



GTC's Submission to the YMDS Panel

This submission covers topics that are crucial instruments for a strong, inclusive and sustainable development of mineral activities in the Yukon.

(1) Call for Update to the Yukon Mineral Resources Regime, Legislation and Regulations

Mining legislation and regulation in Yukon is intended to cover the overall regulatory management of the mining sector in the territory taking into account the existence of different self-governing First Nations and Transboundary Groups. However, numerous Yukon statutes do not place Gwich'in rights and interests at the same level as the rights of First Nations under the Umbrella Final Agreement.

Many of these instances are untenable and out of step with Gwich'in rights and interests in the Yukon and the requirement for consultation by the Yukon Government (YG). For example, there is the exclusion of Gwich'in from key definitions under the *Placer Mining Act* and *Quartz Mining Act*. The lack of inclusion of Gwich'in anywhere in these Acts means that our participants and their rights are not considered under these statutes. This differential treatment of Gwich'in under Yukon legislation is not consistent with Gwich'in rights set out in the Yukon Transboundary Agreement (YTA).

Therefore, the GTC calls for the development of a new Yukon mineral resources regime and legislation/regulations that will reflect and explicitly acknowledge that the Gwich'in (through the YTA) and other Transboundary Groups are a Yukon First Nation and should therefore receive the same benefits and considerations as the signatories of the Umbrella Final Agreement.

As the current legislation that regulates the mineral sector in the Yukon is outdated at many levels, the GTC suggests that development of the new mineral resources regime and legislation commence as soon as possible. The GTC proposes this work



be led by a special working group with representation from YG Department of Justice, YG Aboriginal/Indigenous Relations officials, the GTC and all affected First Nations. Thus, the new regime and legislation will be co-created by YG and the affected First Nations. However, prior to the establishment of the working group, the YG requires conversation with the GTC to comprehensively review these statutes that unduly place Gwich'in rights on unequal footing with the rights of Yukon First Nations.

Once the new mineral resources regime and legislation are developed, the YG should periodically undertake a benchmarking exercise to assess whether mining policies and legal frameworks are up to date and align with evolving political, social and economic environment in relation to the affected First Nations and transboundary groups to identify potential gaps so that we not find ourselves with outdated mining legislation, some decades after.

In addition, the new regime and legislation must respect and uphold the objectives and intent of the affected First Nations and transboundary groups land claim agreements. Specifically, the new Mineral Development Strategy (MDS) must ensure that Gwich'in, collectively represented by the GTC, are included in any relevant *act* and *policy*. This should include a provision about timeline for meaningful consultation, as “the last-minute email” is just not enough nor satisfies the legal duty to consult.

Consultation needs to come at an early stage prior to a proponent's mineral exploration activity. The GTC highlights the need to communicate clearly in the strategy that Proponent must meet the land management and control guidelines, and any other requirements of the First Nations in whose traditional territory the mineral development/activities are intended to happen.

Furthermore, the GTC reiterates that the MDS must align with the GCLCA, Umbrella Agreement and any other Constitutionally protected agreements as the focal points. The MDS also needs to outline its review mechanism and process such



that it remains reflective of the affected First Nations evolving approach to managing mineral exploration and mining activities in their respective territories. This will enable the affected First Nations to engage their participants in the review process to obtain meaningful feedback and input in a timely manner.

(2) Sustainability, Environmental, Social and Human Rights Protection

Attracting exploration investment to any region is a highly competitive business and depends upon many factors. However, a priority for exploration companies is the existence of a high quality and accessible geoscience database. Updating the database is an effective means of: (i) generating and attracting interest to the exploration sector; and, (ii) providing a basis for directing future work for both First Nation communities and exploration companies. In this context, the following measures are recommended:

- Conduct a thorough review of existing data to develop more systematic understanding of geological and mineral potential in the Yukon Territory;
- Work collaboratively with the affected First Nation governments to develop a detail bedrock geology in their traditional territories; and,
- Produce detailed description of most mineral deposits in their territories.

Attracting technically capable and financially sound exploration companies is key to improving geological information and increasing the likelihood of eventual mineral production. However, this must be consistent with the constitutionally protected agreements with the affected First Nations, including the Gwich'in. Any development should not happen to the detriment of the protection and preservation of the lands, air, water, culture and heritage of the affected First Nations.

In this light, the MDS needs to highlight the importance of environmental protection and identify the role of affected First Nations as rightsholders. Critically, it must include the protection of the fundamental rights of the affected First Nations and respect for the environment in Gwich'in and other First Nations' traditional territories. It also needs to underpin an integrated approach to mining governance and balance important ecosystem services with the value of external mineral resources. This implies an integrated, holistic approach to mining governance, using



each decision point in the 8-step mining cycle to balance the contributions of the mineral sector to the territorial economy against uses of resources and impacts on the environment and society.

By “holistic” the GTC means an approach to the sector that considers environmental, social, cultural and human rights issues alongside the economic and technical dimensions at each stage. This is different from treating these issues (environmental, social, cultural and human rights) as of secondary importance – or not addressing them at all.

The strategy must also acknowledge and address trade-offs between stewardship of mineral resources and stewardship of other natural resources – land, water, air and biodiversity and ensure that environmental, social, cultural and human rights issues are prioritised at the exploration stage. Early poor management of these issues can negatively affect relations with local communities well into the life of the mineral governance process. Priority should be given to prevention, from the earliest phases.

As everyone knows, “an ounce of prevention is worth a pound of cure”. This approach also signals from the onset to the mining companies and their stakeholders, that these issues are important and critical. This is the most effective way to avert any loss of biodiversity and reduce lasting harm to ecosystems.

To this end, the GTC is asking for significant changes in the way the sector is governed by the YG. This means, changing expectations in mining ministries as a start and then being bold and ambitious about embracing a wider set of goals for the sector. Instead of considering only the economic contributions of the mining industry, the YG needs to look for a net positive contribution from the mineral sector across all three dimensions of sustainable development – economy, environment and society - over the long term.

In the interim, the GTC is calling for the protection of the environment, social, cultural and human rights related issues as core minimum goals for the governance



of the sector in the YMDS. This means, regulating impacts on the local environment, local communities as well as on the people, and on workers. It also includes regulating or managing wider impacts of mining on the broader environment (considering issues such as climate change, biodiversity, ecosystem services, river basin management, etc.) and society in the Yukon territory as a whole.

If this is done, then sustainability of the mining industry in Yukon can be achieved as Yukoners, their environment and economy/profit are taken into account. If the YG is ready to take this responsible approach, then this requires reducing and then eliminating any negative environmental, social, cultural and human rights impacts as a start and then moving on to positive contributions. The MDS must clearly outline the importance of engaging with and being accountable to First Nations Governments as rightsholders as critical for improving the longer term sustainability of mining.

(3) Interests and Net Economic Benefits

The MDS needs to outline the basic starting point to act as a road map for future development. For this purpose, it must highlight and communicate to industries that affected First Nations are not against resource development; rather, they are supportive of such development so long as their consent is given, sustainability principles are followed, wide-ranging benefits accrue to all affected First Nations, negative impacts are minimized/mitigated and respect for Gwich'in lands, waters, air, culture and environment is maintained.

In addition, the new MDS must ensure that:

- jobs associated with this sector be catalogued and, in conjunction with the communities, assessed for suitability for local people. If deemed suitable for local recruitment, then targeted programs are introduced in the communities/schools to recruit and train people to meet the requirements of these job opportunities;
- interested community members are selected, trained and supported on how to prospect for minerals and enter the professional geotechnical or geology



sciences. This will help build the foundation for future capacity-building efforts over the medium and longer terms;

- access to mineral training to prepare people for mineral industry jobs. In addition, the new MDS needs to insist on training and licensing for claimholders. This will help remind miners of the high standard this sector holds in Yukon.
- for affected First Nations (GTC and other Transboundary Groups), besides royalties, additional revenue streams can be included in Impact Benefit Agreements (IBAs) with companies and Socio-Economic Agreements with the YG and companies. The IBA negotiation process will be triggered when a company communicates that a potentially significant discovery at an advanced stage of exploration has been identified. The YG shall have no role or any interference in these IBA negotiations but may play a supporting role for the affected First Nations if required and requested by the participating First Nations. In negotiating these agreements, the affected First Nations will promote collaborative relationships with industry proponents and the YG. Traditional ownership of the resources and revenue sharing will be a central component of these agreements. Therefore, the new mineral management regime must clearly acknowledge the rights of the affected First Nations to request and require proponents to negotiate IBAs with affected First Nation governments.

(4) Royalty Distribution

The YG needs to modernize the resource revenue offset calculation to match the approach now used in other jurisdictions in Canada to meet the expectations of the affected First Nations. This would allow for royalties to be calculated on both production value and project profits. This means that companies' pay for resources must be based on both the amount of money the resources generate each year, and how profitable those resources have been over a period of time.

Parameters such as market prices, the quality of resources being extracted and cost of extraction, that can influence production value need to be considered in these



calculations. Ultimately, the higher the production and profit, the more the YG can collect in royalties and share with the affected First Nations on new terms that must be discussed with their governments.

(5) Regional Land Use Planning

The new MDS must align with the provisions of regional land use plans such as the Peel Watershed Regional Land Use Plan to exclude new mineral development from environmental, socially and culturally sensitive important areas in the Yukon.

For this reason, the GTC is calling on the YG to discuss with affected First Nations, including the Gwich'in, on the approach to take with claims and mineral staking in regions of their traditional territories where a land use plan is underway or yet to be completed. The new MDS must be explicit about mineral activities in areas or regions where land use plan is not completed and requires an explicit consent of the affected First Nations whose traditional territories are concerned before any development proceeds.

In this regard, the GTC requests that the YG continues with discussions at the highest level with the GTC and the other affected First Nations regarding the full implementation of the Peel Watershed Land Use Plan so that Gwich'in land in the Yukon is utilized to its best economic potential while considering the environmental, social and cultural impacts of any proposed developments.

(6) Indigenous Knowledge Baseline Studies

It is important for any proponent to actively and accurately collect baseline Indigenous knowledge from elders and knowledge keepers of affected First Nations prior to any activity occurring. This baseline can be updated with recent information from those currently on the land. This should be done methodically and thoroughly and where possible, findings incorporated into project plans or designs to minimize any impacts.



It must also be clearly outlined in the new MDS that a comprehensive Indigenous Knowledge study will be required prior to the start of any major mineral development activity and should be an essential component of an Environmental and Social Impact Assessment (ESIA), with the majority of the costs covered by the proponent. The Indigenous Knowledge studies, as part of the ESIA, will help ensure appropriate protection of important cultural and natural areas, species, and lands within and near the proposed project footprint. The studies will also help ensure the protection of cultural sites and important habitats in order to facilitate continuation of cultural practices and traditional livelihood. Past studies need to be referenced to share best practices and lessons learned.

Indigenous Knowledge in the Gwich'in traditional territory in the Yukon shall be governed by the GTC's Traditional Knowledge Policy. The policy includes provisions for obtaining the informed consent of Indigenous Knowledge holders as well as ownership and compensation requirements.

(7) Mining Promotion and Regulation (Coordination)

For the sake of clarity of roles and effectiveness in decision making, the structure of the YG needs to be addressed in the new MDS. The present structure of the YG with the the Yukon Department of Energy, Mines and Resources (EMR) playing the role of promotor and regulator of the mining sector is a concern.

In the new mineral regime, EMR can have the lead mandate for the sector with the involvement of other YG departments, notably Environment, Labour Relations, Economic Development and other departments with social and human rights responsibilities. This way, the compliance and enforcement responsibilities of EMR can be moved to other agencies that can deliver enforcement of the rules and access to justice if required.