November 8, 2013

Honourable Leona Aglukkaq
Minister of Environment
Parliament Buildings
Ottawa, Ontario

Dear Minister Aglukkaq:

Re: New Prosperity Gold-Copper Project

I am writing you in respect of your pending decision under the Canadian Environmental Assessment Act, 2012 (the “CEAA, 2012”) relating to our proposed New Prosperity project (the “Project”). As you are aware, the federal review panel recently issued its report. Now the following steps must occur:

(I) You must determine, under section 52(1) whether, taking into account any mitigation measures you consider appropriate, the project is likely to cause significant adverse environmental effects referred to in subsection 5(1) and 5(2). It is essential to note that this is a decision for you to make “after taking into account the review panel’s report” (s. 47). It is not a decision to be made by the review panel.

(II) Government must determine if the Crown’s duties to aboriginal peoples in respect of s. 35 rights have been discharged

We believe that it is appropriate, as a matter of administrative fairness, for you to consider Taseko’s positions in respect of these matters before making these determinations and this letter represents our submissions in respect of them.¹

Question (I). Is the Project likely to cause significant adverse environmental effects, taking into account the mitigation measures you consider appropriate?

The answer to this question should be “no”, and the Project should be allowed to move into the permitting phase. We say this for the following reasons.

¹ We understand that consultations have been and likely continue to be ongoing between government officials and aboriginal groups, outside of the panel process. If or to the extent any of those consultations result in the government of Canada being aware of any information or holding any positions that could adversely affect Taseko’s interests, we believe administrative law principles require that we be so advised and afforded an opportunity to make representations before any decisions are made.
As you know, the Project design was fundamentally modified to address aboriginal concerns noted in the first review panel 2010. We are spending over $300 million extra to develop the mine in a manner that preserves Fish Lake. This is precisely what the federal government encouraged us to do when rendering its initial decision in 2010.

On the key question relevant to a decision under the CEAA, 2012, the present panel found that the proposed project is *not likely to cause significant adverse environmental effects in respect of* 33 different areas. For example, the panel found:

No Significant Adverse Effect likely in respect of:

- human health
- salmon habitat
- alteration to water flows in Fish Creek and Beece Creek watersheds
- water seepage from the tailings facility to the Fish Creek and Beece Creek watershed, Big Onion Lake and Little Onion Lake
- water quality in Beece Creek and Taseko River
- species at risk
- grassland ecosystems
- old forests or forest industry
- Fish Lake water level through pit dewatering
- mule deer
- migratory birds
- grizzly bear (including no significant adverse cumulative effects if mitigation measures are effectively implemented)
- moose (including no significant adverse cumulative effects if mitigation measures are effectively implemented)
- air quality on recreational users of the area or Taseko Lake Lodge
- recreational use of Fish Lake (including during the time the mine is operating)
- guides and guide outfitters
- trappers
- the users of the meadows in the Fish Lake area due to loss of grazing
- navigation
- Taseko Lake Lodge

Further, with respect to aboriginal interests, the panel (or in some cases a majority of the panel) found no significant adverse effects were likely in respect of several important matters. Specifically, the panel found:
No Significant Adverse Effect likely in respect of:

- Secwepemc First Nation current and cultural heritage
- aboriginal tourism opportunities
- Esk’etemc Community Forest
- aboriginal socio-economic impacts or aboriginal peoples regarding the harvesting of country food

These are a very large number of findings of no likely significant adverse effects, and we consider it highly inappropriate that these findings were completely ignored in the panel’s executive summary, whereas a much smaller set of adverse findings (discussed below) were noted and discussed. We believe this has seriously, and unjustifiably, distorted public understanding of the report and in turn the integrity of this company and the many companies and their professional employees that worked tens of thousands of man-hours on this project over the last three years. It is simply unacceptable for an executive summary to selectively reference a handful of negative findings but make absolutely no mention of dozens of positive ones.

It is also essential to recognize that the panel found that an open pit mine was the only economically viable way to proceed with the Project, that Taseko has adequately demonstrated the purpose and need for the Project and that Taseko had sufficiently considered alternative mine plans for the purposes of environmental assessment. We are again seriously concerned that these points were omitted from the executive summary.

The panel found significant adverse effects were likely in relation to three areas. These related to:

- Water quality in Fish Lake and Wasp Lake
- Fish and fish habitat in Fish Lake, wetlands and riparian ecosystems
- Tsilhqot’in current use of lands for traditional purposes, cultural heritage and archaeological/historical resources

For reasons noted below, we believe that those aspects of the panel’s findings are wrong and contrary to the evidence and that there is simply no reasonable basis for you to conclude that the Project is “likely to cause significant adverse environmental effects” as that phrase is used in CEAA, 2012, particularly when taking into account mitigation measures considered appropriate under the law.

Virtually all of the panel’s findings of “likely” significant adverse effects rested directly or indirectly on the question of how much seepage might occur between the tailings facility and Fish Lake (two km away). In summary:

- The panel relied heavily on Dr. Desbarats’ (NRCan) seepage modelling
- The panel noted water quality guidelines would be exceeded (due in large part to the seepage findings)
- The panel found fish and fish habitat would be harmed by the water guideline exceedance
- The panel found Tsilhqot’in people would be unlikely to use the Fish Lake area because of those effects
The panel’s findings and assumptions regarding seepage and water quality are thus central to the panel’s findings of significant adverse environmental effects. Yet they are clearly and fundamentally flawed, for the following reasons.

**Seepage and water quality determinations**

1. Dr. Desbarats NRCan modelled a project that is not what would actually be built.

The panel noted a divergence of modeling on anticipated seepage, at page 60 of its report. In particular, it contrasts modeling undertaken by Taseko with that of NRCan. On that same page, the panel stated:

> Dr. Leslie Smith, an independent expert retained by the Panel, stated that in his opinion the framework used by Taseko to evaluate seepage of process (pore) water from the tailings storage facility followed accepted practice.

Yet despite this statement, the panel went on to state at page 64:

> The Panel has determined that Taseko has underestimated the volume of tailings pore water seepage leaving the tailings storage facility and the rate at which the water plume would reach the various lakes and streams downslope of the tailings storage facility, even with the mitigations proposed.

The Panel accepts Natural Resources Canada’s upper bound estimate as the expected seepage rate from the tailings storage facility. [emphasis added]

During the course of the hearings and review of the panel’s report, our consultants (the internationally respected engineering firm Knight Piesold\(^2\)) struggled to understand how NRCan’s Dr. Desbarats could possibly have come up with the anticipated seepage rates he did, and Knight Piesold has recently concluded that this occurred because Dr. Desbarats applied his modeling to a design that is different from what the company is in fact proposing to build. More specifically, Dr. Desbarats does not appear to have incorporated the fact that the tailings storage facility would not simply be placed on existing ground conditions, but instead would be placed on an engineered liner of compacted materials subject to strict quality assurance and quality control during construction – something done routinely in BC and other mines throughout the world. This was discussed extensively during the hearings. We can think of no valid reason why NRCan would have based its modelling on a tailings storage facility design that is not the engineered facility that is being proposed.

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\(^2\) Knight Piesold has been in this business for over a hundred years and has designed and built hundreds of tailings facilities all over the world. Knight Piesold was the company that advised and developed the liners for the Mount Polley and Mount Milligan tailings storage facilities, and they recently won an award of merit for their work at Mount Milligan.
It is impossible for our company to raise this issue without raising a related concern regarding prior statements made by Dr. Desbarats, the same official who testified on behalf of NRCan and its model. Specifically, in a February 2012 meeting among provincial officials, federal officials, the Tsilhqot’in National Government (“TNG”) and Taseko where the parties were discussing the geotechnical drilling program necessary to properly inform the environmental assessment, Dr. Desbarats was asked a question and rose slowly to his feet. He then said, “Well, I am not sure why I am here. This project has been rejected and it will not succeed” or words to that same effect.

Moreover, even if NRCan’s modelling were not inherently invalid based on using the wrong project design, or inaccurate assumptions, a model is simply that - a model. All parties recognize that additional information gathering (e.g. further geotechnical drilling) would be required before the Ministry of Energy and Mines, the Ministry of Environment, Environment Canada and the Department of Fisheries and Oceans (among others) could ever decide whether to allow this mine to be built. In fact, the panel expressly notes that the Ministry of Energy and Mines acknowledged additional site investigation would be undertaken and examined during future regulatory phases “and this should lead to a reduction in the uncertainties”. ³

Given this, it simply makes no sense for the panel to have based its subsequent findings of significant adverse effects concerning fish and fish habitat, water quality, and aboriginal use of the Fish Lake area based on the assumption that Fish Lake would be damaged and untreatable because of the most extreme (and in fact flawed) seepage predictions.

Finally, it just does not make any common sense to use the most extreme and negative assumptions to ultimately reach conclusions that the Project is likely to have significant adverse environmental effects on the lake. The tailings facility will be 2 km away from Fish Lake, and any seepage should it get to the lake in the next 200 years will not in any case be “toxic”. As noted to the panel, our company presently has a very healthy population of rainbow trout living in our tailings facility at our Gibraltar mine. Regular testing of those fish demonstrate that they are healthy and thriving in 100% mill process water.

³ Panel report, page 63
If those fish can survive and thrive in the tailings facility itself, how can concerns about potential seepage, from 2 km away, possibly justify such negative conclusions about the Project so early in the regulatory process?

We believe this type of flawed reasoning is precisely what the Federal Court has critically referred to in the environmental assessment context as the “potentially paralyzing effects of the precautionary principle on otherwise socially and economically useful projects”.

2. Taseko obtained all the geotechnical information it could for the EA (following an agreement entered into between the province, the TNG and Taseko), and it provided all the modelling it reasonably could at this stage

Late in 2011 the TNG filed an injunction application, challenging Taseko’s permit under the provincial Mines Act to undertake exploratory and geotechnical drilling in advance of the environmental assessment. A settlement agreement was subsequently entered into, among the TNG, the Province and Taseko. The federal government is not party to that agreement, but Dr. Desbarats, the NRCan official who testified about the NRCan model was personally involved in discussions concerning it (as noted above).

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5 Canadian Parks & Wilderness Society v. Canada (Minister of Canadian Heritage), 2003 FCA 197 (para. 24)
As a result of the settlement agreement, Taseko undertook a work program that was substantially less than had originally been authorized by the permit. The original notice of work permit authorized 18 drill holes and 59 test pits but only 8 holes and 40 test pits were in fact completed, some in locations other than had previously been authorized in the permit.6

While the panel report states that Taseko “refused” to provide certain requested information, a more accurate description would be that the company provided all the information that it was reasonably able to at the environmental assessment stage, and it simply was not able to provide further information and extensive additional modelling requested by the panel once the hearings had already commenced. This is particularly true when the panel had already concluded that Taseko’s Environmental Impact Statement contained the materials required to go to hearing.

In these circumstances, for the panel or any party to be critical of Taseko for not having obtained further technical information or undertaking extensive additional modelling, or for any party to make pessimistic assumptions or draw adverse inferences in the absence of complete scientific certainty, is profoundly unfair and inappropriate. We believe that it would be wrong for you to determine that significant adverse effects are “likely”. Instead, the proper approach is to allow the Project to move forward into more detailed geotechnical investigations in the permitting phase, where that additional information can and will be assembled to the satisfaction of the provincial Ministry of Energy and Mines, the Ministry of Environment, Environment Canada and the Department of Fisheries and Oceans (among others).

3. The panel’s conclusion that exceedance of water quality guidelines results in significant adverse effects is inconsistent with relevant policy and prior EA decisions

For all the reasons noted above, Taseko submits that any impacts on Fish Lake from seepage from the tailings facility would be substantially less than the panel has concluded and therefore water quality impacts on Fish Lake would not be anywhere near as extensive as the panel has assumed when making its findings.

However, even if the panel’s extraordinary conclusion about water quality impacts was correct, it is inappropriate to simply equate exceedance of water quality guidelines with what is a “significant adverse environmental effect”. The panel report states:

*The Panel concludes the concentration of water quality variables in Fish Lake (Teztan Biny) would be considerably larger than Taseko’s predictions. If so, then concentrations of contaminants of concern also would exceed the provincial and federal water quality guidelines. In accordance with guidance provided in the Agency’s Reference Guide: Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects, and adopted by the Panel, this result would be a likely significant adverse effect. (p. 86)*

During the hearing process, Taseko presented substantial evidence about how such guidelines are simply that – guidelines. They are not legally binding, but rather are generic standards developed

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6 See February 28, 2012 press release issued by Taseko announcing commencement of a reduced scope of work pursuant to agreement between the parties. [http://www.tasekomines.com/releases/ID540393](http://www.tasekomines.com/releases/ID540393)
without regard to individual locations, circumstances and species, and while they may serve as a useful starting point, they are not determinative of potential impacts on the environment. Indeed, water quality guidelines can and are departed from under approval by regulators in appropriate circumstances where site-specific standards are developed. A detailed submission was made to the panel on this point, yet the panel report does not mention that submission or discuss the relationship between water quality “guidelines”, site-specific water quality objectives and assessment of what is “likely to cause a significant adverse environmental effects”. This is particularly concerning considering that Taseko also put into evidence a 140-page document related to the development of site-specific water quality objectives in British Columbia.

As the submission to the panel noted, but was excluded from the panel report, there is a very recent example of a mine in British Columbia receiving environmental assessment approval where water quality “guidelines” were expected to potentially be exceeded, on the condition that the Project could only go forward above the guidelines if site-specific objectives were established to the satisfaction of environmental regulators, and adhered to. Specifically, this was the conclusion of provincial ministers in the recent environmental assessment of the Kitsault Mine Project, as well as the conclusions of the Canadian Environmental Assessment Agency (the “Agency”) in its comprehensive study report for the same project. The Agency’s report states:

Additional mitigation measures were developed during the review of the EIS in response to concerns raised by the TWG [Technical Working Group]. Water quality in Lime Creek (LC1 and LC2) and Lake 901 will meet BC WQGs [water-quality guidelines] unless site-specific water quality objectives have been approved by the BC MOE for specific parameters of concern…. (p. 20)

In each project phase, water quality in the Lime Creek receiving environment will be required to meet BC WQGs or site-specific water quality objectives, established by the BC MOE and in consultation with the NLG, to ensure water quality will be protective of aquatic life, including fish. (p. 21)

Based on the information in this report and with the implementation of the mitigation measures as described in this report and summarized in Appendix C, the Project is not likely to result in significant adverse environmental effects on surface water and sediment quality. (p. 23)

APPENDIX C - …Ensure that, during the all phases of the Project, water quality at LC1, LC2 and Lake 901 meets water quality guidelines or objectives set by the appropriate regulatory authorities… (p. 129)

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We have absolutely no idea why the Agency would recognize that “guidelines” are not automatically determinative of what constitutes a significant adverse environmental effect in respect of water quality, yet the federal review panel has not made that distinction. We are equally unable to see why the panel failed to meaningfully consider this matter even though we provided written and oral submissions and filed highly relevant material directly on this point.

We note that the CEAA Reference Guide cited by the panel does not in fact require environmental assessment officials to conclude that an exceedance of water quality guidelines constitutes a significant adverse environmental effect, though that is what the panel’s report suggests they have done. To simply conclude that an exceedance of non-binding guidelines inherently constitutes a significant adverse environmental effect is an unreasonable conclusion and in our view a legal error as it constitutes a fettering of discretion. The panel should instead have discussed the degree to which site-specific water quality objectives could be used, and it should have considered the potential resulting environmental impacts having regard to the five standard factors for determining whether significant adverse environmental effects exist.

Further, we are concerned that the panel’s findings do not meaningfully discuss various judicial decisions submitted by Taseko, which have made very clear that it is entirely appropriate for environmental assessment officials to rely upon additional information gathering, assessment and adaptive management that would follow as a project moves into permitting, particularly where the project requires substantial additional authorizations following environmental assessment. Here is what courts have said in numerous cases that we presented to the panel, but none of which are cited in the report:

... the CEAA... mandates early assessment of adverse environmental consequences as well as mitigation measures, coupled with the flexibility of follow up processes capable of adapting to new information and changed circumstances. The dynamic and fluid nature of the process means that perfect certainty regarding environmental effects is not required.

While there does exist some uncertainty with respect to end pit lake technology, the existing level of uncertainty is not such that it should paralyze the entire project...

In my opinion, the Panel is permitted and indeed mandated to make these kinds of recommendations regarding the proposed Project, which should include recommendations for continued study of potential impacts on valued environmental components and the development of further mitigation strategies. This is consistent with the ongoing and dynamic nature of environmental assessment referred to above and ensures that new information is obtained which facilitates the adaptation of project implementation as required...

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10 The CEAA policy states, “If the level of an adverse environmental effect is less than the standard, guideline, or objective, it may be insignificant. If, on the other hand, it exceeds the standard, guideline, or objective, it may be significant.” (emphasis added). The document also contains substantial guidance for determining significance, requiring officials to consider matters such as magnitude, geographic extent, duration, reversibility and context of effects, and also requiring significance to be considered in light of relevant mitigation measures.
By its nature the panel’s exercise is predictive and it is not surprising that the statute specifically envisages the possibility of “follow up” programs. Indeed, given the nature of the task we suspect that finality and certainty in environmental assessment can never be achieved.


The concept of “adaptive management” responds to the difficulty, or impossibility, of predicting all the environmental consequences of a project on the basis of existing knowledge. It counters the potentially paralyzing effects of the precautionary principle on otherwise socially and economically useful projects.

Canadian Parks & Wilderness Society v. Canada (Minister of Canadian Heritage), 2003 FCA 197 (para. 24)

These are exactly the type of things that will occur here when the Project is allowed to move into the permitting phase. Further geotechnical drilling will be required pursuant to notice of work permits issued under the provincial Mines Act and substantially more information will need to be gathered, to the satisfaction of the Ministry of Energy and Mines, before any permits would ever be issued to construct or operate the mine. Similar principles would apply to any authorizations by the Ministry of Environment, Environment Canada and the Department of Fisheries and Oceans. Not only will this additional permitting-stage work provide information that will reduce uncertainty, but it will also provide information about what mitigation measures should be used and/or modified if necessary.

Fish and fish habitat in Fish Lake, wetlands and riparian ecosystems

Given the erroneous panel findings regarding seepage and water quality, there is no basis for the panel or the minister to conclude that the Project is likely to have significant adverse effects in respect of the fish and fish habitat in Fish Lake, wetlands and riparian ecosystems. Put simply, there is no reason to believe that Fish Lake and the related fish and fish habit will experience the harms that the panel concluded were “likely”.

The panel report makes clear that its subsequent findings are heavily dependent on the panel’s approach to seepage and water quality issues. For example, here is what the panel stated at page 115:

Based on the multitude of factors identified regarding the Project effects on fish and the Panel’s conclusion in Chapter 6 that water treatment options were unlikely to maintain water quality in the long term, the Panel is of the opinion that fish in the Fish Lake (Teztan Biny) would be adversely and significantly affected.

...
The Panel’s lack of confidence in the proposed water recirculation scheme is exacerbated by significant risks to water quality in Fish Lake resulting from the predicted exceedances of contaminants that will contribute to the adverse effect on fish. While the mitigation measures Taseko proposed in the compensation plan are well understood, they will not compensate for the adverse effects to fish that will result from the Project’s impacts on water quality and lake ecology from the recirculation of Fish Lake.

... Because the significant adverse effect on fish is caused mainly by poor water quality and because the poor water quality was determined to be immitigable, the effect on fish and fish habitat is also immitigable.

Simply put, if you do not accept the exaggerated assumptions of impacts on Fish Lake which the panel put forth, then there is no basis for you to reach the same conclusions as the panel regarding the related significant adverse effects.

**Tsilhqot’in current use of lands for traditional purposes, cultural heritage and archaeological/historical resources**

The panel relies on its conclusion that the Fish Lake area is “unique” and of “special significance” to the Tsilhqot’in. However, Tsilhqot’in representatives themselves testified about the Nemiah Declaration, which asserts that all of the lands within the Tsilhqot’in traditional territory (some 97,000 sq. km) have spiritual and cultural significance, and there was no evidence presented to the panel to indicate that Fish Lake differed from any of these other areas. While that is not to suggest that the mine might not have some impact on current use of land for traditional purposes, any such impacts must be considered within this broader context. Having regard to the limited geographic extent of the impacts, and the context of the entire traditional territory (both relevant factors for assessing “significance”) there is simply no basis to conclude that these impacts are “significant” for the purposes of the legislation.

The Tsilhqot’in representatives indicated that even with the preservation of Fish Lake and the surrounding area, they would avoid the area as a result of a fear of perceived contamination and changes to the landscape, which in turn leads to the panel’s conclusion that they would “likely” not use the area for traditional, spiritual and ceremonial purposes. It is Taseko’s position that the panel’s reliance on the Tsilhqot’in perception of contamination and its resulting conclusion that Tsilhqot’in would likely not use the Fish Lake area is inadequate to support its finding of significant adverse environmental effects under section 5 of CEAA, 2012. A finding of significant adverse environmental effect must, according to the terms of the legislation, be based upon a “change to the environment” that results from the project - not perceptions or disaffinity towards an area that may result.

Further, Taseko submits that the panel’s findings regarding archaeological and historical resources are also fundamentally unsound and unreasonable. Taseko completed a comprehensive and detailed archeological impact assessment for the proposed Prosperity mine site in accordance with both provincial guidelines and the terms and conditions of the Inspection Permit issued under the authority of the Heritage Conservation Act (the “AIA”). The AIA is one of the most comprehensive archaeological
assessments ever completed in British Columbia for a project of this nature, and it was conducted by consultants recommended by the TNG and with the active on-site participation of Tsilhqot’in representatives. The previous panel, considering the information provided by the AIA and, notably, a larger mine footprint area, concluded that the Prosperity project would not result in a significant adverse effect on physical heritage and sites of archaeological importance. Despite the previous panel’s finding, and despite the fact that the New Prosperity mine footprint is substantially smaller than the previous proposal, the current panel arrived at the conclusion that the Project would have a significant adverse effect on Tsilhqot’in archaeological and historical resources. To put this finding in perspective, we note – as the panel did in its report – that the Project would result in an 84% reduction in the number of known sites potentially affected, compared with the prior proposal. How that could possibly now be considered a significant adverse effect is simply unfathomable.

To the extent that the current panel arrived at findings different from the previous panel regarding archaeological and historical resources, Taseko has two further concerns.

First, the panel’s finding of significant adverse effects appears to be based on a speculative report presented during the course of the panel hearings by the TNG. The TNG claimed that its report suggested that archaeological sites not identified by the AIA – including sites with no physical evidence – may exist. The panel chose to place more weight on this two-day study conducted by the TNG than the AIA; a comprehensive, professional archaeological survey undertaken by multiple crews over several months in 2006 and 2007 at a cost of approximately $750,000.

Second, the TNG report was presented to the panel through an unfair process, violating fundamental principles of transparency and administrative fairness. More specifically, Taseko was not provided with proper advance notice of this report, which was held out as an expert report. Instead, the document was produced during the course of the hearings and the panel agreed to receive the evidence in confidence. In doing so, the panel undermined transparency of process as the public was not allowed in the room, the company was not afforded reasonable opportunity to review and consult its own experts on the matter, and the panel failed to indicate how confidential receipt of the information could possibly be justified under the legislation. Under section 45(3) of the CEAA, 2012, the panel can only make such extraordinary orders if disclosure of the information would reasonably be expected to result in “specific, direct and substantial harm” to the witness or “specific harm” to the environment. Yet the panel’s reasons fail to identify what such harm could be. All of these are serious transgressions of principles of fairness and openness.

In summary, it is our view that the panel’s departure from the findings of the previous panel regarding archaeological and historical resources – which concluded no significant adverse effects in relation to a project with a greater impact – is unreasonable, contradicts the extensive evidence which the panel was mandated to consider from the last panel process and is a result of a fundamentally unfair process. For all these reasons, we do not believe there is any reasonable basis for you to conclude that the Project is “likely to cause significant adverse environmental effects” in relation to these matters.
Question II. Have the Government of Canada’s duties to aboriginal peoples been addressed?

The short answer is, “Yes”.

The panel noted that the Project would have impacts on and would interfere with certain aboriginal rights, but did not express any opinion on whether such impacts had been duly consulted upon and accommodated, as that is a matter that the panel’s terms of reference reserved for the Government of Canada.

Canadian courts, at every level including the Supreme Court of Canada, have made clear that while government owes certain duties to aboriginal peoples, aboriginal peoples do not have a veto over project development. Rather, provided there is appropriate consultation, accommodation and (in the case of established rights) justification for such impacts, the law is clear that governments must continue to govern and that aboriginal interests must be balanced with other societal interests including economic development. Put simply, the fact that the Project may have some residual effects on aboriginal rights even after mitigation measures is not in any way a reason for it not to proceed. To the contrary, Taseko submits that the Government of Canada can and should readily allow the Project to move into permitting phases in a manner consistent with the Honour of the Crown, because never in the entire history of Canada has a project undergone more extensive aboriginal consultation or been the subject of more substantial and expensive accommodation. To have not succeeded with the original design plan, and to have physically modified the design at a cost of $300 million to mitigate impacts on aboriginal interests, is precisely what the Supreme Court of Canada means when it refers to “accommodation” that must be considered in the balancing of interests.

Further, it is essential to note that:

- The mine footprint will be approximately 35 sq. km, and Tsilhqot’in claim 97,000 sq. km as asserted traditional territory. That is only .04% of the claimed traditional territory.
- Fish Lake, which averages only 11 feet deep, is one of approximately 10,000 identifiable lakes in the area.
- The project is not expected to have significant adverse effects on salmon, species at risk or 31 other related findings.
- Tsilhqot’in representatives testified about the Nemiah Declaration, in which they assert that ALL lands and waters within the traditional territory have cultural and spiritual importance, and there was no evidence to suggest that Fish Lake differed from those other areas in any material way.
- The societal benefits that must be balanced against the aboriginal interests are profound. They include 550 direct jobs and 1280 indirect jobs over 20 years of operation, annual government revenues of $26.2 million per year during construction and $48.4 million during operations, (thus exceeding $1 billion), $11 billion in gross domestic product and 57,000 person years of employment, with such benefits focusing on the Cariboo-Chilcotin region which faces significant economic challenges due to Pine Beetle infestation (note the mill closures recently announced by West Fraser and Canfor due to the Pine Beetle).
- Many of the socioeconomic benefits would flow to aboriginal members in the region who are interested in and supportive of the jobs and opportunities that the Project provides.
• The TNG assertions in the Nemiah Declaration and otherwise that they control all decision-making within their traditional territory is inconsistent with Canada’s Constitution and all of the case law developed by the Supreme Court of Canada. That case law is based on recognition of Canadian sovereignty tempered only by duties of consultation, accommodation and justification for infringement of aboriginal rights (all of which are met here).
• The Federal Government invited Taseko to address the findings in the first panel report and resubmit the project. Taseko did exactly that.

CONCLUSION

Based on the information in the panel report and this submission, it is apparent that you have no reasonable choice but to conclude that the Project is not “likely to cause significant adverse environmental effects” referred to in subsection 5(1) and 5(2) of the CEAA, 2012, having regard to the mitigation measures you consider appropriate and having regard to all of the additional geotechnical studies and modeling that will be required during permitting with the BC Ministry of Energy and Mines, the BC Ministry of Environment, Fisheries and Oceans Canada and Environment Canada (among others).

Further, the Government of Canada should readily conclude that the Crown’s duties to aboriginal peoples have been more than fully discharged through the environmental assessment process, related engagements and through the changes in mine design, development of mitigation measures, and whatever conditions may be imposed on Taseko following environmental assessment approval.

As such, the Project should be approved at this time and allowed to move into further regulatory processes, on the terms and conditions you consider necessary (as the CEAA, 2012 contemplates).¹¹

Our company has spent well in excess of $100 million on the Project to date. We have been in the environmental assessment process - at one stage or another - for more than 18 years. We have fundamentally modified our design at great expense to avoid significant adverse effects.

Accordingly, unless the Project is allowed to move into the detailed permitting stages, we believe Canadians and international investors would be left to wonder whether any major project can be developed in this country going forward.

As a final point, we wish to note that when the Project is moved into the permitting phases, we assure you we will continue in our commitments to constructively engage all interested parties—including aboriginal representatives—and we will continue to explore opportunities for mutual benefit wherever possible. It is our hope that more aboriginal representatives will join people such as former TNG Chief

¹¹ If despite the above you were to determine that the Project is likely to cause significant adverse environmental effects referred to in subsection 5(1) and 5(2) of the CEAA 2012, even with due regard to mitigation measures, then we reserve the right and request the opportunity to make further submissions on the question of whether the Project should be considered justified by the Governor in Council. We offer this comment without prejudice to our ability to, if necessary, legally challenge your determination.
Charleyboy in embracing this Project and all that it can offer their communities. As the late Chief Justice Lamer said in the famous Delgamuukw decision, “Let us face it, we are all here to stay”.

Yours truly,

Russell Hallbauer, P.Eng.
President and CEO

cc:  Right Honourable Stephen Harper
     Honourable Joe Oliver
     Honourable Christy Clark
     Honourable Bill Bennett
     Honourable Shirley Bond
     Honourable Mary Polak
     Cathy McLeod, MP
     Richard Harris, MP
     Donna Barnett, MLA