

# The LOGBOOK of CSP<sup>2</sup>

The CENTER for SCIENCE in PUBLIC PARTICIPATION

*"Technical Support for Grassroots Public Interest Groups"*

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## SUBAQUEOUS DISPOSAL

Before passage of the Clean Water Act in 1972, mining companies frequently dumped their tailings in the nearest lake or river, often with catastrophic consequences for those water bodies, for fish, and for human health. In the United States, however, this outdated practice has been illegal for decades.

Why would industry be interested in this change? Disposal of acid generating mine tailings under water is the best way to prevent acid mine drainage, and it's much cheaper to do this in a natural water body than to construct an impoundment – approximately one-tenth the cost of a regular tailings dam. This technology, now called subaqueous disposal, is being promoted by mining regulators and industry professionals in the US and Canada.

### In the USA

In 2002 the Bush administration finalized a regulatory change, initiated at the assistant secretary level between the EPA and the Army Corps of Engineers, which allows mine tailings to be used as "fill" material. It allows the Corps to issue Clean Water Act permits to dump mine tailings directly into lakes, rivers, or the ocean – something that has not been allowed since the passage of the Clean Water Act in 1972. This change was done without explicit approval of Congress.

The first mine to receive a permit under this rule change is the Kensington mine, near Juneau, Alaska. Tailings would be dumped into Slate Lake, a natural lake with fish. The fish would not survive during mining, but mining company experts argue that fish habitat would actually be improved after mine closure.

### In Canada

Regulations prohibiting the dumping of mine waste into lakes and the ocean were very similar to those in the US. In 2002, regulators in Canada made a change to their regulations to allow lakes to

be used as sites for mine waste disposal. Similar to the situation in the US, this was a regulatory change to previous policy without explicit legislative authorization. There are now applications to use 11 lakes as waste disposal sites in Canada. If natural water bodies are open for mine waste disposal, then they will become the preferred disposal site because it would be economically advantageous to utilize these sites.



*Amazay Lake, British Columbia,  
a lake proposed for mine waste disposal*

### Present Situation

There is significant resistance in both the US and Canada to the regulatory changes that are allowing lakes to be used as waste disposal sites.

In Canada this resistance is being championed by First Nations who are trying to protect environmental and cultural values associated with the lakes proposed for mine waste disposal. (See the accompanying article in this newsletter on Kemess North/Amazay Lake for an example of one such struggle.)

In the US there is a legal challenge to the permit issued for use of Slate Lake as a waste disposal site by the Kensington mine in Alaska. This legal challenge, which was won by the public interest groups in the Ninth Cir-

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cuit Court of Appeals, was appealed by the mining company and is now before the US Supreme Court. Oral arguments on the case will be heard on January 12, 2009, with a decision expected in the spring.

It is not necessary to use natural water bodies for the disposal of mill process tailings and wastewater. Man-made structures can and have been successfully employed for this type of waste disposal, both financially and technically, for over 35 years.

Allowing mill waste disposal into natural lakes would mark a stark change in US Clean Water Act policy. Such disposal represents a significant threat to natural lake and river ecosystems because predictions regarding mitigation for these biological and ecological impacts are far from precise. Thus, the lone benefit of such a change in policy is in terms of mine project economics.

The situation of mine waste disposal in lakes in Canada demonstrates that mining companies will preferentially use lakes over man-made impoundments because of cost savings, and that it is the mill process waste with the most potential to contaminate water that will be preferentially placed in these lakes.

CSP2, along with a multitude of public interest groups, will be closely following the decision of the US Supreme Court on this issue. In the next issue of the Logbook we will give a more detailed explanation of the technical assessment of the risks involved with subaqueous waste disposal in natural water bodies, as well as an update on the ruling of the US Supreme Court on this issue.

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## KEMESS NORTH MINE EXPANSION

In September 2007, after more than 2 years in environmental assessment, an independent Joint Review Panel made a ground-breaking decision by recommending that the mine expansion project not be approved as proposed. The Panel stated: 'the economic and social benefits provided by the Project, on balance, are outweighed by the risks of significant adverse environmental, social and cultural effects, some of which may not emerge until many years after mining operations cease' and that 'in its present form (the Project) would not be in the public interest'.

The Panel established five sustainability criteria as the basis for their review:

- environmental stewardship;
- economic benefits and costs;
- social and cultural benefits and costs;
- fairness in distribution of benefits & costs; and
- present versus future generations



*Brown Bear tracks at Amazy Lake*

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The conclusion to prioritize long-term cultural, spiritual and environmental values over short term, marginal economic gain is unprecedented in an Environmental Assessment (EA) decision. This is a great step towards acknowledging the full cost of mining projects and their impacts on the environment and affected communities for hundreds, if not thousands of years.

Factors that played into the Joint Review Panel’s decision:

- The proponent, Northgate Minerals, proposed the expansion of their current operating copper-gold mine, Kemess South, by developing the Kemess North deposit. The expansion would add approximately 11 years to the mine life. This was recognized as short-term economic gain vs. long-term environmental and cultural destruction.

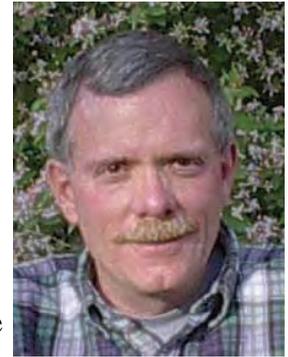
- Northgate proposed to dispose of the Kemess North tailings and waste rock into the 6 km long, fresh water, fish bearing, culturally significant Amazay Lake. The company firmly stated that this was the best and only option for environmental concerns (acid mine drainage) and economic feasibility. The destruction of Amazay Lake was vehemently opposed by local First Nations and outside supporters. The area is shared traditional territory of a number of First Nations, particularly the Tse Keh Nay, an alliance of the Takla Lake, Tsay Keh Dene and Kwadacha First Nations. The Panel gave great weight to the consistent, clear position from First Nations that destruction of Amazay Lake was unacceptable.

- The Kemess North project was reviewed by a federal and provincial Environmental Assessment Joint Review Panel, the highest level of EA review in Canada. However, the Tse Keh Nay felt they were forced to participate in this process ‘under protest’ because they were not consulted in the establishment of the panel, nor were there separate tables for government-to-government negotiations for Aboriginal rights and title issues, consultation and accommodation. BC is largely unceded First Nations territory where provincial and federal governments have a constitutional duty to consult and accommodate First Nations interests where resource developments occur.

The mining industry responded to the Panel’s recommendation by starting an extensive province wide campaign directed at all Mayors, First Na-

## FROM THE EXECUTIVE DIRECTOR

The main focus of this issue is on Subaqueous Disposal. My acronym for “Sub-Aqueous Disposal” is “SAD,” which is, in my estimation, a fitting term. It is sad that the mining industry feels that using our lakes for mine waste is an appropriate use of that precious resource. It is even more disturbing that our public servants in the regulatory agencies in both the US and Canada agree with the mining industry, and are willing to promote that agenda. In both the US and Canadian cases the regulatory changes that allow lakes to be used for mine waste disposal overturn decades of regulatory policy that have prohibited this practice, and have done so without any legislative changes that would justify this policy change – the regulators on both sides of the border just thought it would be an appropriate change.



Dave Chambers is the Executive Director of **CSP**

Living in the west where less government is good government, and where the legislature in my home state of Montana passed a law prohibiting regulatory agencies from doing anything more than what is explicitly stated by legislation (in order to minimize the amount of permit discretion by regulatory agencies), I have little doubt what politicians and local political pundits would be saying if regulatory agencies attempted to exercise their discretion in this way in favor of the environment instead in favor of the mining industry. Legislative action and industry lawsuits would quickly follow.

This is an important issue that will have impacts our children will have to live with if it is successfully implemented. More in the next issue of the Logbook.

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tions and government officials to discredit the panel’s process and decision. The Tse Keh Nay responded with an open letter to the Mining Industry, Premier and all of BC (<http://www.cstc.bc.ca/cstc>) asking for the decision to be upheld. The final decision from the Ministers of the Environment and Mines upheld the Panel decision, and Northgate Minerals withdrew their application for the project.

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