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The Giant Mine: Will Reason Prevail?

by Kevin O'Reilly, Alternatives North and member of MiningWatch Canada Board of Directors, Yellowknife

(October 25, 2013) The Giant Mine operated at the edge of the city of Yellowknife, Northwest Territories, from 1948 to 2004. As the gold-bearing ore was processed, the mine generated a toxic by-product, arsenic trioxide – a proven non-threshold carcinogen. For the first three years of operations, the arsenic trioxide went straight up the stack and then came down on the surrounding land and water, killing at least one Dene child and local milk cows. The family of the dead child received $750 as compensation.

Rather than stop the toxic mining operation, the government gave tacit approval to storing the arsenic trioxide underground. There are now 237,000 tonnes of it stored in mined out areas and some purpose-built chambers. Picture a 10-storey building and then multiply that by 7.5 times. That's the amount of arsenic trioxide stored underground. It's probably enough to kill the entire human race several times over. Arsenic trioxide is very soluble in water and it is leaching out of the underground

Giant Mine headframe behind the Yellowknife Marina, showing proximity to Great Slave Lake. Kevin O'Reilly photo.

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storage areas, although it is being pumped out and treated as part of the overall minewater management.

Following a horrendous labour dispute, the mine went into receivership in 1999 and is now a public liability. The federal and territorial governments (all of us as taxpayers) are on the hook for the remediation. A remediation plan was finally developed in 2005 with limited public involvement. Despite a recommendation from its technical advisors to subject the plan to an environmental assessment, it took a mandatory referral from the City of Yellowknife to send the plan to an open public review process. The assessment process ended in June of this year with the release of a report by the Mackenzie Valley Environmental Impact Review Board.

Old Giant Mine headframe. Kevin O'Reilly photo.

What's the government's plan? Essentially, freeze the arsenic trioxide underground, forever. No long-term funding, no ongoing research and development into something more permanent, no plan for perpetual care of the site.

Despite claims from the government that there was widespread public support for its plan, not one person came forward in favour of it during the environmental assessment. The government wrongly concluded that public concern was with the existing condition of the site, not its inadequate plan to simply stabilize the site. Many of us would prefer an option where the government actually works with the community to implement a remediation plan that includes freezing as an interim solution, independent oversight, and ongoing research and development into something more permanent.

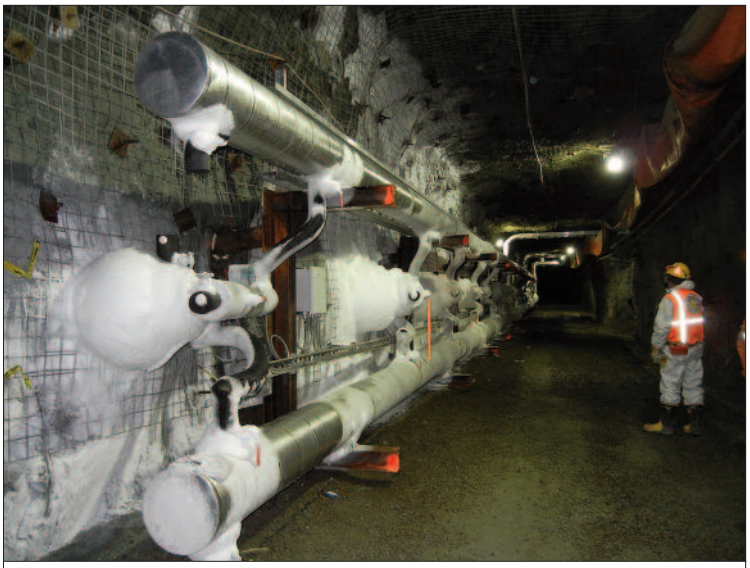
The environmental assessment dragged on for five long years, largely due to government bungling in providing submissions and responding to information requests. The project managers had largely boxed themselves in by going forward to the federal funders with a remediation plan that did not have a social licence. Little progress was made on key issues like perpetual care, independent oversight, long-term funding, or ongoing research and development. As it was, total project costs were only revealed after the public hearing, following an Access to Information Request: an estimated $903 million – and more than likely to increase.

To the credit of the environmental assessment process and the Mackenzie Valley Environmental Impact Review Board that carried it out, an excellent final report with twenty-six recommendations for binding measures was released on June 20, 2013. The governments' approach and plan were largely rejected in favour of a hundred-year timeframe and requirements for a legally-binding agreement to establish independent environmental oversight, ongoing research and development, and much more. The report lays out a solid and collaborative path forward for the remediation to begin.

The report has received widespread praise, including a unanimous motion of support from Yellowknife City Council. The Yellowknives Dene First Nation, the North Slave Metis Alliance, Yellowknife Members of the Legislative Assembly, and the local MP, Denis Bevington, have all indicated their support. A motion of support from the Legislative Assembly of the NWT was also passed this week.

This is one of those rare modern day environmental assessments that actually worked. It has incorporated public and Aboriginal input and in doing so gained a broad base of support.

The fate of the Giant Mine and the remediation plan now lies with federal and territorial Ministers. The reasonable next step is for the Ministers to accept the report and its recommendations, which would then become binding conditions on the project moving forward. If the report and its recommendations are rejected, the whole project goes off to a higher level of scrutiny that will include an evaluation of alternatives – something that no one really wants at this point. The Ministers could



Test freeze of underground caverns, March, 2012. Kevin O'Reilly photo.

also refer matters back to the Review Board, but it's not clear what that would really do. The last option is to enter into a murky world of "consultations" to change or modify the report and its recommendations into something that the ministers will accept.

We are now onwards of four months since the report was released. Will reason prevail?

Left: Jojo Lake tailings spill, September 2011. Below: Jojo Lake tailings remediation, June 2012. Kevin O'Reilly photos.

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Giant Mine headframe. Kevin O'Reilly photo.

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The Federal CSR Counsellor Has Left the Building - Can we now have an effective ombudsman mechanism for the extractive sector?

by Catherine Coumans

(November 1, 2013) The Office of the Extractive Sector Corporate Social Responsibility Counsellor (CSR Counsellor) was announced with much government fanfare in October 2009 as a central "pillar" in the government's "CSR strategy" for Canada's extractive sector. The CSR Counsellor was to provide remedy for people who had been harmed by the overseas operations of Canadian extractive companies by mediating disputes.

On October 18, the Counsellor, Marketa Evans, quietly resigned after four years in the position. No news release, no information about her departure on the office's official web site. In four years she did not mediate any of the six cases brought before her, and none of the complainants received remedy.

For those who have followed the creation – and failures – of this office, Evans' departure is a welcome chance to acknowledge the flaws of this mechanism and to create a more effective ombudsman's office.

MiningWatch Canada and others were critical of the weak mandate of the Office of the CSR Counsellor from the start, and repeatedly detailed its shortcomings. Among other things, the CSR Counsellor was not mandated to investigate complaints, nor to report out on whether or not a company had breached the standards set by the Government of Canada.

The one service she could offer those who had been harmed by the actions of a Canadian mining company, dispute mediation, was contingent on voluntary participation of the company in question. As predicted, companies made use of the voluntary nature of the office to walk away from offers of mediation with no consequences.

Marketa Evans (right) with Trade Minister Ed "Not So" Fast.

Of six complaints filed, three ended before they began when mining companies Excellon Resources, McEwen Mining, and Silver Standard Resources turned their backs and walked out. Silver Standard's recent snub seems to have been the final straw for Evans.

One case, against New Gold's Mexico operations, remains open. Evans closed the final case received, against Golden Arrow Resources, at the end of September due to her stated inability to establish communications with the indigenous Argentinean complainants who sought better consultation by the company and respect for their right to Free Prior and Informed Consent for mining activities in their territory.

These cases highlight the most egregious aspects of the weak mandate and flawed process of the CSR Counsellor's Office. Corporations hold all the power in this process. The mechanism puts complainants in the untenable position of having to rely on the very company that stands accused of having harmed them to decide if it is inclined to participate in mediation, to decide if it is interested in providing any kind of remedy, and, if so, the nature of the remedy it may decide to provide.

Moreover, fruitless participation in the CSR Counsellor's process further harms the weakest parties, the workers and indigenous and community representatives who put themselves in the hands of this mechanism to seek redress. These people have, at best, wasted their time and limited resources. At worst they have exposed themselves to further harm at home for sticking their necks out.

A particularly problematic case is that of Maître Lemine from Mauritania who brought forward community complaints about human rights and environmental abuses related to the operations of First Quantum Minerals. Having been convinced by the company that there was a project level grievance mechanism to which Lemine could turn, Evans sent him back to Mauritania to try his luck there first. MiningWatch has followed up on this case and found that no effective local-level mechanisms existed and Lemine is still seeking redress for the community for ongoing harm from the company's operations.

The Mining Association of Canada (MAC) has appealed to the government to give the failed Office more time and more money. In an interesting twist of logic, Pierre Gratton, MAC's president and CEO, places blame for the Office's lack of effectiveness on "constant criticism" of its fundamental shortcomings. He downplays the most obvious factor in the Office's downfall, the failure of mining companies, including a MAC member, to participate: Excellon Resources was the first company to walk out on the CSR Counsellor's process. The company then joined MAC, but never took up the standing offer of the CSR Counsellor to come back to the table.

Just days after Evans' side-door departure, twenty-three member organizations of the Canadian Network on Corporate Accountability launched the network's "Open for Justice" campaign. The campaign calls for the establishment of an extractive-sector Ombudsman that is empowered to undertake independent investigations to determine if a company has breached guidelines and caused harm, and, if so, to make recommendations to the company and to the Canadian government in order to remedy the harm. The Ombudsman will make its findings public and could recommend the suspension of political, financial, and diplomatic support by the Government of Canada.

An Ombudsman's office was first recommended by a joint industry-civil society report to the Government of Canada in 2007, and its key features were incorporated in John McKay's narrowly defeated private member's bill C-300. It is high time for the Government of Canada to create a truly effective, independent, and mandatory extractive-sector Ombudsman.

A version of this article appeared in the Ottawa Citizen on Oct. 31, 2013 as: "Canada needs effective mining oversight."

Revelations of Industrial Espionage Expose Underbelly of Canadian Support for Mining Companies

by Jennifer Moore

(October 9, 2013) News that the Communications Security Establishment Canada (CSEC) has been spying on Brazil's Mines Ministry starts to expose the extent to which the Canadian government is willing to go in the corporate interest. The scandal in Brazil is consistent with what Canadian authorities have been doing at home and through the diplomatic corps around the world, but goes a step further. It demonstrates that, beyond political and commercial support, the Canadian government is willing to even jeopardize important trade relationships to give the Canadian industry an upper hand.

Glenn Greenwald's ongoing reporting for The Guardian and leaked information from former United States National Security Administration (NSA) contractor Edward Snowden – currently exiled in Russia – has revealed that CSEC's spying goes way beyond tracking terrorism and well into industrial espionage. Another Guardian report today shows that the agency was consulting regularly with Canadian mining and energy companies.

The Canadian Embassy estimates that some fifty Canadian mining firms are invested in Brazil, including companies such as Teck, Kinross Gold, IAMGold, Yamana Gold, Eldorado Gold, Belo Sun and others. Total Canadian foreign direct investment in Brazil is $9.8 billion, dwarfed by Brazilian investment in Canada at $15.8 billion, much of that also in the mining sector since Vale bought out INCO. In fact, the depth of the government's commitment to the Canadian mining sector globally makes a strange contrast with its willingness to sell off Canadian mineral assets and even flagship companies like INCO, Falconbridge, and Alcan, without even putting any real conditions on the sales.

In its above-board diplomatic activities to promote Canadian corporations, the Harper administration has made frequent diplomatic visits to Brazil, the rising regional superpower, over the past couple of years. Notably, in January, 2012, Minister of International Trade Ed Fast announced the Canada-Brazil CEO Forum where corporate executives such as Brazil's mining giant Vale and Canada's Kinross Gold Corporation come together with well-connected former politicians, like former Liberal Deputy Prime Minister John Manley, now head of the Canadian Council of Chief Executives.

As to what information CSEC might have been searching for from Brazil's Mines Ministry, it's hard to know for sure. But it's worth highlighting that since 2008, Brazil's mining code has been up for debate with a new bill presented for debate in June of this year, including a proposed doubling of mining royalties to 4%. While still not high, this could be enough to incite panic in a typically tax and royalty adverse industry, which most recently launched exaggerated threats of a capital strike in response to Mexico's proposed 7.5% royalty rate.

Overall, this is unsurprising news, given our increasing awareness of the ever more open and unconditional Canadian diplomatic support for the Canadian mining industry. From Greece to Mexico and from Ecuador to the Philippines, we now have a running list of some 12 instances in which Canadian Ambassadors have stepped up to uncritically defend the interests of Canadian mining companies faced with community opposition and decisions they didn't like from public administrators.

Nonetheless, Prime Minister Harper and government officials are refusing to comment on the accusations of industrial espionage in Brazil under the absurd pretext that it has something to do with national security. Even more bizarrely, Ray Boisvert, former deputy director of the Canadian Security Intelligence Service, has even tried to claim that the the leaked documents are part of some kind of pretend "war game scenario."

But the revelations are both credible and disturbing in light of what we know about our secret services' domestic operations. Last year, independent reporter Tim Groves revealed how the Canadian government and its domestic intelligence service have been regularly briefing energy corporations since 2005, including providing access to select classified reports. The secret briefings aggravated already existing concerns that the RCMP and others have been spying on environmentalists and First Nations.

As communities, workers and civil society organizations throughout the hemisphere face increasing threats to their advocacy on behalf of health communities, good work and the environment, it's shameful to learn to what length the Canadian government is willing to go to serve such narrow interests.

The Bell Tolls for Free Entry in Canada: Legal Victory for Yukon First Nation Will Have Implications Across the Country

– by Ramsey Hart

(September 27, 2013) Late last week, the Ross River Dena First Nation learned that the Supreme Court of Canada would not hear the Yukon Government's appeal of an earlier decision that sharply rebuked the territory's free entry mineral staking regime. This means the earlier decision of the Yukon Court of Appeal stands.

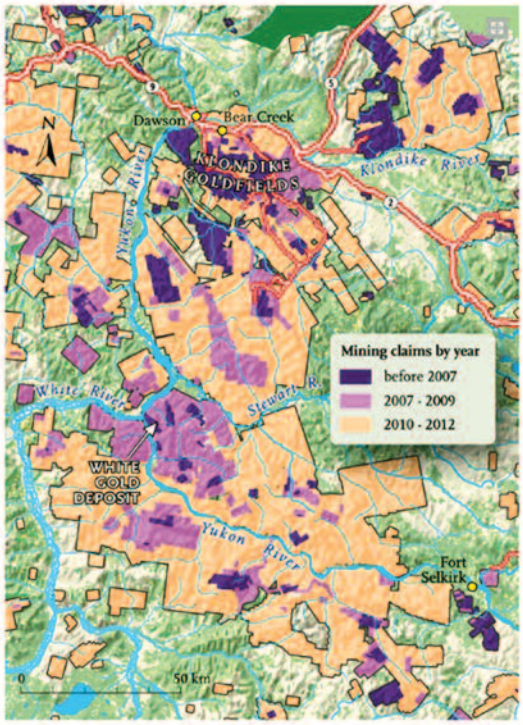
Ross River took the government to court over its practice of allowing mineral claims to be staked and early exploration activities to occur on the First Nation's traditional lands without prior consultation or accommodation of their Aboriginal rights and title. (Yukon Conservation Society has a great animated graphic of claim staking in the Yukon.) The Judge hearing the case for the Yukon Court of Appeal agreed and found in favour of Ross River requiring the Yukon government to consult and accommodate Ross River's Aboriginal rights and title before claim staking and before any exploration activities occur.

While the need to consult on later stage exploration activities is fairly well established in Canadian case law (though not respected in all jurisdictions) this is the first time the courts have clearly indicated the need to have consultation BEFORE a

prospector or mining company stakes a property. The decision is an important recognition that claim staking is not free of impacts to Aboriginal title as it establishes a third party interest that can greatly encumber future decisions about the land.

The Yukon government argued that they did not have a duty to consult because they were not actively making decisions about claim staking or early exploration. The Court of Appeal Judge didn't buy that, stating:

> *"The duty to consult exists to ensure that the Crown does not manage its resources in a manner that ignores Aboriginal claims. It is a mechanism by which the claims of First Nations can be reconciled with the Crown's right to manage resources. Statutory regimes that do not allow for consultation and fail to provide any other equally effective means to acknowledge and accommodate Aboriginal claims are defective and cannot be allowed to subsist."*



The expansion of mining claims in the Yukon until 2012 (Map: Chris Brackley/Canadian Geographic)

As is to be expected, there have been hyperbolic statements from the Yukon Prospectors' Association about the sky falling in on the industry. The CBC quoted the Association's president saying that:

> *Anything that detracts from the Yukon's otherwise good reputation as a place to invest in mineral exploration will make it tougher for us at the bottom of the food chain to defend the properties we're exploring.*

The Prospectors' Association fails to recognise that persistent conflict and lack of clarity about the process for reconciling Aboriginal rights and title are as likely (if not more so) to scare away investors, as are extra steps involved in staking a claim, early consultation or the removal of some areas from access to staking in order to respect Aboriginal rights and title.

The need to address Aboriginal title before claim staking is likely to have implications across Canada, as there is no jurisdiction that has a system in place to do so. Parts of some provinces and territories may be compliant with the Ross River decision on claim staking if a land use plan identifying areas open for staking has been agreed to with the Aboriginal peoples of the area. There are, however, relatively few areas where this is the case.

The requirement to consult before any exploration activities occur is likely to require modifications to most existing consultation processes. A possible exception is Ontario, where new regulations require consultation by mining companies before they file work plans or request exploration permits.

Provincial, territorial and the federal governments will likely argue that the decision doesn't apply to areas with historic or modern treaties as their interpretation of the treaties is that they extinguish all prior Aboriginal rights and title. Aboriginal signatories and some legal experts disagree with the Crown's interpretation of the treaties and will likely push to apply the decision more broadly.

Areas without historic or modern land-based treaties include most of B.C., parts of Ontario, Quebec, and Newfoundland and Labrador, and all of the Maritimes. In theory, there should be few barriers to applying the full scope of the Ross River decision to these areas.

The Yukon government was mandated by the court to respond to its decision by the end of the year but their response so far indicates they do not intend to apply the decision outside of the Ross River area. Whether other territorial and provincial governments see the writing on the wall remains to be seen. If past history is any indication, it may take more lawsuits to ensure they live up to the standard established by the Ross River case – a pattern that has caught the attention of the UN Committee on the Elimination of Racial Discrimination. The Committee's 2012 report on Canada expressed concern *"that Aboriginal peoples incur heavy financial expenditures in litigation to resolve land disputes with the State party owing to rigidly adversarial positions taken by the State party in such disputes."*

The full Ross River vs. Yukon Court of Appeal decision is quite readable and available online. Here are a few select quotes:

[43] I fully understand that the open entry system continued under the Quartz Mining Act has considerable value in maintaining a viable mining industry and encouraging prospecting. I also acknowledge that there is a long tradition of acquiring mineral claims by staking, and that the system is important both historically and economically to Yukon. It must, however, be modified in order for the Crown to act in accordance with its constitutional duties.*

[44] The potential impact of mining claims on Aboriginal title and rights is such that mere notice cannot suffice as the sole mechanism of consultation. A more elaborate system must be engrafted onto the regime set out in the Quartz Mining Act. In particular, the regime must allow for an appropriate level of consultation before Aboriginal claims are adversely affected.

[51] At least where Class 1 exploration activities will have serious or long-lasting adverse effects on claimed Aboriginal rights, the Crown must be in a position to engage in consultations with First Nations before the activities are allowed to take place. The affected First Nation must be provided with notice of the proposed activities and, where appropriate, an opportunity to consult prior to the activity taking place. The Crown must ensure that it maintains the ability to prevent or regulate activities where it is appropriate to do so.

(http://www.canlii.org/en/yk/ykca/doc/2012/2012ykca14/2012ykca14.html)

Spilled Coal Slurry Not Inert But Laced with Arsenic, Toxic Metals, and Carcinogenic PAHs: Data Shines Light on Efforts to Keep Public in the Dark and Downplay Impacts of Massive Spill

– News release

(November 15, 2013) On October 31, an impoundment holding a slurry of waste from Sherritt International's Obed Mountain coal mine failed releasing approximately 670 million litres of waste into the Athabasca River watershed. Alberta government press releases referred to the waste as "process water"[1], "suspended solids, which include such things as clay and organic matter"[2], and sediments containing "such things as clay, mud, shale and coal particles"[3]. Official statements have provided very little information about the extent or magnitude of the spill, and a November 4 statement stated the spill was somehow "contained". As reported in the Edmonton Journal, the only thing that was contained was the waste remaining at the mine site. The plume released to the river extended 113 kilometres by November 8.[4]

The government's statements, along with at least one unofficial statement to media from an employee of the mine[5], led to initial reporting that the released waste materials are inert. MiningWatch is very concerned about what appear to be efforts to keep the public in the dark about the environmental impacts of this spill.

Thanks to successful litigation by MiningWatch, Ecojustice, and Great Lakes United, coal and other mine operators have to report the toxic contents of waste products to the National Pollutant Release Inventory (NPRI). Prior to the 2009 court decision, the federal government allowed a lapsed exemption to the *Canadian Environmental Protection Act* to remain in place for mining operations.

In sharp contrast to the descriptions provided by the Alberta government, data submitted by Sherritt to the NPRI indicate that tonnes of highly toxic materials were being dumped into the ponds every year. The toxic substances include carcinogenic polycyclic aromatic hydrocarbons (PAHs), arsenic, cadmium, lead, and mercury. The wastes also include phosphorous, manganese, and zinc, which have negative impacts on aquatic ecosystems and drinking water at elevated concentrations. These substances occur naturally in the coal and waste rock from the mine but become an environmental hazard when removed from the ground, processed, and stored as slurry.

"This disaster clearly shows the impotence of federal and provincial governments' regulatory oversight and over-reliance on industry self-monitoring and social responsibility," stated Ramsey Hart, Program Coordinator at MiningWatch Canada. "Corporate commitments to sustainability like those made by Sherritt and many other mining companies ring hollow when faced with such an incident and how it's being handled," Hart added.

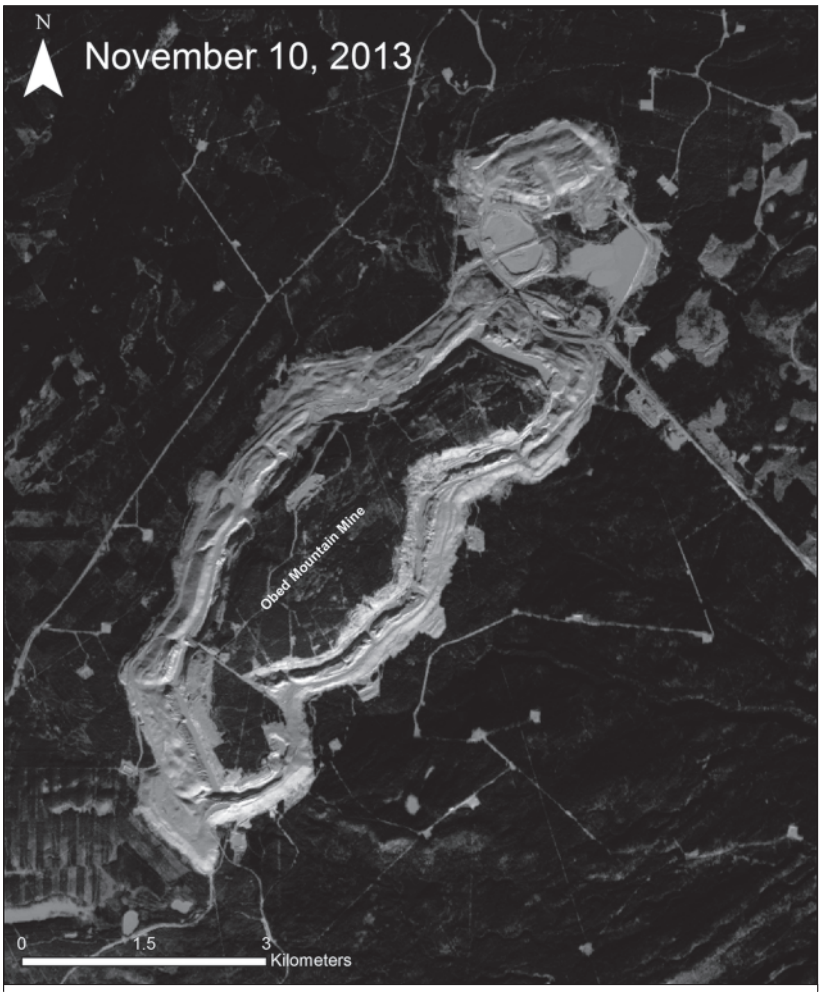


Image: Obed Mountain Coal Mine satellite image acquired by Landsat 8 on November 10, 2013

Concern over the impacts of the spill were confirmed by the unofficial release of water testing results by the Alberta's Chief Medical Officer of Health to the Edmonton Journal. The test results indicated elevated concentrations of PAHs and mercury in the waste plume that was moving downstream.[6]

The table provides data taken from the NPRI for on-site releases of tailings or process water at Obed Mountain Mine.

Toxic substances contained in coal mine waste at the Obed Mountain Coal Mine, from the National Pollutant Release Inventory. (http://www.ec.gc.ca/inrp-npri/)

SUBSTANCE	UNITS	2010	2011	2012	TOTAL
Arsenic (and its compounds)	kg	1684	1078	200	2962
Cadmium (and its compounds)	kg	92	26	5	123
Lead (and its compounds)	kg	4449	1591	294	6334
Manganese (and its compounds)	tonnes	16.3	10.5	1.9	28.7
Mercury (and its compounds)	kg	44	11	2	57
Phenanthrene - PAH	kg	16	3	1	20
Phosphorus (total)	tonnes	24.5	15.7	2.9	43.1
Zinc (and its compounds)	tonnes	14.7	5		19.7

Footnotes: Spilled Coal Slurry Not Inert But Laced with Arsenic, Toxic Metals, and Carcinogenic PAHs

[1] Nov. 1, 2013, "Alberta Energy Regulator responding to Obed Mountain Coal Mine Process Water Containment Failure"
[2] Nov. 2, 2013, "Update: Government responders are monitoring a sediment release into the Athabasca River from a decommissioned mine near Hinton"
[3] Nov. 4, 2013, "Sediment release into Athabasca River has stopped"
[4] Nov. 12, 2013, Edmonton Journal
[5] Nov. 4, 2013, Edmonton Journal
[6] Nov. 15, 2013, Edmonton Journal

Taseko Fails On All Counts - Again: Conclusions of "New Prosperity" Review Panel Echo Previous Review

by Ramsey Hart

(November 1, 2013) MiningWatch welcomes the report of the federal review panel that examined Taseko Mines Ltd.'s proposed "New Prosperity" gold-copper mine. The project is a reconfiguration of one rejected in 2010 by then-Environment Minister Jim Prentice, based on the findings of a report with essentially the same conclusions as the latest report. The panel's report was released late at night on October 31.

Both reports conclude that the project would have a range of significant negative effects and that Taseko had not proposed viable means of addressing these effects. The findings of the new report are not a surprise given that the latest proposal was a variation of the project reviewed in the previous assessment. At that time Taseko stated that the current proposal was more environmentally damaging than the one it was then presenting as its preferred option.

The adverse effects of the project identified by both review panels include impacts on Aboriginal rights and Aboriginal uses of the area, water quality, fish and fish habitat, and grizzly bears.

Image: Xeni Gwet'in drummers overlooking Teztan Biny, "Fish Lake".

When the federal government rejected the first proposal, it noted that the company could reapply if it found ways to address the issues raised through the assessment process. The second panel report clearly indicates that the company has failed to meet this test.

"Given the consistency of the fundamental conclusions in the two reports there is no reason for the decision from the government to be different this time around," stated Ramsey Hart of MiningWatch Canada. "A second and final rejection of this project would provide a clear message to industry about what responsible resource development means. Responsible resource development doesn't mean pushing forward a project against the will of affected First Nations with a poorly conceived strategy to put a healthy lake on life support."

Taseko's plan to "save" Teztan Biny (Fish Lake) was a complex system of pumping and recirculation of water that failed to gain the confidence of government and other reviewers including one who estimated the lake would be dead within ten years.

Given the potential for negative impacts and the staunch opposition to the project from the Tŝilhqot'in and Secwepemc peoples, the Prosperity and New Prosperity projects have been a national priority for MiningWatch Canada. The non-profit organization participated in the review process and attended hearings of both the first and second panel reviews, submitting technical briefs on fish and fish habitat during the first review, and on the economic costs and benefits of the project in the second round. MiningWatch is now conducting a thorough review of the panel report and will continue to make the project a priority through the next 120 days as the federal government deliberates on the finding of the report.

UN High Commissioner Responds Regarding Barrick's Porgera Abuses

by Catherine Coumans

(November 29, 2013) In our last newsletter (Spring 2013) we wrote about the ongoing abuse of the human rights of victims of rape by security guards at Barrick's Porgera Joint Venture mine in Papua New Guinea (95% owned, operated by Barrick). Although Barrick has finally acknowledged the rapes, after years of denial, and is offering a compensation package, the company is using the remedy program to secure legal immunity for itself. It is making any women who accepts a benefits package through the program sign away their legal right to sue Barrick.

MiningWatch conducted a site visit in March of this year and has raised concerns about the legal waiver and other aspects of Barrick's remedy process with the company and with the United Nations High Commissioner on Human Rights.

Additional concerns include: that the remedy process was designed without the input of the rape victims themselves or the local stakeholder groups that spent years raising this issue at the international level; that the remedies being offered to the women were not 'rights-compatible' as they were not commensurate with the harm the women had endured, nor did they in any way redress that harm; that one of the remedies offered, counselling and health care, should be offered to the women regardless of whether they sign any agreement.

Since then, Barrick has reworded the legal waiver to recognize the Papua New Guinea state's right to pursue Barrick criminally (as if that will happen!), but has continued to insist on immunity from civil action by the women themselves. In September, the Office of the UN High Commissioner on Human Rights (OHCHR) responded to the issue with a 13-page opinion. Importantly, with respect to a project-level non-judicial grievance mechanism such as this one, the OHCHR noted that: "...the presumption should be that as far as possible, no waiver should be imposed on any claims settled through a non-judicial grievance mechanism."

Furthermore, recognising the issues that have been raised by MiningWatch and others, the OHCHR recommended an independent review of the remedy program before it is implemented:

"OHCHR recommends that in addition to any further investigation by Barrick itself as to whether the implementation of the programme corresponds to what is stipulated in the Manual and is in conformity with the Guiding Principles, efforts should be made to establish a process to identify an individual, group of individuals or organization, considered credible by Barrick, the claimants and other key stakeholders, to conduct an independent review of the Porgera remediation programme. If necessary, the review should identify possible areas for improvement in the implementation of the programme."

MiningWatch Canada supports the recommendation from the UN High Commissioner and we've expressed willingness to participate in setting up an independent review of Barrick's remedy program. In October, Barrick started to process rape victims through its remedy program without implementing the OHCHR's recommendation. All rape victims who accepted remedy packages were required to sign legal waivers granting Barrick immunity from civil suit by these victims for the rapes they had endured.

Philippines: Marinduque 'Pushed to the Wall' by Barrick Gold

by Catherine Coumans

(October 18, 2013) In the Philippines, the island province of Marinduque is known as a cautionary tale about the ravages of irresponsible mining. It took Canadian mining giant Placer Dome a couple of decades to wreak environmental destruction on major coral reefs in Calancan Bay and to severely contaminate the Mogpog and Boac Rivers with toxic mine waste – none of which has ever been cleaned up. The ongoing environmental impacts are only part of the story.

Fishermen from numerous villages around Calancan Bay lost their livelihoods as the bay filled up with more than 200 million tons of mine tailings dumped there between 1975-1991. Two children died when they were buried in mine waste as a shoddy dam burst and the Mogpog River flooded with toxic mine silt in 1993. The banks of the Boac River still hold steep mounds of tailings that were left to continuously leach acid and heavy metals into the river after another catastrophic dam failure filled that river with mine waste in 1996. These contaminated rivers no longer support the livelihood and economic activities of nearby villages, as they once did.

Placer Dome, which had managed the two Marcopper mines in Marinduque, eventually fled the Philippines in 2001, leaving the mess behind.

Canada's Barrick Gold, the world's largest gold mining company, bought out Placer Dome and has spent the better half of a decade fighting the province in court rather than owning up to the company's responsibility to put things right in Marinduque. Once again, Marinduque is the bellwether, evidence that for all its rhetoric about "responsible mining," the mining industry is still more concerned with its bottom line than in doing what's right.

Untreated mine waste dumped into Calancan Bay. Catherine Coumans photo.

In spite of a long legal struggle with support from very competent American lawyers, on September 17, Marinduque provincial administrator Eleuterio Raza told the Philippine Daily Inquirer (Inquirer) that Barrick was offering the province around $20 million, take it or leave it. According to the Inquirer "[t]he amount, however, would further be reduced to $13.5 million after litigation expenses had been paid. 'These are crumbs,' said Raza, 'but we are being pushed to the wall.'" It is perfectly clear that this extremely low level of recovery from Barrick is woefully inadequate to protect the health and safety of Marinduqueños, which can only be secured through the comprehensive rehabilitation of all contaminated ecosystems and the stabilization or removal of shoddy dams and structures in the mountains of the island, as well as the tons of toxic waste that these dams are barely containing.

Numerous independent scientific studies of the ravages of mining on Marinduque, including by a United Nations team and United States Geological Survey, confirm the extraordinary and ongoing toxic impacts of uncontained mine

Calancan Bay men on what used to be a pristine beach. Catherine Coumans photo.

waste and un-rehabilitated rivers and coastal areas. As the mine was abandoned after the catastrophic dam failure in 1996, numerous dams and structures have not been maintained and now pose a very real threat of failure and further impacts on lower lying communities and ecosystems. Placer Dome's own consultants, Canada's Klohn Crippen, warned in a report leaked in 2001 of "danger to life and property" related to inadequate mine structures holding back waste. These structures have been deteriorating ever since.

Any recovery from Barrick has to be applied to immediate stabilization of dangerously shoddy mine structures, rehabilitation of contaminated rivers and coastal areas, and permanent solutions for the tons of mine waste still at the defunct mine sites in the mountains of Marinduque. But what Barrick has reportedly laid on the table is insufficient for this task. Clean up of mine waste from other contaminated sites around the world indicates that rehabilitation on a scale that is required in Marinduque could easily run into hundreds of millions of dollars. Canada's Teck Resources Ltd. spent $55 million just on studies to prepare for rehabilitation of areas it contaminated by dumping some 9.97 million tons of slag containing heavy metals into the Columbia River. Clean up of that contamination has been estimated to run as high as $1 billion.

It's not that Barrick cannot afford to do the right thing. The mining giant paid its new co-chair $17 million in 2012, including an $11.9 million signing bonus. Barrick's fine for an environmental breach at a mine that is still under construction in Chile came to $16 million, more than Marinduque would apparently get for 30 years of environmental damage.

For the "crumbs" it is offering Marinduque, Barrick is demanding highly valuable settlement provisions to secure the firm permanent legal immunity in this case. One of these, the Inquirer reported, is a clause stating that Placer Dome never operated on the island. "That's something difficult for us to accept. It's common knowledge that Placer Dome was a managing partner of Marcopper," Raza was quoted as saying. Recent reports indicate that the provincial board has rejected the current settlement agreement, described as "onerous."

On October 19, Elizabeth Manggol of a Church-based group, Marinduque Council for Environmental Concerns, told the Inquirer that "the proposed settlement should be rejected, 'not only because the amount was too small, but because of certain conditions absolving the company of environmental damages.' 'Among those conditions is that the settlement proceeds can never be used for the repair and rehabilitation [of the damaged rivers and mining structures] when it was the purpose [of the lawsuit] in the first place.'"

What President Aquino, his advisor on environmental protection Secretary Nereus Acosta, Environment Secretary Ramon Paje, and the Department of Environment and Natural Resources have to recognize is that if funds recovered from Barrick cannot be used to address the urgent risks to health and safety posed by the legacy of irresponsible mining in Marinduque, or if the recovery from Barrick is insufficient to cover the true costs of this work, these costs will ultimately be borne by taxpayers, locally and nationally.

Barrick's unwillingness to shoulder the responsibility of ensuring that the environment and people of Marinduque are made secure means that the province's unfortunate role as the poster child for irresponsible mining, past and present, will surely continue.

[A shorter version of this article was published in the Philippine Daily Inquirer. More photos are available on our website]

Opposition Builds to First Quantum Minerals' Copper Mine, Dams, and Land Grab in Zambia

by Jamie Kneen

(November 28, 2013) Communities affected by First Quantum Minerals' massive Sentinel copper mine project in Northwest Zambia have been resisting the project for more than three years. The company has been throwing its weight around with the community as well as the Zambian government, making liberal promises of jobs and money as well as thinly-veiled threats that opponents would not only lose their struggle to stop the mine (or at least reign in its most destructive aspects) but be blacklisted from jobs and contracts.

First Quantum (FQM) has been given considerable freedom in Zambia despite its history in the region – including being fingered (and then mysteriously absolved) by a UN panel of experts for violating OECD norms during the conflict in the Congo in the late 1990s, getting the Canadian government to try to hold the people of the DRC hostage to regain its mining leases there, continuous environmental and human health problems around its Zambian operations, and documentation of tax evasion in Zambia.

In Musele Kingdom, North Western Province, FQM got the regional Chief, His Royal Highness Chief Musele, to sign over 50,000 hectares of land for the project. Chief Musele has said he was pressured to sign, and subsequently sought support and legal advice to protect his people and their land and water supplies. The surrender was subsequently overturned by the Zambian government, but the environmental assessment for the project had already been approved, and there has subsequently been a series of legal and regulatory actions that have thrown the project into question. The situation is summarized in a press

statement issued July 27, 2013 by eighteen civil society organisations, including MiningWatch.

In light of the continuing failure of Zambian authorities to respond to community and civil society demands for a fair and transparent process, we wrote to His Excellency Ambassador Bobby Mbunji Samakai, High Commissioner of the Republic of Zambia to Canada, on November 7 to express our grave concerns over the project and to urge the Zambian government "to give the greatest consideration to the predicament of the people of Musele Kingdom and to proceed with the fullest precaution in considering this development project that has already caused considerable discord and stands to cause serious, extensive, and irreversible harm to the environment and the people of Musele Kingdom." The letter is available on our web site.

Mining and development – how much will it cost us to clothe the naked emperor?

by Catherine Coumans

(December 2, 2013) Since the mid-2000s the global mining industry, led by the International Council on Mining and Metals (ICMM) in London, has been engaged in a re-branding exercise: marketing itself to the world as a vehicle for development, against overwhelming evidence to the contrary. The current Canadian government has been more than accommodating, readily adopting and promoting this new label for the industry at home and abroad. And the government has gone well beyond rhetoric, placing official development assistance (ODA) at the industry's disposal as a subsidy for corporate social responsibility (CSR) projects at mine sites. This commitment of Canadian tax dollars to subsidize corporate social responsibility projects – which mining companies used to pay for themselves – is a first in Canada. Furthermore, the government is actively promoting partnerships between mining companies and Canadian development organizations, such as World Vision, Plan Canada, and WUSC. These Canadian development organizations have proven to be eager to accept both the agenda and funding of the industry and the government by partnering in mining-related pilot projects in, respectively, Peru, Burkina Faso, and Ghana. Canadian taxpayers picked up the lion's share of the costs, $6.7 million of the total $9.5 million budget for these projects.

Funding these CSR projects in 2011 was just the beginning; the Canadian government has also committed $20 million in development aid to something called the Andean Regional Initiative for Promoting Effective Corporate Social Responsibility (Andean Initiative) "through partnership arrangements between extractive sector companies and other stakeholders aimed at socioeconomic development and support to governance." For some of the Andean projects in Peru, Colombia and Bolivia, NGOs can only apply if they partner with a mining company. And another $25 million from the aid pool has been dedicated to the establishment of the Canadian International Institute for Extractive Industries and Development (CIIEID) housed at the University of British Columbia in partnership with Simon Fraser University and École Polytechnique de Montreal.

These expenditures of official development assistance raise a critical question: if mining truly is a natural engine for development, then why do Canadian tax payers have to foot the bill? It is time for a bit of a history lesson and some critical independent perspective. In the 1990s, the global mining industry took a reputational 'hit' following multiple catastrophic environmental disasters at mine sites (Omai in Guyana, Los Frailes in Spain, and Marinduque in the Philippines, among others). In response, the global industry launched a branding campaign labeling mining as "sustainable" with a focus on environmental sustainability. The industry set itself a goal of getting language to that effect into the final text of the upcoming Earth Summit in Johannesburg. In an unprecedented collaborative effort, CEOs from nine major companies launched a two year campaign in 2000 known as Mines, Minerals and Sustainable Development. The key messages spread quickly. At the annual meeting of the Prospectors and Developers Association of Canada in 2000, an industry presenter showcased environmental management at his company to assure minimal impacts from massive waste rock and tailings impoundments stating, "we are really a waste management industry." Although the physical and chemical threats of ill-contained waste rock and tailings at mines all over the world did not diminish, the industry campaign was successful as the final text of the 2002 Earth Summit maintains that mining is sustainable.

In the 2000s social issues came to the fore. There was growing recognition of human rights abuses related to, among others, forced relocations of thousands of people to make way for mines; violence, rape and killings by mine security guards; loss of livelihoods through loss of access to land and contaminated water sources; high incidences of sexually transmitted diseases around mine sites; and negative economic impacts associated with mining at both the national and local levels in most developing counties. Economists like Joseph Stiglitz set out to explain why poor countries that developed their mineral resources "have done even more poorly than countries without resources." Deepened poverty, increased inequality, increased corruption and conflict are all national level characteristics of the resource curse, even as local level social, environmental and economic impacts deepen poverty of many community members around mine sites.

Just as the global industry took on the challenge to its reputation from environmental disasters in the 1990s, by declaring itself "sustainable," the industry has taken on the re-branding of itself as an agent of "development" with equal vigour. And once again, a lot of effort went into getting text to this effect into the final declaration of the Earth Summit in Rio de Janeiro, ten years after the last earth summit in Johannesburg. And once again, the new mantra spread quickly. At a multi-stakeholder meeting in Vancouver this year a mining executive proclaimed "we are really a development industry."

The naked emperor...

If sheer repetition of slogans and getting key language into global texts could make what the industry is selling true, we would all be better off. But hard facts and reality on the ground the world over seriously get in the way of this nice story. It is

time to recognize that the emperor has no clothes. Large-scale mining is still what it has always been, a business with huge returns for a very small elite, and for home countries such as Canada, based on extracting non-renewable and finite wealth from the earth, primarily in poor host countries. The local environmental, social and economic impacts during and after mining are still devastating with more losers than winners, particularly in developing countries and in remote and vulnerable communities in developed countries. These impacts exacerbate poverty in ways not addressed by typical project-level CSR efforts. Nor do the newer "governance initiatives" associated with the Andean Initiative and the CIIEID address the realities of the resource curse as these efforts appear to be primarily aimed at smoothing the way for Canadian companies to gain conflict-free and cheap access to overseas ore bodies.

If the Canadian government and the extractive industries were to take seriously the task of mitigating negative impacts of the industry to overseas development they would address the massive capital flight out of poor countries associated with transfer mis-pricing arrangements of Canadian mining companies that cause the taxes they should have paid in those countries to end up in tax havens such as the Cayman Islands. And they would insist on realizable financial bonds that would cover the true costs of managing the ongoing toxic threats from mined-out projects for the true length of time these threats prevail - often "in perpetuity." In Canada alone there are thousands of legacy sites that tax payers now have to pay to clean up and manage: a bill that runs in the billions of dollars – and counting. This is a financial burden developing countries cannot bear.

Those who are not fooled by vigorous branding exercises, misleading texts in international documents and the strategic partnering of some Canadian development NGOs, are the growing number of communities who oppose mining the world over, often at great costs to themselves, and those who are fighting to realize protective provisions such as Free Prior and Informed Consent ("FPIC"). Also waking up are a growing number of overseas governments that are taking a harder look at the investor-state contracts they sign, insisting on better returns from mining, withholding or withdrawing permits from environmentally dangerous projects, and even declaring moratoriums or banning certain kinds of mining altogether. Some of these governments, such as that of El Salvador and Papua New Guinea – even the United States – have found themselves sued by Canadian mining companies, others, such as Costa Rica and Romania are facing similar threats. If the Canadian government and Canadian mining companies were serious about supporting good governance and promoting development in the countries that host Canadian mines, then it would focus on actively addressing the many ways in which mining creates development deficits.

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