



## TŚILHQOT'IN NATIONAL GOVERNMENT

253 – 4<sup>th</sup> Avenue North • Williams Lake, BC V2G 4T4 • Phone (250) 392-3918 • Fax (250) 398-5798

January 30, 2017

### **Teztan Biny (Fish Lake) Media Backgrounder**

The Tsilhqot'in have struggled for decades to have their Aboriginal rights respected, leading to over 25 years of court cases and resulting in Canada's first, and to date, only, declaration of Aboriginal title. Fish Lake (Teztan Biny) is one of BC's most productive wild trout lakes, is an important Tsilhqot'in cultural school and sacred site, and lies adjacent to the title lands and inside one of Canada's only court-declared area of proven Aboriginal rights.

Despite the court declaration of Aboriginal rights to the Fish lake area, Taseko Mines Ltd. (TML) continues, after trying for almost 30 years, to advance the Prosperity, then the "New" Prosperity Mine proposal, over concerns and objections from the Tsilhqot'in Nation. Twice they have emphatically failed to obtain federal environmental approval, in both cases from the most promising federal government in recent history. Under then Prime Minister Stephen Harper the Prosperity Mine proposal was rejected in [2010](#) and the New Prosperity Mine proposal was rejected in [2014](#).

Since 2014, the Tsilhqot'in have been forced into court to defend the sound rejection of the New Prosperity proposal, and have spent almost three years and hundreds of thousands of dollars to ensure that no means no. The integrity of our environmental laws is at stake.

All of this is happening in a "post-*Tsilhqot'in*" era. Despite the Supreme Court decision, the unqualified adoption in Canada of the *United Nations Declaration on the Rights of Indigenous Peoples*, and the Calls to Action by the Truth and Reconciliation Commission, the Tsilhqot'in are still being forced to go to great lengths to protect an area of immense spiritual, cultural and environmental sensitivity.

### **Judicial Reviews**

- The Tsilhqot'in Nation is in [Federal Court](#) in Vancouver this week, **Jan 30-Feb 3, 2017**, to oppose an attempt by Taseko Mines Limited (TSX:TKO) (TML) to overturn the 2014 federal rejection of TML's proposed New Prosperity Gold-Copper Mine proposal.
- The TML case includes a constitutional challenge to the *Canadian Environmental Assessment Act, 2012 (CEAA 2012)*, arguing that *CEAA 2012* goes too far in protecting the interests of Aboriginal peoples and that those protections should be struck down.
- In essence, the company is attempting to further reduce the protection of our already gutted federal environmental laws, particularly as they apply to Aboriginal people.

## **Major Drilling and Exploration Application for Rejected Project**

- To make matters even worse, while making these claims in court, TML is urgently seeking permits from the BC Ministry of Energy and Mines for a major drilling and exploration program starting in February 2017 to support construction of the twice rejected project.
- The company wants to begin extensive road building, drilling, test pits, and seismic line testing, and build a 50-man camp.
- These activities would have extensive impacts on Tsilhqot'in lands, waters, wildlife, cultural use, and court declared Aboriginal rights.
- In December 2011, the BC Supreme Court noted that each new incursion into the area with a drilling program causes irreparable damage to the habitat and further diminishes the exercise of (court-declared) Aboriginal rights by the Tsilhqot'in people.  
**The Honourable Mr. Justice Grauer [Taseko Mines Ltd. v. Phillips, 2011 BSSC 1675]**  
*"Each new incursion serves only to narrow further the habitat left to them in which to exercise their traditional rights. Consequently, each new incursion becomes more significant than the last. Each newly cleared trail remains a scar, for although reclamation is required, restoration is impossible. The damage is irreparable."* [Para 65]
- The Tsilhqot'in Nation is opposed to any further disturbance at Teztan Biny (Fish Lake) and Yanah Biny and will take steps to ensure that this does not occur.

## **Environmental Reviews**

- Unprecedented in Canadian history, the Tsilhqot'in have been subjected to going through not one but two environmental assessments for essentially the same project.
- Both the Prosperity Mine proposal and the New Prosperity Mine proposal, were reviewed by different independent expert federal panels.
- The [Prosperity panel report](#) was released in 2010.
- The [New Prosperity panel report](#) was released in 2013.
- Both times the Panels found significant, adverse, and in many cases, immitigable impacts to the environment, and Tsilhqot'in culture, heritage and Aboriginal rights.
- Both times the Panels found that, "*Fish Lake (Teztan Biny) and Nabas areas are places of unique and special significance for Tsilhqot'in cultural identity and heritage and they have occupied Nabas and used Fish Lake for generations.*" [p. 4 of New Prosperity Panel Report]
- In both cases the federal government under Stephen Harper found the project had unacceptable impacts on the environment and the Tsilhqot'in, and soundly rejected them.

## **Timeline**

- **1980s-1990s** – Junior exploration company finds major ore deposit in Tsilhqot'in territory
- **1989** – Xení Gwet'in issue the [Nemiah Aboriginal Preserve Declaration](#) affirming jurisdiction over their lands and putting TML on notice that a major mine proposal was not appropriate for this area.
- **1990** – Xení Gwet'in begin trapline court action in response to forest industry impacts.

- **1995** – TML seeks federal and provincial approvals for its “Prosperity” Mine proposal. The federal Department of Fisheries and Oceans (DFO) warns TML and the Province that the destruction to Teztan Biny is unacceptable because neither DFO nor the Minister of the Environment could approve the loss of this rare and fish-rich (85,000 rainbow trout) lake.
- **1998** – TML withdraws from environmental permitting applications
- **Mid-2000s** – TML, under new ownership, new federal and provincial governments, and buoyed metal markets, re-initiates environmental permitting applications
- **2007** - The Xení Gwet’in trapline case evolves into an Aboriginal title case, leading to the Late Justice Vickers landmark 2007 [Tsilhqot’in v. B.C. ruling](#).
- **2009** – After months of negotiation for a joint federal-provincial panel review, the BC EAO unilaterally announce that they will not participate, and instead conduct an in-house environmental review. The Tsilhqot’in leaders learned of this via the press.
- **2010 (January)** – The BC EAO rushes its review, issuing an approval for the Prosperity Mine ahead of the federal Panel hearings. The Tsilhqot’in boycotted the [unilateral EAO process](#) and call the approval a “[rubber stamp](#)”.
- **2010 (July)** –The Prosperity Mine Federal Panel releases its [report](#) and finds numerous significant, adverse environmental and cultural effects. The Panel also notes the BC EAO was missing key information as a result of not participating in the hearings.
- **2010 (November)** – The federal [government rejects the Prosperity Mine Proposal](#) due to the unjustifiable impacts to the environment, and Tsilhqot’in culture and rights.
- **2011** – a mere 3 months after the federal rejection, TML announces it is reapplying for a revised mine proposal called the New Prosperity mine. The company no longer wants to drain Fish Lake, but the plan requires an un-proven and unprecedented whole lake re-circulation scheme. The mine design was based on an alternative reviewed in the first Panel Review, when both TML and Environment Canada stated that it was an inferior mine design.
- **2011-13** – The Tsilhqot’in Nation objects to the second federal review, arguing that forcing communities to go through an unprecedented second federal EA, and subjecting community members to explain to an entirely new panel the cultural importance of Teztan Biny, was unfair and unjustified. Despite these grave concerns, the Tsilhqot’in Nation participated in good faith in the second panel review.
- **2012-13** – The Majority Federal Conservative government begins dismantling and weakening federal environmental protection laws. The Tsilhqot’in fear this is designed to ensure approval of the New Prosperity proposal.
- **2013 (Oct)** – The New Prosperity Panel issues a second, equally scathing report finding numerous significant environmental effects, many of them immitigable.
- **2013 (Nov)** – TML begins claiming that the Panel used the “wrong model” for the tailings storage facility, and begins a judicial review of the panel process and report. The question of the tailings storage facility was just one of numerous significant environmental and cultural impacts identified by the New Prosperity Panel.
- **2014 (Feb)** – The majority Conservative government finds that once again, the enormous impacts of the proposed mine cannot be justified, and [soundly rejects](#) the project a second time.
- **2014 (March)** – TML begins judicial review proceedings of the federal decision.

- **2014 (June)** – The Supreme Court of Canada, in the [Tsilhqot'in Nation decision](#), for the first time ever in Canadian history, recognize and affirm Aboriginal title on the ground, to approximately 1750 km<sup>2</sup>. The ruling ends a long history of denial and sets the stage of recognition of Aboriginal title in its full form. Teztan Biny lies in an area of proven Aboriginal rights, and nearby the Declared Title Area.
- **2014 (Oct)** – Nuu-chah-nulth Master Carver Tim Paul and his family give the Tsilhqot'in Nation a totem pole in recognition of the efforts made by the Tsilhqot'in to advance recognition of Indigenous peoples, and the strong relationship between the Nuu-chah-nulth and the Tsilhqot'in. The pole is raised at Teztan Biny to recognize and protect the sacred site.
- **2014 (Oct)** – At the totem pole raising ceremony, the Tsilhqot'in communities of Xeni Gwet'in and Yunesit'in, with the support of the Tsilhqot'in Nation, announce the creation of the [Dasigox Tribal Park](#), which includes Teztan Biny and the area.
- **2015** – The Final Report of the Truth and Reconciliation Commission of Canada is released. One of its calls to action include calling on “the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples*”, including a commitment to “meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects”. (p. 14 of the TRC's [Calls to Action](#)).
- **2015** – The new federal Liberal government commits to implementing the [United Nations Declaration on the Rights of Indigenous Peoples](#), and the Prime Ministers' [mandate letters](#) to cabinet include the statement that, “No relationship is more important to me and to Canada than the one with Indigenous Peoples.”
- **2016** – The Tsilhqot'in Nation signs the [Nengay Deni Accord](#) with the Province of British Columbia, a framework agreement to guide further negotiations and that establishes a shared vision, principles and structures to negotiate a comprehensive and lasting reconciliation between the Nation and the Province.