

May 1st, 2020

To: Mineral Development Strategy Panel

Submitted via e-mail:

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**Re: Response to Request for Comments
Yukon Conservation Society presentation
Written Submission following the on-line presentation**

To the YMDS Panel

The Yukon Conservation Society (YCS) is a grassroots environmental non-profit organization, established in 1968. Through a broad program of conservation education, input into public policy, and participating in project review processes, we strive to ensure that the Yukon's natural resources are managed wisely, and that development is informed by environmental considerations.

YCS is not opposed to mining, as long as it is done in appropriate areas, uses best environmental practices, and has comprehensive and adequately funded closure plans. YCS is submitting this written submission as supporting documentation to the on-line discussion YCS had with the panel on May 1st, 2020. Attached is a copy of the slides that were used by YCS during the on-line discussion.

Introduction

Thank you for the opportunity to provide comments regarding the Yukon's mineral exploration and development regime. The Society has been an advocate for responsible mineral exploration and mine development for decades. Our involvement in Yukon Water Board proceedings and more recently in YESAB proceedings have often contributed to significant changes to

mineral development proposals so to reduce their adverse effects on the Yukon's ecological well-being.

The Yukon's *Quartz Mining Act* and *Placer Mining Act* are premised on the view that mineral extraction is the highest and best use of land. The legislation was brought into effect when the Yukon was generally uninhabited except for First Nation peoples who were considered by the dominant Canadian culture as of no importance and obstructions to development and colonial expansion into the north. Therefore, the First Nation peoples had no rights, a subservient status in law and no ownership of the land. Further to that, non-First Nation people's other interests were also second to northern mineral development.

By entrenching a free-entry system, where any legal person could stake a mining claim and extract mineral resources, the government encouraged non-First Nation people to come and develop Yukon mineral resources. Over time, amendments to the mining legislation required limited compensation for those holding particular surface rights to portions of land that subsurface mineral rights holders damaged as they extracted the resources.

More recently, national and Yukon territorial parks and otherwise protected areas have been withdrawn from *Quartz Mining Act* and *Placer Mining Act* mineral claim staking and municipalities have generally been withdrawn from *Placer Mining Act* mineral claim staking.

The *Quartz Mining Act* section 50 provides the mineral claim holder with access to all minerals below the surface of the mining claim. The *Placer Mining Act* provides similar access. The *Yukon Environmental and Socio-economic Assessment Act* provides for an assessment of *Quartz Mining Act* based activities and constraints on the activities, but due to provisions of the Act mine development cannot be denied. *Placer Mining Act* based activities may be denied.

Constraints and conditions may be imposed on mining activities such as the contents of water leaving the mining claim development and the use of some substances, such as mercury, but they are few and do not directly prevent mining activity. It would seem that the *Quartz Mining Act* and the *Placer Mining Act* limit the role of governments, and ensure the rights of the mining community are paramount.

YCS envisions all mining projects conform to some of the ideas raised in the draft document *Our Clean Future: A Yukon strategy for Climate Change, Energy and a Green Economy*. This will ensure there is a shift in the Yukon's mining focus and behaviours to immediately dramatically reduce greenhouse gas emissions and support the move towards a circular economy. YCS notes that the draft document focuses on large mines moving towards emission intensity targets, which is something YCS does not support.

Free Entry

The free entry system for staking *Quartz Mining Act* and *Placer Mining Act* mineral claims allows for claim staking in all but limited areas of the Yukon. The current system, now acknowledged as antiquated, has resulted in displaced homes, displaced First Nation peoples' traditional harvesting and severely damaged ecosystems that include fish and wildlife resources. Although *Quartz Mining Act* claims activity may be constrained, claim staking is permitted even in certain sections of Whitehorse.

The rationale for the free entry system of claim staking, to provide incentives and reward interest in the Yukon, was a by-product of a colonial perspective of northern Canada as an area of no other potential use or interests. While vestiges of the past colonial perspective have survived to the present, recent court decisions and modern attitudes provide reasons to change the free entry system to a constrained claim staking system.

Some Canadian jurisdictions provide a non-free entry mineral development system. In the Northwest Territories, a prospecting licence is required. Further to that, the consent of the holder of any surface rights is required prior to entry for prospecting or staking.¹ The Alberta government website notes that Alberta uses an application process to secure mineral rights for exploration and development.² Ontario has more limitations to the areas available for mineral claim staking than the Yukon.³ Quebec limits mineral claim staking to lands designated for that purpose.⁴

The Yukon with its multiple governments and varied land uses and interests would be well advised to adjust legislated provisions related to mineral staking. Whatever access to staking is provided, the claims should be subject to an assessment as to the socio-economic and environmental matters related to a prospective major exploration or mine development. The assessment need not include extremely detailed exploration or mine development plans but should include the effect of potential major development activities, access and ground disturbance in the area. If the initial staking is not subject to the assessment, any exploration or development activity beyond simple hand tool prospecting should be.

Another staking related matter is the staking of access to a future exploration and/or mine area. Provisions of the *Yukon Environmental and Socio-economic Assessment Act* provide for an assessment of proposed roads in the Yukon. The recent support of the Department of Energy, Mines and Resources for a mining company to stake the road to their proposed exploration/mine area is a clear abrogation of the department's responsibility to support the law and the intent of

¹ <https://www.aadnc-aandc.gc.ca/eng/1100100027895/1100100027896>

² <https://www.alberta.ca/additional-mineral-information.aspx>

³ Province of Ontario, no date, *A Guide to Staking Mining Claims*, Publications Ontario, 50 Grosvenor Street, Toronto ON M5A 1N8

⁴ <https://mern.gouv.qc.ca/english/publications/online/mines/claim/index.asp>

the noted legislation. It is also an affront to the proponents and public that participate in the implementation of the assessment legislation. Mining legislation should include provisions stipulating staked claims shall not be used for access to other staked areas unless the access is assessed via YESAA as a road.

Impact Benefit Agreements

Large exploration projects and mines affect communities in the project's proximity and often communities on the related transportation routes. While some mineral development corporations provide some benefits to a community in the proximity of the project, the benefits vary. In the Yukon case, the agreements are usually with the local First Nation. Benefit agreements with the local First Nation are confidential.

Since the resource belongs to the public at large, there is no need to restrict the agreement to the local First Nation. Community benefits such as local recreational facilities, additional health care support and infrastructure improvements may also be added to what may be First Nation citizen and others employment and contracting provisions. While agreements with a First Nation may remain confidential if the First Nation (but not the mineral corporation) wishes, provisions supporting community benefits should be publicly available.

A requirement for a community benefits agreement should be included in the new Yukon mineral legislation.

Royalties

Royalty, the amount paid by a mining company to the Yukon government (public) to secure ownership of the mineral obtained via a mining operation, in the *Quartz Mining Act* context is rather complex. The royalty in the *Placer Mining Act* context is not only simple but antiquated. Once ownership is obtained in a placer mine, the mining company can then sell the mineral on the open market.

Royalties paid for minerals obtained via the *Quartz Mining Act* regime are determined by a complicated system of deductions and allowances. The current system was designed to encourage mineral development and provide relatively little return to the government (public) for the publicly owned mineral resources. The rationale for the minor return is that there is a second-hand benefit to the public and government via local employment with the mining operation and mining supporting businesses and the related income taxes. This is a flawed perspective in that the same can be said of any business venture and all business ventures have associated risks.

The low royalty paid for the gold obtained via the *Placer Mining Act* regime is based on a similar rationale to the *Quartz Mining Act* regime with the added rationale that any change to the gold royalty established in 1908 may be politically unpopular. The placer mining industry was often the sole incentive for non-First Nation people moving to the Yukon in 1898 and later. The placer mining activity, while growing and shrinking for over one hundred years, has been con-

sidered a heritage matter and not just an economic matter. Yukon placer mining is considered by many Yukoners as a “Mom & Pop” operation that is similar to a family-owned and run corner grocery store. This is despite the reality that placer mining operations are corporately (and often foreign) owned and often yield millions of dollars in profit each summer.

Any discussion of Yukon placer gold royalty also includes the anomaly of the royalty being set when gold sold for fifteen dollars a Troy ounce. The thirty-seven point five cents a Troy ounce royalty no longer reflects the approximately fifteen hundred dollar Troy ounce price of today. The placer gold royalty is clearly out of date.

The current royalty for placer gold was established relative to the then price of gold on the market and the amount, not a formula of royalty to the market relationship, placed in legislation. Opposition to any change in the fixed amount by the placer mining industry has been supported by some politicians. The selling of a public resource for substantially less than market value to benefit mining corporations cannot be supported. The Yukon companies servicing the placer mining industry will not suffer due to an appropriate gold royalty regime tied to the market price. A change to the placer gold royalty such that it is a percentage tied to the market price of gold would provide the public with a realistic return for providing private interests with a publicly owned resource.

The *Quartz Mining Act* royalty system is not only quite complicated but does not yield a fair price for publicly-owned resources.⁵ Business tax calculations provide deductions for business operations. The royalty is, in effect, a second tax paid per the *Quartz Mining Act* royalty regime. An important and odd aspect of the *Quartz Mining Act* regime is that section 50 of the Act conveys ownership of the mineral via the staking of the mining claim. There is no acknowledgement that the new owner obtained the mineral without paying its previous owner, the public. The only “price” paid for the publicly owned commodity is a minor tax (royalty), one that does not reflect the value of the commodity.

A rational approach to the *Quartz Mining Act* royalty regime would be for the royalty or return to the public of the publicly-owned resource, to be calculated on the market price of the resource; something the current royalty regime does not do. The oft-touted public benefit of a strong business sector should not include public resources being “sold” at prices substantially below market value.

Part of the problem with the *Quartz Mining Act* is that it conveys ownership of the mineral via section 50 without any direct benefit to its previous owner, the public. A change to the ownership needs to reflect the value obtained by the new owner. A royalty regime that reflects this is needed. If section 50 remains, the royalty regime needs to be changed to reflect the reality that the claim holder, at no point in the mining process and mineral sale, pays a price for the commodity to its previous owner. That price could be paid via an improved royalty regime.

⁵ http://www.emr.gov.yk.ca/mining/royalty_narrative.html

A suggested change to the *Quartz Mining Act* royalty calculation is to eliminate the multiple complicated calculations and deductions and charge a simple percentage of the cost paid by the smelter receiving the mined metal, or the net smelter return. This will provide a simple, market-based royalty paid by mining companies to “obtain” a public asset.

Mine Closure

Yukon hard rock or *Quartz Mining Act* regime based mines that have ceased to operate have never been closed in the true sense of closed. There have been mines abandoned by the corporation that owned the mine and the responsibility for which has changed to the government and mines that have ceased operations but are still owned by a mining company that has yet to address the problems at the inactive mine site. Many hard rock mines and some major mineral exploration sites in the Yukon that have become inactive, regardless of ownership or responsibility, continue to spew contaminated water on the ground and/or into Yukon streams and rivers or the disturbed landforms have not been rehabilitated to support a return to a semi-natural state.

The current Yukon government hard rock mine permit regime requires a mining company to provide secured funds to be used for some exploration activities and to close a mine when operations cease. This approach appears to address exploration disturbances and the mine closure situation if the funds secured are sufficient, readily available and properly expended.

The determination of the cost of total mine closure is complicated and to a degree speculative. It is complicated insofar as identifying the multiple tasks required to achieve acceptable rehabilitation goals of any mine-related ground modifications. These may include open pits, large piles of waste rock, large, often water spewing, portals and diverted streams. Difficulties related to closure have included specifying the amount of expertise, labour, and machine time required. Assuming an acceptable approach to closure is found, projecting or speculating what the labour and machine use costs will be years into the future is difficult. Also, predicting what rehabilitation techniques such as ground reforming will suffice to address erosion, contaminated water seepage/flow, revegetation, and access interests is difficult in a northern context. It is important that the current Yukon government efforts to improve its cost estimates are augmented by a publicly available third-party review of each case.

A current mine closure conundrum is related to water flowing from abandoned mines. In some cases, there is groundwater bringing subsurface contaminants to the surface as it flows from portals. In other cases, surface water flowing over waste rock or disturbed ground mobilizes contaminants. In some cases, tailings ponds contain contaminants mobilized by rain and snowmelt runoff. Earlier federally permitted mines are stark examples of irresponsible stewardship of the public resource.

Mineral legislation should include a requirement for any mineral exploration or development plan to identify progressive reclamation of exploration sites and/or the means by which a developed mine may be closed, subject to later monitoring. Any mineral development proposal that does not include a full and final closure plan with costing and fund security should not be

allowed to proceed. Cost estimates and funds availability for a proposed mine closure need to include a risk assessment of cost increases and assured funding availability.

Management of the mine closure and funds is also a concern. The management of the Faro mine rehabilitation project has been brought into question publicly. One suggestion is to have an independent body of knowledgeable people established to oversee the funds and operations of a mine closure plan as has been adopted in the Northwest Territories. In the Yukon's case, it would be advisable to have a single independent body rather than a mine specific one as in the Northwest Territories.

Thank you for the opportunity to provide suggestions on what may be included in the new Yukon mineral legislation.

Yours truly,

A handwritten signature in black ink, appearing to read "Lewis Rifkind". The signature is written in a cursive, flowing style.

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