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October 1, 2016

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Submitted by email: rule-comments@sec.gov

Dear Sir:

Subject: File Number S7-06-16

I realize that we are out of time for this submission on Regulation S-K. However, as we provide a concrete example of disclosure related to community conflict and human rights concerns, we feel that this submission may assist in your consideration of the issues raised in questions 216 and 221 of your concept release.

The Justice and Corporate Accountability Project (justice-project.org) submits this material on behalf of the Network in Solidarity with the People of Guatemala (<http://nisgua.org/>).

On August 8, 2016, we sent a report to the SEC providing information about Tahoe Resources relating to Tahoe's failure to disclose conflicts and human rights issues relating to its Escobal mine in Guatemala. The report is attached for your convenience.

Tahoe is a precious metal extraction company headquartered in Reno, Nevada, but incorporated in British Columbia, Canada. It is traded on the Toronto and New York stock exchanges (TSX:THO/NYSE:TAHO). It has operated the Escobal mine in Guatemala since June 2010.

216. Are there specific sustainability or public policy issues are important to informed voting and investment decisions?

(i) Investors require disclosure of human rights issues

We believe that investors require accurate disclosures on human rights issues. In the Tahoe case, the \$850 billion Norwegian Government Pension Fund divested in January 2015 based on discrepancies between information disclosed by Tahoe and the information reported by the United Nations High Commissioner on Human Rights and Amnesty International. The Norwegian Council on Ethics, which advised the Fund, engaged with Tahoe and concluded that, “[Tahoe’s] replies to the Council make it difficult for the Council to conclude that the company’s systems and strategies are suited to reveal, prevent and compensate for human rights violations connected to the operation.”¹ The letter to the SEC outlines a number of areas where the Council was not satisfied with Tahoe’s official disclosures. See pages 20-27 of the attached submission.

The Canada Pension Plan Investment Board also divested in 2015 for unknown reasons.

These example show that there are serious investors that require disclosures on human rights issues.

(ii) Disclosure should be required in situations where there is a requirement for free, prior, informed consent by Indigenous people

Free, prior, informed consent of Indigenous peoples is an important component for project success. This standard has been adopted by a number of bodies including the International Council on Mining and Metals², the International Financial Corporation³ and the Equator Principles. Tahoe has indirectly adopted the consent standard through its commitment to the Equator Principles. The Equator Principles has a membership of 84 financial institutions from 35 countries, including Bank of America, JP Morgan Chase Bank and Wells Fargo Bank. Members

¹ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 167, online: <<https://perma.cc/54TQ-QEUP>>.

² “Indigenous Peoples and Mining Position Statement” (May, 2013) online: <http://www.icmm.com/en-gb/members/member-commitments/position-statements/indigenous-peoples-and-mining-position-statement>

³ See Performance Standard 7 (2012) points 13-17. online: http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES

will not provide funding for projects unless there is Indigenous consent, as described in the International Finance Corporation Performance Standard 7.⁴

Tahoe has not disclosed the opposition of Indigenous communities in areas in which Tahoe wishes to expand. The Xinca and Xinca Parliament have consistently opposed mining in its area, and blame Tahoe for the murder of one of its leaders. The Norwegian Council on Ethics, which investigated Tahoe's human rights problems, notes that the Xinca and Xinca Parliament "oppose the mining operation and demand that they be consulted before licences are granted in the areas in which they live."⁵

However, Tahoe stated that "in 2015, [wholly-owned subsidiary Minera San Rafael] engaged with indigenous communities in Guatemala that expressed an interest in the Escobal mine and during the year, more than 130 indigenous community members visited the Escobal Mine" and "indigenous peoples have participated in our Guatemalan avocado and coffee rust prevention programs and received donations of agricultural supplies and musical instruments."⁶ These meetings with individuals and the distribution of musical instruments do not amount to free, prior, and informed consent. See pages 14-17 of the attached submission.

A reader of Tahoe's filings would be misled into thinking that the Indigenous communities supported Tahoe's activities. We recommend that companies be required to disclose situations where Indigenous consultation and consent is required.

221. What, if any, challenges would registrants face in preparing and providing this information?

We cannot see a situation where registrants would suffer an extra burden for reporting on human rights issues. Any company operating in any context should be aware of the surrounding social context, and if they are not, then perhaps there is a good argument for requiring companies to report on social issues. In the case of Tahoe, for example, there would have been no challenge at all. Tahoe knew information about the human rights situation and disclosed some of the information and hid other information, resulting in misleading disclosures. See pages 17-18 for Tahoe's undisclosed law suits, some of which involved trying to stop local communities from holding a plebiscite on mining.

⁴ Equator Principles III (June 2013), Principle 7, online: <http://www.equator-principles.com/resources/equator_principles_III.pdf>.

⁵ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 172, online: <<https://perma.cc/54TQ-QEUP>>.

⁶ Tahoe Resources Inc., *2015 Annual Information Form*, 2015 (March 9, 2016), at 24.

We do not know the results of the pending SEC investigation, and whether they would find that Tahoe Resources failed to disclose material information in relation to the opposition to expansion. If the SEC comes to the conclusion that the existing rules have not been breached, it may indicate that there is a gap that needs to be filled by requiring clearer social context and human rights disclosure.

Thank you for your consideration. Please feel free to contact me should you require further information.

Yours truly,

A handwritten signature in black ink, appearing to read 'Shin Imai', with a stylized flourish at the end.

Shin Imai

Barrister and Solicitor

Justice and Corporate Accountability Project

A solid black rectangular redaction box covering contact information.



Request to Investigate Tahoe Resources for Failure to Disclose Material Information

August 8, 2016

Filed by:
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[REDACTED]

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I. Request for investigation

The following is a request to investigate Tahoe Resources Inc. (“Tahoe”).

1. Does Tahoe meet the requirements of a “foreign private issuer”
2. Has Tahoe failed to disclose material information, including
 - a. the extent of community opposition and political instability that could ultimately lead to an inability to expand;
 - b. litigation that is not “ordinary routine litigation incidental to the business”, namely lawsuits by Tahoe’s subsidiary in Guatemala, Mineral San Rafael (MSR) against the President of Guatemala and other government entities to provide MSR with more protection from protesters; and litigation to stop or invalidate community plebiscites on whether to accept or reject mining
 - c. key information relating to human rights violations.
3. Does the failure to disclose the above information give rise to personal liability, pursuant to Exchange Act Rule 10b-5.

Tahoe is a precious metal extraction company incorporated in British Columbia, Canada and headquartered in Reno, Nevada. It is traded on the Toronto and New York stock exchanges (TSX:THO/NYSE:TAHO). It has operated a mine in Guatemala since June 2010. In April 2015, it merged with Rio Alto Mining, which has an operating mine in Peru, and in February 2016, Tahoe announced a business combination with Lake Shore Gold Corp., which operates two mines in Ontario, Canada.

This request to investigate relates to Tahoe’s ongoing operation and expansion of the Escobal mine (“El Escobal”) in Guatemala.

The bulk of the information presented in this report relates to Tahoe’s failure to disclose. We raise issues related to jurisdiction, foreign private issuer status and personal liability for further investigation by the SEC.

II. The Informants

The Justice and Corporate Accountability Project (“JCAP”) is a legal clinic that is located at Osgoode Hall Law School in Toronto, Canada. JCAP provides legal support and advice to

communities in Latin American that are negatively affected by the Canadian extractive industry—and files this submission on behalf of the Network in Solidarity with Guatemala (“NISGUA”) and the Catholic Church Committee for the Defense of Nature (“CODIDENA”).

A. NISGUA

NISGUA (Network in Solidarity with Guatemala) was formed in 1981 and works to build understanding of the challenges facing Guatemalan people by strengthening people-to-people ties across borders. NISGUA is one of the many organizations worldwide using international accompaniment as a strategy to protect human rights. NISGUA provides accompaniment to individuals and organizations under threat that have requested an international presence as a security measure to dissuade attacks and create a safer space for them to carry out their human rights work. More information may be found on NISGUA’s website at <http://niscua.org/>.

B. CODIDENA

CODIDENA (Consejo Diocesano en Defensa de la Naturaleza, or the Diocesan Committee in Defense of Nature) is a group of community organizers in Guatemala that assists in educating surrounding communities on the effects of mining projects, organizing community consultations, and supporting human rights defenders in their efforts to express concerns about Tahoe’s operations. CODIDENA is active in the departments of Santa Rosa and Jalapa where communities are organizing to defend their land and water against mining. CODIDENA has its roots in Catholic social justice teaching and was formed in 2010 as a commission within the Diocese of Santa Rosa as a result of parishioners’ demands that the Church take a stand on mining.

III. Jurisdiction of the Securities and Exchange Commission to investigate

A. Tahoe’s status as a “foreign private issuer” should be reviewed

Tahoe currently holds foreign private issuer status with the SEC. It is incorporated in the province of British Columbia and states in its filings that it is a Canadian company, with the British Columbia Securities Commission as its principal regulator. In light of Tahoe’s own disclosures about its status as a foreign private issuer, we ask that Tahoe’s status be investigated.

In its 2015 Short Form Prospectus, Tahoe disclosed that its status as a foreign private issuer may be on weak ground. This disclosure arose out of Goldcorp Inc.’s (“Goldcorp”) decision to sell its 40% share in Tahoe. As part of this process, Tahoe identified the followings risks for prospective purchasers:

We may in the future lose our foreign private issuer status if a majority of our shares are held in the United States and we fail to meet the additional requirements necessary to avoid loss of foreign private issuer status, such as if: (1) a majority of our directors or executive officers are U.S. citizens or residents; (2) a majority of our assets are located in the United States; or (3) our business is administered principally in the United States. At the present time, a majority of our directors are in the United States and our business is administered principally from Nevada.¹

The above description is further supported by a 2015 affidavit sworn by Donald Paul Gray, Vice-president of Operations for Tahoe, in which Mr. Gray states that the company has no business address, no officers, and no employees in British Columbia. All twenty-six employees are in the United States, as are the majority of the Board of Directors.² This affidavit was prepared for litigation in Canada, in which Tahoe challenged the jurisdiction of the court to hear an action alleging that Tahoe's security forces shot unarmed protestors in Guatemala. The residence and citizenship of the Board of Directors may have changed after the business combination with Lakeshore Gold of Canada in 2016.

Tahoe enjoys financial and regulatory advantages by being incorporated in Canada, as it disclosed in its 2015 Prospectus:

The regulatory and compliance costs to us under U.S. securities laws as a U.S. domestic issuer will be significantly more than the costs incurred as a Canadian foreign private issuer. If we are not a foreign private issuer, we would not be eligible to use foreign issuer forms and would be required to file periodic and current reports and registration statements on U.S. domestic issuer forms with the SEC, which are generally more detailed and extensive than the forms available to a foreign private issuer. In addition, we may lose our ability to rely upon exemptions from certain corporate governance requirements on U.S. stock exchanges that are available to foreign private issuers.³

It may be that Tahoe should no longer enjoy the status of a foreign private issuer and should be held to account to the more rigorous standards provided for in the United States legislation.

B. The SEC has the jurisdiction to assess standards of disclosure

In the alternative, if Tahoe's current status is found to be correct, the SEC has the jurisdiction to assess whether Tahoe has met Canadian disclosure requirements independently of a Canadian investigation, as the SEC did in its exchange of correspondence with Tahoe in 2013.⁴

¹ Tahoe Resources Inc., *Short Form Prospectus* (June 23, 2015) at 27.

² Affidavit of Donald Paul Gray, November 24, 2014, filed in the matter of *Garcia v. Tahoe Resources*, Supreme Court of British Columbia, No. S-144726, para 6-9, online: <<https://perma.cc/EX9Y-HVFM>>.

³ Tahoe Resources Inc., *Short Form Prospectus* (June 23, 2015) at 27.

⁴ See exchange of letters between August 28, 2013 and November 25, 2013: Letter to Mr. Mark T. Sadler Chief Financial Officer Tahoe Resources Inc., August 28, 2013, online: <<https://perma.cc/XHM7-NT98>>; Letter to Mr. Mark T. Sadler Chief Financial Officer Tahoe Resources Inc., October 15, 2013, online:

We are submitting a parallel investigation request to the British Columbia Securities Commission. Should the SEC determine that Tahoe meets the requirements of a foreign private issuer, we submit that Tahoe's conduct nonetheless warrants a separate investigation by the SEC based on the above source of jurisdiction.

IV. The expansion of the Escobal mine is a key part of Tahoe's business plan, but has Tahoe materially misstated the facts about the extent of community opposition to the Escobal mine, and has Tahoe omitted to state material facts necessary for investors accurately to judge the risk that this opposition poses to the expansion of the Escobal mine?

We show below that the Escobal mine is the most important asset for Tahoe and that expansion of the Escobal mine is a key part of its business plan. Consequently, information that indicates that expansion of the mine may be in jeopardy is material information.

Tahoe's ability to fulfill its Escobal expansion plans is at risk for four main reasons:

- i. Tahoe plans to expand into municipalities where the citizens, in officially-sanctioned plebiscites, have voted overwhelming to reject mining.
- ii. protests against mining in some municipalities have been so severe that Tahoe has been prevented from connecting to the country's main power grid and Tahoe's wholly-owned subsidiary, Minera San Rafael, filed a law suit against the President of Guatemala asking for more protection
- iii. Tahoe will be expanding into areas where the consent of Indigenous people will be required; and
- iv. Tahoe appears to have lost three of its exploration concessions.

A. El Escobal is a significant Tahoe asset and expansion is key to Tahoe's business plan and strategy

El Escobal is a central part of Tahoe's operations and any impact to that project would have a significant impact on the company. El Escobal is located in San Rafael Las Flores in the Department of Santa Rosa, Guatemala. Tahoe acquired the mine from Goldcorp in June 2010. Tahoe owns 100 percent of the project through its wholly owned subsidiary, Minera San Rafael ("MSR"). In April 2015, Tahoe merged with Rio Alto Mining Limited, and

<<https://perma.cc/3QAV-Z8MH>>; Letter to Mr. Mark T. Sadler Chief Financial Officer Tahoe Resources Inc., November 25, 2013, online: <<https://perma.cc/9789-DC23>>.

acquired two mines in Peru.⁵ In February 2016, Tahoe acquired all issued and outstanding shares in Lake Shore Gold Corp., a Canadian company with mines in Ontario, Canada.

El Escobal continues to be Tahoe's main asset. In a news release on April 4, 2016, Tahoe stated,

Tahoe's asset base is anchored by the large-scale, high-grade Escobal silver mine in Guatemala and also includes low-cost, growing gold operations in Peru and the Timmins Gold Camp in Northern Ontario.⁶

Consequently, any impact on El Escobal will have a significant impact on Tahoe's operations as a whole.

Commercial production of El Escobal commenced in 2014. Tahoe stated in its 2014 Annual Information Form ("AIF") that, "[o]ur principal objectives at this time are to optimize Escobal operations and to continue expanding the Mineral Resource and Mineral Reserve base through exploration and development of the Escobal vein and other veins identified in the region."⁷ They further state that "[as] part of this process, we will undertake early-stage exploration activities to ensure an orderly and steady development of exploration targets."⁸ In an interview on television with the Business News Network ("BNN") in February 9, 2015, Kevin McArthur, Tahoe's CEO, reiterated his plan to expand in Guatemala.⁹

Accordingly, the expansion of El Escobal remains a crucial element of Tahoe's ongoing business plan and strategy.

The map below (Figure 1) is found in Tahoe's 2015 AIF.¹⁰ It shows that in 2015, the approved licences included the Escobal exploitation concession (in red) and, four exploration concessions - Oasis, Juan Bosco, Lucero and Andres (in green). As explained in further detail below, it is unclear how many of these licences are actually approved, as Tahoe may have recently lost three of these exploration licences. It appears that Tahoe did not disclose the loss of the three exploration licences, but rather merely began reporting in the text that it had only two licences – the Escobal exploitation licence and the Juan Bosco exploration licence – while showing on its map that it continued to have four exploration concessions plus the Escobal exploitation concession.

⁵ See "History" on the corporate website: "History", (2016), online: *Tahoe Resources Inc.* <<https://perma.cc/8UPB-V7TV>>; for ease of reference, we refer to the corporate entity, Tahoe, throughout the majority of this letter. However, these references are intended to incorporate all acts and omissions of MSR.

⁶ Tahoe Resources Inc., *Tahoe Resources Creates New Leader in Precious Metals Sector; Provides Combines 2016 Guidance* (April 4, 2016), online: <<https://perma.cc/6PCP-VDUK>>.

⁷ Tahoe Resources Inc., *2014 Annual Information Form*, (March 11, 2015), at 12.

⁸ Tahoe Resources Inc., *2014 Annual Information Form*, (March 11, 2015), at 12.

⁹ Business News Network (BNN), "Tahoe CEO: Sure I love silver but I'm making \$1B bet on gold", (Feb 9, 2015), online: <http://www.bnn.ca/video/tahoe-ceo-sure-i-love-silver-but-i-m-making-a-1b-bet-on-gold~547549>.

¹⁰ Tahoe Resources Inc., *2015 Annual Information Form*, 2015 (March 9, 2016), at 27.

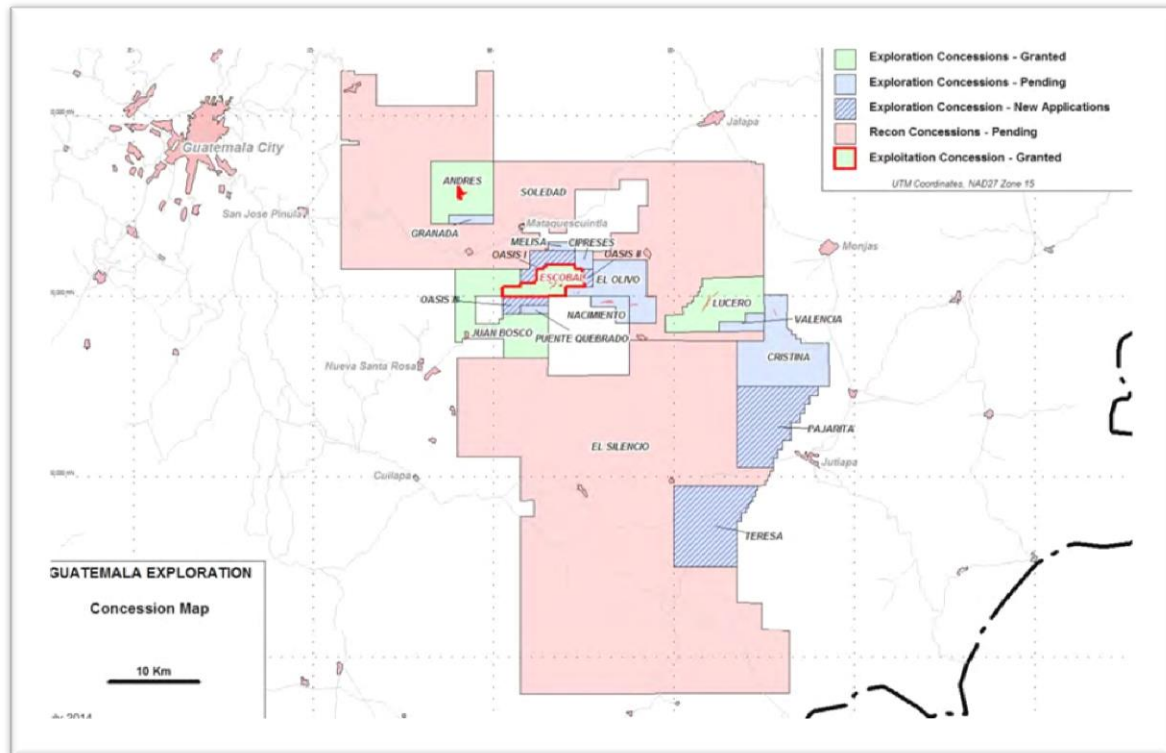


Figure 1 Map of Concessions

In addition, the map demonstrates that Tahoe has a number of other applications pending. According to the Council of Ethics for the Norwegian Government Pension Fund Global (the “Norwegian Fund”):

The company [has] applied for other licenses totalling approximately 2,500 km² in the region. Of these, the company has thus far been awarded just under 130 km². The licences the company has applied for are spread across three departments (Santa Rosa, Jalapa and Jutiapa), and encompass 10 cities and up to 50 towns.¹¹

Given that the expansion of El Escobal is central to Tahoe’s operations as a whole, information that threatens the expansion should be disclosed.

B. Failure to disclose material information that may put future expansion in jeopardy

Tahoe’s disclosure regarding local opposition to El Escobal is at best boilerplate and is buried in generalities that apply to both Guatemala and Peru:

¹¹ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 171, online: <<https://perma.cc/54TQ-QEUP>>.

Local opposition to mine development projects occurs in Guatemala and Peru, and such opposition in the past has at times been violent. Roadblocks by members of local communities, unemployed people and unions can occur on local, national and provincial routes. Renewed political unrest or a political crisis in Guatemala or Peru could adversely affect the Company's business and results of operations. Such adverse effects could result from the efforts of third parties to manipulate local populations into encroaching on the Company's land, challenging the boundaries of such land, impeding access to the Company's properties through roadblocks or other public protests or attacks against our assets or personnel.¹²

Below are four examples of more specific material information within the knowledge of Tahoe that could have been disclosed by the company.

- i. Tahoe plans to expand into municipalities where the citizens, in officially-sanctioned plebiscites, have voted overwhelming to reject mining.***

In the map below (Figure 2), we have superimposed the boundaries of the municipalities on Tahoe's map of concessions reproduced above. Both the granted exploration licences (identified in green) and the pending licences (identified in pink) are found in the municipalities of Mataquescuintla, Jalapa, San Carlos Alzatate, Santa Rosa de Lima, Nueva Santa Rosa, and Casillas.

¹² Tahoe Resources Inc., *Management's Discussion and Analysis For the three and nine months ended September 30, 2015 and 2014*, (November 12, 2015), at 22-23. This is exactly the same as the description in Tahoe Resources Inc., *Management Discussion and Analysis For the three months ended March 31, 2016 and 2015*, (May 3, 2016), at 17.

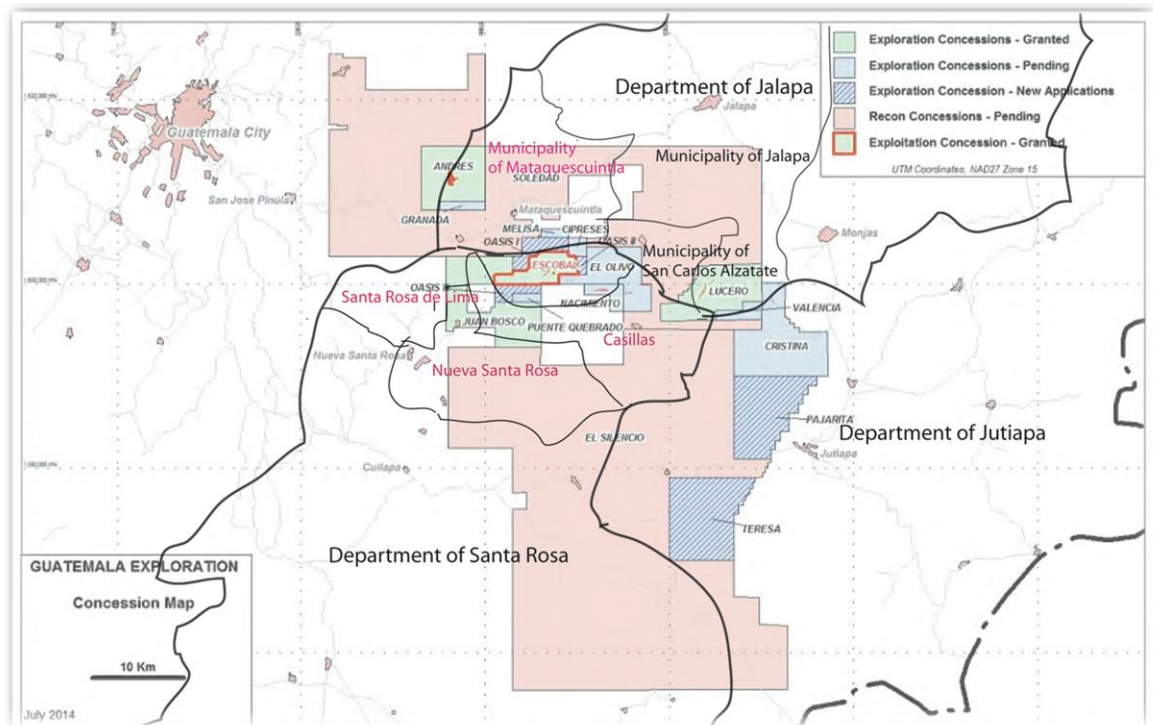


Figure 2 Municipal boundaries superimposed on map of concessions

Five of these municipalities have held official municipally sanctioned plebiscites relating to the mine, in which eligible voters participated. The majority of voters in all five plebiscites voted against allowing mining operations in their communities. The results have been published in the official registry for government announcements, the *Diario de Centro América*.¹³ Two other plebiscites in municipalities outside of the immediate area of the pending concessions have also resulted in votes against the mine.¹⁴ Tahoe and its supporters brought at least four court cases to try to stop and invalidate these official votes, but the Constitutional Court of Guatemala has supported the legislation, which allows communities to hold plebiscites.¹⁵ Tahoe has disclosed none of these court cases, nor has the significance of these plebiscites on Tahoe's expansion plans.

¹³ The five municipalities are Nueva Santa Rosa, Santa Rosa de Lima, Casillas, Mataquecuintla and Jalapa. Copies of four of the official announcements are available at *Diario de Centro América*, archived online: <<https://justice-project.org/legal-support/consultas/>>. We are not in possession of copies of the government announcements for Jalapa.

¹⁴ See the description of the consultas in Tecuaco and Quesada in the Appendix.

¹⁵ Court cases were brought in Santa Rosa de Lima by the Chamber of Commerce (case No. 2432-2011 and 2481-2011, December 5, 2012); Mataquecuintla by lawyer Marco Perez Ubieto (case No. 4639-2012 and 4646-2012, December 13, 2013); Casillas by Minera San Rafael (case No. 4672-2011, February 13, 2014). The cases, which are all in Spanish, can be found in the website of the Constitutional Court – Corte de Constitucionalidad by putting in the case number under the option entitled "Búsqueda por Número de Expediente," online: <<http://www.sistemas.cc.gob.gt/Sjc/>>. We have not been able to locate the court case dealing with a fourth plebiscite in San Juan Tecuaco.

The Appendix sets out a more detailed explanation of the votes that have taken place in each of Tahoe's existing or pending concessions. More information on the litigation is found in Part VI, below.

Tahoe claims that it has community support. In an interview with the Canadian television show on the Business News Network in January 2015, Kevin McArthur said, "the communities love us".¹⁶ In December 2015, in a posting on the Business and Human Rights Resource Centre website, Tahoe argued that community plebiscites were unreliable. More reliable, according to Tahoe, was the fact that "7 of 9 municipalities in and around the mine signed royalty agreements with MSR".¹⁷ Although the December 15, 2015 document does not name the municipalities, a footnote cites an article in a Guatemalan newspaper from August 2014 – over a year earlier – that says that six municipal mayors have accepted royalty cheques from Tahoe. The mayors are from San Rafael Las Flores, Cuilpa, Barberena, Santa Cruz Naranjo, Santa Rosa de Lima and Casillas.

Tahoe's December 15, 2015 posting is misleading for two reasons. First, the posting does not mention that in elections held four months earlier, in September 2015, three municipalities had renounced the royalties that were signed by previous mayors. These are the municipalities of Santa Rosa de Lima, Casillas and San Carlos Alzatate. In the same elections, a pro-referendum candidate defeated the mayor of San Rafael Las Flores who had refused to permit a referendum on mining.¹⁸

Second, Tahoe claims that seven of the nine municipalities support the mine. We do not know which municipalities are referred to, since Tahoe does not name them. The maps below show the location of San Rafael Las Flores and the location of the six municipalities closest to the mine. The municipalities of Santa Rosa de Lima, Casillas and Nueva Santa Rosa, are in the Department of Santa Rosa (Figure 3). The Department of Jalapa to the north of the mine and the map below shows the three municipalities closest to the mine are Mataquescuintla, Jalapa and San Carlos Alzatate (Figure 4). Five of these municipalities closest to the mine have had plebiscites, which have resulted in a vote against mining in each municipality and we are informed that all six municipalities closest to the mine now have mayors who have rejected royalties from Tahoe.¹⁹ The map below shows that three of municipalities that are mentioned in the August 2014 article as receiving royalties are in the outer ring of municipalities around the mine: Cuilpa, Bargerena, and Santa Cruz Naranjo.

¹⁶ Business News Network (BNN), "Tahoe CEO: Sure I love silver but I'm making \$1B bet on gold", (Feb 9, 2015), online: <<https://perma.cc/4L9F-7HU4>>.

¹⁷ Tahoe Resource Inc., *Tahoe Resources Inc.'s Response to Recent Baseless and Irresponsible Accusations in "Tahoe on Trial,"* (December 22, 2015), online: <<https://perma.cc/3G7L-3BYE>>.

¹⁸ Prensa Libre, "Santa Rose Elige a 14 Jefes Ediles" (8 September, 2015), online: <<https://perma.cc/8U6F-92SH>>.

Prensa Libre, "Pobladores eligen a autoridades municipales de Jalapa" (9 September, 2015), online: <<https://perma.cc/8G2G-2NRY>>.

¹⁹ See Appendix 1 for detailed documentation on the plebiscites. See footnote 17 for the results of the elections in September.



Figure 3 Municipalities in Santa Rosa



Figure 4 Municipalities in Jalapa

In conclusion, Tahoe has not disclosed that both MSR and supporters of mining have brought lawsuits to prevent people from voting or invalidating the results of unfavourable results. Tahoe argued in December 2015, that the degree of community support should be determined by the numbers of mayors receiving royalties – Tahoe said that 7 out of 9 municipalities were accepting the royalty payments. Yet Tahoe had information that four months earlier, a series of elections in the region had resulted in the election of mayors who rejected the royalties. In short, Tahoe had information about its lack of support, but did not disclose it.

- ii. ***Protests against mining in some municipalities have been so severe that Tahoe has been prevented from connecting to the main power grid and Tahoe's wholly-owned subsidiary, Minera San Rafael, filed a secret law suit against the President of Guatemala asking for more protection***

Tahoe has consistently downplayed the degree of community opposition to the mine. It has described the opposition as being led by a small, unrepresentative group of individuals or by communities outside of the immediate area of the mine.

For example, in March 9, 2011, in the AIF for the year ending December 31, 2011, Tahoe describes protests as “small” with “very limited” participation by local community members, stating that they “have not had a material effect on operations, financial position, cash flow or results.”²⁰ The Preliminary Economic Assessment (“PEA”) of May 7, 2012, further states, “community support is very high.”²¹

²⁰ Tahoe Resources Inc., 2011 Annual Information Form (March 8, 2012) at 19-20.

²¹ Tahoe Resources Inc., NI 43-101 Preliminary Economic Assessment (Revision 0) (May 7, 2012), at 152.

However, at the time of the publication of the AIF and PEA, Tahoe was actually experiencing significant community opposition. In June 2012, only a month after the release of the PEA, Tahoe's wholly-owned subsidiary, MSR, secretly filed a lawsuit before the Constitutional Court of Guatemala complaining that community protests had "impeded its work", including the construction of an electrical transmission line through a road allowance in the neighbouring municipality of Mataquescuintla. The lawsuit named the President of the Republic of Guatemala, Ministry of the Interior, Ministry of National Defence, Director of the National Police, Commissioner of the National Police in Department of Jalapa, and the Commissioner of National Police in the Department of Santa Rosa. It accused them of failing in their duties to protect the mine.²²

The lawsuit outlined a series of protests against the mine in much greater detail than Tahoe disclosed to its shareholders. The Constitutional Court dismissed Tahoe's lawsuit on February 26, 2013. However, two months later, in April 2013, the police broke up a peaceful protest and arrested 26 protesters. This conduct attracted criticism from the United Nations High Commissioner on Human Rights ("OHCHR"), which stated in its 2014 annual report that:

OHCHR-Guatemala observed that protests by communities and social organizations against projects for the exploitation of natural resources frequently triggered criminal proceedings against protestors with charges such as terrorism and criminal conspiracy, which appear disproportionate to the gravity of the alleged offences. Several cases were dismissed by the judiciary due to the lack of evidence and the inability to prove individual responsibility. Examples include [...] the cases of 26 people detained in San Rafael las Flores, in April, on charges of "unlawful assembly" and attacks on public authorities, who were subsequently released due to lack of evidence.²³

On May 2, 2013, when protests did not subside, the then President, Otto Pérez Molina,²⁴ declared a state of siege and deployed 8,500 police in the municipalities of San Rafael Las

²² Corte de Constitucionalidad de Guatemala, Expediente 2728-2012, June 28, 2012.

²³ Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala* (13 January 2014), A/HRC/25/19/Add.1, at para. 47, online: <<http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/25/19/Add.1>>.

²⁴ President Otto Pérez Molina resigned as President in 2015, and was immediately jailed for corruption. The Minister of Energy who granted Tahoe's exploitation licence is also jailed for corruption; The Guardian, "Guatemalan president resigns after arrest warrant issued" (September 3, 2015), online: <<https://perma.cc/TY8Q-TDPZ>>; Sofia Menchu, "Guatemala brings corruption charges against five ex-ministers" Reuters (June 11, 2016) online: <<https://perma.cc/Z59C-CFJT>>; Azam Ahmed and Elisabeth Malkin "Otto Pérez Molina of Guatemala Is Jailed Hours After Resigning Presidency" New York Times (September 3, 2015) online: <http://www.nytimes.com/2015/09/04/world/americas/otto-perez-molina-guatemalan-president-resigns-amid-scandal.html?_r=0>; The Economist "Corruption in Guatemala: Bad apples everywhere" (June 11, 2016) online: <<https://perma.cc/C5NY-E9FG>>.

Flores (where the mine is located), and in the three surrounding municipalities that had voted against mining – Mataquescuintla, Casillas, and Jalapa.²⁵

The secret lawsuit was partly instigated by Tahoe's inability to construct a power line. In September 2011, Tahoe was granted authorization to build an electric power transmission line from the substation of San Rafael Las Flores, property of the National Institute of Electricity, to the substation at El Escobal. There is a high voltage electrical line of 69 kilovolts nearby, which has the potential to be upgraded to meet the power load requirements for the Escobal mine. According to the Feasibility Study released on November 5, 2014, connecting to this existing national grid to get power could potentially reduce the mine's operational costs by as much as 10%.²⁶ In order to access this line, Tahoe had to pass through the neighbouring municipality of Mataquescuintla.²⁷ However, due to ongoing and active opposition of Tahoe's mining activities, Tahoe had to abandon the power line project.²⁸

In conclusion, the fact that Tahoe sued the government for protection from community opposition, encountered so much protest that a state of siege was imposed, and continues to be precluded from constructing a key power line is indicative of the magnitude of the opposition to the existing mine and to future expansion. Tahoe's disclosures do not accurately portray the seriousness of community opposition in the areas in which Tahoe wishes to continue to explore and expand.

iii. Tahoe will be expanding into areas where the consent of Indigenous people will be required

The immediate area of the mine in the municipality of San Rafael Las Flores is predominantly non-indigenous. However, there is a Xinca Indigenous population in the surrounding municipalities where Tahoe wishes to expand. Tahoe's own Corporate Social Responsibility policies would require obtaining consent of the Xinca.

Tahoe states in its Form 40-F filed on March 11, 2014 that it was "not aware of any significant Indigenous population residing in the area of the Project."²⁹ In its Form 40-F filed on March 12, 2015, it modified its statements and no longer claims that there are no

²⁵ Prensa Libre, "Estado de Sitio en Santa Rosa y Jalapa deja 16 capturados" (May 3, 2013), online: <<http://perma.cc/UY95-U7C5>>; Associated Press, "Guatemalan mine dispute militarizes región" (June 1, 2013), online: <<https://perma.cc/GP2C-5Q4K>>.

²⁶ Tahoe Resources Inc., *NI 43-101 Feasibility Study* (November 5, 2014), at 217.

²⁷ Corte de Constitucionalidad de Guatemala, Expediente 3311-2012, January 9, 2013, at para. I, D.1, a.

²⁸ Tahoe Resources Inc., *2015 Annual Information Form* (March 9, 2016), at 19.

POWER LINE AT ESCOBAL

The Company installed contractor supplied diesel-fired generator power which is sufficient to operate the project in excess of the 4500 tpd design rate. The Company continues to assess alternative power strategies to reduce power costs.

²⁹ Tahoe Resources Inc., *Form 40-F EXHIBIT 99.1, Annual Information Form For the Year Ended December 31, 2013*, (March 11, 2014), at 21, online: <<https://perma.cc/8W3D-9VLJ>>.

Indigenous people residing in the area of the project. Instead, it states that, “there are no indigenous populations currently living in *the immediate area* of the Escobal mine site” (emphasis added).³⁰

An example of Tahoe’s disclosure about risks in relation to Indigenous peoples is found in the Prospectus issued on June 23, 2015.³¹ It states:

To the best of our knowledge, although indigenous people may have inhabited the area of the Escobal Mine site at one time, there are no indigenous populations currently living in the immediate area of the Escobal Mine site. According to Guatemala’s most recent census (National Institute of Statistics (Census 2002)) the population of San Rafael las Flores is 99.6% “Ladino”, meaning of Hispanic origin and non-indigenous. Nevertheless, law and movements respecting the acquisition of lands and other rights of indigenous communities may alter decades-old arrangements made by prior owners of the lands where the Escobal Mine is located. Our efforts to ensure all land-related agreements were entered into in accordance with applicable laws do not guarantee that future laws and actions will not have a material adverse effect on our operations at the Escobal Mine or on our financial position, cash flow and results of operations.³²

This is a misleading boilerplate clause that does not provide details within the knowledge of Tahoe.

First, it does not describe the implications of the fact that there are Indigenous people *outside* of the *immediate area* of the mine. According to a report presented to the United Nations High Commission for Human Rights, Tahoe has applied for exploration and exploitation licences in municipalities that form part of the Xinca people’s territory, including Jalapa, San Carlos Alzatate, Monjas, Mataquescuintla and Nueva Santa Rosa.³³

In 2013 and 2014, Tahoe adopted certain international standards to purportedly guide its practice. One standard adopted by Tahoe is the Equator Principles.³⁴ The Equator Principles were developed by world’s most prominent financial institutions to guide investments in situations where there are environmental and social risks. These principles

³⁰ Tahoe Resources Inc., *Form 40-F EXIBIT 99.1, Annual Information Form For the Year Ended December 31, 2014*, (March 12, 2015), at 25, online: <<https://perma.cc/WA7K-T9Y3>>.

³¹ Tahoe Resources Inc., *Short Form Prospectus* (June 23, 2015) at 21.

³² Tahoe Resources Inc., *Short Form Prospectus* (June 23, 2015) at 21.

³³ *Informe Preliminar: Violaciones a Derechos Humanos en Estados de Sitio en Jalapa y Santa Rosa*, Guatemala Mayo 2013, online: <https://issuu.com/cumbrecontinentalindigena/docs/informe_preliminar__violaciones_a_d>; This report titled “Preliminary Report: Human Rights Violations under the State of Siege in Jalapa and Santa Rosa” was prepared by social organizations of Guatemala (las Autoridades Comunes de los 48 Cantones de Totonicapán, el Consejo de Alcaldes Comunes, el Consejo de Autoridades Ancestrales Mayas, Garífuna y Xinca) and was presented to the United Nations High Commissioner for Human Rights in May 2013. It indicates that the Xinca territory includes Nueva Santa Rosa de Department of Santa Rosa, Jalapa and Mataquescuintla of Department of Jalapa, and San Carlos Alzatate and Monjas of Department of Jutiapa.

³⁴ Tahoe Resources Inc., *Form 40-F EXIBIT 99.1, Annual Information Form For the Year Ended December 31, 2014*, (March 12, 2015), at 14.

require that mining companies consult with Indigenous peoples and obtain the free, prior, informed consent of Indigenous people before commencing a project.³⁵ Consultation is a formal process that requires engagement with the governing bodies that represent Indigenous people.

Second, neither Tahoe nor the government of Guatemala have undertaken any formal consultation with the Xinca. The Environmental Impact Assessment for the Escobal mine site shows that the only meetings that occurred were within the core municipality of San Rafael Las Flores where the mine is currently located.³⁶ No meetings have been held in the surrounding municipalities. Tahoe stated that “in 2015, MSR engaged with indigenous communities in Guatemala that expressed an interest in the Escobal mine and during the year, more than 130 indigenous community members visited the Escobal Mine” and “indigenous peoples have participated in our Guatemalan avocado and coffee rust prevention programs and received donations of agricultural supplies and musical instruments.”³⁷ These meetings with individuals and the distribution of musical instruments do not meet the standard of consultation with a community required by International Labour Organization Convention 169,³⁸ a standard that Tahoe itself points out is an “informative-dialogue procedure.”³⁹ The Norwegian Council on Ethics, which investigated Tahoe’s human rights problems, notes that the Xinca and Xinca Parliament “oppose the mining operation and demand that they be consulted before licences are granted in the areas in which they live.”⁴⁰

Third, Tahoe gives no indication of the degree of opposition among the Xinca, and why consent by this group is highly unlikely. The Xinca were one of the community groups that released a joint statement in June 22, 2012, rejecting the government’s decision to grant MSR its exploration licences.⁴¹ In March 2013, four indigenous Xinca leaders, including the president of the Xinca Parliament, Roberto Gonzales, were abducted while returning from observing a community referendum in El Volcancito, in which more than 99 percent of people voted against El Escobal. One of those abducted, Exaltación Marcos Ucelo, was found dead the next day. When the Norwegian Council on Ethics requested information from Tahoe about the death, Tahoe indicated that it had a government report saying that

³⁵ Equator Principles III (June 2013), Principle 5, online: <http://www.equator-principles.com/resources/equator_principles_III.pdf>.

³⁶ Asesoría Manuel Basterrechea Asociados, *Estudio De Evaluación De Impacto Ambiental Proyecto Minero Escobal: San Rafael Las Flores, Santa Rosa*, (June 2011). See Part 10, where the public engagement is discussed.

³⁷ Tahoe Resources Inc., *2015 Annual Information Form*, 2015 (March 9, 2016), at 24.

³⁸ International Labour Organization, Convention No. 169 – Indigenous and Tribal Peoples Convention (July 27, 1989), online: <<https://perma.cc/T5M9-NC2X>>.

³⁹ Tahoe Resource Inc., *Tahoe Resources Inc.’s Response to Recent Baseless and Irresponsible Accusations in “Tahoe on Trial,”* (December 21, 2015), online: <<https://perma.cc/3G7L-3BYE>>.

⁴⁰ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 172, online: <<https://perma.cc/54TQ-QEUP>>.

⁴¹ Comunidades de Poblacion en Resistencia, “Rechazan Licencia Minera de Exploracion Juan Bosco”, June 22, 2012, online: <<https://perma.cc/8AAH-3QAB>>.

there was no kidnapping or murder. The Council asked for a copy of the proof, but it was never provided to the Council.⁴² Meanwhile, a report of the United Nations High Commissioner on Human Rights cites this death as an example of the murder of a human rights activist.⁴³

In conclusion, Tahoe's careful wording about the presence of Indigenous people, the lack of consultation with Indigenous people, and the failure to disclose the degree of opposition by Indigenous people, results in a disclosure that fails to be "not misleading".

iv. Tahoe appears to have lost three of its exploration licences

Tahoe, through MSR, holds one *exploitation* concession: El Escobal. However, it is not clear what *exploration* licences, if any, are held by MSR. For example, in the June 2012 undisclosed lawsuit against the government of Guatemala, MSR references threats by protesters to its Oasis and Juan Bosco licences. In its 2014 AIF, released on March 11, 2015, Tahoe states that it has requested renewal of three exploration licences – Oasis, Lucero and Andres.⁴⁴ The map in the 2015 AIF (Figure 1 above) shows four exploration licenses granted, but the text refers to only two licenses. Adding to the uncertainty, Tahoe's Q1 MD&A, dated April 2015, states that it has four approved licences, while its 2016 Q1 MD&A Tahoe reports on the Escobal exploitation licence and one other licence only.⁴⁵

The uncertainty regarding the state of Tahoe's exploration and exploitation licences in Guatemala, along with the company's seemingly contradictory disclosure regarding this issue, demonstrate the risks faced by Tahoe with respect to its development and expansion plans, and warrants investigation by the SEC.

V. Has there been a failure to disclose material litigation that is not "ordinary routine litigation incidental to the business"?

Item 103 requires disclosure of material litigation that is not "ordinary routine litigation incidental to the business", where the registrant or any of its subsidiaries is a party or where any of property of the registrant is involved. While Tahoe has disclosed some litigation in relation to the Escobal mine, it has not disclosed the litigation relating to the

⁴² Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 177 online: <<https://perma.cc/54TQ-QEUP>>.

⁴³ Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala* (13 January 2014), A/HRC/25/19/Add.1, at para. 45, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/101/61/PDF/G1410161.pdf?OpenElement>>.

⁴⁴ Tahoe Resources Inc., *2014 Annual Information Form*, (March 11, 2015), at 29.

⁴⁵ Tahoe Resources Inc., *Management's Discussion and Analysis for three months ended March 31, 2015 and 2014*, (April 28, 2015), at 9; Tahoe Resources Inc., *Management's Discussion and Analysis for three months ended March 31, 2016 and 2015*, (May 3, 2016), at 15.

plebiscites, nor the lawsuit against the President of Guatemala. The affidavit of Donald Paul Gray, Vice-president of Operations for Tahoe, submitted in the litigation brought by the Guatemalan farmers alleging that Tahoe security guards shot them, is also telling. Gray gives several examples of court cases involving MSR, including litigation on the environment. However, his affidavit does not disclose the cases to stop the plebiscites nor the suit against the President and government of Guatemala.⁴⁶ It is also significant that Tahoe did not disclose these cases to the Norwegian Council on Ethics during a detailed review of Tahoe's human rights record.⁴⁷

A. Lawsuit against the President and government of Guatemala asking for protection

The undisclosed lawsuit against the government of Guatemala is material because it described a series of protests that had prevented MSR from operating its mine. These threats to its operation were in stark contrast to the claims by Tahoe of a high level of community support.⁴⁸ The suit against the President of Guatemala, Ministry of the Interior, Ministry of National Defence, Director of the National Police, Commissioner of the National Police in Jalapa, and the Commissioner of National Police in Santa Rosa cannot reasonably be considered to be "ordinary routine legislation incidental to the business."

B. Lawsuits to stop or invalidate community plebiscites

The series of court cases brought to stop or invalidate the plebiscites on mining in the municipalities surrounding El Escobal are material because they either involve MSR directly as a party or they relate to municipalities where MSR has a granted or pending concession. They show the extent to which Tahoe and its allies feared the results of the votes and the extent to which they would thwart democratic rights to vote.

In Santa Rosa de Lima, a plebiscite was held on July 10, 2011 under the Guatemala Municipal Code. The results were published on July 18, 2011 as Acta E11-2011. There were 5,338 votes cast and 95.69% voted against mining in the area. The total population is around 17,000, but we do not have information on the number of registered voters. Guatemalan Chamber of Commerce brought a case challenging the plebiscite, but on December 5, 2012, the Constitutional Court dismissed the case noting that International Labour Organization Convention 169 provided for people to be consulted and that plebiscites are an important mechanism for a democratic regime.⁴⁹

⁴⁶ Affidavit of Donald Paul Gray, November 24, 2014, filed in the matter of *Garcia v. Tahoe Resources*, Supreme Court of British Columbia, No. S-144726, online: < <https://perma.cc/EX9Y-HVFM>>.

⁴⁷ See discussion of the findings of the report of the Norwegian Council on Ethics in Part VI. A., below.

⁴⁸ See footnote 19 and 20, above, for statements made by Tahoe about the high level of community support, just before Tahoe commenced the lawsuit.

⁴⁹ Corte de Constitucionalidad de Guatemala, Expedientes Acumulados 2432-2011 y 2481-2011, December 5, 2012.

In Casillas, a plebiscite was held on August 7, 2011 under the Guatemala Municipal Code and the results were published in the Central American Registry as Acta 007-2011 on July 21, 2012. There were 5,114 votes and 98.6% voted against the mine. The total population was about 23,000, but we do not know how many are registered to vote. On August 4, 2011 MSR instituted a lawsuit to try to stop the vote from taking place, because the mine was requesting an exploration licences in the area. On February 3, 2014, the Constitutional Court dismissed the case noting that it could not see what harm the mine would suffer.⁵⁰

In Mataquescuintla, a plebiscite was held on November 11, 2012, under the Guatemala Municipal Code. Just before the plebiscite, lawyers supportive of mining brought a case claiming that the plebiscite was unconstitutional. In its decision of December 13, 2013 the Constitutional Court dismissed the suit, saying pointedly that, “it is clear that plebiscites are important mechanisms for guaranteeing fundamental rights and a clear expression of democracy”.⁵¹ The results were published in the official Gazette of Central America on October 5, 2015. According to the official municipal notice, 10,377 people voted. Of the votes cast, 10,022 residents voted against mining, 169 in favour, 169 null, and 23 blank.⁵² There are about 19,700 registered voters in Mataquescuintla.⁵³

In San Juan Tecuaco, a plebiscite was held on May 17, 2015 under the Guatemala Municipal Code. Out of about 6,000 registered voters, 2,600 cast ballots and 98% voted against mining in their region.⁵⁴ There are Indigenous people in this region and the Xinca Parliament supported the anti-mining result.⁵⁵ The Guatemalan Chamber of Commerce also challenged this case in the Constitutional Court.⁵⁶ While there do not appear to be concessions in this municipality, there was concern that mining vehicles would pass through their territory.

⁵⁰ Corte de Constitucionalidad de Guatemala, Expediente 4672-2011, February 13, 2014.

⁵¹ Corte de Constitucionalidad de Guatemala, Expedientes Acumulados 4639-2012 y 4646-2012, December 13, 2013, at 28.

⁵² Instituto Nacional de Estadística, *Guatemala: Estimaciones de la Población total por municipio. Período 2008-2020 (al 30 de junio)*, online: <<https://perma.cc/4EGR-5LWT>>.

⁵³ Prensa Libre, “Realizan consulta Comunitaria sobre minería en Mataquescuintla”, (November 11, 2012), online: <<https://perma.cc/T2LV-RBTX>>;

- Consultation in the municipality of Mataquescuintla, Department of Jalapa
- Original: Diez mil 22 vecinos votaron contra la minería, 169 a favor, 169 votos fueron nulos y 23 en blanco. En total hubo 35 centros de votación y participaron 10 mil 375 de 19 mil 700 empadronados. [trans.: 10,022 residents voted against mining, 169 in favour, 169 null and 23 blank. In total, there were 35 voting centres and 10,375 voted of 19,700 on the voter registry.]

⁵⁴ Truth Out, “Guatemalans are Taking Their Democracy Back”, (June 13, 2015), online: <<https://perma.cc/62UR-9W5Z>>.

⁵⁵ El Diario de Víctor Maquin, “Consulta Municipal de San Juan Tecuaco”, (May 16, 2015), online: <<https://perma.cc/N7PE-K3SF>>.

⁵⁶ Boletín de ACOGUATE, “Camara industria impugna consulta en San Juan Tecuaco”, (September 2015), online: <<https://perma.cc/W99H-Z6N2>>. In this case, we do not have the decision of the Constitutional Court of Guatemala.

It is questionable whether a lawsuit to prevent a community from exercising democratic rights can ever be “ordinary routine litigation incidental to the business”; but in this case, these tactics also put into doubt Tahoe’s claims that it had a high degree of community support. This may be why the court cases were never disclosed.

VI. Has there been a failure to disclose material information on human rights violations?

On January 27, 2015, the Norwegian Fund divested from Tahoe based on the recommendation of the Council on Ethics and its findings that the Company has and will likely continue to engage in “an unacceptable risk of...contributing to serious human rights violations.”⁵⁷ We argue below that the Norwegian Fund is a “reasonable investor” and its decision to divest based on its investigation of human rights violations makes information on human rights material. In addition, information about human rights violations is material because (i) there is heightened international concern about human rights violations associated with Canadian mining companies and (ii) there is growing consensus that social conflict hurts the bottom line.

A. Norwegian Fund divestment makes human rights issues associated with Tahoe material

The Council on Ethics provides advice to the Norwegian Pension Fund on whether certain investments meet ethical criteria set out in its governing documents.⁵⁸ In 2014, the Council undertook a review of the human rights issues related to Tahoe. The Council gathered information from several sources, including reports by the United Nations High Commissioner on Human Rights and Amnesty International, as well as from Tahoe itself. The Council provided Tahoe a draft of its report for comment. Ultimately, the Council concluded that, “the company’s replies to the Council make it difficult for the Council to conclude that the company’s systems and strategies are suited to reveal, prevent and compensate for human rights violations connected to the operation.”⁵⁹

Below are accounts of instances in which Tahoe failed to provide adequate responses to the Council or in which the Council came to conclusions that contradicted assertions made by Tahoe.

⁵⁷ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 16, online: <<https://perma.cc/54TQ-QEUP>>.

⁵⁸ See Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014), online: <<https://perma.cc/54TQ-QEUP>>.

⁵⁹ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 167, online: <<https://perma.cc/54TQ-QEUP>>.

i. Support for the mine and engagement with the community

Tahoe's assertions that, "the violence in and around El Escobal is the fault of external criminal groups rather than real opposition to the mine" and that, "the majority of the local population supports the mining operation" are insufficient to meet disclosure requirements.⁶⁰ Tahoe told the Council on Ethics:

According to San Rafael Mayor Victor Leonel Morales, 70% of the population of San Rafael supports the project and the rest do not have an opinion with the exception of a very small number of vocal opponents who unfortunately foment discord in the region.⁶¹

As described above, Tahoe discounts the official plebiscites in the five municipalities surrounding the mine and Tahoe and its allies brought at least four court cases to try to stop and invalidate these plebiscites from taking place.⁶² The only municipality that did not have an official plebiscite was San Rafael Las Flores, where the mayor, who was a supporter of the mine, refused to hold a plebiscite. It is ironic that Tahoe bases its claim of community support on the one municipality that did not have a vote, while discounting the plebiscites in the five surrounding municipalities that held plebiscites.

The Council on Ethics does not accept Tahoe's assertions and notes that "the results of various *consultas* [plebiscites] indicate considerable resistance to the mining operation in the local population."⁶³ The Council goes on to say:

[...] it is important for the company to take responsibility for its role in the ongoing conflict, carefully identify and analyse the stakeholders in the specific area, and accept that critical stakeholders should also be heard. Given the deadlocked situation and the company's replies to the Council, it appears unlikely that such a due diligence process will be conducted in the near future.⁶⁴

ii. Compliance with international standards

⁶⁰ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 167, online: <<https://perma.cc/54TQ-QEUP>>.

⁶¹ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 176, online: <<https://perma.cc/54TQ-QEUP>>.

⁶² Corte de Constitucionalidad de Guatemala, Expedientes Acumulados 2432-2011 y 2481-2011, December 5, 2012; Corte de Constitucionalidad de Guatemala, Expedientes Acumulados 4639-2012 y 4646-2012, December 13, 2013; Corte de Constitucionalidad de Guatemala, Expediente 4672-2011, February 13, 2014.

⁶³ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 179, online: <<https://perma.cc/54TQ-QEUP>>.

⁶⁴ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 179, online: <<https://perma.cc/54TQ-QEUP>>.

Tahoe told the Council on Ethics that it was confident that it “met or exceeded the requirements of local, regional, national and international law prior to issuance of the exploitation licence.”⁶⁵ The Council on Ethics disagreed, noting

Given the many conflict situations and violence in connection with demonstrations against the mine, it is difficult for the Council on Ethics to assume that the company is taking sufficient steps to comply with international standards and guidelines.⁶⁶

Amnesty International also noted:

While meeting Guatemala’s minimum legal requirements, Tahoe’s human rights record falls far short of international standards for businesses.⁶⁷

Tahoe’s current website states: “[...] we are committed to the United Nations Guiding Principles on Business and Human Rights, the Voluntary Principles on Security and Human Rights and the Equator Principles.”⁶⁸ This statement is carefully worded, as Tahoe is not a *member* the Voluntary Principles on Security and Human Rights, and, as it is not a financial institution, cannot be a *member* of the Equator Principles.⁶⁹ Consequently, Tahoe’s adherence to these principles is not monitored by the organizations that developed the principles for their *members*.

iii. Tahoe’s CSR policies

Tahoe indicated to the Council on Ethics that human rights were an “integral part of Tahoe Resources’ ethical standards.” However, the human rights policy obtained by the Council indicated that the company’s view on its obligations with respect to human rights was limited to respecting national laws and “cultural values.”⁷⁰ The Council requested other parts of the company’s policies and systems in the human rights area, but was advised that such policies would not be provided on the basis of confidentiality concerns. The same response was provided when the Council requested information relating a Social Performance Gap Analysis that was conducted on behalf of Tahoe in relation to the human rights impact of its mine.⁷¹

⁶⁵ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 176, online: <<https://perma.cc/54TQ-QEUP>>.

⁶⁶ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 179, online: <<https://perma.cc/54TQ-QEUP>>.

⁶⁷ Amnesty International, “Public Statement on Tahoe Resources’ Escobal Project” (May 8, 2013), online: <<http://perma.cc/VS2H-2MCZ>>.

⁶⁸ “Social Responsibility”, (2016), online: *Tahoe Resources Inc.*, online: <<https://perma.cc/3RDW-TRQB>>.

⁶⁹ Voluntary Principles on Security and Human Rights, “For Companies”, (2016), online: <<https://perma.cc/W7KY-W6TF>>; Equator Principles, “Equator Principles Association Members and Reporting”, online: <<https://perma.cc/HWL6-SPR8>>.

⁷⁰ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 179, online: <<https://perma.cc/54TQ-QEUP>>.

⁷¹ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 179, online: <<https://perma.cc/54TQ-QEUP>>.

iv. Shooting of seven protesters ordered by Tahoe's head of security

There have been a number of deaths of people who were protesting the mine. We have already mentioned the Xinca leader, Exaltación Marcos Ucelo, who had been kidnapped on his way home from a plebiscite on mining in the town of Volcancito and was found dead the next day. Since then, sixteen-year old Topacio Reynoso, a youth organizer against the mine, was assassinated and her father badly injured in an attack on their car in Mataquescuintla in April 2014.⁷² In April 2015, Telésforo Odilio Pivaral González, a member of the Committee in Defense of Life and Peace in San Rafael Las Flores, which opposes the mine, was assassinated at a bus stop near his home in Volcancito.⁷³ Topacio Reynoso's father, Edwin Alexander Reynoso Bran was shot again in October 2015 as he and two companions were leaving the office of the mayor of Mataquescuintla.⁷⁴ Both the town of Volcancito and the municipality of Mataquescuintla held plebiscites and the vote went against mining in their region. No suspects have been identified in any of these shootings and Tahoe denies any involvement.⁷⁵ Nonetheless, community members blame Tahoe.⁷⁶

The Council on Ethics did not investigate these shootings. However, it did investigate the shooting of farmers by Tahoe's private security forces.

On April 27, 2013, members of Tahoe's security personnel shot six farmers and one student. At the time of the incident, Tahoe claimed that the protest turned "hostile" and the "security force used tear gas and rubber bullets to repel the protestors at the mine gate."⁷⁷ This version of events was repeated in a Tahoe's December 2015 press release. Tahoe described the events as follows:

⁷² Nina Lakhani, "Clashes as Guatemalan communities fight mine", *BBC* (June 6, 2014), online: <<https://perma.cc/L3QM-DC3N>>.

⁷³ Noticias, "Miembro de Resistencia en San Rafael Las Flores fue asesinado", (April 5, 2015), online: <<https://perma.cc/Q24R-NLZ4>>.

⁷⁴ Prensa Libre, "Nuevo ataque contra dirigente anti minería", (October 17, 2015), online: <<https://perma.cc/9G3Q-88GL>>.

⁷⁵ Ira Gostin, Vice President for Investor Relations at Tahoe said in an email "Not going to discuss these unfortunate Guatemala events that had absolutely nothing to do with mine operations. To say that the Escobal security team had anything to do with these deaths is unfounded and reckless." The Plaid Zebra, "Unethical Canadian mining practices shed a harsh light on Canada's good-guy image" (February 26, 2016), online: <<http://perma.cc/N4NG-8PBQ>>.

⁷⁶ Juan Ramon Ruiz, Plaza Publica, "Por Topacio y otras gemas, la lucha por la justicia debe seguir" (May 22, 2014), online: <<https://perma.cc/YA8V-8GWK>>; Jimmy Tobias, "Poor Guatemalans Are Taking On North American Mining Companies—and Have the Bullet Wounds to Prove It" *The Nation* (January 14, 2015), online: <<https://www.thenation.com/article/poor-guatemalans-are-taking-north-american-mining-companies-and-have-bullet-wounds-pr/>>.

⁷⁷ Tahoe Resources Inc., *Tahoe Clarifies Reports Regarding Incidents Near Escobal Project*, (May 1, 2013), online: <<https://perma.cc/YC75-7M5Y>>:

"The use of force by Minera San Rafael private security providers using rubber bullets against protesters in April 2013 was inconsistent with these principles. While the protestors were, according to the company, carrying sticks and machetes, there is no evidence that they posed

[...] violence intensified, culminating in an altercation between MSR's contract security forces and non-peaceful protestors who were carrying machetes and sticks and blocking the mine gate.⁷⁸

Unbeknownst to Tahoe, telephone conversations of their head of security, Alberto Rotondo, had been wiretapped due to suspicions of his involvement in a prior incident of violence. The wiretap demonstrates that Rotondo ordered the shooting of the protestors and then conspired to cover up the evidence and fabricate a story of the attack. Security video obtained from the company shows that there were about twenty protestors, but they made no attempt to enter the open gate nor is there any indication that traffic was impeded.⁷⁹ They were not acting in a hostile manner nor shouting slogans. The video first shows puffs of dust as bullets hit the ground near the protestors, then heavily armed security personnel with shields, helmets and bullet proof vests charge out of the mine grounds. They stand outside of the gate of the mine and shoot fleeing farmers in their backs. Seven of the protestors were injured. Rotondo was ultimately arrested in Guatemala in connection with the shooting. After being committed to trial in Guatemala he was placed under house arrest in December 18, 2014. In November 2015 he fled to Peru. He was recaptured in January 22, 2016 and five Guatemalan police officers have been arrested in connection with his escape.⁸⁰

Tahoe told the Council that it had conducted a “thorough internal investigation” of the shooting. However, Tahoe did not comply with the request from the Council on Ethics for information on the investigation or the company’s rules of conduct.⁸¹ Amnesty International analyzed the situation and found that the actions of Tahoe’s security personnel violated the Voluntary Principles on Security and Human Rights, which Tahoe claimed to follow.⁸²

v. Kidnapping of Xinca leader

a risk to the lives of the security guards or any other person; indeed, Tahoe’s own public statement does not suggest that there was any imminent threat, but refers only to the fact that the protestors were “impeding traffic”.

⁷⁸ Tahoe Resource Inc., *Tahoe Resources Inc.’s Response to Recent Baseless and Irresponsible Accusations in “Tahoe on Trial,”* (December 22, 2015), online: <<https://perma.cc/3G7L-3BYE>>.

⁷⁹ To watch the video: Tahoe On Trial, *Security Footage Outside Escobal Mine*, (2016), online: <<https://perma.cc/QGL4-2LZV>>; To read wiretap transcript: Affidavit of Roger Barany, January 21, 2015, filed in the matter of *Garcia v. Tahoe Resources*, Supreme Court of British Columbia, No. S-144766, online: <<https://perma.cc/QXH8-SGYL>>.

⁸⁰ See the following reports from the Guatemalan paper: La Hora, “Juez podría enviar a juicio a Alberto Rotondo”, (December 17, 2014), online: <<https://perma.cc/RHU2-MC8Q>>; La Hora, “Capturan a Alberto Rotondo”, (January 22, 2016), online: <<https://perma.cc/Z853-GLMP>>; La Hora, “Señalan a policías por escape de Rotondo”, (February 19, 2016), online: <<https://perma.cc/3NEN-ARW5>>.

⁸¹ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 177, online: <<https://perma.cc/54TQ-QEUP>>.

⁸² Amnesty International, *Mining in Guatemala: Rights at Risk* (2014) online: <<https://perma.cc/99VE-P73P>>.

As noted above, in March 2013, four members of the Xinca Parliament were abducted, and one was later found dead. When the Council on Ethics requested information from Tahoe about the death, Tahoe indicated that it had a government report saying that there was no kidnapping or murder. The Council asked for a copy of the supporting documentation. Tahoe never provided the information to the Council.⁸³ Meanwhile, a report of the United Nations High Commissioner on Human Rights cites this death as an example of the murder of a human rights activist.⁸⁴

The five human rights issues described above were material. In *TSC Industries v. Northway, Inc.*, 426 U.S. 438 (1976), the United States Supreme Court set out the test for materiality, based on the “substantial likelihood” that a reasonable investor would have taken into consideration the undisclosed information.⁸⁵ The standard contemplates showing that there is substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.

In the case of the Norwegian Fund, there is no need to speculate whether the information would have been significant or not. The Pension Fund is the largest fund of its kind in the world, with a market value of over \$US 850 billion. The Fund found the disclosure by Tahoe lacking, investigated on its own, and based its decision to divest on information that had not been disclosed by Tahoe. We submit that the information that was not disclosed was material to the Pension Fund, and would be material to other reasonable investors.

B. Human rights disclosure is important because of heightened international concern and consensus that social conflict hurts the bottom line

There are additional public policy reasons for considering human rights information material. We highlight two grounds suggested by the International Corporate

⁸³ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 177, online: <<https://perma.cc/54TQ-QEUP>>.

⁸⁴ Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala* (13 January 2014), A/HRC/25/19/Add.1, at para. 45, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/101/61/PDF/G1410161.pdf?OpenElement>>.

⁸⁵ *TSC Industries v. Northway, Inc.*, 426 U.S. 438 (1976), at 449.

Accountability Roundtable in its 2013 report, which encouraged the SEC to require human rights reporting.⁸⁶

i. Heightened public concern about activities of mining companies incorporated in Canada

Disclosure requirements should take into account heightened interest in a particular area of business activity. The SEC's guidance with respect to information related to climate change is an example of materiality being responsive to the impact of business. We submit that human rights, community rights and Indigenous rights now fall into the same category.⁸⁷

Mining companies incorporated in Canada have been associated with a great deal of conflict. For example, in 2013 a group of organizations from Latin America presented 23 case studies involving conflicts with Canadian mining companies in the region to the Inter-American Commission on Human Rights.⁸⁸ In 2014, the Commission heard from a coalition of 29 civil society organizations from Canada,⁸⁹ and again in 2015, from Catholic Bishops who criticized the practices of Canadian mining companies.⁹⁰ United Nations treaty bodies, beginning in 2002, have urged Canada, specifically, to assume its responsibility to protect against human right abuse outside its territory and to provide effective oversight regarding its companies' overseas operations, including through extraterritorial regulation.⁹¹ The latest critique was from the Human Rights Committee in June 2015:

⁸⁶ International Corporate Accountability Roundtable, *Knowing and Showing: Using U.S. Securities Laws to Compel Human Rights Disclosures* (2013) online: <<https://perma.cc/3XL7-3H6H>>.

⁸⁷ International Corporate Accountability Roundtable, *Knowing and Showing: Using U.S. Securities Laws to Compel Human Rights Disclosures* (2013), at 15, online: <<https://perma.cc/3XL7-3H6H>>.

⁸⁸ Working Group on Mining and Human Rights in Latin America, *El impacto de la minería canadiense en América Latina y la responsabilidad de Canadá*, (2014), online: <<https://perma.cc/56YT-PZ6S>>.

⁸⁹ Canadian Network on Corporate Accountability, *Human Rights, Indigenous Rights and Canada's Extra-territorial Responsibility*, (2014), online: <<https://perma.cc/V425-BWBW>>.

⁹⁰ Posición de la Iglesia católica ante vulneración y abusos contra los derechos humanos de las poblaciones afectadas por las industrias extractivas en América Latina, (March 2015) [trans. "The position of the Catholic church in relation to the breaches and abuses of human rights of peoples affected by the extractive industries in Latin America] sponsored by Consejo Episcopal Latinoamericano (CELAM), Secretariado latinoamericano y del Caribe de Cáritas (SELACC), Confederación latinoamericana y caribeña de religiosos y religiosas (CLAR), Comisión amazónica de Conferencia Nacional de Obispos de Brasil (CNBB) and Red Eclesial Pan-amazónica (REPAM), online: <<https://perma.cc/Y99E-SLMG>>.

⁹¹ See concerns from the Commission on Human Rights, the Committee on the Elimination of Racial Discrimination, and the Committee on the Rights of the Child: Commission on Human Rights, *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights Report, Mission to Canada, 17-30 October 2002*, (14 January 2003), E/CN.4/2003/56/Add.2, at para. 126, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/102/78/PDF/G0310278.pdf?OpenElement>>; Committee on the Elimination of Racial Discrimination, *Concluding Observations*, (25 May 2007), CERD/C/CAN/CO/18, at para. 17, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/421/69/PDF/G0742169.pdf?OpenElement>>; Committee on the Elimination of Racial Discrimination, "Concluding Observations", CERD/C/CAN/CO/19-20, (4 April 2012), at para. 14, online:

The State party [Canada] should (a) enhance the effectiveness of existing mechanisms to ensure that all Canadian corporations under its jurisdiction, in particular mining corporations, respect human rights standards when operating abroad; (b) consider establishing an independent mechanism with powers to investigate human rights abuses by such corporations abroad; and (c) develop a legal framework that affords legal remedies to people who have been victims of activities of such corporations operating abroad.⁹²

As noted above, both the United Nations High Commissioner on Human Rights and Amnesty International have highlighted the problem of violence associated with Canadian mining companies in Guatemala.

ii. Social conflict hurts the bottom line

The costs of community conflict are significant and can result in serious impacts on companies, including suspensions and closures of projects. The degree of opposition has resulted in violent confrontations across the globe, with people killed, injured and raped, and huge losses to companies.⁹³

A well-known example in Latin America is Colorado-based Newmont Mining Corporation's ("Newmont") \$4.8 billion USD Conga project in Peru. Newmont faced massive opposition including general strikes and road blockades and was forced to "voluntarily" suspend the mine with losses in the hundreds of millions of dollars.⁹⁴ In the case of HudBay Minerals, a Canadian mining company in Guatemala, its head of security was charged and jailed after a community leader was murdered. Thirteen women also claimed they were gang raped by HudBay's private security forces during a violent eviction from their homes. Shortly after a lawsuit was filed in Canada on behalf of the victims in 2011, HudBay sold the mine

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/19-20&Lang=En>; Committee on the Rights of the Child, *Concluding Observations*, (6 December 2012), CRC/C/CAN/CO/3-4, at para. 29, online:

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CAN/CO/3-4&Lang=En>.

⁹² Human Rights Committee, "Concluding observations on the sixth periodic report of Canada," (23 June 2015), CCPR/C/CAN/CO/6, para. 6, online:

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2fCO%2f6&Lang=en>.

⁹³ See case studies of 22 conflicts involving Canadian companies in Latin America: Working Group on Mining and Human Rights in Latin America, *Canadian Mining in Latin America and Canada's Responsibility*, (March, 2014), online: <<https://perma.cc/56YT-PZ6S>>.

⁹⁴ Mining, "Peru abandons Newmont's \$4.8 billion Conga", (August 28, 2012) online:

<<https://perma.cc/3JRN-G3J8>>; Earthworks, "Mining giant Newmont urged to obtain community consent", (April 25, 2013), online:

<<https://perma.cc/8MCN-8ZA6>>.

for \$176 million CAD. HudBay had bought the mine only three years earlier, for \$CAD 446 million.⁹⁵

A Harvard University report on company-community conflicts found that social conflicts had not only significant financial costs, but costs to human resources for addressing those conflicts.⁹⁶

In conclusion, there are three grounds for considering materiality of the missing disclosures on human rights:

- a. The Norwegian Fund, which should be considered a “reasonable investor”, decided to divest after conducting its own investigation;
- b. Bodies associated with the United Nations and the Organization of American States have expressed international concerns with the conduct of Canadian mining companies; and
- c. The growing consensus that social conflict hurts the bottom line.

VII. Tahoe’s filings merit rigorous scrutiny

Tahoe’s conduct and disclosure practices merit close scrutiny given its prior problems with securities regulation.

We are not requesting that the issues raised below be investigated again. Rather, we raise these issues as illustrations of Tahoe’s careless disregard for accuracy that should form a backdrop in assessing Tahoe’s credibility, supporting the need for further scrutiny of Tahoe’s public disclosures.

A. Tahoe placed on “Issuers in Default List”

In July 2013, the British Columbia Securities Commission placed Tahoe on its “Issuers in Default List” because the company did not comply with disclosure requirements in relation to its Preliminary Economic Assessment (“PEA”).⁹⁷ As Tahoe is listed on the New York Stock Exchange, the SEC also questioned Tahoe about a number of matters including its statements on sustainable development, the nature of the reserves, and the lack of a

⁹⁵ For a history of the El Estor mine see: Shin Imai, Bernadette Maheandiran and Valerie Crystal, “Access to Justice and Corporate Accountability: A Legal Case Study of HudBay in Guatemala”, (2014) 35 (2), Canadian Journal of Development Studies 286-303.

⁹⁶ Rachel Davis and Daniel Franks, *Costs of Community-Company Conflict in the Extractive Sector* (Cambridge: CSR Initiative at the Harvard Kennedy School, 2014), at 16, online: <<https://perma.cc/KWY7-T2JD>>. See also description of Rio Tinto’s promise to seek consent from an Indigenous group in Australia: Ciaran O’Faircheallaigh, “International Recognition of Indigenous Rights, Indigenous Control of Development and Domestic Political Mobilisation”, (2012) 47 Australian Journal of Political Science at 531-545, 542.

⁹⁷ Tahoe Resources Inc., *Tahoe to Clarify PEA Disclosure*, (July 18, 2013), online: <<https://perma.cc/479E-ANNZ>>.

bankable feasibility study.⁹⁸ As a result, Tahoe was required to amend its PEA to clarify that no feasibility study had been done and to acknowledge that projects lacking a PEA “have a much higher risk of economic and technical failure.”⁹⁹

B. Investors unsatisfied with responses from Tahoe

As described above, the Norwegian Council on Ethics attempted to engage Tahoe about allegations of human rights abuses associated with El Escobal, found difficulty receiving information on a number of issues, and disagreed with Tahoe’s assertions on other issues.

An anonymous author on Seeking Alpha, a financial markets content service whose contributors comprise of investors and industry experts, echoed this experience. When the investor asked Tahoe about its claims of having undertaken extensive community consultation in light of contradictory evidence from local communities, Tahoe was quick to dismiss the issue, stating that the Mine was “the driver of [...] improvements in the general standard of living in the communities near the mine.” Furthermore, when the author sought verification of Tahoe’s assurance that the local communities’ environmental concerns were unfounded, the investor was directed towards “technical documents that were apparently publicly available and contained answers to [his/her] questions, especially on environmental issues and mine closure plans.” The author never managed to acquire these documents, even being “strung along for several weeks” by Tahoe after the investor reached out for assistance.¹⁰⁰

Ultimately, the author’s attempts to clarify previously disclosed information, as well as his/her efforts to obtain meaningful information on environmental issues from the Company, yielded very little beyond unverifiable assurances. The author writes that the imbalance of information (i.e., ample information from mine opposition versus the limited disclosures supplied by Tahoe) “has certainly affected [his/her] view of the Escobal project and Tahoe Resources.”¹⁰¹ In fact, the author seems to have developed suspicions that “the issues surrounding the Escobal mine may well have systematic human rights abuse at their very root.”¹⁰²

⁹⁸ See exchange of letters between August 28, 2013 and November 25, 2013: Letter to Mr. Mark T. Sadler Chief Financial Officer Tahoe Resources Inc., August 28, 2013, online: <<https://perma.cc/HG9P-ZL9B>>; Letter to Mr. Mark T. Sadler Chief Financial Officer Tahoe Resources Inc., October 15, 2013, online: <<https://perma.cc/2TCK-WWAP>>; Letter to Mr. Mark T. Sadler Chief Financial Officer Tahoe Resources Inc., November 25, 2013, online: <<https://perma.cc/3Y48-FQ22>>.

⁹⁹ Tahoe Resources Inc., *Tahoe Resources Clarifies PEA Disclosure*, (July 24, 2013), online: <<https://perma.cc/E6XG-HYM6>>.

¹⁰⁰ Seeking Alpha, “Questioning Tahoe Resources’ Social License”, (October 21, 2014), online: <<https://perma.cc/C62E-Z8YN>>.

¹⁰¹ Seeking Alpha, “Questioning Tahoe Resources’ Social License”, (October 21, 2014), online: <<https://perma.cc/C62E-Z8YN>>.

¹⁰² Seeking Alpha, “Questioning Tahoe Resources’ Social License”, (October 21, 2014), online: <<https://perma.cc/C62E-Z8YN>>; although the author of this article is anonymous, Seeking Alpha claims that they know the identity of the author. The author’s comments are consistent with what the Council of Ethics

II. Conclusion

For the reasons cited above, we submit that there are grounds for reviewing Tahoe's disclosures, and its status as a foreign private issuer. We also submit that past experience with Tahoe justifies a rigorous review.

of Norwegian Pension Fund has pointed out.

Appendix

Concessions affected by plebiscites

Tahoe has held a number of exploratory concessions, but the status of most of them are uncertain, as Tahoe has not reported consistently on whether they are currently valid.

The following is a detailed description of the concessions affected by the plebiscites and, where appropriate, the court cases that have attempted to stop the voting or invalidate the results. We do not know whether these are all of the lawsuits brought by Tahoe and its supporters. There may be other lawsuits that have not reached the level of the Constitutional Court.

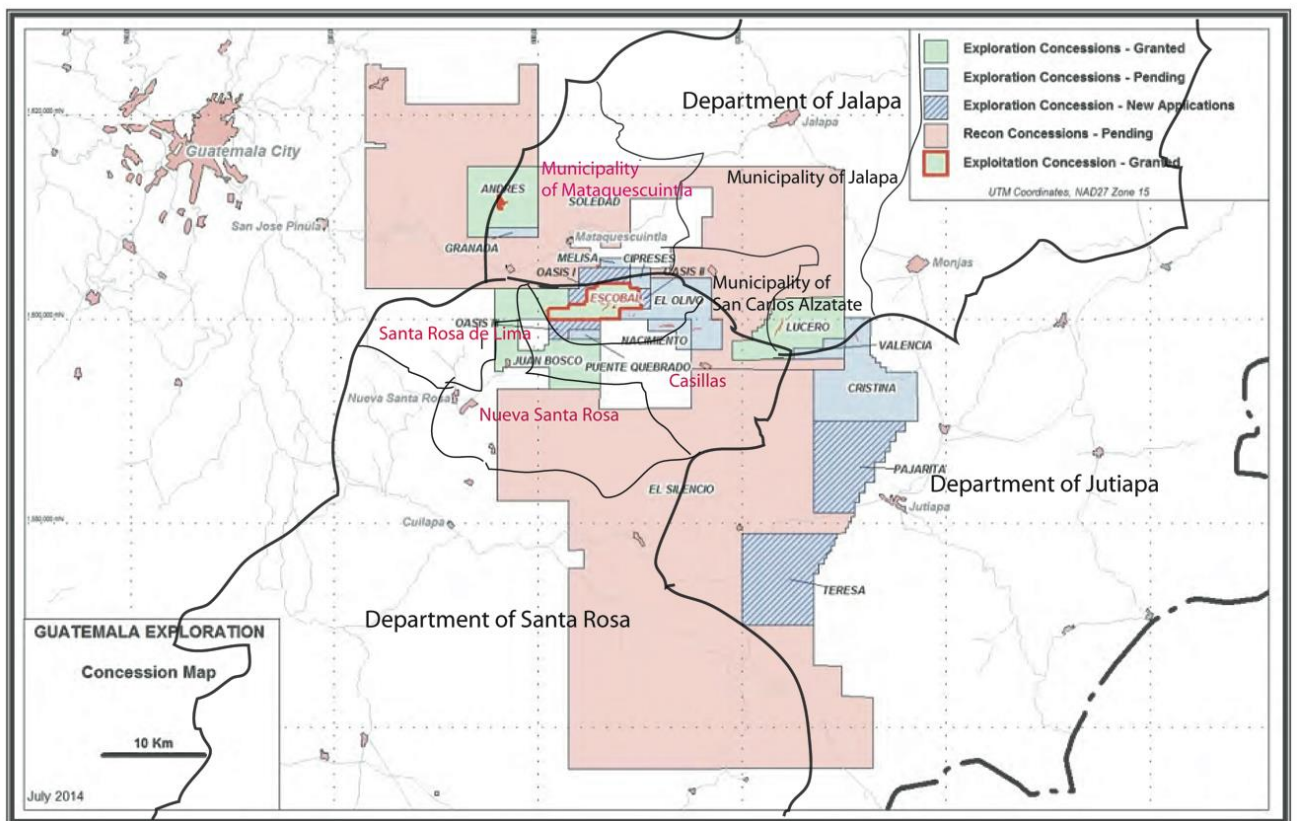


Figure 2 Municipal boundaries superimposed on map of concessions

The map above (Figure 2) is based on the map found in the 2015 Annual Information form.¹⁰³ It shows granted and pending concessions. We have added the approximate boundaries of the municipalities and superimposed them on Tahoe's map. Below we describe the opposition that exists in the concessions.

¹⁰³Tahoe Resources Inc., 2015 Annual Information Form, 2015 (March 9, 2016), at 27.

1. Juan Bosco concession (appears to be approved)

The Juan Bosco concession, just south of Escobal, is marked as granted on the map, and appears to be the only exploration licence approved.¹⁰⁴ This concession was identified in the lawsuit filed by MSR on July 28, 2012 against the government of Guatemala as one of the concessions that needed protection from protesters.¹⁰⁵ According to this non-disclosed lawsuit, the Juan Bosco concession authorizes exploration in Mataquescuintla, Nueva Santa Rosa, Casillas and San Rafael Las Flores. Official votes against mining have been conducted in three of the municipalities.

In Mataquescuintla, a plebiscite was held on November 11, 2012, under the Guatemala Municipal Code. Just before the plebiscite, lawyers supportive of the mine brought a case claiming that the plebiscite was unconstitutional. In its decision of December 13, 2013 the Constitutional Court dismissed the lawsuit, saying pointedly that, “it is clear that plebiscites are important mechanisms for guaranteeing fundamental rights and a clear expression of democracy”.¹⁰⁶ The results were published in the official Gazette of Central America on October 5, 2015. According to the official municipal notice, 10,377 people voted. Of the votes cast, 10,022 residents voted against mining, 169 in favour, 169 null, and 23 blank.¹⁰⁷ There are about 19,700 registered voters in Mataquescuintla.¹⁰⁸

In Nueva Santa Rosa, a plebiscite was held on July 3, 2011 under the Guatemala Municipal Code and the results were published on July 11, 2011 as Acta 2-2011. There were 7,702 votes cast and 98.87% were against mining in the area.¹⁰⁹ The total population of Nueva Santa Rosa is around 30,000, but we do not know how many are registered to vote. We do not know whether MSR brought a court challenge on this case.

In Casillas, a plebiscite was held on August 7, 2011 under the Guatemala Municipal Code and the results were published in the Central American Registry as Acta 007-2011 on July 21, 2012. There were 5,114 votes and 98.6% voted against the mine. The total population

¹⁰⁴ Tahoe Resources Inc., *Management’s Discussion and Analysis for three months ended March 31, 2016 and 2015*, (May 3, 2016), at 15.

¹⁰⁵ Corte de Constitucionalidad de Guatemala, Expediente 2728-2012, June 28, 2012.

¹⁰⁶ Corte de Constitucionalidad de Guatemala, Expedientes Acumulados 4639-2012 y 4646-2012, December 13, 2013, at 28.

¹⁰⁷ Instituto Nacional de Estadística, *Guatemala: Estimaciones de la Población total por municipio. Período 2008-2020 (al 30 de junio)*, online: <<https://perma.cc/SM2N-S2EN>>.

¹⁰⁸ Prensa Libre, “Realizan consulta Comunitaria sobre minería en Mataquescuintla”, (November 11, 2012), online: <<https://perma.cc/467L-CN93>>;

- Consultation in the municipality of Mataquescuintla, Department of Jalapa
- Original: Diez mil 22 vecinos votaron contra la minería, 169 a favor, 169 votos fueron nulos y 23 en blanco. En total hubo 35 centros de votación y participaron 10 mil 375 de 19 mil 700 empadronados. [trans.: 10,022 residents voted against mining, 169 in favour, 169 null and 23 blank. In total, there were 35 voting centres and 10,375 voted of 19,700 on the voter registry.]

¹⁰⁹ noticias.gt, “Nueva Santa Rosa dice no a la minería” (July 6, 2011), online: <<http://perma.cc/4MZW-S8RA>>.

was about 23,000, but we do not know how many are registered to vote. On August 4, 2011 MSR instituted a lawsuit to try to stop the vote from taking place, because the mine was requesting for an exploration licences in the area. On February 3, 2014, the Constitutional Court dismissed the case noting that it could not see what harm the mine would suffer.¹¹⁰

The fourth municipality affected by the Juan Bosco concession is San Rafael Las Flores, where the current mine is located. The former mayor of the municipality was a supporter of the mine and had refused to allow a municipal plebiscite to take place. Tahoe told the Norwegian Council on Ethics that the mayor said there was great support for the mine.

According to San Rafael Mayor Victor Leonel Morales, 70% of the population of San Rafael supports the project and the rest do not have an opinion with the exception of a very small number of vocal opponents who unfortunately foment discord in the region.¹¹¹

It is hard to know how the mayor could arrive at this figure with no plebiscite. However, given Tahoe's efforts to stop or invalidate the plebiscites in other municipalities, it is understandable that they would prefer to rely on a mayor to whom they are making special royalty payments. On April 2013, representatives of more than half of the communities in the municipality signed a declaration against mining.¹¹² After that, community organizations began conducting their own informal votes at the district level. These informal votes were suspended when the Guatemalan government instituted a state of siege in May 2013 and arrested many community activists.¹¹³ Two more informal votes were organized in 2014. As indicated above in this report, in September 2016, a new mayor was elected in San Rafael Las Flores who favoured holding a plebiscite.

Of the total of nine community votes in San Rafael Las Flores, only one favoured the mine.¹¹⁴ For further information, please refer to the following news reports (in Spanish):

- a. Consultation in (1) San Juan Bosco, San Rafael Las Flores, Department of Santa Rosa,¹¹⁵

¹¹⁰ Corte de Constitucionalidad de Guatemala, Expediente 4672-2011, February 13, 2014.

¹¹¹ Council on Ethics for the Government Pension Fund Global, *Annual Report, 2014*, (December 31, 2014) at 176, online: <<https://perma.cc/54TQ-QEUP>>.

¹¹² MiningWatch Canada and NISGUA, "Tahoe Resources Shareholder Alert: A Dangerous Investment" (May 8, 2013), at Appendix B, online: <https://perma.cc/94ZL-RRFU>

¹¹³ NISGUA, "Guatemalan gov't declares state of siege in municipalities surrounding Tahoe Escobal mine" (May 3, 2013), online: <https://perma.cc/JW7G-8AEE>

¹¹⁴ For a list of the communities and the votes, see Luis Solano, "Under Siege: Peaceful Resistance to Tahoe Resources and Militarization in Guatemala (Nov.15, 2015) at 10, online: <<https://perma.cc/YB46-LJCA>>.

¹¹⁵ "Consulta San Juan Bosco" (April 2, 2013), online: <http://www.youtube.com/watch?v=G28A_eEHm0A>; Guatemala Human Rights Commission, "Fotos: Consulta Comunitaria de Buena Fe, en aldea San Juan Bosco" (Feb.25, 2013), online: <<https://perma.cc/AJN3-HC6X>>.

- b. Consultation in (2) Aldea Los Planes, San Rafael Las Flores, Department of Santa Rosa;¹¹⁶
- c. Consultation in (3) Cuchilla, San Rafael Las Flores, Department of Santa Rosa;¹¹⁷
- d. Consultation in (4) Aldea el Chan, (5) El Caerio Renacimiento and el (6) Caserio Las Delicias, San Rafael Las Flores, Department of Santa Rosa;¹¹⁸
- e. Consultation in (7) Barrio Oriental, San Rafael Las Flores, Department of Santa Rosa;¹¹⁹
- f. Consultation in (8) Volcancito, San Rafael Las Flores, Department of Santa Rosa;¹²⁰
- g. Consultation in (9) Sabana Redonda, San Rafael Las Flores, Department of Santa Rosa¹²¹

2. Oasis licence (status uncertain)

According to the lawsuit against the government of Guatemala, this concession lies partly in the municipalities of Mataquescuintla, San Carlos Alzatate, San Rafael Las Flores and Casillas. We have seen that the municipalities of Mataquescuintla and Casillas have had plebiscites that resulted in votes against the mine. In San Rafael Las Flores, we have described above that the mayor did not permit a plebiscite to take place, but informally conducted votes have almost all gone against mining. We are informed that the new mayor is in favour of holding a plebiscite.

¹¹⁶ “Consulta de BUENA FE-ALDEA LOS PLANES,” (April 1. 2013), online: https://www.youtube.com/watch?v=gZ_85nA2cjM.

¹¹⁷ “Nueva Consulta de Buena Fe se lleva acabo en la aldea la Cuchilla” (March 25, 2013), online: <https://perma.cc/U7V4-X5XZ>.

¹¹⁸ Comunidades de Población en Resistencia, “Tres Consultas de Buena Fe se llevaran acabo este 21 de Abril en San Rafael las Flores”, (April 17, 2013), online: <https://perma.cc/W94A-XAPW>.

¹¹⁹ La Hora, “Continúan Consultas de Buena Fe, resisten explotación minera”, (April 16, 2013), online: <https://perma.cc/72YH-CP57>.

¹²⁰ The link to a report on the vote in Volcancito is no longer active. However, a reference to the vote is made in an article describing the abduction of four Xinca leaders on their way back from the plebiscite in Volcancito; La Hora, “Líderes indígenas fueron secuestrados uno fue muerto y otro sigue desaparecido” (March 8, 2013), online: <https://perma.cc/L3JK-YZH8>.

¹²¹ Panorama Noticias, “Continúa consulta comunitaria de buena fe en la Aldea Sabana Redonda”, (January 12, 2014), online: <https://perma.cc/T5X8-MTZU>.

3. The Andres concession (status uncertain)

Over half of this concession lies within the Municipality of Mataquescuintla. As noted above, the municipality has voted against the mine, and the protests in this municipality have prevented Tahoe from constructing a power line.

4. The Lucero concession (status uncertain)

This concession lies to the west of San Rafael Las Flores and lies mostly in the Municipality of Jalapa with a portion in the municipality of Casillas.

As noted above, Casillas has also voted against mining. The municipality of Jalapa is one of the largest in the area, with over 100,000 inhabitants. We do not have information on the registered voters, but in December 2013, a plebiscite was conducted under the Guatemala Municipal Code. Of the 24,400 people voting, almost all opposed mining.¹²²

5. The El Silencio pending reconnaissance concession

The El Silencio concession lies to the south and east of San Rafael Las Flores. The municipality of Santa Rosa de Lima is covered by this concession.

In Santa Rosa de Lima, a plebiscite was held on July 10, 2011 under the Guatemala Municipal Code. The results were published on July 18, 2011 as Acta E11-2011. There were 5,338 votes cast and 95.69% voted against mining in the area. The total population is around 17,000, but we do not have information on the number of registered voters. Guatemalan Chamber of Commerce brought a case challenging the plebiscite, but on December 5, 2012, the Constitutional Court dismissed the case noting that International Labour Organization Convention 169 provided for people to be consulted and that plebiscites are an important mechanism for a democratic regime.¹²³

6. Other Plebiscites in the area

Plebiscites on mining continue to be held in the area surrounding the area planned for Tahoe's expansion.

In San Juan Tecuaco, in the Department of Santa Rosa, there do not appear to be pending concessions, but there was concern that mining vehicles would pass through their territory. A plebiscite was held on May 17, 2015 under the Guatemala Municipal Code. Out of about 6,000 registered voters, 2,600 cast ballots and 98% voted against mining in

¹²² La Hora, "Comunitarios de Jalapa rechazan minería", (November 12, 2013), online: <<https://perma.cc/P9DG-LJM4>>.

¹²³ Corte de Constitucionalidad de Guatemala, Expedientes Acumulados 2432-2011 y 2481-2011, December 5, 2012.

their region.¹²⁴ There are Indigenous people in this region and the Xinca Parliament supported the anti-mining result.¹²⁵ The Guatemalan Chamber of Commerce also challenged this case in the Constitutional Court.¹²⁶

In Quesada, in the Department of Jutiapa, a plebiscite was held in May 2016. Jutiapa is contiguous to Santa Rosa, and includes the El Silencio pending concession. The particular concern in this municipality appeared to be a concession held by Canadian mining company, Goldcorp, which was a 40% owner of Tahoe Resources until it sold its shares in April 2015. In this plebiscite, more than 50% of registered voters participated, with 8,072 votes against resource extraction and 8 votes in favour.¹²⁷

¹²⁴ Truth Out, "Guatemalans are Taking Their Democracy Back", (June 13, 2015), online: <<https://perma.cc/62UR-9W5Z>>.

¹²⁵ El Diario de Victor Maquin, "Consulta Municipal de San Juan Tecuaco", (May 16, 2015), online: <<https://perma.cc/N7PE-K3SF>>.

¹²⁶ Boletín de ACOGUATE, "Camara industria impugna consulta en San Juan Tecuaco", (September 2015), online: <<https://perma.cc/W99H-Z6N2>>.

¹²⁷ NISGUA, "More than 99% of participants in the Quesada municipal consultation oppose mining" (May 10, 2016), online: <<https://perma.cc/8JYY-YK25>>.