



FORM 2 (RULE 3-3 (1))

No. S-121589
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

TASEKO MINES LIMITED

PLAINTIFF

and

**WESTERN CANADA WILDERNESS COMMITTEE also known
as WILDERNESS COMMITTEE and SVEN BIGGS**

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Western Canada Wilderness Committee also known as Wilderness Committee
and Sven Biggs (the "defendants")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

- 1 Except where expressly admitted herein, the defendants deny each and every allegation contained in the Notice of Civil Claim.
- 2 The facts alleged in paragraphs 1 through 4, 7 through 10, 12 through 14, 16 through 22, 33 and 34 of Division 1 of the Notice of Civil Claim are admitted.
- 3 The facts alleged in paragraphs 5 and 6 of Division 1 of the Notice of Civil Claim are outside the knowledge of the defendants.

Division 2 – Defendants' Version of Facts

- 1 As elaborated below, the defendants say that this defamation action is without merit, and that based upon the plaintiff's own public statements and prior environmental review

panel conclusions, the words complained of are not defamatory and are in any event protected by the defences of truth, fair comment or responsible communications; and that this action should be dismissed with special costs against the plaintiff for attempting to use the litigation process to silence critics on a matter of fundamental public interest.

Factual Context

- 2 The Taseko Mines' "Prosperity Project" was an open pit mine proposal that failed a federal environmental assessment in 2010. The "New Prosperity Project" is a revised open pit mine proposal which nevertheless covers approximately the same geographic area. Both the rejected and new proposals encompass Little Fish Lake near the south end of the project area, Fish Lake which is beside the proposed open pit mine, and Fish Creek which flows north from Little Fish Lake into Fish Lake and from there into nearby rivers and watersheds, eventually into the Chilcotin and Fraser Rivers.
- 3 In respect of the Prosperity Project, a Federal Review Panel of the Canadian Environmental Review Assessment Agency was established by the Minister of the Environment of Canada pursuant to the Canadian Environmental Assessment Act (the "Act") under Reference Number 09-05-44811. The Review Panel received documents and evidence, conducted hearings, and reported its conclusions pursuant to section 34 of the Act, with a recommendation to deny approval to the plaintiff's "Prosperity Project".
- 4 In respect of the New Prosperity Project, a Federal Review by the Environmental Review Assessment Agency was established by the Minister of the Environment of Canada pursuant to the Act under reference number 11-05-63928. The Agency has received documents including the plaintiff's Project Description dated August 2011 and public comments. Hearings have yet to be held.
- 5 The Federal Review Panel proceedings in respect of both the Prosperity Project and New Prosperity Project were and are quasi judicial and the documents, hearings, evidence and report forming both proceedings were and are privileged.

6 The proceedings described above included the following statements and information (collectively, “the Review Proceedings Excerpts”):

a) From the July 2010 Report of the Federal Review Panel regarding the original Prosperity Project:

(p. ii) “The Panel finds that the fish and fish habitat compensation plan would not mitigate the effects of the loss of the fishery in the Teztan Yeqox (Fish Creek) watershed. The Panel concludes that the Project would result in a high magnitude, long-term and irreversible effect... [The Project would] “result in the destruction of approximately 90,000 Rainbow Trout in Teztan Biny (Fish Lake) and Y’anah Biny (Little Fish Lake).”

(p. 15) “Teztan Biny (Fish Lake) would be drawn down to allow for the creation of a storage area for non-potentially acid generating waste rock, low grade ore and overburden. The tailings storage facility would encompass the area currently occupied by Y’anah Biny (Little Fish Lake), portions of Teztan Yeqox (Fish Creek) and the surrounding wetlands and meadows, and would be used for the storage of tailings and potentially acid generating waste rock.”

(p.39) ...Mine Development Plan 3 proposed to locate the the tailings storage facility south of Teztan Biny (Fish Lake), and would eliminate Teztan Biny, Y’anah Biny (Little Fish Lake) and the majority of upper Teztan Yeqox (Fish Creek). The main embankment would be located across the Teztan Yeqox valley at the inlet to Teztan Biny. Teztan Biny would be drained to accommodate the storage of non-potentially acid generating waste rock, low grade ore and overburden. To compensate for the loss of Teztan Biny, Y’anah Biny and upper and lower Teztan Yeqox, Taseko proposed a fish and fish habitat compensation plan. ...Taseko noted that, with appropriate mitigation, Mine Development Plan 3 offered the safest, most environmentally responsible plan as it confined all Project components within a single watershed and in the event of a dam failure, the tailings would report to the open pit.

(p. 45) “Environment Canada stated that while Mine Development Plan 3 would have the greatest immediate impact to the aquatic environment, it had a potentially lower long-term environmental risk than Mine Development Plans 1 and 2.” [Note that Plan 2 is the basis for the New Prosperity Project proposal as described in excerpts below]

(p. 46) “Taseko’s justification for eliminating Mine Development Plans 1 and 2 was based on economic thresholds, the most important of which were the waste rock and tailings storage methods and locations. Given the potential for metal leaching and acid rock drainage, it was determined by Taseko that sub-aqueous storage of potentially acid-generating waste rock was the only viable option. Taseko indicated that other potentially acid-generating waste rock management

method had not been proven at the appropriate scale and would be uneconomical.”

(p. 65) “The Panel agrees with the observations made by Taseko and Environment Canada that Mine Development Plans 1 and 2 would result in greater long term environmental risk than the preferred alternative”

- b) From the 2010 Review Panel hearings in respect of the Prosperity Mine:

Statement by the plaintiff’s Vice-President of Corporate Affairs, Brian Battinson, March 22, 2010, transcript page 72:

“Developing Prosperity means draining Fish Lake. We wish it were otherwise. We searched hard for a different way. A way to retain the lake and have the mine. But there is no viable alternative. The lake and the deposit are side by side. It is not possible to have one without the loss of the other.”

Statement by the plaintiff’s Vice President of Engineering, Scott Jones, April 26, 2010, transcript page 5450:

“What happens to the water quality in Fish Lake, if you try and preserve that body of water with the tailings facility right up against it, is that over time the water quality in Fish Lake will become equivalent to the water quality in the pore water of the tailings facility, particularly when it’s close. You might be able to delay that by moving the tailings facility farther away to Fish Creek south. You may even be able to minimize that, reduce it by mitigation measures that could be applied. But eventually the water quality will change.”

- c) From the plaintiff’s assertions contained in its Project Description submitted in August of 2011 to the Federal Review proceedings in respect of the New Prosperity Mine:

(p. 36) area map at Appendix A to this Response to Civil Claim;

(p. 10) proposed project map at Appendix B to this Response to Civil Claim;

(p. 13) “The PAG [potentially acid generating] overburden contains weathered rock which includes oxidized or partially weathered sulphide minerals. This material will be placed in the tailings management facility.”

(p. 15) “The TSF [tailings storage facility] or impounding tailings will be located in the Upper Fish Creek valley 2 km south of Fish Lake.... The TSF will be an average of 4 km long by 3 km wide with a footprint of approximately 1200 ha [hectares]...PAG waste rock and overburden that is deemed to have the potential to

generate acid drainage will be stored under water within the tailings management facility”.

(p. 15) “Non-PAG waste rock, glacial till and overburden will be used to build the TSF embankments in stages throughout the life of the Project from stripping operations at the open pit. The Main Embankment will be located in the Fish Creek Valley; the West Embankment will be constructed along the western ridge which separates the Fish Creek drainage basin from the Big Onion Lake drainage basin; and, the South embankment will be constructed across the Fish Creek Valley between Little Fish Lake and Wasp Lake”

(p. 19) “The 3 MDPs [Mine Development Plans described in the Prosperity Mine proceedings] were:

- Option 1 (Tete Angela) Subaqueous PAG in Tailings in Tete Angela Drainage with non-PAG Waste Rock and Lower Grade Ore Storage North of Pit
- Option 2 (Fish Creek South) Subaqueous PAG in Tailings in Upper (South) Fish Creek Drainage with non-PAG Waste Rock and Lower Grade Ore Storage North of Pit
- Option 3 (Fish Creek North) Subaqueous PAG in Tailings in Fish Creek Drainage just South of Fish Lake with non-PAG Waste Rock and Lower Grade Ore Storage in Fish Lake Location

(p. 19) “Taseko’s conclusion was that MDP Option 3 was the most environmentally responsible option and was the most appropriate option from an overall technical, socio-economic, environmental and economic perspective.

(p. 20) “In its 2010 review ...Option 3 was deemed as being environmentally unacceptable in November of 2010 when the federal cabinet announced that the project could not proceed as proposed.”

(p. 20) “As an alternative to Option 3, Option 2 is the basis for the New Prosperity design that is the subject of this proposal.”

(p. 24) “Water management activities include the following ... Construction of a small earth-filled dam and collection pond near the outlet of the lake to enable recycling of Fish Lake discharge to supplement flows into the lake.”

(p. 24) “Water volume flowing into Fish Lake will be optimized to meet aquatic and fisheries objectives. The outflow from the lake may be utilized to supplement inflows to Fish Lake, as required. The majority of water volumes from the lake outflow will be directed to the TSF to assist operational water needs.”

(pp. 24-25) “Runoff and seepage from the TSF will be collected in seepage collection ponds downstream of the embankments and will be pumped back to the TSF, or discharged to the inflow of Fish Lake...”

(p. 32) "The closure system would result in a larger lake (TSF Lake) than presently exists (i.e., Little Fish Lake)."

(p. 35) "The proposed mine site is situated within the Fish Creek watershed. This system is approximately 94 km² measured from the confluence with the Taseko River. Upper Fish Creek flows to the northwest and discharges into the southern arm of Fish Lake. Fish Lake drains into Lower Fish Creek, which then drains into the Taseko River, a tributary of the Chilcotin River, which in turn flows to the Fraser River. Wasp Lake, located at the southern boundary of the Fish Creek watershed drains into the Bece Creek system"

(p. 35) "The Project will result in the reduction of contributing catchment areas to Fish Lake, while enabling the lake area to be kept intact. ... mitigative measures may include optimizing flows, including recirculating water from Fish Lake outflow, to ensure adequate inflow of water to Fish Lake."

(p. 37) "... seepage flows will have to be collected and pumped back to the TSF or treated and then released into Middle Fish Creek to supplement flows to Fish Lake. ...Should supplemental flows to Fish Lake be required during operations to meet fish production objectives, water management options include re-circulating water from the Fish Lake outlet, sourcing water from aquifers, or utilizing TSF seepage water. Prior to supplementing Fish Lake inlet flows, water from these sources will be treated as necessary to permitted levels."

(p. 38) "Of the 62,864 [square meters] of fish-bearing in-stream habitat that will be affected in Fish Creek, 20,590 [square meters] will be permanently lost... The remaining 42,274 [square meters] of fish-bearing habitat may be altered through a reduction of flows during the life of the mine..."

(p. 38) "Currently a spawning population of approximately 15,000 fish use an available 12,000 [square meters] of spawning habitat. It would be reasonable to expect that the 2,240 [square meters] of available spawning habitat retained by the project design will be sufficient for a spawning population of 1,400 spawning pairs..."

(p. 40) "Of particular interest is the potential impact on grizzly bear. The New Prosperity Mine configuration avoids areas of moderate and high value feeding habitat. As mitigation measures to address potential cumulative effects of this project in combination with current and future logging and ranching on grizzly bear..."

(p. 75) "The alternatives assessment for the mine site is unchanged from that reviewed in 2009/2010; however, due to changes in long-term commodity pricing, the preferred option presented in this Project Description is based on Option 2 rather than Option 3."

(p. 91) [in the New Prosperity Project as opposed to the earlier Prosperity Project] “Water management activities no longer include the following:

- Construction of a Headwater Channel along the east slope of the Fish Creek Valley during the pre-production period to collect and divert clean runoff north towards Fish Creek and south towards Prosperity Lake, Wasp Lake and Beece Creek;
- Pumping down of Fish Lake prior to construction of the Stage Ia embankment;
- Installation of a sump and cofferdam downstream of the Main Embankment to prevent flow from Fish Lake into initial foundation excavation; and
- Use of the Fish Lake basin area as a natural sediment pond.”

(p. 94) “Metal Leaching (ML) and Acid Rock Drainage (ARD) are naturally occurring processes caused when minerals containing metals and sulphur (called sulphides) come into contact with both air and water. When sulphides are exposed to water and oxygen from air, they rust or oxidize. Oxidation of sulphides can also produce acid. If this acid is carried by streams it is called ARD”

(p.99) “Water quality from the main embankment seepage flow into Upper Fish Creek may contain levels of arsenic, iron and mercury which exceed guideline levels for the protection of aquatic life; during operations seepage flows will have to be collected and pumped back into the TSF or treated and released into Middle Fish Creek to supplement flows to Fish Lake”

- 7 In 2011, in proceedings before the British Columbia Supreme Court in *Taseko Mines Ltd v. Phillips*, 2011 BCSC 1675, Grauer, J. in a decision on an application for an injunction by Taseko against blockades by the Tsilhqot'in Band, stated at paragraph 16:

[16] The bands of the Tsilhqot'in Nation vigorously opposed the original Prosperity Project, and put a great deal of blood, sweat and tears into educating the Federal Review Panel about their concerns, and how the project would impact them. This was an exhausting exercise, and they were dismayed by the project's resurrection as the New Prosperity mine. From their perspective, the revised project did not adequately address the factors considered by the Federal Review Panel, but continued to represent significant adverse environmental effects that remained unjustifiable.

(the “2011 BC Supreme Court Decision”),

Responses to the Alleged Defamation

- 8 The words complained of, as set forth at paragraph 24 of the Notice of Civil Claim, in their context, are not defamatory of Taseko Mines Limited as alleged or at all.
- 9 In the alternative, the words complained of in the Notice of Civil Claim are protected by the defence of fair comment, being statements of opinion, inference or deduction on a matter of public interest, namely environmental protection and biodiversity, representing views that a person could honestly hold, based upon true or privileged facts, stated or known, the particulars of which are the Review Proceedings Excerpts and 2011 BC Supreme Court Decision listed above.
- 10 In the alternative, the statements complained of were true or substantially true, and in that regard the defendants rely upon the entirety of the publications in issue for context and meaning.
- 11 In the alternative, the publications complained of are on matters of public interest, which were handled in a responsible manner such that they are protected by the defence of responsible communication.

Strategic Lawsuit against Public Participation (SLAPP) and Charter Violation

- 12 The defendants say that this action represents an improper use of the litigation process or threat thereof to silence critics on a matter of public importance, and as such the action should be dismissed with special costs.
- 13 This action is frivolous, vexatious and an abuse of process, and as such should be dismissed with special costs.
- 14 Through these proceedings, the plaintiff is seeking to use the law of defamation to limit the fundamental freedom of expression of the defendants, which is protected by the *Canadian Charter of Rights and Freedoms*. The true and dominant purpose of this action is to curb the defendants' exercise of freedom of expression to the extent it is critical of the plaintiff's project. The common law of libel and applicable statutes should

be interpreted and applied in a manner protective of the defendant's rights and consistent with *Charter* values, and accordingly this action should be dismissed.

Damages

- 15 The defendants deny that the plaintiff has suffered any damages to its reputation whatsoever as a result of any of the publications complained of..
- 16 In the alternative, if any damages were suffered, which is denied, the defendants say that a corporate plaintiff cannot maintain an action for libel without proof of actual damages, and that any common law rule to the contrary is not in accord with Charter values and requires modification to require proof of damages from a corporate plaintiff.

Division 3 – Additional Facts

- 1 None

Part 2: RESPONSE TO RELIEF SOUGHT

- 1 The defendants oppose the granting of the relief sought in paragraphs (a) through (g) of Part 2 of the notice of civil claim and ask that the claim be dismissed in its entirety with costs including special costs.
- 2 The defendants take no position on the granting of the relief sought in paragraphs N/A of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

- 1 Words are only defamatory at common law where they attack the character or integrity of the plaintiff in the minds of reasonably well informed and thoughtful readers.
- 2 Fair comment at common law protects statements recognizable as opinion, inferences or deductions which represent views a person could honestly hold on matters of public interest and based upon facts stated or known, which are true or privileged.

- 3 Responsible communication at common law protects statements on a matter of public interest which were responsibly published.
- 4 The Canadian Charter of Rights and Freedoms, section 2(b), protects freedom of expression subject only to reasonable limits demonstrably justifiable in a free and democratic society.
- 5 Rule 9-5 of the Rules of Court permit a Court to strike or dismiss pleas which are scandalous, frivolous, vexatious or an abuse of process.
- 6 Rule 14-1 of the Rules of Court permit a Court to award increased or special costs in appropriate circumstances, which has been held in this province to include litigation which is designed as a strategic lawsuit against public participation.

Defendants' address for service:

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P.O. Box 49130
Three Bentall Centre
2900-595 Burrard Street
Vancouver, BC V7X 1J5
(Attention: Daniel W. Burnett)

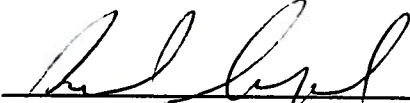
Fax number address for service (if any):

604-632-4433

E-mail address for service (if any):

dburnett@owenbird.com

Date: March 22, 2012

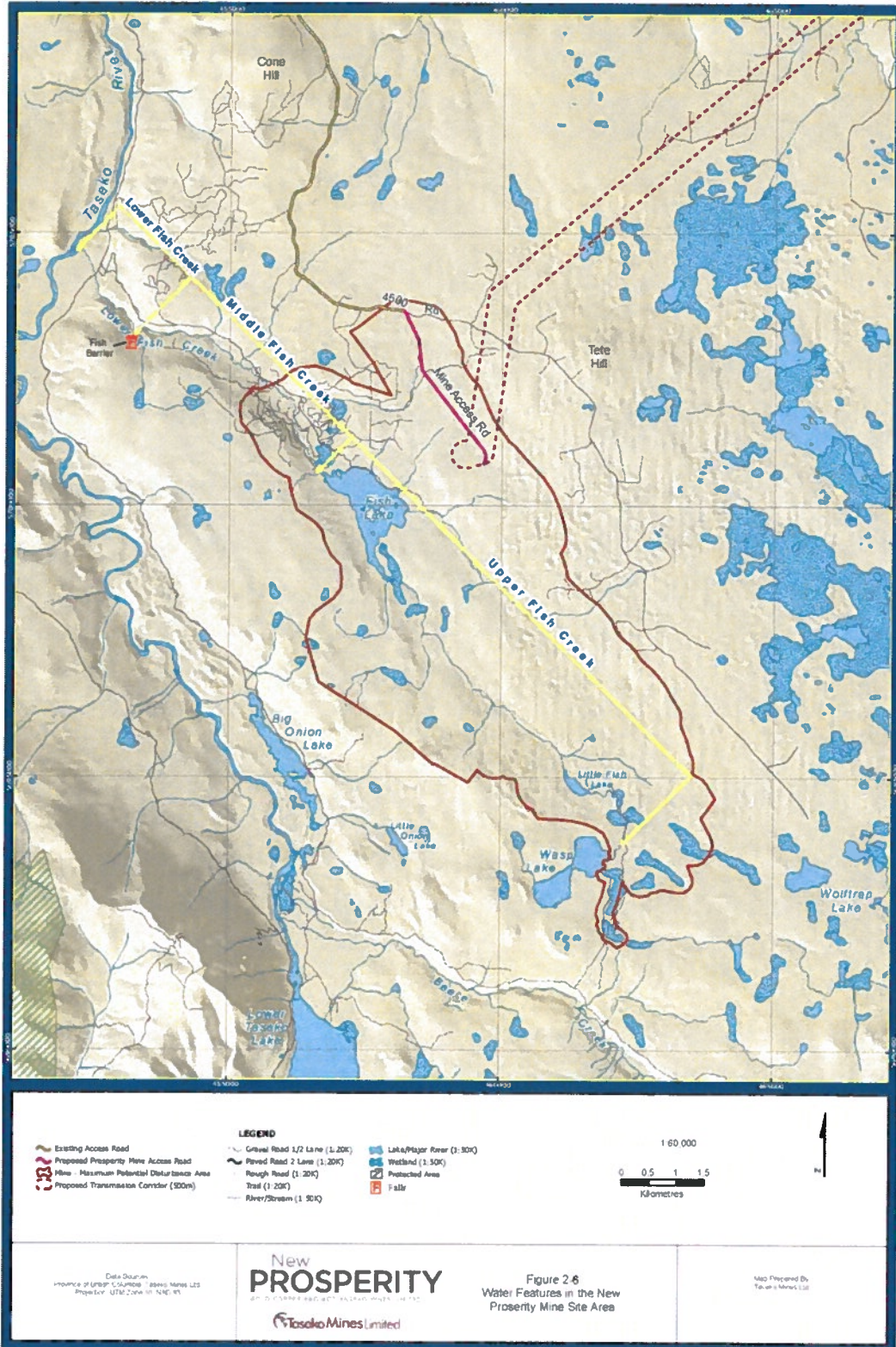


Per: Signature of lawyer for defendants
Daniel W. Burnett

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

Appendix A – (from plaintiff’s New Prosperity Mine Proposal p. 36) area map:



Appendix B (from plaintiff's New Prosperity Mine Proposal p. 10) proposed project map:

