



Beverly and Qamanirjuaq Caribou Management Board

1 December 2017

Government of the Northwest Territories
Department of Industry, Tourism and Investment
Mining Recorder's Office
Yellowknife, NT X1A 2L9

Via e-mail: EngageMRA@gov.nt.ca

Input for Developing a Mineral Resources Act for the Northwest Territories

On behalf of the Beverly and Qamanirjuaq Caribou Management Board (BQCMB), I am submitting comments intended to assist the Government of the Northwest Territories (GNWT) with its goal of developing new “leading-edge”, made-in-the-North” legislation governing mineral resources, mining, and exploration in the NWT. This legislation is significant to the BQCMB because the Board has been actively involved for many years in discussions and policy and planning exercises about mineral exploration, mining development and roads on important and sensitive caribou habitats. This includes involvement in developing land use plans in Nunavut and northern Saskatchewan, environmental assessment processes in NWT and Nunavut, and discussions with exploration and mining companies about many of the topics outlined in the discussion paper circulated by the Department of Industry, Tourism and Investment (ITI): *Unlocking Our Potential Together*.

The mandate of the BQCMB is to safeguard the Beverly and Qamanirjuaq caribou herds, primarily in the interests of Indigenous peoples from Nunavut, the NWT, Saskatchewan and Manitoba who have traditionally relied upon these herds, and to advise governments and caribou range communities on conservation and management of the herds and their ranges. The BQCMB, which was established in 1982 and continued since with the GNWT as one of 5 government signatories, has provided advice to the GNWT in various other engagement processes, most recently regarding development of a Bathurst Caribou Range Plan and the proposed listing of barren-ground caribou under the Northwest Territories (NWT)

*Species at Risk Act. The Beverly and Qamanirjuaq Caribou Management Plan 2013-2022*¹ summarizes the Board's overall approach and provides guidance for the advice it provides.

Thank-you for the opportunity to provide input during the early stages of development of new NWT legislation. At this time we offer our overall perspective on what is needed in this new legislation, a few general comments and responses to some of the questions provided by ITI in its discussion paper (see Attachment).

The Perspective of the BQCMB

The BQCMB is not against mining or other forms of economic development, and the governments and communities represented on the Board all recognize mineral exploration and mining as important parts of northern economies. However, we are very concerned about the impacts of the mining industry on caribou and their habitat, and would like to emphasize that new mining legislation needs to provide guidance for reducing land use conflicts over environmental and socio-economic issues related to the mining industry in the NWT.

We are expecting the GNWT to set the bar high for new "leading-edge" legislation that promotes best practices in all areas and will be looked upon as a modern model for developing legislation in other jurisdictions (such as Nunavut) in future. Therefore we encourage the GNWT to develop legislation that does not merely "tweak" the system inherited from the federal government, which was established in a previous era with different values, priorities and technologies. The new legislation should address the circumstances of the current era and reflect the needs, values and wishes of all residents of the NWT, not just those involved in the mining industry.

In order to do this the GNWT must give sufficient weight to all the guiding principles described in the discussion paper (p. 11). In order to address the last principle for preserving the economic, environmental and cultural heritage for future generations of all peoples in the NWT, the new legislation must describe a new way of doing things, and not be based on the previous system. This will require meaningful consultation with Indigenous and other peoples of the NWT and ongoing careful attention to needs for protecting the environment and Indigenous land-based cultures.

We believe this requires the GNWT to take a step back and take a broader, higher-level look at the overall system whereby land access and mineral tenures are issued. It is clear to the BQCMB that the current free entry system, which is neither modern nor leading-edge, is simply not appropriate in the current era. It is also evident that, if the old system is continued, land claims and land use planning

¹ BQCMB. 2014. Beverly and Qamanirjuaq Caribou Management Plan 2013-2022. Beverly and Qamanirjuaq Caribou Management Board, Stonewall MB. 102pp.

should be completed throughout the NWT before new mineral tenures and mining permits and leases are issued. Only then will sufficient and appropriate consultation have been conducted in order to ensure that the wishes and values of the NWT's Indigenous peoples have been successfully taken into account.

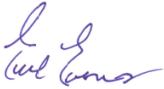
General Comments from the BQCMB

- To be leading-edge legislation, the GNWT needs to develop an MRA that aims to manage minerals along with other resources, including surface lands, forests, water, and wildlife, as part of an integrated land and resource management regime, not in a manner that is disassociated from all other elements.
- The MRA should support the NWT system already in place via *Mackenzie Valley Resource Management Act (MVRMA)* which integrates land use planning, environmental assessment, land and water management, and state of the environment reporting.
- The NWT Mineral Development Strategy and the MRA discussion paper appear to be mostly driven by GNWT-ITI. The environmental and social impacts from mining, including exploration, must be recognized and the need for minimizing these impacts needs to be addressed by the new Act; collaboration with the other GNWT departments with appropriate knowledge and expertise in these areas is needed to develop a suitable MRA.
- The Act should reflect the precautionary principle regarding the frequent lack of adequate knowledge concerning the state of wildlife populations and other aspects of northern ecological systems, and resulting uncertainty about potential environmental impacts.
- The public engagement process appears to have been very selective, with community open houses held in tax-based municipalities and discussion sessions held with specific “stakeholder” groups. We were surprised to see that there was not broader engagement held with the Lutsel K'e Dene First Nation (LKDFN), which is a member of the BQCMB and is the NWT community with the greatest recent experience under the current legislative regime and with modern mining companies.
- The responsibility for managing subsurface rights should be moved to the GNWT Department of Lands, as it is not appropriate for ITI to act as both promoter of the mining industry in the NWT and also the regulator/enforcer.
- Protocols for collecting scientific data should be done consistently across all phases of exploration and development, so that information can be built upon throughout the life of a mine until closure, and good information for cumulative effects assessments is available.
- New legislation should provide a framework for standards or targets to be achieved through “best practices”. The GNWT should publicly encourage companies who choose to work in the NWT to exceed these standards.
- Any regulations or requirements established in new legislation must be supported by resources and systems adequate to enforce them.

Please also see the attachment to this letter for responses to some of the questions provided in the discussion paper. We have focused on questions that relate in some way to caribou conservation and management issues resulting from mineral development, which in our view incorporates broader aspects of land and water conservation related to land access, land use planning, socio-economic effects and cultural preservation.

We appreciated the opportunity for a BQCMB representative to participate in the group discussion on developing this new mineral resources legislation in mid-September, at which time we provided verbal input. We also appreciate this opportunity to provide input in writing, and look forward to further engagement opportunities, at which time we will provide additional comments. If you have any questions about these comments, please contact BQCMB Executive Director Ross Thompson (rossthompson@mymts.net) or contract biologist Leslie Wakelyn (wakelyn@theedge.ca).

Sincerely,



Earl Evans
BQCMB Chairperson

Attachment

Attachment. Responses to some of the questions provided in the discussion paper which relate to mineral development and caribou conservation and management.

LAND ACCESS IN PROSPECTING AND EXPLORATION

General comments based on BQCMB experience:

- Initial land access is key and often sets up ongoing concerns regarding effects of mineral exploration and mining development on wildlife and habitat, and also on harvesters and their communities, especially for crucial harvested species.
- The MRA should aim to develop a system that will provide key information to those with interests in mineral exploration BEFORE they acquire exploration rights, so they: a) can make informed decisions about the level of risk and uncertainty they will face dealing with environmental and socio-economic concerns, and b) have the option of choosing to avoid operating in sensitive wildlife habitats and/or areas with high potential for causing significant disturbance to wildlife during sensitive time periods.
- Land use plans and protected areas need to be in place as a priority to protect the NWT's social, cultural, ecological and biodiversity values (including caribou), while providing greater clarity to industry on what areas are not suitable for exploration and development.
- There is a need to provide input into a system for assessing cumulative impacts to identify when thresholds are reached, at which time more land access for mineral exploration could be prohibited until such time as impacts fall below the threshold.

Responses to discussion paper questions:

Q1: How should land access for mineral exploration be dealt with in the proposed MRA?

A: Not status quo; changes are needed

Q3: The Mining Regulations list prohibited lands. Should the process and list be reviewed for the MRA?

A: Yes, more than legislated protected areas need to be considered off-limits to exploration and development based on ecological and cultural values.

Q4: Should lands with high potential for mineral presence or transportation be regulated differently than other areas? For example, to designate special mining zones or transportation corridors?

A: No, areas should not be given special status for development without comprehensive land use planning. Areas for which interests are identified for mining or roads, for example, still maintain ecological and cultural value, they should not be automatically considered to be more valuable for development purposes.

Q5: Should the MRA allow for high-potential land to be regulated differently than other under-explored lands in the NWT?

A: We assume this refers to high potential for minerals. These lands should be regulated more stringently due to their greater potential for land use activity associated with further exploration and possible mine development.

Comment: We are not sure what is meant by “under-explored”. This appears to assume that ideally all lands should be subject to intense exploration for minerals, again showing a bias toward mineral value as being greater than all other values of the land, which is not appropriate.

ONLINE MAP STAKING

General comments based on BQCMB experience:

- On-line map staking in principle would avoid the environmental damage associated with claim staking that requires clearing lines between posts and the disturbance to wildlife and harvesters that results from using helicopters.
- On-line staking could result in large areas being tied-up, perhaps primarily by large companies that have deep pockets but little or no knowledge of the local environmental or cultural issues. Therefore it could potentially result in greater levels of conflict with local land users and greater impacts on wildlife and habitat.
- On-line staking could increase land use conflicts if settlement of land claims and land use plans are not completed and extensive consultation with Indigenous peoples is not conducted prior to staking.

Responses to discussion paper questions:

Q4: What are the considerations for a made-in-the-North custom online map staking system?

A: A goal of the system should be to minimize the environmental impact from exploration activities.

Prior to use of an on-line map staking system the following should be established:

- Settled land claims through the NWT, or at least in regions subject to the on-line system.
- Approved land-use plans through the NWT, or at least in regions subject to the on-line system.
- Limitations on the number and size of claims staked by an individual or company specified with spatial and temporal limits.
- A set time period provided for review of the application before the exploration permit is granted with meaningful consultation with local peoples and groups.

This could possibly be similar to the system that INAC has used for prospecting permits in Nunavut, but with capacity and a process for dealing with conflicts, including a dispute resolution process to address issues which arise during the review period and an option for refusal of the permit if defined issues cannot be resolved to the satisfaction of local peoples.

MINERAL TENURE

General comments based on BQCMB experience:

- The current system apparently gives the grantor of tenures little discretion. This does not allow Indigenous communities or regional organizations, or other groups with information about the ecological or cultural values of land (such as the BQCMB) to influence whether tenures should be issued.
- Companies currently expect preliminary tenure (prospecting permits or mineral claims) to guarantee rights to continue through all stages of mine development. This disregards other land values, Indigenous rights, new information that may become available during the term of

tenures, and changes to the importance and sensitivity of wildlife habitat over time. New legislation should address these inadequacies.

- A leading-edge and fully integrated system would not let companies conduct exploration in areas unless there is full agreement that it is appropriate to set up a mine there. Otherwise governments are letting companies spend money in areas that may be of no value to them if local peoples reject their development proposal.
- No government is willing to compensate companies for tenures with the current system. There is a need for governments to be forced through legislation to assess the risk involved in issuing tenures, including:
 - the risk of needing to provide future compensation for exploration and development costs if local peoples reject a development being established in a given area, as well as
 - the risk of losing another essential resource (e.g., a caribou herd) should developments go ahead on sensitive or critical wildlife habitats (e.g., calving areas).
- Completion of land use plans prior to issuing mineral tenures would go a long way toward resolving these issues, and would also provide certainty for industry, lessen land use conflicts and promote partnerships between companies and communities.

Responses to discussion paper questions:

Q1: Should geological data and results be required submissions in order to obtain mining leases?

A: Yes. These results would be valuable for informing others and their availability would hopefully reduce the amount of exploration occurring since companies would not need to conduct exploration again in the same areas.

Q2: How can we encourage proponents to disclose geological information?

A: It should be required by legislation in order to maintain mineral tenures and obtain further permits (e.g. land use permits) and mining leases.

Q4: Does the process of transferring mineral tenure (including prospecting permits, claims, and leases) to other qualified parties require review? If so, what should the review process entail?

A: Yes, review of the credibility and track record of new parties applying to take over tenure should be part of the legislated process.

Q6: Should mineral tenures be revocable if the holder is not investing or advancing them? What would be an acceptable requirement for maintaining a tenure?

A: Yes, and tenures should also be revocable if the tenure holder is not fulfilling requirements for compliance, consultation, research and monitoring, disclosing potential environmental issues etc.

INDIGENOUS ENGAGEMENT AND CONSULTATION

General comments based on BQCMB experience:

- Public governments and regulators have a duty to consult and accommodate Indigenous peoples and their governments; so should companies.

- The concept of free, prior and informed consent that is part of the United Nations Declaration on the Rights of Indigenous Peoples and has been endorsed by Canada and GNWT has not been put into practice. This should be reflected in new NWT legislation such as the MRA.
- The discussion paper favors continuing the status quo in terms of the organization of governing mineral resources, mining, and exploration in the NWT. It continues to promote the historic approach whereby all lands outside communities and legislated protected areas are open for mining, and that mining is assumed to be the best and highest use of the land, regardless of the wishes of communities. This is not consistent with the GNWT commitment to reconciliation
- The MRA and all related land and resources legislation in the NWT must fully recognize legislated land and self-government agreements.
- Land use plans developed by indigenous communities and their governments should be in place before new tenures are issued. If this does not occur, areas without settled land claims and established land use plans should be regulate differently than areas for which they have been completed. The MRA should provide guidance as to how the mining industry needs to operate and consult with communities in each of these three situations: areas with a) settled claims and land use plans, b) settled claims but no plan, and c) no claim and no plan.

Responses to discussion paper questions:

Q1: How can the MRA promote dialogue and shared expectations between mining proponents and Indigenous peoples?

A: Meaningful consultation by companies prior to initial tenure issuance should be required.

Q2: Are there specific ways to encourage proponents to engage early and frequently with potentially impacted Indigenous communities?

A: Meaningful consultation should be required, not just encouraged. Companies should be encouraged to capitalize on use of resource management boards to share existing management plans, information on sensitive habitats etc. Companies should reciprocate by sharing business plans.

SOCIO-ECONOMIC BENEFITS

General comments based on BQCMB experience:

- Socio-economic costs of exploration and development should be considered, not just benefits.
- Full-cost accounting principles should be required when assessing socio-economic and environmental costs and benefits; this means evaluation of proposals vs. potential risks to environment and natural resources.

Q5: Should compliance with benefit agreements be a condition to maintaining mineral tenure?

A: Yes, of course.