The tar sands gigaproject is the largest industrial project on Mother Earth and has been termed ‘a slow industrial genocide’ by First Nations communities downstream from operations. Total E&P Canada, a wholly owned subsidiary of Total, France and is one of the largest players in tar sands developments. Currently, Total’s tar sands operations’ produces approximately 27,000 barrels per day. Over the next 10 years, Total expects to reach a production rate of approximately 627,000 barrels per day. Total has put forth applications to expand its capacity through new mines and in situ projects despite calls from First Nations for comprehensive health studies on the effects of existing projects. Several First Nations have launched lawsuits against companies and the government of Alberta regarding existing projects. Currently, Total is named in a lawsuit launched by the Beaver Lake Cree First Nation. Should the lawsuit succeed, regulatory approval for tar sands projects could be substantively affected.

About IEN

Established in 1990 within the United States, and working in North America and internationally, IEN was formed by grassroots Indigenous peoples and individuals to address environmental and economic justice issues (EJ). IEN’s activities include building the capacity of Indigenous communities and tribal governments to develop mechanisms to protect our sacred sites, land, water, air, natural resources, health of both our people and all living things, and to build economically sustainable communities.
The tar sands or bitumen (a mixture of sand, clay and heavy crude oil) underlie 140,000 km² of Alberta’s boreal forest, an area approximately the size of the entire state of New York. These deposits are the second largest source of oil in the world, eclipsed only by Saudi Arabia. Currently, tar sands operations produce about 1.5 million barrels of crude oil each day; the majority (97%) of this oil is exported to the U.S. In the next decade, if the government and industry get their way, production is expected to double and reach 5 million barrels of crude oil each day by 2030.

What are the Tar Sands?

The deposits of Tar Sands in Alberta cover a surface area approximately the size of New York State or England.

Extraction Methods

There are two main extraction methods to separate crude oil from bitumen: surface mining and in situ technologies. In 2010, surface mining accounted for 52% of tar sands extraction. However, 80% of tar sands deposits are accessible only by in situ, whose production rates are expected to surpass mining by 2017.

While open pit mines are visually horrifying, the In Situ method of extraction is far more carbon-intensive, water-intensive, and energy-intensive. In Situ completely fragments the boreal forest in Canada, which is the largest terrestrial carbon sinks in the world. Local communities are continually bearing the brunt of the detrimental effects of Shell’s tar sands projects whether it be from toxic emissions and water contamination to the complete fragmenting and decimation of the boreal forest - tar sands development is completely altering our homelands and destroying the very foundation of who we are as Indigenous peoples.”

-Melina Laboucan-Massimo, Greenpeace Climate and Energy Campaigner and member of the Lubicon Cree First Nation

In Situ Operations

In situ operations occur when tar sands deposits are located 100 under the ground or deeper. There are two main technologies for in situ: SAGD (Steam Assisted Gravity Drainage) and CSS (Cyclic Steam Simulation). Both technologies inject steam directly into the ground to separate the crude oil from bitumen, which is then pumped to the surface for processing.

Total operates the Surmont in situ facility in partnership with ConocoPhillips. The plant began operations in 2007, currently producing 27,000 barrels per day; though expansion plans will increase production to 110,000 barrels per day by 2015. In situ requires approximately 5 barrels of water for each barrel of oil produced, drawing largely from groundwater sources. Industry and government promote in situ as having less impact on lands. However, when a full life cycle assessment of land disturbance is considered (including roads, pipelines and land fragmentation), in situ is projected to disturb 6,500 km² compared to 4,800 km² for surface mining methods. Each barrel of oil produces about 0.5 barrels of waste. Generally, this waste is not treated and instead injected into the ground. Both First Nations and farmers in the Cold Lake region adjacent to in situ operations have reported mysterious ponds smelling heavily of chemicals and oil after operations began.
Surface Mining Operations in Canada

Total's future output will primarily be based on surfacing mining, through its Joslyn, Northern Lights and Fort Hills holdings. Surface mining operations occur when tar sands are located within 100m of the ground surface. First, the “overburden” (boreal forest) is removed by clear cutting, then the bitumen is stripped and transported using “heavy hauler” trucks (over 3 stories high) to industrial “cookers” where steam and chemicals separate the heavy crude from bitumen. To date, surface mining has been the primary method to extract tar sands. Currently, each barrel of oil from surface mining requires 2-4 barrels of freshwater and produces about 1.5 barrels of toxic waste. This waste is held in ‘tailings ponds’, which in 2009 covered 130 km², holding 720 billion litres of toxic waste. Each day, 11 million liters of waste leaks into the Athabasca River from tar sands operations, representing approximately 4 billion liters of contamination each year.

Joslyn mine controversy

In January, 2011 Total received approval for its proposed Joslyn Mine (North) operation, despite reliance on questionable data sources. The Regional Aquatic Monitoring Program (RAMP) conducted the bulk of research and found that the mine would have ‘no significant impacts’ on human and ecological health. However, RAMP has been heavily criticized by two separate peer reviewed studies for using inaccurate data, questionable statistical methods and blatantly promoting industry aspirations. Indeed, the official opposition party in Canada, the New Democratic Party, has called on the Canadian government to ban reliance on RAMP data for tar sands projects approval.

Water monitoring in Alberta has been insufficient. In December 2001, the Federal Environment Commissioner reported that for the last 20 years, water monitoring stations in Alberta had not been testing for pollutants associated with the tar sands. Instead, they had been testing for pollutants associated with the pulp and paper industry. When questioned during public hearings on the Joslyn mine, Total admitted it had inadequate water testing procedures for key pollutants for tar sands mining.

The regulatory process in Alberta has been widely criticized by First Nations, scientists and politicians as failure that has favored money over human and ecological health. The government has repeatedly ignored the concerns of both First Nations and scientists regarding tar sands, instead favoring unproven technological theories from industry and prioritizing trade ties with the U.S. Yet as evidence has mounted of the severe and irreversible impacts of tar sands, First Nations communities and the public have organized strong opposition.

Company Conflict and Legal Complications
Today, the legal basis for Canada’s tar sands developments rests on shaky foundations. The Government of Canada holds a unique legal relationship with Aboriginal (First Nation, Métis and Inuit) Peoples. In the past, Aboriginal Rights were largely ignored in development projects. However, over the past 30 years Canadian courts have recognized a ‘nation to nation’ relationship between Aboriginal peoples and the Canadian state. Moreover, they have ruled against the state several times in cases where Aboriginal Rights were undermined or ignored.

Aboriginal peoples: that the Crown would have to negotiate and settle outstanding land claims.

In 1982, following the Calder case, the Canadian government ratified Section 35 of the Canadian Charter of Rights and Freedoms, which states, “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” Legally applied, Section 35 has meant that there is a duty for government to both consult Aboriginal peoples on development projects and accommodate their concerns. Subsequent cases have demonstrated that Aboriginal peoples have two types of rights substantive rights (to hunt, fish or harvest) and procedural rights (the right to be honourably consulted).

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To date, there have been five legal proceedings brought before the Canadian courts regarding tar sands developments by First Nations. Total has been named in one, the Beaver Lake Cree First Nation lawsuit against the Government of Alberta.

In 2008, the Beaver Lake Cree First Nation filed a lawsuit based on 20,000 infringements of their treaty rights related to extraction in general and tar sands specifically. Beaver Lake argues that they are unable to maintain their way of life due to the severe impacts tar sands operations have had on lands and wildlife. Beaver Lake specifically is concerned about Total’s Surmont in situ project, which will further deplete caribou populations through habitat fragmentation. The Beaver Lake Cree have experienced a 74% decline of the Cold Lake herd since 1998 and a 71% decline of the Athabasca River herd since 1996. Today, just 175 – 275 caribou remain. By 2023, the total population is expected to be less than 50 and locally extinct by 2040.13

In 2008, the Athabasca Chipewyan First Nation filed suit against the provincial government of Alberta over lack of consultation. Shockingly, the court of appeal ruled that a government post on an obscure website constituted consultation, rather than face-to-face (or rather, nation to nation) discussion. The decision is contested, as it ignores both technological divides and good faith negotiations on behalf of the Canadian government, and will likely be challenged at the Supreme Court of Canada.

In 2008, the Prairie Chipewyan First Nation also launched a lawsuit against the Government of Alberta for lack of consultation related to a mining project that was approved for development on their territory. In 2010, both the Duncan and Horse First Nations were granted intervenor status in Supreme Court of Canada case dealing with issues of consultation. The Duncan First Nation was not properly consulted about the impacts of the Peace River in situ complex, located on its traditional territory.14 The community reports massive losses of wildlife and habitat fragmentation.

In 2007, the Woodland Cree First Nation filed suit with the Alberta government and Royal Dutch Shell over inadequate consultation regarding an in situ expansion, located within 10 km of their traditional territory. WCFN residents have expressed concern about respiratory illnesses, wildlife health and contamination of Cadotte Lake from existing tar sands operations.

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Shareholder Concerns and Recommendations

Shareholder Concerns

Total plans to invest $20 billion USD into tar sands projects over the next decade. However, shareholders have expressed concern with Total’s investment plans in the tar sands. In 2009, the PhiTrust Investor Group, an asset manager signatory to the United Nations Principles for Responsible Investment, put forward shareholder resolutions outlining the risks involved with tar sands operations.

Total claims to strive for the ‘social license to operate’ with its projects. In Alberta, a growing body of litigation and First Nations resistance has demonstrated that for many, the lands, culture and health of communities is more important than profit. Total should question the economic, legal and social sustainability of its tar sands assets, before committing billions more to contested lands.

Recommendations

- Total needs to assess and disclose information through independent review of the social, environmental, cultural and economic impacts, including accumulative impacts of its operations in Alberta
- Total needs to conduct an Annual Human Rights Impact Assessment of its operations in the tar sands.
- Develop revised investment mandates drawing on expertise and guidance from independent sources and best practices in the financial sector to identify the human health and accumulative impacts of tar sands on First Nation communities
- Make the right and principles of Free, Prior and Informed Consent (FPIC) of Aboriginal peoples a condition of all forms of project finance.
- Transition away from risky carbon intensive investments in the tar sands to sustainable renewable and clean energy solutions.

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1. At IEN, we use the term Mother Earth as both a sacred and political term. Indigenous peoples throughout the world have integrated their relationship with Mother Earth into the new politics of consciousness, as exemplified by the Cochabamba Peoples Accord on Rights of Mother Earth.
2. First Nations is a term of ethnicity that refers to Aboriginal peoples of Canada that are neither Inuit nor Métis.
3. Also called oil sands.
5. ibid
6. ibid
7. ibid
8. Observed Summer, 2010 by Dave Vasey, York University/University of Manitoba researcher and Melina Laboucan-Massimo, Greenpeace Climate and Energy Campaigner and member of the Lubicon Cree First Nation – davevassey@gmail.com, Melina.Laboucan.massimo@greenpeace.org ibid