



May 14, 2020

BACKGROUND

Težtan Biny (Fish Lake)/New Prosperity Mine

WHERE

Težtan Biny (Fish Lake) and Nabas are located in traditional Tsilhqot'in territory about 125 kilometres southwest of Williams Lake, B.C. The area includes about 300,000 hectares of wilderness and wildlife habitat, and borders a number of existing large parks and protected areas. Težtan Biny is one of BC's most productive wild trout lakes, and the surrounding area is an active Tšilhqot'in cultural school and sacred site, adjacent to the Aboriginal title lands and inside one of Canada's only court-declared areas of proven Aboriginal hunting and trapping rights.

WHAT

Taseko Mines Ltd. (TML) has tried for almost 30 years to advance a massive open pit mine - first called Prosperity Mine and then the "New" Prosperity Mine proposal - over the concerns and objections of the Tšilhqot'in Nation. Twice they have emphatically failed to obtain federal environmental approval, in both cases from the most pro-mining federal government in recent history.

Under the Canadian government of then-Prime Minister Stephen Harper, the Prosperity Mine proposal was rejected in [2010](#). A subsequent 'New' Prosperity Mine proposal was rejected in [2014](#). Both rejections were based in part on the devastating and immitigable impacts the mine on Tšilhqot'in rights, culture and cultural heritage. Since 2014, the Tšilhqot'in have repeatedly been forced into court to defend the Federal Government's rejection of the New Prosperity proposal. The integrity of Canadian and Tšilhqot'in environmental laws is at stake.

Despite the federal rejections and the fact that New Prosperity cannot be built under Canadian federal law, the Tšilhqot'in have also been forced to contend with attempts by Taseko to conduct an extensive drilling program at Težtan Biny and the surrounding area of Nabas in order to advance the *rejected* mine. On July 14, 2017, the BC Government – four days before John Horgan was sworn in as Premier of British Columbia – granted Taseko the drilling permit. The Tšilhqot'in were compelled to respond with further court action to protect Težtan Biny and Nabas, and currently have an injunction in place which protects the area from the drilling program while a lawsuit is heard by the Supreme Court of BC.

Despite the 2014 Supreme Court of Canada aboriginal title decision in favour of the Tšilhqot'in, the unqualified adoption in Canada of the *United Nations' Declaration on the Rights of Indigenous Peoples*, and stated commitments to implement the Calls to Action made by the Truth and Reconciliation Commission, the Tšilhqot'in are still being forced to go to great lengths to protect an area of immense spiritual, cultural and environmental importance.

WHY TŚILHQOT'IN ARE OPPOSED TO DRILLING AND MINING ACTIVITY

- The Tšilhqot'in Nation is opposed to mining and any further drilling disturbance at Težtan Biny and Yanah Biny because of the cultural importance of these lands, waters, and wildlife, and court declared Aboriginal rights.



OTHER BACKGROUND

Environmental Reviews

- Unprecedented in Canadian history, the T̓silhqot̓'in have been subjected to not one but two environmental assessments for essentially the same project.
- Different independent expert federal panels reviewed both the Prosperity Mine proposal and the New Prosperity Mine proposal.
- 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 T̓silhqot̓'in culture, heritage and Aboriginal rights.
- Both times the Panels found that, *"Fish Lake (Te̓žtan Biny) and Nabas areas are places of unique and special significance for T̓silhqot̓'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 T̓silhqot̓'in, and soundly rejected them.

Timeline

- **1980s-1990s** – Junior exploration company finds major ore deposit in T̓silhqot̓'in territory
- **1989** – Xení Gwet̓'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 Gwet̓'in begin trapline court action in response to proposed clear-cut logging of its caretaker area of T̓silhqot̓'in territory.
- **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 Te̓žtan 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 Gwet̓'in trapline case evolves into an Aboriginal title case, leading to the Late Justice Vickers landmark 2007 [T̓silhqot̓'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 T̓silhqot̓'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 T̓silhqot̓'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 T̓silhqot̓'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 says it will no longer drain Te̓žtan Biny,



T̓SILHQOT̓IN NATIONAL GOVERNMENT

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 would result in greater long term environmental risk.

- **2011-13** – The T̓silhqot̓in 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 Te̓ţtan Biny, was unfair and unjustified. Despite these grave concerns, the T̓silhqot̓in 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 T̓silhqot̓in fear this is designed to support approval of unacceptable projects such as 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 filed in Federal Court for 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 rejection of New Prosperity.
- **2014 (June)** – The Supreme Court of Canada, in the [T̓silhqot̓in Nation decision](#), for the first time ever in Canadian history, recognizes and affirms Aboriginal title on the ground, to approximately 1750 km². The ruling ends a long history of denial and sets the stage of recognition of Aboriginal title in its full form. Te̓ţtan 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 T̓silhqot̓in Nation a totem pole in recognition of the efforts made by the T̓silhqot̓in to advance recognition of Indigenous peoples, and the strong relationship between the Nuu-chah-nulth and the T̓silhqot̓in. The pole is raised at Te̓ţtan Biny to recognize and protect the sacred site.
- **2014 (Oct)** – At the totem pole raising ceremony, the T̓silhqot̓in communities of Xenı Gwet̓in and Yunesit̓in, with the support of the T̓silhqot̓in Nation, announce the creation of the [Dasıqox Tribal Park](#), which includes Te̓ţtan Biny and the surrounding 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 T̓silhqot̓in Nation signs the [Nenqay Denı 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.
- **2017** – The B.C Liberals approve a major drilling permit to TML for the Te̓ţtan Biny area on the final day before transition to the new NDP government. The T̓silhqot̓in Nation challenge this permit.



TŚILHQOT'IN NATIONAL GOVERNMENT

- **2018 (April)** – Tsilhqot'in communities of Yunešit'in and Xeni Gwet'in release the draft community vision and management goals for [Dasiqox Tribal Park](#) to the public for feedback and host public information sessions. Goals for the Tribal Park area include ecosystem protection, sustainable livelihoods and cultural revitalization.
- **2019** - Drilling permit is upheld by the BC Court of Appeal. The BC Court of Appeal recognizes the profound cultural and spiritual importance of the area for the Tsilhqot'in people, and even states that it might have been reasonable to deny the drilling program at this time, but ultimately concludes that it was reasonable to approve the program.
- **March 2019** - The Tsilhqot'in Nation seeks an injunction against this permit on March 22, 2019 while it applies for leave from the Supreme Court of Canada to have the appeal heard.
- **April 1, 2019** – The injunction was granted by BC Court of Appeal, pending decision of Supreme Court of Canada
- **June 13, 2019** – Supreme Court of Canada dismisses Tsilhqot'in application for leave to appeal.
- **June 20, 2019** - The day before Indigenous Peoples Day in Canada, TML provided notice that it will mobilize personnel and machinery for the Težtan Biny area within days, and plans to commence the drilling program as of July 3, 2019.
- **August 2019** – The Tsilhqot'in Nation signs the [Gwets'en Nilt'i Pathway Agreement](#) with the Government of Canada and the Province of British Columbia, a framework agreement to guide tripartite negotiations, continuing the work of previous framework agreements established with Canada and BC, and which outlines a staged approach to negotiate a comprehensive and lasting reconciliation between the Nation, the Government of Canada and the Province.
- **September 6, 2019** – The BC Supreme Court granted TNG an interlocutory injunction barring TML from undertaking its drilling program while TNG's lawsuit for infringement of rights is underway.
- **December 18, 2019** – The Federal Court of Appeal dismissed TML's appeals of the 2013 Panel Report and the 2014 Federal Government's rejection of New Prosperity, upholding the Panel Report and the Federal Government's rejection. TML subsequently applied for leave to appeal these decisions to the Supreme Court of Canada, which is the subject of today's news.
- **May 14, 2020** – Supreme Court of Canada dismissed Taseko's application for leave to appeal, with costs. This means that the rejection of New Prosperity Mine by the Government of Canada stands, once and for all.