

Globe British Columbia

ABORIGINAL CLAIM » XENI GWET'IN

Native band seeks to halt proposed mine

Group that won title case in 2007 back in court to stop development that is estimated would generate \$5-billion in economic activity

BY JUSTINE HUNTER VICTORIA

A B.C. native band that has already won a landmark aboriginal title case will be back in court today seeking to kill a proposed multibillion-dollar gold and copper mine within their traditional lands near Williams Lake.

The Prosperity mine, which

is still subject to an environmental review, would "de-water" a small lake known as Fish Lake. A pristine fishing hole under the shadow of Anvil Mountain, the lake is home to a unique subspecies of rainbow trout.

"You don't need a lot of patience to fish there," said Marilyn Baptiste, chief of the Xen

iet'In First Nation, who can recall fishing trips with her father as some of her earliest memories.

The local recreation guidebook, *Cariboo Chilcotin Coast Backroad Mapbook*, includes a fond entry for the lake: "Fish Lake is a good place to bring younger kids as the trout are fairly indiscriminate, and will

bite most anything that looks like food." The lake is only about 12 square kilometres, but it's teeming with an estimated 85,000 trout.

But the lake sits next to what is believed to be one of the largest undeveloped copper-gold deposits in Canada, with more than 13 million ounces of gold and five billion pounds of



You don't need a lot of patience to fish there.

Marilyn Baptiste, chief of the Xeniet'In, referring to Fish Lake

copper.

The scale of the proposed open-pit mine, in economic terms, is staggering — enough to register as 0.3 per cent of the province's gross domestic product. Over the estimated 20-year life of the mine, it is expected it would generate \$5-billion in economic activity.

» SEE 'MINE' PAGE 2

WINTER WEATHER

News flash: Vancouver is in Canada and in Canada it snows



GARY MASON

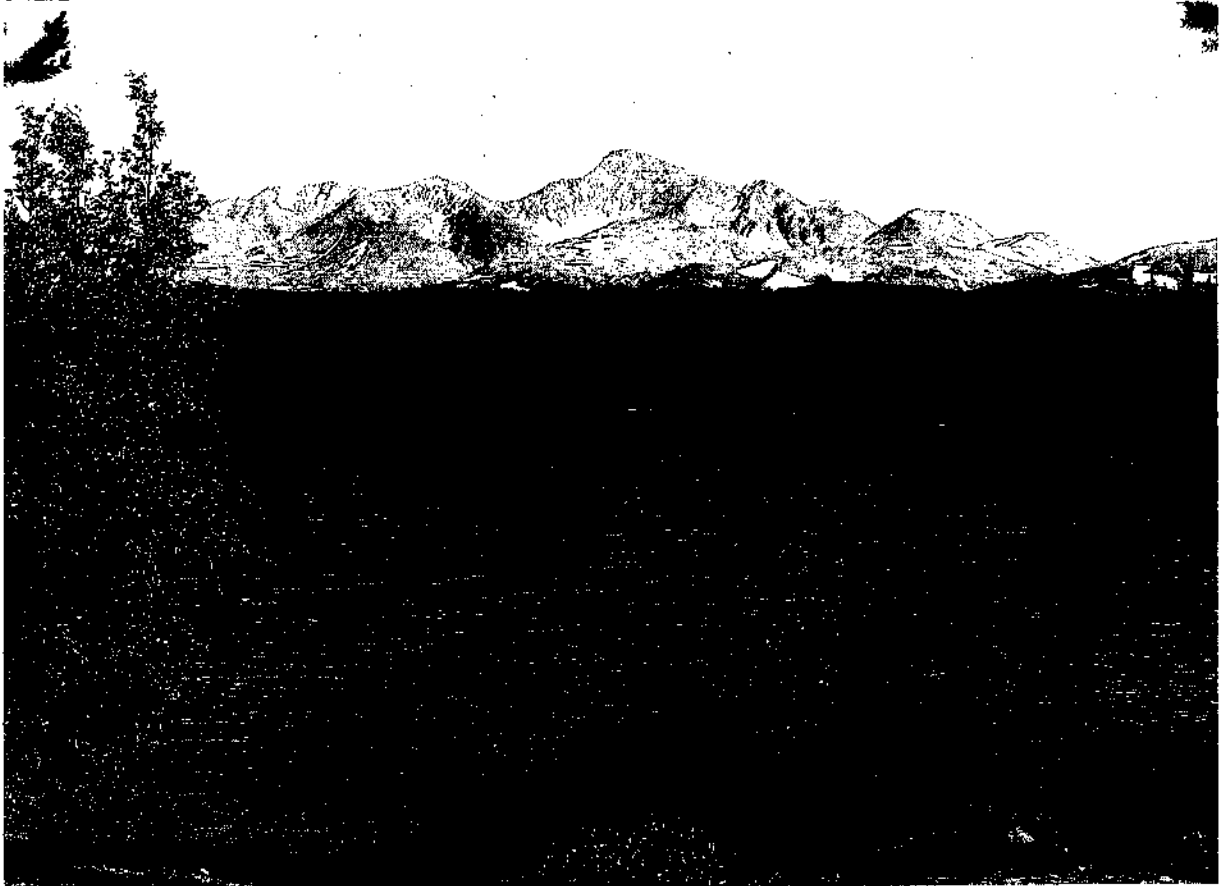
amason@alobeandmail.com



WEATHER WARNINGS

**Rain, snow
create**

FROM PAGE 1 » MINE



Fish Lake, in the shadow of Anvil Mountain near Williams Lake, is home to an estimated 85,000 trout. XENI GWET'IN

Mine proposal calls for formation of new lake

» The project has won significant support in Williams Lake, a community that has faced major job losses because of the pine beetle infestation.

The water is needed for the mine operations. Taseko Mines Ltd. has already invested \$90-million in preparing a submission for an environmental assessment.

The proposal calls for the creation of a new lake, Prosperity Lake, six kilometres away, that would eventually be home to the offspring of Fish Lake's inhabitants.

"The purpose is to retain genetic integrity of those fish," said Brian Battison, Taseko's vice-president of corporate affairs.

Mr. Battison said the mine would be one of the largest private-sector investments in B.C. this decade, and its contribution to the economy would exceed the province's television and film industry. "We are confident we can prove that it is in the public interest to allow us to proceed."

While he said the project has support from the community, the Xení Gwet'in say it will in-

fringe on their aboriginal rights. A statement of claim, to be filed today in B.C. Supreme Court, seeks to quash the environmental assessment process.

"The construction, operating and maintenance of an open-pit mining project of this magnitude, including the destruction of a fish-bearing lake, will significantly impact the ecological, cultural and spiritual integrity of the surrounding lands and waters," the statement reads.

The band's lawyer, Jack Woodward, called Taseko's plans to build a new lake "audacious" and questioned the feasibility of creating the right conditions for these unique trout.

"Normally, only God creates lakes," he said. "The idea that there is some empty niche where you could find a habitat for 85,000 fish is a denial of what we know about how biological systems work."

In November, 2007, Mr. Justice David Vickers found the Xení Gwet'in had proved aboriginal title to roughly 200,000 hectares of land in the Nemiah Valley. But the initial claim was framed as an all-or-



Normally, only God creates lakes.

Lawyer Jack Woodward

nothing proposition, and Judge Vickers said he could not therefore formally hand over the lands. He did accept that the band has aboriginal rights to capture horses, and to hunt and trap.

This case is distinct from that, Mr. Woodward said, because it deals with fishing rights, which were not part of the original land-claims case.

The lake, which the Xení Gwet'in refer to as Teztan Biny, is within the band's territory as defined in that court case.

Although the Vickers ruling was a landmark decision in land claims, it was also opaque.

"The Court offers the opinion that ... title does exist inside and outside the Claim Area," Judge Vickers wrote.

The judge concluded that title exists not in the postage-stamp-sized areas suggested by the Crown, but in wide swaths

of territory where the provincial government would lose control over the resources that are critical to the B.C. economy.

That opinion is non-binding, and Judge Vickers urged the parties to negotiate a settlement.

However, face-to-face negotiations since then would barely fill a week in the calendar. The federal government refused to take any active standing, while the province made an offer that included no cash and no land. The talks broke off late last year, and all three parties are proceeding with appeals.

Chief Baptiste said the Xení Gwet'in are not interested in the financial benefits of the proposed mine.

"In 1864 we had our war leaders protect our territory on the west side - they were after gold then. Now we are looking to protect our territory on the east side," she said in an interview yesterday.

"Back then our leaders knew we cannot eat gold. If they go after the gold now, that would destroy our fish and our water."