect then considered the Compensation Plan in their justification considerations. DFO has identified various risks and policy related gaps in the present form of Compensation Plan. Taseko continues to work with DFO to resolve these gaps and risks.
 - v. Concerning Terrain and soils, vegetation and 21 wildlife species the EAO concluded no significant effects. Taseko agrees with these findings. With the exception of consideration of wetlands and riparian habitats federal RAs/FA's made no assessments. Taseko understands CW's views concerning the unavoidable loss of migratory bird habitat and is committed to implementation of a Habitat Compensation Plan as outlined in the EAO EA Certificate.
 - vi. Concerning Human and Ecological Health the EAO and Health Canada concluded no significant effects. Taseko agrees with these findings.
 - vii. Concerning Archaeological and Heritage Resources following completion of Taseko's AIA the Archaeology Branch developed recommended mitigation measures and the EAO concluded no significant effect. Taseko agrees with this conclusion. No assessment of these resources were undertaken by federal RAs/FA's.

- The EAO concluded that the effects of the project will have significant positive economic benefits that would flow for 22 years and would accrue to the present and the next generation. The EAO also concluded that there is no expected cost to future generations except the loss of Fish and Little Fish Lake. Although Taseko wasn't asked and didn't undertake an economic analysis, Taseko agrees with these conclusions. The federal RAs and FAs undertook no assessment of these effects.

3. Cumulative Effects Assessment, Effects of the Environment on the Project, Accidents and Malfunctions and Sustainability

Cumulative effects were found not to occur for most VECs due to the geographic isolation of the Project. Where they do occur they were found to be either not significant or they were positive. A request from the Panel to undertake a cumulative effects assessment of a theoretical 13 year extension to the mine life was responded to. The provincial EA Certificate was issued for a 20 year mine plan as proposed and would require amendment should Taseko decide at some time in the future to extend mining operations.

Concerning the assessment of the effects of the environment on the project both the provincial EAO and federal RA's/FAs considered these effects but didn't comment. Taseko assumes that they took no issue with our conclusion that there was no risk to the public or the environment.

A range of environment effects that might occur in the unlikely event of an accident or malfunction were considered. No comments were offered by either the EAO or federal RA's/FA's so Taseko assumes that they took no issue with our conclusion that effects would be minor and manageable with the application of emergency response plans and mitigation as specified.

SUMMARY OF TASEKO'S POSITION ON THE INFORMATION BROUGHT BEFORE THE PANEL

Concerning those matters properly before this panel (i.e assessment of environmental effects as defined in CEAA)

We heard that things have been difficult in this part of Canada.

Kerry Cook the Mayor of Williams Lake spoke powerfully to this very point saying:

Consumer bankruptcies in the Cariboo Regional District increased from 274 to 466. This is an increase of 70 percent over the last year.

The unemployment rate in the Cariboo Region has increased 84 percent in 2009.

As people are moving away, looking for work, Williams Lake residential rental vacancy rates have increased 700 percent in the last year, rising from 1.7 percent rental vacancy to 13.6 percent.

School enrollment in Kindergarten to Grade 12 has decreased by 17 percent over the last two years with more numbers expected to decline this next year. Our School District is faced with a decision to close more schools, possibly, as we are no longer able to sustain the number of programs and schools in our region.

*The City of Williams Lake is supporting the Prosperity Mine Project because we desperately need a boost to our local economy. We need to keep our families here. We need to provide jobs and opportunities to turn the situation around. In January, with a Provincial green light given, there was a new hope and optimism in our community that I haven't felt for a long time. We need that hope. We all need that hope.*¹

The South Cariboo consists of a number of small unincorporated areas surrounding the District of 100 Mile House and has a population greater than 20,000.

Councilor Dave Mingo, speaking on behalf of the District of 100 Mile House and in support of Prosperity, echoed similar sentiments as those of Mayor Cook:

*Our forestry has been significantly impacted by global economic factors and by the pine beetle; Our ranching and agriculture industry is struggling; Our commercial businesses, because of the other aspects, are also struggling; Our commercial property vacancies are increasing; Workers and families, and especially the young, are leaving our community, they are searching for employment elsewhere. We see the mining industry as a major supporter of our economy in this area.*²

In Alexis Creek the Panel heard from Rick Mumford local area director for the Cariboo Regional District. He said,

In a nutshell, the local economy in Chilcotin is a shadow of its former self. There's not one community in the Chilcotin, and this includes First Nations communities, that don't need an economic boost.

The Prosperity Project has the potential to give our communities that economic boost we need. Most of what you have probably heard is about the benefits this Project will bring to Williams Lake. But there will also be job opportunities for local people living in the Chilcotin. If just 20 percent of the workforce lived in the Chilcotin, that would increase local spending power by over \$5 million dollars

¹ Vol 3, pp.347 - 348

² Vol 8 pp. 1359 - 1360

*annually from workers only. There'll also be an opportunity for jobs for our kids and a reason for them to stay in the Chilcotin. And that's significant because there's not many younger people left out here.*³

Where there was expert opinion brought forward (i.e. Stratus, Mining Watch, Dr. Morin, Dr. Shaeffer) it either misrepresented the information contained within our EIS, lacked the benefit of a full understanding of all the analysis/assessment undertaken by provincial experts in these matters or was raising matters that were clearly outside of our approved Terms of Reference and therefore should be given little weight in the Panel's deliberation.

In the area of First Nations Cultural and Heritage Values we heard a lot of very valuable new information during the 17 days of Community Hearings. Unfortunately even with this additional information we submit that there is no basis by which the Panel can reach a different determination of significance of effects than that reached previously by Taseko and the Province. This determination was reached using quantifiable information characterizing the effect in terms of spatial extent of disturbances to the land and resource base and this remains the only available sound and defensible approach.

One issue raised by many presenters during the community hearings related to the spiritual significance of the area around Fish Lake, including the island within the lake.

The relevance of this to an environmental assessment would be to attempt to measure the significance of the loss of 'spiritual' or 'sacred' values that may result from the bio-physical changes to the area resulting from the proposed mining activity.

Taseko has attempted to understand the nature of the spiritual or sacred values of the Tsilhqot'in by examining the comments made by the presenters.

One of Taseko's conclusions was that the nature of the Tsilhqot'in belief system is that all things, or virtually all things, are sacred throughout their traditional territory, and presumably beyond. Some examples are as follows:

Doug Johnny

*And in a Native traditional culture, we look at everything as being sacred. Even a circle such as this, a meeting. It doesn't have to be a circle, but every time we have a gathering, you know, we always open it with a prayer*⁴.

*And that land is very, very important to our People. They have clearcut our land, you know, you can see it from the satellite photo. And, like I said, you know, these trees have a spirit. And everything in the land has a spirit. Everything is sacred*⁵.

³ Vol 9, pp. 1498 - 1499

⁴ Vol 17, p. 2813

⁵ Vol 17, p. 2869

Chief Francis Lacey, Chief of Toosey First Nation

But, you know, it's a very, like our spiritual person was saying, that our land is full of spirit, as, you know, as we all are. And I think it's a very strong connection. Because all out in our territories, that's where our People are buried, you know, because of whatever, you know, whenever they -- from a long time ago.

And, you know, those – and everything else out there is connected to us in, you know, in the different ways. And that's where we get our strength from is being out on our lands and our waters. You know, if we're out there, that's where we feel as one with the land.

And that's where our legends come from is from the land and from the waters. We have a lot of legends and a lot of stories that are passed down to us. But I can't stress the importance of that, you know, what's sacred to us, that we're dealing with serious, you're dealing with a serious issue, whether it's how that sacredness is connected to the land or to the water, and it's got a connection to us.

And it's a very serious issue when you're dealing with that and trying to make a resource in those same areas. And I don't think that's acceptable to us as a Nation in order to, you know, that we have to maybe do things elsewhere, our animals or our fish have to be moved elsewhere for us to continue. You know, I don't think you can move our rights around. That fish in Fish Lake is our right, as I see it⁶

Ms. Naomi Setah

The destruction of Teztan Biny is bad because it will kill us inside. We won't have all our land anymore because of this proposed mine development.

I love to camp and one of my favourite place to camp is Teztan Biny because of the scenery, it looks like heaven. Teztan Biny is sacred and special to me because it is a part of me. The whole Tsilhqot'in land is a part of me.⁷

Mr. Sami-Joe Perry

Our grandparents have hunted and camped along Fish Lake long before we were even born. It does not take a scientist to figure out the damage it will do to the land. We see our lands as sacred and valuable as it is.

We do not look at our trees, minerals or waters as money. We look at them as Mother Earth's gifts to help us heal, live and protect.

And we protect all Mother Nature's gifts. Our culture revolves around our lands.

⁶ Vol 17, p. 2887-2888

⁷ Vol 12, p. 1970

*You cannot destroy something that isn't yours. You just can't. We love our lands the way it is. Not for what it can become*⁸.

David Williams

*Walking the trails of these mountains and forests with friends like Rocky Quilt, Rafael Williams and Norman William, I have come to see that every plant, every stone and tree is known and has value and is imbued with a significance for life and survival that I can only describe as spiritual.*⁹

Following Pat Larcombe's presentation given during the technical hearings, Taseko brought the Nemiah Declaration of 1989 to her attention. Ms. Larcombe expressed that it was her understanding that the Declaration referred to the whole of the Eastern and Western Trapline areas as well as the Brittany Triangle.

Taseko noted that the Declaration states that "This area is the spiritual and economic homeland of our People" and describes that the area is set aside "To practice our traditional native medicine, religion, sacred and spiritual ways."

When Patt Larcombe was asked by Taseko to "give us or the Panel any context that puts the significance, the value, of central Nabas (that is, the area of the mine) in the context of this broader area which you declare is the spiritual and economic homeland," Ms. Larcombe's answer was:

And so the work that's been doesn't allow you to say, one, you know, relatively what is one area more important than the other.

And I would argue that the Tsilhqot'in People don't say one place is, it's not within their cultural belief system to call one place more important than another.

*You can't compare is one place more spiritual than another. Like, that's impossible.*¹⁰

In conclusion, and without intending to be disrespectful in any way to the Tsilhqot'in people, it is Taseko's conclusion that the Fish Lake area has fond memories and spiritual significance to many Tsilhqot'in people, but taking into account the assessment of Mr. Justice Vickers in the *William* case, it may not have any more or less spiritual significance than other land throughout the area described in the Nemiah Declaration of 1989.

On the subject of Current Use the position of Taseko is that the temporal meaning of "current use" is its ordinary definition, meaning how it is being used now – its current modern day use.

⁸ Vol 13, p. 2207

⁹ Vol 14, p. 2322

¹⁰ Vol 33, Draft Transcript p. 67

According to the text “Canadian Environmental Assessment Act, An Annotated Guide”:

“This definition is also designed to capture any changes to the environment caused by the project that result in changes to the modern day use that aboriginal people make of the land, flora, fauna and other natural resources for traditional purposes such as fishing, hunting, trapping, gathering and ceremony. This part of the definition has been crafted to focus on any changes in the current use of the land and natural resources resulting from the environmental effects of the project, and not on whether the land and natural resources were in fact historically used for traditional purposes by aboriginal people¹¹,”

What Taseko heard of its modern day use was that it is used primarily for camping and for family fishing trips.

It was recently used for an organized event where traditional values are taught (this took place at Onion Lake in 2009, but appears to have taken place at Fish Lake in about 2007), and the area is also used for organized outings to allow children to experience nature. It is also used by some people – Cecil Grinder included – as a place to gather plants and to seek to gain spiritual powers. It is also used for some hunting.

It appears that it is not currently used for trapping, probably since that activity is uneconomic in recent times.

It appears that there are many other areas nearby – including Onion Lake – which have similar values for the Tsilhqot’in people.

Concerning Other Matters Introduced.

a. Legal Questions Raised

There were a number of comments throughout the hearing concerning legal positions that were being taken by a number of the presenters opposed to the project, and Taseko will briefly comment on some of those.

What were the findings in the *William*¹² case concerning the area around Fish Lake?

This case was frequently referred to in the hearings, and there appeared to be a great deal of confusion amongst some of the presenters about what the findings in the case were. From Taseko’s perspective, the most relevant findings of the Court were as follows:

¹¹ Canadian Environmental Assessment Act, An Annotated Guide: Release No. 9, December 2008 published by Canada Law Book, p. II-11

¹² *Tsilhqot’in Nation v. British Columbia*, 2007 BCSC 1700

1. The Court would have been prepared to find aboriginal title to approximately half of the land that was subject to the claim, if there was not a defect in the pleadings. Most of this land where aboriginal title would have been found was in the area known as the “Brittany Triangle”.
2. The Court determined that no portion of the “Eastern Trapline Territory”, which is where Fish Lake is located, was subject to aboriginal title because the Tsilhqot’in people did not have a sufficient connection with the land. The words used were:

[893] I am satisfied Tsilhqot’in people were present in the Eastern Trapline Territory at the time of first contact. The area has been used by Tsilhqot’in people since that time for hunting, trapping, fishing and gathering of roots and berries. I am not able to find that any portion of the Eastern Trapline Territory was occupied at the time of sovereignty assertion to the extent necessary to ground a finding of Tsilhqot’in Aboriginal title.

3. In finding that the Fish Lake area was not subject to aboriginal title, the Court had to make an assessment of the relative cultural significance of the land to the Tsilhqot’in people. The Court noted that:

[543] Aboriginal title arises out of the claimant’s connection to their ancestral lands. The particular lands must have been occupied by the claimants prior to sovereignty. Although the Court notes that the group’s connection with the land must have been integral to the distinctive culture of the claimants, Lamer C.J.C. also directed that any land that was occupied pre-sovereignty, and which the parties have maintained a substantial connection with since then, is sufficiently important to be of central significance to the culture of the claimants.: *Delgamuukw*, para. 151.

[544] Lamer C.J.C. explained at para. 149 that the standard of occupation required to prove Aboriginal title may be established in a variety of ways: ranging from the construction of dwellings through cultivation and enclosure of fields to regular use of definite tracts of land for hunting, fishing or otherwise exploiting its resources: see McNeil, *Common Law Aboriginal Title*, at pp. 201-2. In considering whether occupation sufficient to ground title is established, one must take into account the group’s size, manner of life, material resources, and technological abilities, and the character of the lands claimed.: Brian Slattery, *Understanding Aboriginal Rights.*, at p. 758.

[545] The cultural relationships between the claimant Aboriginal group

and the land, and the ceremonial and cultural significance of the land will also be relevant to this inquiry.

By finding that the Fish Lake area was not subject to aboriginal title, the Court was implicitly concluding that the area was of lesser ceremonial and cultural significance to the Tsilhqot'in people than the Brittany Triangle area where the Court would have been prepared to find aboriginal title.

Should the Project be put on hold pending the determination of Aboriginal Rights and Title and the settlement of Treaties?

There is no legal basis for such a proposition.

The recent decision of the Supreme Court of Canada in *Haida Nation*¹³ was intended to address exactly this issue. The answer is the duty of consultation. A key extract of the *Haida Nation* decision is as follows:

27. The answer, once again, lies in the honour of the Crown. The Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued in the process of treaty negotiation and proof. It must respect these potential, but yet unproven, interests. The Crown is not rendered impotent. It may continue to manage the resource in question pending claims resolution. But, depending on the circumstances, discussed more fully below, the honour of the Crown may require it to consult with and reasonably accommodate Aboriginal interests pending resolution of the claim.

One very important part of the above passage is that the Crown will “continue to manage the resource in question pending claims resolution”. This is at the heart of what was a repeated theme of who should control the land use decisions – the Crown or the First Nations. The Supreme Court of Canada has unequivocally answered this question – the Crown manages the resources prior to the conclusion of a treaty or a determination of legal claims which might alter that management.

Related to the issue of who has control over the land use decisions is what should happen if consultation with First Nations does not result in the support of the First Nations for the project. The answer of the Supreme Court of Canada is also unequivocal – consultation does not give rise to a veto by the First Nations:

165 This process does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim.

What is the relevance of the comments that the *William* case is under appeal?

¹³ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73

Whether the *William* case is actually proceeding to an appeal is irrelevant to the environmental assessment.

Firstly, the law is clear that the law is what a Court has decided, not what some other Court might decide on appeal. Our system of justice would not operate if it were otherwise.

Secondly, the law is also clear that even if a subsequent ruling were to determine that the Eastern Trapline Territory were subject to aboriginal title, that would not prevent the Government from approving the Project without the consent of the Tsilhqot'in people.

This is discussed in the decision of the Supreme Court of Canada in *Delgamuukw*¹⁴ in the context of how to justify an infringement of aboriginal title. Basically, the Court recognized that the Crown could authorize certain types of development on lands subject to aboriginal title, although it would require justification, which would include consultation with the First Nation holding the aboriginal title.

165 In my opinion, the development of aquaculture, forestry, mining and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure, and the settlement of foreign populations to support those aims are the kinds of objectives that are consistent with this purpose and in principle can justify the infringement of Aboriginal Title.

A determination of aboriginal title in the Eastern Trapline Territory might assist the Tsilhqot'in in a claim against the Crown for compensation, but would not prevent the Crown from justifying an infringement of aboriginal title for the purpose of developing a mine.

b. Adequacy of Consultation

A number of presenters suggested that Taseko have should have started consultation earlier, or done more.

There was an enormous amount of consultation with First Nations that took place in connection with this Project. It is summarized in detail in the Consultation Record that is included in the EIS.

However, one additional observation is appropriate here, which is that the obligation of consultation is owed solely by the Crown. Although some procedural aspects of consultation may be delegated to the Proponent, the legal responsibility for consultation rests with the Crown. This is set out as follows in the *Haida Nation* decision:

53 ... the duty to consult and accommodate, as discussed above, flows from the Crown's assumption of sovereignty over lands and resources formerly held by the

¹⁴ *Delgamuukw v. British Columbia*, 1997, 3 SCR 1010,

Aboriginal group. This theory provides no support for an obligation on third parties to consult or accommodate. The Crown alone remains legally responsible for the consequences of its actions and interactions with third parties, that affect Aboriginal interests. The Crown may delegate procedural aspects of consultation to industry proponents seeking a particular development; this is not infrequently done in environmental assessments. ... However, the ultimate legal responsibility for consultation and accommodation rests with the Crown.

c. Different Approaches taken by federal departments

Taseko noted and appreciated the approach taken by DFO, NRCan, Health Canada and Environment Canada throughout their involvement in both the federal and provincial review.

DFO provided advice and explained their interpretation on matters of policy preferring to leave it up to the Panel and federal cabinet to make any recommendations and provide direction on the fish and fish habitat matters before DFO exercise their course of action decisions (s.35(2) Authorization and MMER Schedule 2). Taseko will continue to work with DFO to narrow any remaining gaps and risks.

Health Canada although they didn't participate in either the Community Hearings or the Topic Specific Hearings participated in the review and provided their assessment of effects within their jurisdiction and expertise. Environment Canada and NRCan both went beyond their specific areas of mandate/jurisdiction in assessing areas within their expertise. Taseko appreciated this even though there were some minor areas of disagreement.

Transport Canada provided the Panel with what can only be described as a very unusual submission. They reached a conclusion concerning significance not on the issue of interference to navigation which Taseko understands to be their mandate but on the acceptability of Taseko's mitigation measure (Prosperity Lake). In our view they reached their determination of significance before applying mitigation and after having acknowledged publically that they had not considered various aspects associated with First Nations use of the area. Taseko has serious questions arising out of this submission and will look for the earliest opportunity to seek clarification.

d. Impact Benefits Agreements

A number of presenters commented on the fact that Taseko has not entered into an Impact Benefit Agreement with the First Nations. Some even suggested that it should be a precondition of Taseko proceeding with the Project.

The evidence disclosed that Taseko raised the subject of Impact Benefit Agreement with the TNG at an early stage, and the position of the TNG was that they did not wish to have such a discussion until after the environmental assessment process was concluded.

There is no legal requirement – or even a legal definition – in British Columbia of a “benefit sharing agreement”, often referred to as an Impact Benefit Agreement, between a project proponent and potentially affected First Nations.

The policy of the Province concerning benefit sharing agreements, as expressed in the service plan¹⁵ of the Environmental Assessment Office, is:

The EAO encourages proponents to explore benefit sharing agreements with First Nations where the parties consider that to be in their mutual interest. The Office will consider any information it receives regarding such agreements when assessing the social and economic impacts of a proposed project. However, such agreements are not considered preconditions to completion of the EA review process or a decision by the responsible ministers.

It is worth noting that the Province did require certain legal commitments from Taseko in its Certificate which address subject matters that are frequently considered to be key components of an Impact Benefit Agreement, including preferential provisions for First Nations for jobs, job notifications, contracting opportunities, training, and input on certain environmental considerations. In addition, the Province has introduced the Resource Revenue Sharing Policy that will apply to this Project, which addresses the revenue sharing component that has been a feature of a number of Impact Benefit Agreements.

As a result, whether or not Taseko ultimately enters into one or more Impact Benefit Agreements with the First Nations, most or all of the categories of benefits that would normally be found in such an arrangement have already been incorporated into this Project by a combination of legal commitments and Provincial government policy.

e. Clash of Cultures

Project Approval Process

One of the common themes that the Panel heard from the TNG was that ideally Taseko should have developed the Project in a joint-venture arrangement with the Tsilhqot’in people, and in any event the Project should not proceed without their consent.

However, when the approval process that was the model for the Tsilhqot’in was described by David Setah, Band Councillor with Xení Gwet’in, it became apparent how practically impossible that would have been.

¹⁵ See p. 6 *Environmental Assessment Office User Guide* (updated April 2010)

Mr. Setah's model required that a company wishing to do business with the Tsilhqot'in should arrive with no plans whatsoever. The model would then require a long joint process of the development of a business plan, with 50 percent of the business being owned by the Tsilhqot'in, with the Tsilhqot'in contribution apparently based on an acceptance of their ownership of the land base. Control of all aspects of the development of the plan would be in the hands of the Tsilhqot'in. At the end of the development of the business plan through this process, the Tsilhqot'in people would then hold a referendum to determine whether or not the Project would actually proceed. The evidence appeared to be that the experience with the only forest company that had actually got through a process of this kind was that the community rejected it at the referendum stage.

As appropriate as this consultation model may appear to the Tsilhqot'in, it is completely unworkable in the context of a mining development. The costs, risks and timing issues surrounding a Project like Prosperity would mean that if following that model were a requirement of development then no mine would ever be built, or even be attempted.

Mr. Setah's evidence on this point is summarized below:

David Setah

What we didn't really like about that is that they are putting the cart in front of the horse. If somebody wants to be a true partnership with us, then they should have no plans within our area. We should decide all that from day one. There's nothing on the paper. And together we can decide on how we are going to do forest resource extractions. Of all the ones we've been approached, there was one mill that didn't have any plans for our area. They told us that we just letting you guys know we got no plans whatsoever in your area. We're hoping to do this together. And they won. And that was Lignum. That's the only joint venture we had was with Lignum. It was 50/50. And they had no plans.

And that speaks a lot of volumes to us is that a true partner will come to you like that. And together we can talk about how much money we can make. We can talk about how much jobs our People can have. And we can, best of all, is we can talk about how much forest resource extractions we can do and still maintain the sustainability.

(TRANSLATION)

Even though Lignum is our joint venture partner 50/50, we stressed to them that whatever plans we come up with, surely we need to get the blessing from the people. The people got to decide that this goes ahead or not.¹⁶

...

If there's going to be any harvesting within our area, we get the opportunities. And we are the one that logs. That have the employment for our People. This is ourself, the joint venture. And knowing how well Lignum wants to work with us, that they can also get forest licence but they go by what we want. And that's really important, because on the things you do, you can control. You can control

¹⁶ Vol 12, p. 1833

*the situation. You can control the territory of about resource extractions. If you let any other people in the area that you got no ties to, you got no agreements with, then we lose control. We greatly understood that. And what the thing was, that we plan where all the cut blocks going to be, we plan on all the type of resource extractions we're going to have. And still, it's still the blessing from the people. The membership got to approve it.*¹⁷

NEXT STEPS

Taseko's position is that there are no significant environmental effects after taking the mitigation measures into account.

However, if this Panel were to find, as the Province did, that the loss of Fish Lake was a significant adverse environmental effect, then the issue of justification arises.

Under the Terms of Reference, if the Project is likely to cause a significant adverse environmental effect then the Panel should also ensure that "information with respect to the justifiability of any significant adverse environmental effects is obtained".

Under this Panel process the determination of whether an adverse environmental effect may be justified will be made by the responsible authority – the Minister of Fisheries and Oceans - following a consideration of the Panel's Report by Cabinet.

In reaching a determination on justification, the Minister may take into account policy considerations it considers appropriate. This is noted in the recent *Imperial Oil* case¹⁸ where Justice Tremblay-Lamer of the Federal Court stated:

[74] Should the Panel determine that the proposed mitigation measures are incapable of reducing the potential adverse environmental effects of a project to insignificance, it has a duty to say so as well. The assessment of the environmental effects of a project and of the proposed mitigation measures occur outside the realm of government policy debate, which by its very nature must take into account a wide array of viewpoints and additional factors that are necessarily excluded by the Panel's focus on project related environmental impacts. In contrast, the responsible authority is authorized, pursuant to s. 37(1)(a)(ii), to

¹⁷ Vol 12, p. 1833 - 1834

¹⁸ *Pembina Institute for Appropriate Development and others v. Attorney General of Canada and others* 2008 FC 302

permit the project to be carried out in whole or in part even where the project is likely to cause significant adverse environmental effects if those effects “can be justified in the circumstances”. Therefore, it is the final decision-maker that is mandated to take into account the wider public policy factors in granting project approval.

Many important issues were raised in this Panel process, including:

- The state of the economy in the Cariboo Chilcotin
- The balancing of interests between various economic components of the economy, such as the cost of the generation of electrical power, and the benefits attributable to resource development
- The likely impact of the pine beetle on the forestry sector and what that will mean for the Cariboo Chilcotin
- Why it is important that the Project proceed now as opposed to sometime in the future.
- The opposition of the aboriginal people who appeared before the Panel to the project
- The role of aboriginal people in land use decisions in British Columbia
- The adequacy of the Crown’s consultation that is required in this case
- The role of the Crown in the reconciliation process with the aboriginal people of Canada
- The respective roles of the Provincial and Federal governments in environmental review processes, and the future of those roles
- Societal concerns with respect to the balancing of interests between economic development and the preservation of wilderness areas

These issues have little or nothing to do with the Panel’s determination of significant environmental effects, but the ‘final decision-maker’ may consider all of these matters – and other “wider public policy factors” – in reaching a determination of whether a significant adverse environmental effect may be justified in the circumstances.

Taseko prepared the EIS in accordance with agreed Guidelines. However, the Guidelines did not require any justification analysis, and Taseko did not prepare one.

Taseko’s view is that should there be a finding of significant adverse environmental effect, then that can be justified by the economic benefits that will arise from the Project, and the particular need for the Project at this point in the history of the Cariboo Chilcotin.

In summary, on the issue of justification, if the Panel concludes that the Project is likely to cause significant environmental effects, the Panel should forward the information on justifiability that it has obtained, with the expectation that the Federal Government will make a determination of justifiability taking into account that information, and whatever other information and public policy factors it considers appropriate in the circumstances..

Taseko remains confident that the project is both environmentally responsible and technically viable. Taseko and its shareholders are preparing to invest \$800,000,000 to develop the project but it can only be built if:

- (1) the federal government makes a positive decision; and then
- (2) the Taseko Board of Directors makes a positive decision to build it.

Through our work and investment at the Gibraltar Mine, and through our significant investment in preparing the plan for Prosperity which reflects the very best in scientific work, in engineering design and in technical and environmental expertise, Taseko has proven itself to be a responsible corporate citizen.

We want to continue to invest in the Cariboo, for the benefit of our shareholders, and for the benefit of others. That is our intention with Prosperity and what Prosperity means to us.

Prosperity is a large and important project. People hold strong views on its future. There is clear and significant value and benefit for the country.

Whether the Project is approved, or not, will have lasting ramifications for the province as a place to invest.

BC is currently the largest copper producer in Canada. The eyes of the international mining and mining investment communities are squarely focused on how the Federal Government handles this decision.

Let there be no misunderstanding, the stakes here are very high ... not only for Taseko and Prosperity ... but for this community and for the Cariboo, and for the Provincial Government and this Province, and for this country and its people.

Rarely does an opportunity like Prosperity come along - rare indeed is the opportunity to build a large metal mine with the strength and power to deliver lasting value for people.

For the better part of 17 years this Project has been undergoing an environmental assessment.

The examination of our work and the science behind it: the technical merits of our engineering and the high degree of confidence we have in it: the economic value and social benefit that will be delivered to local and regional communities: the need for this project at this particular time in our history: all of this has led the Province of British Columbia, after lengthy, detailed and careful examination of all of the facts by each of their responsible departments and agencies to approve Prosperity for development.

The decision by the Province of British Columbia was the right and proper course of action to take.

And for all of these reasons, it is the right and proper course of action for the Federal Government to take as well.

A number of factors influence the decision of when to build a mine – commodity prices, availability of capital, investor confidence, public attitude and need – the need for metals, the need for wealth, the need for opportunity.

Now is the time to build this mine for now is the time these factors are aligned.

Only if this mine is developed will it be able to create the wealth by which First Nation communities can be given new local opportunity to rise above the poverty and despair that so many of them in their remarks to the Panel spoke so passionately and emotionally about.

Now is the time for a decision by the federal government which will allow this mine to proceed.

Put your faith in us.

Have confidence in our findings and in the decision of the provincial government.

Have confidence in the Federal departments, in Natural Resources Canada, Environment Canada, and the Department of Fisheries & Oceans, and in the future decisions they will make.

Put your confidence in our plan.

Have confidence in our people.

Have confidence in our abilities and determination to deliver a sound, safe and beneficial Project.

Have confidence in our future conduct and in the commitments we have made to First Nations and others.

Have confidence in Prosperity.

Mr. Chairman and Panel members, good luck with the work before you and in the execution of your remaining duties. Thank you.

- END -