

Insufficiency Report: Fortune Mineral's Traditional Knowledge Study Tłıchq Government Technical Report on the NICO Project - EA0809-004 [2009]

The following report reviews the Golder/Fortune Traditional Knowledge (TK) Study that was included in the Developer Assessment Report (DAR) for the NICO Project - EA0809-004 [2009]. The findings of this review reveal that the traditional knowledge information contained in the Golder/Fortune TK Study is an insufficient and inadequate base from which to make an informed decision regarding the potential effects of the NICO Project ("the Project") on the biophysical and human environment the Tłıchq Government and its citizens rely upon. This report includes a review of guidance from the Review Board on Traditional Knowledge, as well as the ten critical gaps in the Golder/Fortune TK Study.

Review Board Guidance on Traditional Knowledge

The Tłıchq Government abides by the guidelines that the Review Board has written, endorsed and utilized during environmental assessment over the past half-decade or more. Elements of the Review Board Guidelines examined by the Tłıchq Government during its review of the developer's TK study include the following:

The Review Board's TK Guidelines¹ [*Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment*] point out that context and proper data collection techniques are all-important during TK collection:

Traditional knowledge is often only communicated by traditional knowledge holders in a culturally sensitive setting and this setting plays an important role to the context of the information. Thus, context of traditional knowledge and important information can sometimes be lost when traditional knowledge is documented for the purpose of an environmental impact assessment. – pg. 12.

At page 16 of the Review Board's TK Guidelines, it states:

Where traditional knowledge policies or guidelines do not exist, the developer must still consult with traditional knowledge holders and the appropriate aboriginal organizations to determine acceptable standards for working with traditional knowledge holders and the handling of the traditional knowledge being used by the developer.

The Review Board's TK Guidelines state in relation to conformity (section 7.4) that:

The Review Board shall conduct a conformity check to determine if the developer has provided traditional knowledge evidence in its DAR as required by the terms of reference. If there appears to be something missing, the Review Board shall, at its discretion, issue a deficiency statement about the traditional knowledge content of the DAR.

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http://www.reviewboard.ca/upload/ref_library/1247177561_MVReviewBoard_Traditional_Knowledge_Guidelines.pdf

Section 7.4 of the TK Guidelines refers the reader on to section 3.12 of the Review Board's EIA Guidelines², which state the following regarding "conformity checks" (emphasis added):

The first step in reviewing the Developer's Assessment Report is called the conformity check. This determines whether the developer has responded to every item required by the Terms of Reference with enough information to address the impacts on the environment, but does not investigate the **quality of the responses in detail**. Because the conformity check is a straightforward examination, it is usually completed internally. Where warranted, the Review Board may request conformity comments from any or all of the environmental assessment participants.

If the Review Board had sought conformity comments from the Tłıchǵo Government in this case, the Tłıchǵo Government would have provided evidence about the quality of the traditional knowledge information brought forward by the developer. The lack of quality in the developer's TK study was the primary reason that the Tłıchǵo Government requested funds to conduct a traditional knowledge /traditional land use study.

The developer's TK/TLU study never met many of requirements of good practice for a TK/TLU study, and appears to only loosely conform to the guidance noted above. Among the many gaps, identified by traditional land use/traditional knowledge practitioners such as Dr. John B. Zoe, Dr. Alice Legat, Dr. Craig Candler, and Rachel Olson, are the following:

Tłıchǵo Government Review of the Golder/Fortune Study

1. Lack of Information Regarding Confidentiality and Ethics

The Golder/Fortune TK Study does not provide detailed information regarding the rules followed vis-à-vis disclosure of geospatial data and associated informants. Instead, the report provides information in several ways that are not standard or acceptable practice in TK/TLU research.

The report reveals specific data points in the maps for traditional use and knowledge. Generally, specific data points are randomized and buffered to protect the intellectual property of aboriginal knowledge holders, in this case Tłıchǵo citizens. For example, Figure 5.3-5 shows a polygon indicating an area where a specific medicinal plant is harvested. It is unclear whether Fortune Minerals asked the permission of the harvesters to release their rat root locations (or traditional medicine locations)-often considered highly sensitive information by knowledge holders - to the public record. This is not standard practice. Another example is the release of data on cabins and occupancy data in Figures 5.3-9 through -12.

This puts into the public realm sensitive information that is "owned" by the knowledge holders themselves. No effort was made by the developer to confirm that this was an acceptable practice.

² http://reviewboard.ca/process_information/guidance_documentation/guidelines.php

Second, the names of individuals are attached to specific maps in the DAR. This runs contrary to good practice of TLU/TK studies. Again, the developer has not provided any reference as to whether the individuals were advised that their private knowledge was going to be displayed with their name. Nor was it revealed whether these maps were all provided to individuals for confirmation, another standard TK practice.

2. Lack of Information Regarding Interviewee Selection

It is unclear how the Golder/Fortune TK Study selected interviewee participants. The ongoing Tłıchǫ Government study has started by interviewing the oldest Elders with intimate knowledge of the area, as selected by a team of Tłıchǫ people. It is critical to interview the “right” people when running a study, rather than simply the available people. We note that to date there is only one individual who crosses over from the Golder/Fortune TK Study to the Tłıchǫ Government study (which stands at 13 interviews and counting), suggesting to us that the interviewee list may not have been constructed by the people who understand traditional use and knowledge in the region.

3. Biased and Culturally Inappropriate Interview Methods

The Fortune Minerals report relied on staffing from non-experts and non-objective team members. Notably, the interviews included a company representative during the TLU/TK interviews. Having someone like this in attendance can interfere strongly with the comfort that TK holders have in sharing their knowledge. The attendance of a direct company representative, especially one with no visible experience in TLU/TK interviews, is not something any of our practitioners have ever encountered in a previous study, and certainly is not acceptable good practice of TLU/TK.

When inexperienced or non-experts are brought into a TK study, they can also make ill-informed “professional judgements.” This brings into question the analysis made of the limited TLU/TK base collected by Golder and Fortune. As section 6.5.1 of the DAR states:

A detailed description of the methods used to analyze residual effects from the NICO Project on VCs is provided... Available traditional knowledge and community information are incorporated into the analysis and results. Due to the amount and type of data available, some analyses are qualitative and include professional judgement or experienced opinion.

In the opinion of the Tłıchǫ Government, the use of inexperienced researchers with little knowledge of the Tłıchǫ mode of life to make judgements using Tłıchǫ traditional knowledge is not professional practice, and any findings developed thus are subject to challenge. In addition, the developer’s own admission that there was limited data available makes it important to increase the information base upon which the Review Board makes its s. 128 decision (on the determination of impact) on this file.

4. Lack of Context Critical for Interpreting Tłıchǫ Perspective

The Tłıchǫ Government found the DAR had a lack of understanding of the Dene perspective in general, and more specifically of the Tłıchǫ perspective (as required in the above noted guidelines). Without providing background information on this perspective, it is virtually

impossible to complete a cultural assessment or predict impacts on Tłıchǫ citizens. Furthermore, without information on the Tłıchǫ perspective, it is often difficult to interpret comments made about wildlife and habitat. In addition, the DAR sections purported to rely on traditional knowledge (e.g. Section 5) rely more on jargon rather than on showing evidence of actual adherence to good practices of TK/TLU study or an underlying knowledge of the Tłıchǫ history, knowledge base, values and worldview, despite the existence of a variety of open-source and available information on this topic (see #8 below).

There is also very little evidence of the TK or Tłıchǫ perspective being incorporated into project planning, other than the specific mention of limiting the size of the co-disposal pile so that it cannot be seen from Hislop Lake.

5. Lack of Depth in Data

The Golder/Fortune TK Study has a lack of depth in the data collected and reported. This has led to major gaps in the study design and findings. This gap is being filled now through the Tłıchǫ-led TLU/TK study.

The Golder/Fortune study minimizes the importance of traveling trails both on the land and through oral narratives. Knowledge of traveling trails via oral narratives allows Tłıchǫ citizens to always be prepared to use the trails and the area in the future. Furthermore, Fortune uses language such as: “an old traditional trail...” (5.3.6.2) that implies the trail is no longer part of the cultural landscape, and is neither wanted nor valuable in the current and future context. This type of language is misleading. For the Tłıchǫ, trails may not be used for long periods of time, and then used again as need arises. The land, like knowledge itself, is a storehouse available for use in times of need.

In the oral storytelling culture of the Tłıchǫ, “the land is like a book” (as noted by Elder Harry Simpson). In the DAR, there is no discussion of the potential cultural impacts from physical alterations to certain areas of land, or avoidance of areas frequented by Tłıchǫ citizens. There is also no readily apparent discussion of how the mine might impact Tłıchǫ citizens’ individual and collective knowledge base where use is restricted, denied or avoided in the area.

It is also clearly evident even from the first round of TK/TLU interviews with 13 elders run by the Tłıchǫ Government in Whati and Gameti between June 4 and June 8, that the developer’s TK study represents only a very small portion of the total story of the importance of the study area to Tłıchǫ citizens and their concerns related to the operation of the proposed mine. If minimal land use and minimal concerns were being noted by Tłıchǫ citizens, the Tłıchǫ Government would not be adamant that the Review Board needs to see this evidence well in advance of its s. 128 decision. Current, historic and desired future land use in the area is prevalent, and the location plays an undeniably important role in the Tłıchǫ cultural landscape. Many Tłıchǫ citizens are expressing public concern about this additional mine in a general area that has both high cultural and environmental values, and which has been previously impacted by the Rayrock mine.

6. Confusing Use with Knowledge

Throughout the DAR, Fortune confuses traditional land use and traditional knowledge. A person can use an area without having much knowledge of it. However, understanding vegetation communities, wildlife behaviour, habitat, land use over time, and environmental changes takes Tłıchǵ knowledge of (for example) specific plants, water flow, animal behaviour, human behaviour, and a historical overview. Traditional land use is connected to traditional knowledge, but the relationship is dependent on a particular perspective as well as the specific knowledge.

The report also contains data from a limited number of interviewees, and - given the above concerns regarding interviewee recruitment, and the reliability and sufficiency of this information (e.g., does it reflect an acceptably broad cross-section of land users and knowledge holders) - may be questionable. Further, there is no discussion on how the mine will impact peoples' knowledge base when use is restricted or denied in the area.

7. Undermining Beliefs Based in Knowledge

In Section 5.3.1 of the DAR, and several other places in the document, the Golder/Fortune Study refers to Tłıchǵ harvesters' concern as "beliefs." This suggests that statements grounded in scientific knowledge are identified as ones of fact, while the statements grounded in traditional knowledge are identified as opinion or belief. Fortune does not state, but seems to imply, that Tłıchǵ citizens do not have the knowledge to back up their concerns.

Given the onus on the developer to show why parties and members of the public should not be concerned about potential significant adverse impacts from its proposed development under the Review Board's environmental assessment process, Fortune's responsibility is to be clear on what knowledge the Tłıchǵ citizens are basing their concern. Take for example the language used in the DAR: "Perceived problems with past mining projects..." among other concerns labelled as "perceived." Rayrock was not a "perceived problem;" the problems were (and continue to be) real for Tłıchǵ citizens and their government, with real biophysical impacts and real impacts on land alienation, faith in country food and water, and associated psycho-social impacts, among other factors. The developer's unwillingness, or inability, to recognize this fact of life in the Tłıchǵ region is troubling and speaks to the inability to properly incorporate Tłıchǵ knowledge or worldviews into the DAR.

Section 9.4.2.1 of the DAR includes the statement "Pre-development land use is considered to be wildlife habitat with infrequent transitory use by Aboriginal people for hunting and trapping/" This kind of inference is troubling to the Tłıchǵ Government. How was this conclusion determined, and what findings justify this statement? There is no information that this categorization was verified with the Tłıchǵ Government or citizens. Nor is there any respect for the much deeper time scale the Tłıchǵ citizens use when talking about a place. For the Tłıchǵ, "pre-development land use" for the area around and east of Hislop Lake and the Marian River is as a primary travel route, harvesting location (for almost all types of game), animal migration route, and human habitation and gathering place.

8. Lack of Reference to Ethnographic Studies in the Region

The Golder/Fortune TK Study does not include an appropriate literature review, which would have enhanced their cultural assessment. A review of all literature available for land use, resource knowledge and the Tłıchǫ cultural perspective is vital. There was no reference to Joan Ryan's work - done in Whati - on Tłıchǫ laws associated with resources and on traditional medicines (Ryan, 1995), or Tłıchǫ publications such as:

- Rayrock (Legat, Chocolate, Gon, Zoe, Chocolate, 2001);
- The caribou and law report (Saxon, Zoe, Chocolate, Legat, 2002);
- June Helm's substantive body of work (Helm 2000; Helm 1994; Helm 1972; Helm 1965; Helm and Gillespie, 1981; Helm and Lurie, 1966);
- Tom Andrew's dissertation on Tłıchǫ ethnohistory (Andrews, 2011);
- Allice Legat's dissertation (Legat, 2007 and subsequent book, Legat: 2012), or
- Other invaluable scholarly work (Legat, Chocolate, Chocolate, Williah, Zoe, 2001; Zoe, 2006; Zoe, 2005; Zoe, 2002).

Further, there are TK protocol precedents as far back as the 1950s, with June Helm and Joan Ryan, which were neither considered nor incorporated by the developer in its TLU/TK study.

9. Quality of Monitoring and Mitigation

Given the location of this mine, TK monitoring is vital – it is very close to critical caribou habitat, to vital trails such as the Įdaà Trail,³ and to an ancient village. On this issue of monitoring, Fortune states only that it is committed to “having discussions with hunters and trappers who approach Fortune with the belief that their hunting and trapping practices have been compromised by the NICO Project ...” (5.4.3 first bullet).

It is poor practice to monitor the environment only reactively though discussions with harvesters who first must approach the developer. Traditional monitoring is sophisticated, relying on in-depth observations. Furthermore, limiting TK monitoring to “discussions,” when Fortune considers hunters statements to be “beliefs” and not based on knowledge of the area, is the first step towards eliminating TK from the process and Tłıchǫ leaders and citizens from decision making. We note that the developer has committed in the Technical Sessions to more substantive engagement on this topic.

10. Lack of Incorporation of Traditional Knowledge of Caribou

In Sections 15.2.5 and 15.3, Fortune discusses land use and harvesting without putting it into a Tłıchǫ context or providing any substantive discussion on how land use has changed over time and continues to evolve. This is a disturbing knowledge and evidentiary gap, given the centrality of traditional harvesting to the Tłıchǫ mode of life and cultural survival.

There is a lack of information on woodland caribou whose habitat is in the boreal forest of the NWT. TK should be done to understand the Tłıchǫ use of woodland caribou more fully

³ <http://www.lessonsfromtheland.ca/idaahome.asp?lng=English>

and to gather TK - baseline information. This is important if the impact on woodland caribou is to be understood through TK monitoring.

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