

## KWANLIN DŪN FIRST NATION

### SUBMISSION TO THE MINERAL DEVELOPMENT STRATEGY MDS PANEL

#### **A. Introduction**

1. The YG and self-governing Yukon First Nations committed under the *Mining Memorandum of Understanding* dated January 24, 2017 (the “**Mining MOU**”) to work collaboratively to improve the management of placer and quartz mining in the Yukon. This work is carried out by the MOU-Mining Matters Working Group (the “**MM-WG**”). Kwanlin Dun First Nation has been an active participant on the MM-WG from its beginning.

2. The YG and the self-governing Yukon First Nations approved recommendations in 2019 made by their technicians pursuant to the Mining MOU, including a recommendation for the establishment of an independent Mineral Development Strategy Panel (**MDS Panel**) to lead an engagement process (First Nations, Stakeholder Groups, the Public) relating to the development of a Mineral Development Strategy (**MDS**) for public and Category B Settlement Land lands in the Yukon

3. It is expected that the Mineral Development Strategy would set out a framework for the responsible management of public and Category B Settlement Land minerals in the Yukon, including activities relating to placer and quartz mineral prospecting, staking, exploration, development, production, reclamation, closure and post-closure.

4. KDFN supports the work of the MDS Panel and looks forward to reviewing its recommendations for a Mineral Development Strategy.

5. This submission is made to the MDS Panel as part of its public and Category B Settlement Land engagement process and we encourage the MDS Panel to give full consideration to the concerns, comments and suggestions made herein.

6. The KDFN urges the MDS Panel to carry out its work in a timely manner so that its recommended draft Mineral Development Strategy can be reviewed and initial work can be undertaken by the YG and Yukon First Nations to develop the new mineral management regime (including Mineral Successor Resource Legislation) consistent with the approved strategy before the end of the current territorial government’s term.

7. While it may be challenging for the MDS Panel to balance and reconcile the range of views and comments submitted by Yukoners for its consideration, we believe that common objectives will emerge from these submissions, including the need for any new mineral management regime for the Yukon to be founded on new, modern legislation.

8. Unlike the present placer and quartz legislation, the new mineral management regime’s objective cannot be focused exclusively on the development, extraction and export of mineral resources which is a hinterland to core development model. It must balance the various place-based values and interests of Yukoners relating to the use and management of mineral resources. The management of our mineral resources under this new regime must be able to accommodate, to the highest degree possible, all of the environmental and socio-economic values and interests of all Yukoners.

In particular, the MDS must promote sustainable and responsible mining exploration, development and mine management “cradle to grave” to ensure that Yukon First Nation citizens and other Yukon residents benefit from the development of mineral resources without compromising the integrity of our environment or the wellness of our communities and cultures.

KDFN asserts that the MDS Panel must view mining through a lens guided by Regional Land Use Planning and YESAB Project Assessments in order for the MDS recommendations to contribute to determining the best way for these Final Agreement tools to be used to frame what is needed in the new mining management regime

9. KDFN and all Yukon First Nations want a vibrant and sustainable economy for the Yukon that provides employment, training and business opportunities for Yukon First Nation citizens and local residents. We support resource development activities that respect our treaty and aboriginal rights. This is a key objective of our land claim agreements.

## **B. Our responsibility**

10. Our culture as Yukon First Nations people is rooted in our relationship with our lands and resources. Based on this relationship, we have assumed stewardship responsibilities for the management and use of the lands, waters, wildlife, fish and plants within our Traditional Territories.

11. We were taught to treat these natural resources with respect and:

- to honour them;
- to only take what we needed and use everything that we take;
- to ensure that fish and wildlife populations remained strong and healthy.

12. We were also taught that we hold our lands and resources in trust for our grandchildren and their grandchildren. Therefore, we must always act in the best interests of our future generations.

13. This means that we must ensure that any use of our lands and resources is prudent and sustainable so that our future generations will be prosperous and healthy and they are able to live our culture and enjoy our way of life.

## **C. Our experience with mineral exploration and development in the Yukon**

14. For more than a century, the Yukon First Nations have experienced the impacts of mineral exploration and development. These impacts on our culture, community, lands and resources have been significant and continuous and, in some cases, permanent.

While KDFN citizens did not experience all of the direct land use or socio-economic impacts of the mineral development the needs of the early and current mineral development further north have had major effects on the KDFN Traditional Territory and citizens.

These impacts included the following:

a. KDFN people were displaced from traditional use areas by the demands of mining activities further north, for example from the development of the Whitehorse Dam which destroyed the local

Yukon River salmon fishery in the early 50s and greatly hampered the exercise of KDFN citizens aboriginal and treaty subsistence harvesting rights for other resources in the Whitehorse area.

b. The boom-bust cycle of the mining economy has disrupted the health and wellbeing of our natural resources, communities and families Yukon wide. In the Whitehorse area the mining industry caused rapid growth of the city population due to jobs created in service industries that supported the mining industry. Kwanlin Dun people were moved from their residential areas close to subsistence resources along the Yukon River 3 times because of City development activities.

c. There has been and continues to be placer mining exploration and development in the KDFN Traditional Territory and a major concern is that this often took place in areas within the ranges of the Southern Lakes and Laberge Caribou Herds and other important wildlife). As well, given that these same areas have been used for hundreds of years by KDFN people the risk of loss of Heritage Resources in these placer mining areas was high (i.e. east of Lake Laberge in Livingstone Mining District).

#### **D. The YG's current placer and quartz legislation**

**15.** The Yukon's mineral legislation is outdated and woefully inadequate to manage placer and quartz resources today. It is KDFN's position that any Mineral Development Strategy for the Yukon must be founded on new modern mineral management legislation.

**16.** The current placer and quartz legislation was originally enacted more than 100 years ago and, despite advances in mining technology, equipment and processes over that period of time, the legislation has not been updated substantively.

**17.** The first legislation to govern administration and disposition of mineral rights on federal lands in Canada was approved by order-in-council in 1884. These first regulations were made pursuant to the *Dominion Lands Act* and made no distinction between placer and quartz operations. Amendments were made in 1887. Further amendments made in 1898 were referred to as *Quartz Mining Regulations*.

**18.** The mining industry pressed for improvements to the legislation in the early 1900s due to increased development of mining properties in the Yukon. The *Yukon Placer Mining Act* was enacted by Parliament in 1906. The *Yukon Quartz Mining Act* was enacted in 1924. The 2 Acts simply facilitated mineral exploration and development. Their provisions primarily related to the administration of public land mineral rights and the collection of royalties.

**19.** Since the initial enactment of the *Yukon Placer Mining Act (PMA)* and *Yukon Quartz Mining Act (QMA)* there have been monumental changes in the Yukon's political, socio-economic circumstances and environmental legislation, including greater public awareness and desire to participate in natural resource decision-making because of a much greater societal appreciation of the values of our natural environment.

Some of these changes were:

- the establishment of a responsible Yukon government and the implementation of our Final and Self-Government Agreements,

- the enactment of Yukon-specific environmental review and assessment processes in accordance with our Final Agreements (YESAA and YESAB),
- the beginnings of developing Regional Land Use Plans as per the Final Agreements,
- the YG enactment of territorial legislation in 2003 pursuant to the Devolution Transfer Agreement that mirrored the provisions of the former Federal *Yukon Placer Mining Act* and *Yukon Quartz Mining Act*.

20. However, while very little has been done with the PMA or QMA, we can no longer afford to have outdated and inadequate mining legislation allow environmental catastrophes to take place in exchange for short-term economic benefits. Our Traditional Territories cannot bear any new Clinton Creek, Faro or Mount Nansen mines and their aftermaths. Yukon and Canadian taxpayers simply cannot afford these mistakes.

21. KDFN expects that a fully modern assessment and regulatory regime will ensure that the impacts of mining activities and projects will be reviewed fully and appropriate operational and closure plans with robust mitigation, security and reclamation measures will be recommended and acted upon.

22. In general, public governments and industry have resisted change to the Yukon's mineral legislation. There has been a lack of political will to update and renew the Yukon's mining legislation. They have often insisted that the need to maintain stability in the "rules of the game" for an industry with long time horizons outweighs the need to update and renew mineral management practices.

#### **E. The need for new modern mineral management legislation**

23. For decades, the Yukon First Nations have expressed deep concerns about the Yukon's mining legislation. In particular, we are concerned that the foundation of the *Placer Mining Act* and *Quartz Mining Act* continues to only be the promotion and support of mineral exploration, mine development and export of raw materials. The regime does not include any ethic of land and natural resource conservation or balance in the Yukon economy.

24. The presumption of this promotion and support of mineral development is that all land is open for potential development. Mining is seen to be the highest and best use of lands in the Yukon since all lands are open for exploration and staking, unless expressly withdrawn from mining activities.

In most cases, no comprehensive planning exercise has been undertaken to determine which lands should be withdrawn for other purposes, such as cultural, recreation, hydro generation and protection of lands for ecological or watershed values. This is also inconsistent with the content of existing aboriginal title, which encompasses the right to exclusive occupation of title lands.

The **Free Entry System** for staking *Quartz Mining Act* and *Placer Mining Act* mineral claims is the result of the above "presumption" and 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 until recently was even permitted in residential sections of Whitehorse and is still permitted in some municipal areas.

The historical rationale for the free entry system was to provide incentives and reward interest in the Yukon, as it was an area thought to have little other potential use or interests. However, 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 license is required. Further to that, the consent of the holder of any surface rights is required prior to entry for prospecting or staking. The Alberta government website notes that Alberta uses an application process to secure mineral rights for exploration and development. Ontario limits the areas available for mineral claim staking. Quebec limits mineral claim staking to lands designated for that purpose.

The Yukon with its multiple governments and greatly changed land uses and interests from 100 years ago would be well advised to seriously consider new legislated provisions related to mineral staking.

The recent Yukon and First Nations' agreement on withdrawal orders prohibiting entry to all Category B Settlement Land that is designated in Yukon First Nation Final Agreements by the letters "C" or "S" or as Fee Simple Settlement Land, for the purposes of prospecting, locating a claim or mining for minerals, gold, precious minerals or stones or coal under territorial legislation, is a very important first step.

Another staking related matter involves the use of claim staking in order create "the right" to build roads to active mining claims in the hinterland. Pursuant to the Yukon Environmental and Socio-economic Assessment Act/Activity Regulation road building is an assessable activity. It is an affront to other land use applicants who participated in a YESAB assessment that a mining operation should skirt the required process in this way. New Mining legislation must include provisions stipulating that staked claims shall not be used for access to other staked areas unless the access is assessed via YESAB as a road.

**25.** In addition, the Yukon First Nations have consistently raised concerns about the inconsistency and gaps of existing provisions of the *Placer Mining Act* and *Quartz Mining Act with the Final and Self-Government Agreements*.

Issue No. 3 MDS Discussion Paper v 1.0 - Mining Legislation and Regulations asks: How should the QMA and PMA be changed to align with YFN Final and Self Government Agreements

The answers can partially be found in several chapters and provisions of the Final Agreements:

Chapters 5 and 6 that deal with access to Settlement Lands especially Category B SL

Chapter 13 Heritage and the value of Heritage Resource Impact Reviews and Assessments  
Chapter 14 Water Management and the First Nations' water rights on and off claims

Chapter 16 Fish and Wildlife whereby hunting on claims is often controversial as to subsistence and licensed hunter rights.

Chapter 17 Forest Resources – Timber harvest on Claims

Chapter 18 Non-Renewable Resources where for example the provisions there are not reflected in the practice of Class 1 Exploration on the ground.

Resource Roads and Roads on Claims – while not explicitly addressed in the Final Agreements are a growing concern to First Nations because of their potential adverse effects on the lands they open up.

## **F. Mine Development, Operations, Reclamation and Closure Planning**

**26.** Several *Quartz Mining Act* regime based mines that have ceased to operate have never been closed adequately. There have been a few forms of the cessation of operations of mines:

- a. mines abandoned by the corporation that owned the mine and the responsibility for which has changed to the government,
- b. mines that have ceased operations but are still owned by a mining company that has yet to address the reclamation and closure problems at the inactive mine site
- c. mines that have been completely abandoned and the former owner corporations dissolved

Whatever the mode of cessation of an exploration or mining operation some of these continue to present contaminated water issues. There is the risk that these waters will end up in area surface and ground water. The other risk from cessation, in particular if there is no entity with the reclamation and closure responsibility, is that mine infrastructure such as waste rock dumps and tailings piles will also leach acid and metal leachates into the soil or water in the area.

These problems create the situation where the mine area and site have not been reclaimed to a state that would support a return to a semi-natural state.

KDFN asserts that the above major problem is due to the lack of the requirement for potential mine developers and operators to provide a robust suite of development, operational, reclamation and closure plans. Mining legislation, regulations and policies need to set out the content requirements of these plans and these plan requirements must be met before a mine project proposal can enter the Mine Licensing Application/Assessment process. These plans can include some flexibility for changes discovered to be needed after mining has begun, through a well thought out Adaptive Management Plan. For example major components of such plans must include area and site research to understand the hydrology of both ground and surface waters, the other ecosystem components and the interaction of these components. The companies already understand the geology of the area and site. With the above understanding the mine developer must rigorously determine/plan how the actual mining work/activity will be done and how it will impact the natural background conditions. For example, how is water used directly in the mining work or the water encountered in the mining activities but not to be used, going to be managed? How will the mining infrastructure be sited and built, such as waste rock piles (containing no minerals/ore), tailings ponds (containing after processing waste materials), ore processing facility buildings and areas, and any dams needed to contain tailings and process water? Most importantly, how are the all of the mining activities/infrastructure going to



be discontinued/closed and left in a state that will not impact the site/area after mining has been completed (i.e. a reclamation and closure plan).

It could be said that if the mining company cannot show if and how they will properly reclaim and close the mine then, the project cannot be allowed to proceed. Yukon and Canadian taxpayers are already paying, both financially and environmentally, for inoperative and abandoned major exploration and mine sites. This cannot continue to happen.

Finally, mine reclamation and closure is also fundamentally linked to continued, effective and timely regulatory oversight. Compliance monitoring and Enforcement are discussed below. This is an aspect where a tremendous amount of improvement is required. We suggest that mining regulatory bodies are not amply resourced to carry out the required monitoring. There is an opportunity to partner with First Nation governments to develop, enhance and increase the regulatory, monitoring and enforcement aspects of the Yukon's mineral regime as a way of supporting a more effective and accountable system.

a. Development and approval of development and operating plans:

The MDS should be aware that Classes 2 to 4 Exploration programs and Class 4 Mining proposals must be submitted to the Yukon Environmental and Socio-economic Assessment Board (YESAB). If the Assessors recommend that either a Class 4 exploration program or a Class 4 mining project should proceed (likely with terms and conditions as mitigation measures, and the Yukon approves mining and water licenses, then the proponents are required to submit an Operating Plan to the Mining Lands Office and that plan must be approved before any exploration activities can be commenced. These plans may set out multi-year exploration or development programs up to ten years, which the Chief of Mining Land Use may approve or alter.

For Class 4 Programs, the Chief of Mining Land Use may require the operator to consult the First Nations and the public. The operating plan would outline all of the proposed project activities and requirements and identify measures that will be undertaken to minimize any adverse effects on the environment.

The new mineral management regime must ensure that development/operating plans have a standardized form and require proponents to comply with these operating plans, unless they are amended. The affected Yukon First Nation must be involved in the approval and any amendment of these plans.

These plans are of critical importance for compliance, monitoring and enforcement.

b. Development and approval of reclamation and closure plans:

The MDS should recommend that a review of the development of reclamation plans provided by proponents of mining projects must be conducted by Yukon and First Nations. A reclamation/closure plan is a foundational element of the mining development and operating plans, upfront in the mine planning process. The potential adverse effects of mining activities can be extensive and without fully adequate mine operating and reclamation planning these effects can quickly spiral out of control. Some critical features of a reclamation/closure plan are:

- i. reclamation/closure plan elements to address all components of the mine operation from mine infrastructure, to mining processes, to waste management, to ecosystem components

- ii. progressive reclamation activities where practicable
- iii. full understanding of the ground and surface water regime before any mining commences and development of a robust water management plan
- iv. a full costing of all reclamation processes and activities for the duration of the mining project
- v. a suite of contingency plans for spills, accidents and malfunctions which could occur during mine operations, with the potential adverse impacts of which being considered in a reclamation plan and adaptive management plan mentioned above

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 additional water from rain and snowmelt runoff and which could over top the dam and tailings water being released into the environment.

Mineral legislation should include a requirement for any mineral exploration or development plan to identify progressive reclamation of all sites and the means by which an exploration site or mine closed temporarily, subject to later monitoring. Perpetual water treatment is not an option. Any mineral exploration/development proposal that does not include a full and final closure plan with full costing and adequately funded security should not be allowed to proceed.

#### c. Requirement for and Management of Security

Financial security is within the scope of both the *Waters Act* and the *Quartz Mining Act* and thus needs to be considered by both regulators. The ability for each regulatory instrument to require security for similar components results in a duplication of the process of assessing security to be required.

In general, the regulations will need to be modernized and adjusted. The acceptable form of security list could be amended to add new or remove the forms that are not acceptable anymore. The Waters Regulation and the Security Regulation will also require amendment to add provisions for temporary closure and risk assessment.

#### KDFN recommends:

That Yukon:

- Work with YWB on procedural and administrative mechanisms to ensure that security determination on mine licenses (Quartz Mining License and Water Licence) is agreed to and rationale for costing is adopted by the board.
- Establish a process that would reduce, eliminate the duplication effort to determine, manage and release the financial security for mine licencees.
- The outcome is to establish a single procedure for the determination of financial security for mine sites in the Yukon. The procedures will include, but not limited to, calculation method for operation, reclamation & closure, post-closure monitoring and higher risk components (risk assessment). The procedures should also include how security will be release dafter closure of the mine site.

Security provided by a mining company is the main mechanism to ensure that the Development, Operation, Reclamation and Closure Plans will be implemented even if the operator abandons



the mine or goes into bankruptcy status. Therefore, security must be required for all mining activities on public and Category B Settlement lands.

**Determination of security amount-** The costs to reclaim/close all aspects of the area/site that were altered by mining activity, for example, dismantling of mining infrastructure, stabilizing any infrastructure that will remain, remediation of damaged environmental components, replacement of overburden, removal of garbage, debris and discarded machinery, are often very significant.

The new mineral management regime must ensure that adequate security is collected from proponents, up front, in a secure/liquid form to carry out all reclamation and closure activities required at any one time. There must be clarity and certainty about the costing system to determine adequate security. As outlined above the costing system is integrally related to the reclamation/closure planning.

The cost estimates are complicated and to a degree speculative. It is complicated insofar as identifying the multiple tasks required to achieve acceptable rehabilitation/closure goals of any mine-related above or below ground modifications to the area/site. These may include open pits, large piles of waste rock, tailings ponds, large often water spewing portals and diverted streams.

Difficulties have included specifying the amount of expertise, labour, and machine time required. Assuming an acceptable approach to costing reclamation/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.

Costing is speculative because a proposed mine reclamation/closure plan cost estimate needs to include a risk assessment of future cost increases and funding availability.

We are not convinced that the current approach has ensured that security funds or instruments provides adequate secured funds and that these have been expended properly. There have been examples of some cases where funds were either not secured or expended, not sufficient to deter irresponsible practices or the situations were not addressed by the Yukon or federal government as the case may be.

**Forms of Security** - The forms of security include the direct deposit of funds to YG, surety bonds (i.e. insurance from an international bank), pledging of assets, etc. Aside from the fundamental flaw of determining securities based on industry's adaptive management approach and proponent commitments, the form of security model needs to be based on an approach that does not leave YG, and the Yukon tax payers, on the hook should a company fail to operate as authorized. For example, monies held by YG (through direct deposit) may be subject to court order retrieval by shareholders should the company file for insolvency. The surety bond approach is an insurance premium where the coverage details are not disclosed to YG, and using the value of the assets is determined based on their market values which often fluctuate.

Ultimately, the uncertainty around these approaches to forms of security high and more thought needs to be put into redrafting this model that YG relies upon to ensure all unexpected events do not put the Yukon tax payer on the line from a liability and financial perspective.

KDFN recommends:

YG to review and redraft the form of security model. This work should be done in conjunction with YFN and tax payers to determine a more fiscally responsible approach to collecting security.

**Management and expenditure of security** 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 reclamation/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. This may address the transparency and accountability issues that have plagued the Faro situation.

The new mineral management regime must establish a collaborative decision-making process with YG, the company and First Nations for the management and expenditure of security.

Another aspect of reclamation/closure security is that the new mineral management regime must address progressive reclamation. This would help avoid a situation where a company runs into operating and financial difficulty and must temporarily cease or even abandon the project. If there had been progressive reclamation done before the difficulty then there would be less costs for reclamation/closure remaining. On the other hand an incentive for companies is that as they carry out progressive reclamation activities and prove the work to government they would receive a refund of some of the security that had provided at the outset of their mining project.

## **G. Compliance Monitoring & Enforcement**

27. A priority of the new mineral management regime must be to achieve an effective compliance monitoring and enforcement regime with applicable legislation, regulations and policies. As stated above the compliance regime is based on development, operating and reclamation plans submitted by the proponents and approved by the YG. It should also promote collaborative monitoring arrangements between the YG and Yukon First Nations, such as identifying inspection priorities and undertaking joint inspections.

- a. Inspectors. The new mineral management regime must ensure that inspectors are qualified and have the capacity to deal with complex or large-scale projects. Perhaps it would be appropriate for inspectors to report to a territorial department other than ERM in order to avoid any real or perceived conflict of interests since ERM is responsible for both encouraging industry to undertake work in the Yukon and regulating industry for compliance with the applicable legislation, regulations and policies.
- b. Enforcement tools. The new mineral management regime must establish a range of enforcement tools to ensure that inspectors are able to effectively and efficiently address non-compliance with any licences and permits or with the legislation or regulations.

This may mean that inspectors have the authority to issue an administrative monetary penalty or stop work orders or order a proponent to undertake specific remedial work within a prescribed period of time.

The legislation must provide authority to suspend or cancel a claim where a proponent is unable to provide evidence that the claim is being held for the purposes of mineral exploration or development.

- c. Penalties. The new mineral management regime must establish substantive penalties for those who fail to comply with applicable licences and permits or the legislation and regulations. The legislation should include penalties for making a false or misleading statement to an inspector, obstructing an inspector, failing to pay a royalty payable as required, failing to file a report required under the legislation, conducting exploration activities in contravention of an order to cease activities and generally doing anything in contravention of the legislation and its regulations.

If a proponent is a “bad actor” who acts in bad faith or repeatedly violates the applicable licences and permits or the legislation and regulations, that proponent should be prohibited from undertaking or being involved in mineral activities and projects in the Yukon for a specified period of time.

- d. Sentencing principles. There must be an element of deterrence, denunciation and punitiveness for non-compliance of the applicable licences and permits or the legislation and regulations. For example, a person who illegally builds a 20 - kilometre mining road in the pristine backcountry cannot simply be fined \$1,200 upon conviction in the Yukon Territorial Court. That is not appropriate. It creates no deterrent for non-compliant behaviour.

In addition, a court must be authorized to issue orders to remediate and compensate for damage caused by a person’s non-compliance with the applicable licences and permits or legislation and regulations. This court intervention may include Yukon being required to expend the security held when the operator will not or cannot pay for the ordered remediation.

## **H. Royalties**

**28.** Put simply, royalties are for the extraction and use, through mining activities, of a public resource, owned by the people of the Yukon. Royalty calculations in the current in the *Quartz Mining Act* context are rather complex. On the other hand, the royalty in the *Placer Mining Act* context is simple. Both are antiquated and the royalties are ridiculously low.

Any discussion of the Yukon gold royalty must acknowledge the anomaly of the royalty having been set when gold sold for thirty-three dollars a Troy ounce. The current thirty-seven point five cents a Troy ounce royalty no longer reflects the approximately seventeen hundred dollar Troy ounce price of gold today.

A second anomaly in the gold royalty system is that the ownership of the gold is conferred on a miner in the *Yukon Placer Mining Act (PMA)* and *Yukon Quartz Mining Act (QMA)* when the mining claims are staked. No payment is made for staking claims.

The current royalty rates and distribution system suggests that there is a balance between the financial success of the mining industry, so that there can be further investment and production and public benefits from mining.

We understand that there are financial benefits to Yukon and communities from mining including:

- a. Community benefits from residents' wages and through mine local spending in the community
- b. Property taxes from the mine (indirectly from YG as most mines are outside community boundaries)
- c. Impact Benefit Agreements
- d. Yukon benefits from Income Tax paid by mine employees and the Mine
- e. Shareholder benefits to Yukon resident investors
- e. Yukon benefits from Royalties which are miniscule now but could be significant in future

However, we wish to point out that there are significant costs to communities, residents and Yukon from the development and operation of a mine as follows:

- a. infrastructure development and maintenance to service the mine (roads)
- b. compliance monitoring and enforcement costs
- c. worker health care as these may be new Yukoners
- d. the influx of people to a community may put stress on community operated infrastructure, social systems, traffic management
- e. wildlife and wildlife habitat disturbance from noise, dust, alteration, illegal harvests

We also understand that there are significant costs to plan, develop and operate a mine. However, off- setting these "costs of doing business" there are potentially quite large revenues and profits forthcoming.

We recommend that there be a thorough cost benefit analysis of a typical large mining project to determine if more royalties or some sort of tax should be required from a mining company or not. This would be an estimated full cost accounting of all typical mining costs and revenues/profits and of resident, community, Yukon costs/benefits as compared to their revenues and financial benefits.

Only then could we determine fair and reasonable royalties/tax amounts that mining companies should pay.

A rational approach to the *Quartz Mining Act* royalty regime would be for the royalty to be calculated on the using the Net Smelter Return, 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. This is not directly tied to the market price of gold. Instead Yukon would charge percentage of the cost paid by the smelter receiving to the operator of the mined metal. This will provide a simple, partly market-based royalty paid by mining companies to obtain a private benefit from a public resource.

## **I. Impact Benefit Agreements**

**29.** Large exploration projects and mines affect First Nation communities in the vicinity of a project and often other communities nearby. Impacts go beyond the generalized understanding in YESAA of the “scope” of the project. For example, the increased highway truck traffic due to the Victoria Gold project has a direct effect on the highway mortality of subsistence harvest species such as caribou and moose as well as the harvest by non-First Nation people. The direct and indirect effects of mineral exploration and development activities on subsistence plant and animal harvest activities include, but are not limited to disturbance of furbearers, increased access to sensitive areas, the crossing of trapping trails, clearing and stripping of ground cover that is habitat for animals and that provides plants used for a multitude of purposes by First Nation people.

A First Nation’s interests go beyond its Settlement Land and extend to its Traditional Territory and beyond as those areas’ resources and their well-being affect all Indigenous People and people in general. It is that interest in the management of land and resources beyond Category A Settlement Land and include Category B Settlement Lands and public lands.

The new mineral management regime must require proponents to enter into Impact Benefit Agreements (IBA) with affected Yukon First Nations and communities for specific activities and projects to ensure that local communities and residents have opportunities for long-term benefits, such as employment, training and contracting opportunities.

Proponents must be required to conclude benefit agreements with affected Yukon First Nations in order to undertake advanced exploration projects and mine development and operation projects. It should also encourage proponents to engage with affected Yukon First Nations as soon as practicable when planning and undertaking new exploration or mining work.

We recommend that the new legislation set out the topics to be discussed in the negotiation of IBA, including:

- employment opportunities;
- contracting opportunities;
- scholarships, education and training opportunities;
- payments for community benefits;
- community infrastructure development; and
- equity participation.

An IBA need not incorporate all of these matters, and it could include other items, so long as the substance of the agreement is fair and proportional to the scope of the project.

The YG would have no role in the negotiation of benefit agreements. The YG should not prescribe, oversee or interfere with content of the IBA. The proponent would only need to show that an agreement has been concluded in order to discharge this legislative requirement. Written confirmation from the proponent and affected Yukon First Nations would suffice to assure the Minister that the IBA requirements of the new legislation have been met.

The new legislation should establish a dispute resolution body to adjudicate issues relating to negotiation impasses with respect to IBA. This dispute resolution body would only have jurisdiction over impact benefit agreements, not other issues arising between the affected Yukon First Nation and a proponent, such as the mitigation of impacts.

While the dispute resolution body would be funded and set up by the YG, it would be an independent body which operates separately from the YG. The dispute resolution body's design would ensure expertise, independence, public trust and efficient use.

## **J. The way forward**

**30.** Any modern legislation must be consistent with the recommendations accepted by the YG and self-governing Yukon First Nations under the **Mining Matters MOU-Working Group**, including the recommendations made by the **Progressive Reclamation Sub-working Group**.

**31.** In addition, the new mineral management regime must incorporate the list of proposed strategic amendments developed by the working group pursuant to the Mining MOU with respect to the *Placer Mining Act* and *Quartz Mining Act*.

**32.** In our view, the benefits of new mineral management legislation would be significant, including the following.

a. Provide certainty and clarity about responsibilities and liabilities, promote collaboration and cooperation amongst the YG and Yukon First Nations and stakeholders with respect to the management of mineral resources throughout the Yukon.

b. Be consistent with our Final Agreements and the common law, including legal requirements for notification and consultations, and this should avoid the need for the Yukon First Nations to use other processes to protect our aboriginal and treaty rights.

**33.** In accordance with the commitments made in the DTA, the YG and Yukon First Nations, in consultation with the public and stakeholders, including industry, would develop new territorial legislation to replace the mirror mining legislation. This legislation would be consistent with the Mineral Development Strategy.

**34.** Clearly, the views and perspectives of industry are important with respect to the development of a modern mineral regime for the Yukon. However, they cannot be provided a veto with respect to the development of policy relating to the management of public land and Category B Settlement Land resources. They cannot be provided a disproportionate influence in these discussions especially as many mining company Directors and managers are not Yukon residents year-round.

**35.** The YG is authorized under the terms of the DTA to manage and control public lands, minerals, water and forestry in the Yukon. As part of the DTA, the YG enacted territorial legislation relating to public lands, minerals, and water that "mirrored" the federal laws that were existing on the date that the DTA was brought into legal effect.

It was intended this mirror legislation would be in place temporarily until the YG and Yukon First Nations developed successor resource legislation in accordance with the DTA. So, far only the Forest Resources Act was developed and enacted as successor resource legislation replacing parts of the old Territorial Lands Act and Regulations.

This new legislation would be "made-in-Yukon" to address the unique circumstances of the Yukon. To that end, the First Nations and YG have recently agreed to re-establish the **Successor**



**Resource Legislation Working Group** (the “SRLWG”) under section 4 of *Appendix B – YTG – First Nation Agreements* of the DTA as follows. The SRLWG would:

- consist of representatives of both the YG and the First Nations;
- serve as the “cooperative working arrangement” between the YG and First Nations with respect to the development of successor resource legislation in accordance with *Appendix B*;
- provide recommendations for priorities for development of successor resource legislation;
- provide recommendations for the development of each particular piece of successor resource legislation; and
- operate on the basis of consensus in the development of its recommendations.

In our view, the YG and Yukon First Nations must employ the SRLWG to develop the new mineral management legislation, consistent with the Yukon’s Mineral Development Strategy, that would replace the *Placer Mining Act* and *Quartz Mining Act*.

**36.** If we are forced to use other processes and forums – whether it be political, court or media – to protect our aboriginal and treaty rights within an outdated mineral management regime, relationships will be damaged, the Yukon’s perception as a progressive mining jurisdiction will be tarnished, and the ability of Yukon mining proponents’ to raise money will be impacted. This would benefit no one.

**37.** We cannot afford to work unilaterally to amend or develop new legislation, policies or rules relating to the Yukon’s mineral management regime – as was done with respect to the enactment of Bill S-6. If this is proposed, we will take every step to oppose such changes. We must be committed to work in a partnership to deal with these issues.

**38.** Upon the completion of the bills for the new mineral management legislation, the YG and Yukon First Nations must develop an implementation plan that will describe the costs, timing and resources that will be needed to implement the legislation after they are enacted. In particular, this plan would address matters relating to a regulation development process, training materials, public awareness, information technology infrastructure and support for the Mining Recorder Offices.

#### **K. Sustainability of Mining in Our Yukon environmental circumstances and socio-economic circumstances**

The following 3 Issues from the MDS Discussion Paper are linked closely to each other as discussed below. Redeveloping and improving elements of the mining regime as discussed above will also contribute to the achievement of both sustainability and climate change adaptation/mitigation goals.

**39.** Issue No. 1 - MDS Discussion Paper v 1.0 – Sustainable Industry Development - Asks:

*Given that Yukon mineral producers are price takers, and that production costs in the North are higher than in other jurisdictions, how can a Yukon Mineral Development Strategy help encourage sustainable industry development?*

*How can a Yukon Mineral Development Strategy help ensure that Yukon communities are involved in development activities and that positive benefits accrue to Yukon people over the long term?*

*What are some concrete actions that industry, communities and governments can take to maximize positive benefits from mining projects and mitigate negative impacts on Yukon communities?*

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These questions could be addressed in the MDS through a thorough examination of Research and Development and Best-Practices for mining (at least in North America). Then the MDS could make strong recommendations on how to improve mining in Yukon to both improve the sustainability of mining, and the overall sustainability of the Yukon socio-economic and environmental circumstances.

Some of the components of examining the components of mine development and operation that could benefit from this work are listed below. The goal of this would be to avoid, reduce or mitigate adverse effects of the mining activities.

- \* Worker training not only about their job and safety skills but about all aspects of sustainability
- \* Transportation (to and from the mine site, within the mine site, types of vehicles and machinery)
- \* Energy sourcing and use (types of energy selected, conservation measures)
- \* Materials purchasing overall and the handling/processing of ore, minerals, waste rock
- \* How the mine site is cleared of vegetation and overburden taking into consideration future reclamation
- \*Water use and management
- \* Progressive and final reclamation and closure practices
- \* Balancing the mining companies' financial needs for mine development, operation and closure with much more equitable benefits to Yukon society, communities and Yukon government.

Other changes for the interim, before a full review and amendment of the 2 Acts takes place, are being discussed as "Strategic Amendments" at the Mining MOU Working Group table.

KDFN realizes that the MDS cannot solve all the issues but instead it must facilitate the processes among YG and YFN that will address them.

**40. Issue No. 5 - MDS Discussion Paper v 1.0 - Regional Land Use Planning – Asks:**

*Where does the regional land use planning process fit within the development of a Yukon Mineral Development Strategy?*

*Are sub-regional land use plans — such as the Beaver River Land Use Plan — a reasonable alternative to regional land use plans from a resource development point of view?*

*How can a Yukon Mineral Development Strategy help ensure that cumulative effects from development are adequately considered?*

*Should regional land use plans be subject to periodic review to consider changes in factors such as land use patterns, climate change and advances in geologic thinking?*

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Land-Use Planning in all its forms is paramount to assessing if a mining project should go ahead or not. There is significant value land-use plans which are built by a broad spectrum of people and organizations with differing perspectives/interests. Out of principal, land-use plans should be implemented prior to any land disturbing activities take place because the Plan guides YESAB assessment of project proposals. One very important component of land-use planning is determining what the biophysical and socio-economic assimilative capacity of an area/region is with respect to land-disturbing developments. This knowledge and understanding of the capacity for the land to support resource developments also plays into determining the cumulative effects that are occurring from multiple land uses.

**41 Issue No. 7 - MDS Discussion Paper v 1.0 – Climate Change Adaptation – Asks:**

*How can a Yukon Mineral Development Strategy be integrated with the Yukon’s climate change adaptation efforts?*

*How can climate change adaptation knowledge be harnessed for more effective adaptation strategies in the mineral sector?*

*What can be done to address vulnerabilities to climate change at mine sites such as loss of permafrost during the post-operational phase of mines?*

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KDFN asserts that all mining projects could closely 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.

The MDS can be integrated with the Climate Change, Energy and Green Economy Strategy by closely examining the “Our Clean Future” Strategy Goals, Objectives and Actions against the mining components. There will be synergies that can be acted upon.

For example reclamation can involve active tree and vegetation plantings which could speed up regeneration of the cleared areas of the mine site. The plantings become a carbon capture sink once again. Of course using renewable energy options as much as possible is a no-brainer.