

Pan American Silver & Tahoe Resources try to operate violent, harmful mine in Guatemala, adding fuel to fire that forces 10s of 1000s of people to flee into exile, every year

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Pan American Silver poised to buy huge trouble with acquisition of Tahoe Resources' Escobal mine

By Ellen Moore [emoore@earthworksaction.org]

<https://earthworks.org/blog/pan-american-silver-poised-to-buy-huge-trouble-with-acquisition-of-escobal-mine/>

On November 15th Pan American Silver and Tahoe Resources announced a \$1.1 billion arrangement in which Pan American will buy out Tahoe Resources, including the highly controversial "Escobal" mine in southeastern Guatemala.

Misleading shareholders, investors and the public?

Escobal has been suspended since June 2017, when community members first established a permanent encampment to prevent mine traffic from reaching the site and second, when courts ordered the state to consult with Indigenous Xinka people.

Despite the ongoing suspension, and checkered history marked by community opposition, repression and conflict, the company's [joint statement](#) and [media coverage](#) focused on Escobal in such a way as to build shareholder confidence in the project's so-called "robust growth profile" once the consultation with the community is complete.

When asked about the troubled project, Pan American Silver CEO, Michael Steinmann told the [Financial Post](#), "I'm very confident that we can bring that mine back to running."

This statement, however, obscures considerable risks associated with this dangerous investment. Pan American shareholders should be wary of Mr. Steinmann's confidence given recent allegations by Xinka leaders of manipulation and illegalities on the part of Tahoe Resources, and the company's pattern of poor disclosure.

Evidence of this are three [class-action lawsuits](#) that shareholders have filed in the US for material losses due to the company's failure to report its lack of social license and the presence of indigenous people.

[A fourth was filed last month in Canada](#), focused on [statements made by former Tahoe CEO, Ron Clayton](#), immediately following the filing of the lawsuit in May 2017 that resulted in the suspension of

the mine. Clayton minimizes the legal action and fails to mention that Minera San Rafael (MSR), Tahoe's wholly owned subsidiary, is named as a co-plaintiff in the suit. This initial mischaracterization foretells an ongoing problem for Tahoe, which Pan American is poised to inherit.

This blog documents gaps and misinformation in company reporting since September 3rd when the Guatemalan [Constitutional Court issued its final ruling](#) on the process of consultation with affected Xinka Indigenous people, ordering the mine to remain closed while it takes place.

Tahoe reports on Stage 1 of the consultation process before Xinka co-plaintiffs are even notified

On November 6th, 2018, Tahoe issued its [third quarter report to shareholders](#), detailing early advances in the consultation process. CEO James Voorhees stated, "We are encouraged that Stage 1 of the four-stage ILO 169 consultation process is well advanced. The relevant entities have agreed on the area of influence, which is the same as the original EIS [Environmental Impact Statement] boundary. The proposed boundary has been submitted to MARN [Ministry of Environment and Natural Resources] for their approval, which is expected soon. Once finalized, Stage 2 of the consultation process can commence."

Definition of the area of influence will determine which communities will be included in the consultation process, defined by the courts as the 'area of affected rights'.

If this had been finalized at the time of Tahoe's third quarter statement, then the Xinka Parliament should have already been notified as a co-plaintiff, along with MSR, in the lawsuit that rendered the silver mine suspended. But the Xinka Parliament was not notified that the new area of influence had been decided on and submitted to MARN until more than a week later, on November 14th.

Backing up the company's assertion about the process and adding to the confusion, on November 15th, [local media](#) reported that the [Ministry of Energy and Mines](#) had issued a statement signaling the start of the second stage of the consultation process.

Once notified, legal counsel for the Xinka Parliament immediately filed a complaint, arguing that Xinka people were being denied participation at the very outset of the consultation process in violation of the Constitutional Court ruling and international human rights law.

As of November 21st, Supreme Court resolution confirms that Stage 1 had not yet begun

In a separate legal action filed in early November, the Xinka Parliament requested the Supreme Court issue a due diligence measure to ensure they would be notified of the start of the consultation process and ensured full participation. In response, the [Court issued a resolution on November 21st](#) confirming that the enforcement order to initiate the consultation process is still pending and so has yet to begin. As a result, it is impossible that Stage 1 is 'well advanced', as Voorhees suggested on November 6th.

In light of this, the Xinka Parliament believes that MARN and the Ministry of Energy and Mines (MEM) acted illegally and that their decision on the area of influence is void. Why or how Tahoe had privileged information more than a week before the Xinka Parliament was notified is an open question that deserves an answer.

Xinka Parliament complains of Tahoe's misinformation campaign

Amidst the confusion in Guatemala over the area of influence and timing of the consultation process, Xinka leaders held a [press conference on November 19th](#) in front of the Supreme Court to express their

growing discontent with the company and Guatemalan authorities over alleged illegalities and misinformation regarding the consultation process.

In their [statement](#), Xinka leaders called the consultation process ‘a mockery’ for excluding their participation. The statement also referred to a misinformation campaign being led by MSR, which leaders say is designed to confuse the population and reduce the consultation process to a mere formality rather than a good-faith effort to determine the future viability of the mine (read the [full English translation of the statement here](#)). They provided further evidence to support their concerns in a brief filed the same day with the Supreme Court.

Their brief contends that MSR disobeyed the court-ordered suspension and international human rights law concerning consultation with Indigenous peoples by continuing activities related to powering the mine, as well as by carrying out an aggressive public and community relations campaign. The Parliament underscored the importance of consultation being free and without pressure, coercion or manipulation by the company. In the best of circumstances, this is extremely difficult to achieve given the imbalance of power and extraordinarily asymmetrical economic resources available to the company to publicize information and mobilize personnel.

In their brief, the Xinka Parliament also provided examples of the types of coercive and manipulative communication they believe undermines the ‘free’ character of the consultation process. They cite how MSR spokesperson, Andrés Dávila, declared in a November 15th radio interview that the company has “achieved important agreements with communities and important actors in the area...”, and that parallel processes of community relations are underway. Such parallel efforts outside of the consultation process undermine the decision making role of legitimate and representative Xinka authorities (the Xinka Parliament also denounced this in greater detail in their [October 2018 statement](#)). Statements of this nature have also been [repeated by Tahoe Resources’ management](#).

Additionally, the brief describes the uninvited visit on October 12th by MSR’s Sustainability Director, John Serna, to the ongoing peaceful encampment outside of the town of Casillas to promote the company’s campaign, “Démosle vuelta a la tortilla!” or “Let’s flip the tortilla!”. The campaign appears to be part of company attempts to convince people to forget the past, including their experiences of criminalization, intimidation and militarization of their communities, to start fresh and focus on the economic benefits of mining.

The Xinka Parliament concluded calling on the Supreme Court to order MSR to halt its PR campaign and activities in communities surrounding the mine, including the distribution of donations. They also urged the Court to commence corresponding legal action against the company for failure to respect the ruling.

Escobal remains a high risk, dangerous investment

For nearly a decade, communities in Santa Rosa and Jalapa have opposed mining in their territory at tremendous risk to their safety, overall well-being and livelihoods. They have suffered painful repression, violence and human rights abuses. One such incident is the focus of a [civil lawsuit moving ahead in Vancouver, Canada](#) against Tahoe for negligence and battery over an attack by private security against peaceful protestors outside the mine in 2014. A recent [report from Protection International](#) found that tension related to the project continues, as well as an escalation of attacks, intimidation and defamation campaigns against people protesting Tahoe’s operations since the mine’s suspension. But communities have not given up. By undermining and downplaying the power of their

conviction, Tahoe Resources – already subject of shareholder lawsuits -, and now Pan American Silver, are making a critical mistake.

Communities in southeastern Guatemala have been very clear in repeatedly stating that the costs of the Escobal mine outweigh the benefits. Perhaps one of the strongest indications of this is the refusal of five mayors in surrounding municipalities to receive voluntary royalty payments from the mine out of respect for their constituencies' decision. Now, despite the company's pleas to 'start over' and promises of good faith, Tahoe continues to manipulate information and exclude legitimate community voices, including the tens of thousands of people who have risked their lives and livelihoods to defend their water, land and dignity. Pan American shareholders should think twice about heading down the same path.

More information

- Ellen Moore, emoore@earthworksaction.org, 202-887-1872x128, FB: [earthworksaction](https://www.facebook.com/earthworksaction), TW: [@earthworks](https://twitter.com/earthworks), W: earthworks.org
- Tahoe Resources lawsuit in Canada, holding Tahoe accountable for shooting of community members peacefully protesting mining violence, harms and corruption. Contact lawyer Matt Eisenbrandt: meisenbrandt@gmail.com
- Rights Action has, since 2012, funded community/ environmental/ human rights defense struggles of communities harmed by Tahoe Resources' / Pan American Silver's mine: info@rightsaction.org

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- Contact your MP: <https://www.ourcommons.ca/Parliamentarians/en/members>
- Minister Chrystia Freeland, Ministry of Foreign Affairs, 613-992-5234, 1-343-203-1851, chrystia.freeland@parl.gc.ca, chrystia.freeland.c1d@parl.gc.ca, chrystia.freeland@international.gc.ca
- Canadian Ambassador to Guatemala, Deborah Chatsis, 502 2363-4348, gtmla@international.gc.ca

Rights Action December 2018 newsletter

“Refugee-producing countries: Honduras & Guatemala; Refugee-producing ‘international community’”, by Grahame Russell, Rights Action

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