Review of duplication in Yukon mining regulation

June 2020

Executive summary

PricewaterhouseCoopers, LLP ("PwC," "we" or "us") was engaged by the Yukon Minerals Advisory Board (YMAB) to conduct a review of unnecessary duplication in mine assessment and regulation, and propose actionable solutions for key issues.

The Yukon Government has recognized the need to improve the efficiency and effectiveness of the assessment and regulatory process. In a globally competitive mining sector, a well-functioning assessment and regulatory system is crucial to attracting and sustaining mine exploration and development. This study is the result of a recommendation by YMAB in its 2018 annual report that the Yukon Government carry out a review of duplication in the assessment and regulatory process. The focus of this document is to identify the main issues causing duplication or extending timelines in the assessment and regulatory process, and to provide readily actionable solutions to address those issues in a timely manner.

In developing this report, we took the following steps:

- conducted interviews with mine proponents that have recently gone through the assessment and regulatory process for exploration and development projects;
- conducted interviews with representatives from government bodies in Yukon and other provinces;
- reviewed government documents including legislation, regulatory documents, rules, and court decisions from Yukon and other provinces; and
- reviewed consultant reports.

Below, we summarize the key issues we identified and the key actions recommended as part of our proposed solutions.

Monitoring mechanism

We propose that when the below recommendations are actioned, a control and reporting mechanism is established that provides real time feedback on the timeliness of the action and its effectiveness against its objectives. The best role or organization to take on this role should be determined between YMAB and the Minister of Mines. If the Yukon Government (YG) adopts the recommendation in the recent Gowling report to develop a Commissioner of Mines role, that would be a good fit for this monitoring task.

1. Project coordination

A central issue for mine assessment and regulation in Yukon is that there has not been a coordinated approach to developing the project assessment and regulation process, and proponents need to navigate a variety of processes among multiple assessment and regulatory agencies, some of which may be unclear. On the government side, the three bodies responsible for assessment and regulation operate for the large part independently from one another, which can also lead to a lack of coordination and understanding.

Key actions proposed

A project manager role should be established that would work with proponents from the submission of their project proposal to Yukon Environmental and Socio-economic Assessment Board (YESAB) through to the end of licensing. Major Projects Yukon should establish this role for executive committee evaluations, while for designated office screenings, the Mining Lands Officer role should be expanded to include the project manager function. This role would help proponents understand the assessment and regulatory processes and would promote coordination and understanding among assessors and regulators on the government side. Timeline: six to nine months.

2. YESAB scope

One of the top challenges identified through our review is the scope of YESAB and Designated Office

Yukon Environmental and Socio-economic Assessment Act (YESAA) assessments. Per Section 42 of YESAA, a YESAB assessment is required to address the question of whether there will be significant socio-economic and environmental effects of a proposed project and if these can be mitigated; whereas licensing stages need to address the technical details of how a project can proceed, including implementing the terms and conditions of a decision document.

Proponents claim that during a YESAA assessment, at both the adequacy and the evaluation stages, the review often goes beyond its scope as laid out in the legislation and covers issues in a level of detail that, based on the relevant legislation, should be dealt with in the licensing stages.

This issue is exacerbated by the fact that there are currently limited mechanisms for YESAB to communicate with licensing agencies on how areas of overlap in scope should be addressed.

Key actions proposed
YESAB, Yukon Government, and the Yukon Water Board (YWB) should develop and implement a Memorandum of Understanding (MOU) that describes the scope of each body and provides a mechanism for meeting to resolve issues where scopes overlap, as well as providing a forum for communication on issues of common interest. Timeline: one to three months.

3. Information requests and communication with proponents

Proponents described a number of trends that have increased the number of requests, the number of questions, and proponents' ability to address them efficiently. A key issue is a reluctance from assessment and regulatory staff to meet with proponents and workshop the proposal so that it is understood, to discuss information requests in meetings, and to conduct visits to the proposed mine site.

Key actions proposed
We believe that in-person meetings and site visits can promote a better understanding of the proposed project as well as assessors' and regulators' concerns, and would provide a more efficient and effective way to address issues. YESAB should amend the Screening Rules and Designated Office Rules to include an initial meeting with proponents during the adequacy review period and subsequent meetings as needed. The rules should also be amended to require staff to conduct site visits as part of their review for sufficiently complex projects. YESAB and the Water Board should implement a system to track when and how comments are resolved. The Water Board should continue to conduct technical pre-submission hearings and monitor their effectiveness. Timeline: one to three months. Longer term, the Yukon Government should consider changes to the Waters Act that would formally remove any restrictions on the Board's and the Secretariat's ability to communicate with proponents.

4. Reassessment

A factor that can add to the time and complexity of an application is when reassessment is required to amend an existing licence when certain aspects of a project plan have changed. Proponents have described a lack of clarity and guidance around the reassessment process that creates uncertainty and makes it difficult to plan for how long the assessment process may take. There is also the possibility that aspects of a project that have not changed may be reassessed, creating uncertainty. This is an issue for both applications for new mines (during the approval process) and changes to operating mines (projects that have already been approved).

Key actions proposed
YESAB, Yukon Government, and the Water Board should each prepare a list of their overriding objectives in assessing a project (e.g. which key outcomes are of concern) for a licence or permit amendment. Following this, these bodies should consult with industry to develop guidelines around what changes to a project proposal would trigger the need for reassessment, and guidance around which aspects of an application would be reassessed in different scenarios. When projects are reassessed, assessment and regulatory bodies should use the communication mechanisms established through the recommendations under Item 2 to coordinate areas of overlap. YESAB and proponents should adopt Gowling's[1]

[1] Gowling WLG (2020).

recommendation to broaden the scope of a proposed project to include likely future modifications. Timeline (for all items): three to six months.

5. Adequacy review

Adequacy review during the assessment process is perceived by proponents as having increased in time and complexity over the past several years. The key issues are a lack of clarity, both for assessors and proponents, about what is required for a project proposal to meet adequacy requirements, and the length of the adequacy period.

Key actions proposed

YESAB's Screening Rules and Designated Office Rules should be amended to include guidelines as to what is required for an adequate proposal. As part of this, YESAB should also develop a clear interpretation of when environmental and socio-economic, and environmental impacts are considered to be "significant." Timeline: three to six months.

6. Opportunities for public participation

There are several opportunities for the public to provide input throughout the application and permitting process. The number of opportunities for public comment can sometimes be onerous for members of the public and stakeholder groups because it takes significant resources to review relevant materials and develop a response. The relatively short length of YESAB's consultation periods (30 days) adds to this pressure, although the length may be extended.

Key actions proposed

YESAB should streamline its process for executive committee reviews to include a single opportunity for public comment. Timeline: one to three months.

7. Staff skills and experience

The ways that staff and consultants are managed, as well as the skills and experience of those staff and consultants, can affect the functioning of the assessment and regulatory process. This can lengthen the assessment and regulatory process by leading to more information requests, including some that proponents feel are not relevant for assessment, and may lead staff to be more conservative in their decision-making if they do not feel confident in their ability to understand and approve projects.

Key actions proposed

YESAB, Yukon Government, and the YG department of Energy, Mines, and Resources (EMR) should review existing procurement policies to ensure that the skills and experience being asked for is appropriate. Those policies should also be updated to reflect the following:

- give preference to using one set of consultants per project among all government bodies;
- develop an MOU that provides a channel to hire available specialist staff from other government bodies as an alternative to external consultants;[2] and
- allow proponents to provide a shortlist of suggested and appropriately qualified consultants (which the assessor/regulator would not be obligated to choose from).

Timeline: one to three months.

8. Reclamation and closure bonding

Currently, both EMR and the Water Board conduct separate reviews of the bond amount, each hiring consultants to review the estimate. Because closure and reclamation can be carried out in different ways, there is room for disagreement among specialists on the best way to do this and the associated costs. Therefore, this setup sometimes leads to disagreements between sets of consultants, adding time to the

[2] This recommendation may have legal implications, which should be considered before proceeding.

review process without necessarily increasing the quality of the estimate. The two reviews are carried out sequentially rather than as one coordinated process, again increasing the time spent.

Key actions proposed
EMR and the Water Board should continue to work on a single process for reviewing reclamation and closure bonds. The MOU they develop should be monitored and reported on to ensure that it is meeting its goals. Timeline: one to three months/ ongoing.

9. Water Board issues

A key challenge is the fact that it is difficult for the Water Board to begin a meaningful review of projects until a decision document has been issued, which can extend the overall timeline for approval and licensing. Another problem with beginning review later is that the Water Board may request major changes to a proponent's plan at a late stage in the process. We understand that the Water Board recognizes that there is room for improvement here, and has begun engaging with proponents and beginning reviews earlier in the process. Finally, proponents cited a lack of consistency in timekeeping with regards to administrative adequacy and technical adequacy.

Key actions proposed
YWB should update its timekeeping system to increase transparency, as described above. The Water Board and Secretariat should continue to proactively engage with proponents and raise potential issues as much as possible, and may consider updates to its Rules of Procedure in this regard. Timeline: one to three months.

10. Claim precedence

Recently, situations have arisen where there may be a conflict between placer and quartz mining claims. In these cases, the law has not clarified which claims would take precedence, creating a lack of clarity for proponents that wish to make changes underground or on the surface level. Currently, there is no provision in the QMA, the PMA or the Surface Act to resolve disputes between quartz claim and placer claim holders. This issue can also create uncertainty in a situation where a road construction crosses others' placer claims.

Key actions proposed
Enact changes to legislation that would provide a venue for a third party to be able to adjudicate between overlapping claims, in instances where it is likely to cause a problem for mine operations. Depending on which option is chosen, the responsible body would be the territorial or federal legislature. Timeline: 12 to 18 months.

Contents

Introduction

PricewaterhouseCoopers, LLP ("PwC," "we" or "us") was engaged by the Yukon Minerals Advisory Board (YMAB) to conduct a review of unnecessary duplication in mine assessment and regulation, and propose actionable solutions for key issues. YMAB is a board established to advise the Yukon Minister of Energy, Mines and Resources on mineral development matters, with the following specific objectives:

- increase the potential for mineral exploration and development in the Yukon
- attract capital for the exploration and development of new mines
- ensure that mines can be developed feasibly and in a timely fashion
- improve the potential for producing mines to remain viable
- enhance Yukon participation in mining
- reduce constraints, including government constraints, on the development of minerals in the Yukon; and
- outreach with First Nations to explore the opportunities and benefits of mineral exploration and development in the Yukon

The scope of this report relates directly to these goals. The Yukon Government has recognized the need to improve the efficiency and effectiveness of the assessment and regulatory process for mining projects. In a globally competitive mining sector, a well-functioning assessment and regulatory system is crucial to attracting mine exploration and development. This study is the result of a recommendation by YMAB in its 2018 annual report that the Yukon Government carry out a review of duplication in the assessment and regulatory process.

The focus of this report is identifying issues that are having a major effect on the speed and efficiency of the assessment and regulatory process, rather than providing a comprehensive review. For each issue identified, we describe the issue and recommend actionable items to be dealt with in an accountable manner. For the most part, these proposed solutions are designed to be feasible within the existing legislative framework, and can be implemented in the short term. We have noted where legislative changes would be valuable in addressing issues in the longer term.

The scope of this study includes the three main assessment and regulatory bodies in the Yukon: the Yukon Environmental and Social Assessment Board (YESAB), the Yukon Government (YG), and the Yukon Water Board (YWB). Although the scope of the study includes both placer and quartz (hard rock) mining, the majority of the suggestions focus on Quartz mining, and particularly on larger operations. Although YMAB, and by extension the direction of this study, is under the scope of the Yukon Government, all three main assessment and regulatory bodies will need to be part of developing solutions to the issues outlined in this report.

We understand, based on interviews with mine proponents, that the perception of Yukon's assessment and regulatory process has deteriorated in recent years, and in some cases is decreasing the inclination to invest in the Yukon. In recent years, there have been several reviews of the Yukon mining assessment and permitting process that identified areas for improvement. These include a 2014 study of Existing Mine Licensing Improvements by Rob McIntyre and Angus Robertson, and a 2007 study by Gartner Lee for the Yukon Regulatory Competitiveness Advisory Task Force. Very few of the recommendations in these reviews were adopted by assessment and regulatory bodies, particularly as they relate to legislative changes.

We note that consulting with First Nations was not part of our mandate in conducting this study. First Nations are an important stakeholder with respect to mining policy, and we expect that the relevant agencies will consult First Nations as appropriate in relation to the matters raised in this report.

The key authors of this study are:

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Scope of review

To prepare this assessment, we have reviewed and, where appropriate, relied upon various documents and sources of information. By general classification, these sources include the following:

- interviews with mining proponents conducted in April 2020;
- interviews with representatives from government bodies in Yukon and other provinces;
- government documents including legislation, regulatory documents, and court decisions from Yukon and other provinces; and
- consultant reports.

A full list of sources and articles used for the purpose of this assessment is available in Appendix B: References.

Glossary

Bill S-6: Yukon and Nunavut Regulatory Improvement Act: An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act (2015 bill)

Bill C-17: An Act to amend the Yukon Environmental and Socio-economic Assessment Act and to make a consequential amendment to another Act (2017 bill)

EMR: Department of Energy, Mines and Resources (Yukon Government)

QMA: Quartz Mining Act, SY 2002, c. 14

UFA: Umbrella Final Agreement

YESAA: Yukon Environmental and Socio-economical Assessment Act

YESAB: Yukon Environmental and Socio-economical Assessment Board

YG: Yukon Government

YWB: Yukon Water Board

Key issues and proposed solutions

This section presents the key issues we identified through our review, and our proposed solutions. The issues identified are based on the scope of our review, including interviews with proponents who have brought forward exploration and mining projects for review in recent years. The intent of this report is to provide actionable solutions; therefore, our proposed solutions focus on actions that can be implemented without changing legislation, which is often a lengthy and difficult process. In this regard, we note that challenges identified by proponents with the assessment and regulatory process had significantly increased over recent years, even in areas that had seen no legislative changes. Notwithstanding, where legislative changes could play a role in further addressing an issue, we have noted that.

Our recommendations focus on the removal of unnecessary duplication thereby improving the efficiency of the publicly funded processes by reducing assessment timelines and increasing process certainty in line with the Purpose of the Acts in question. Importantly, this is achieved without negatively impacting the efficacy of the processes in relation to environmental assessment, providing First Nations and Yukon public with the means and opportunity to have a voice in the assessment and maintaining public trust in the process.

Monitoring mechanism

If and when any of the below solutions are implemented, it will be important to establish a mechanism for monitoring how the implementation is working and whether it is effective at achieving its stated goals. The role of this mechanism would be to observe implementation, periodically report on progress and raise any issues with governing bodies where necessary. It is important to note that this role would consist of observation and reporting only, and should not be viewed as an "oversight" role that would interfere with the independence or discretion of the regulatory agencies.

A report by Gowling WLG recently commissioned for the Yukon Government recommends the establishment of a Resource Development Commissioner within YG that would, among other roles "promote consistency throughout all project phases and regulatory processes," provide a forum to raise concerns, and resolve disputes. If this role is established, it would be a logical role to take on the monitoring mechanism that we recommend. Until such a role is established, YMAB should continue to observe how these recommendations are implemented and provide public comments on the progress and effectiveness of implementation. Another role or body that has the capacity and willingness to take on this role may also be suitable.

This observation and reporting role would apply to any new memoranda of understanding, changes to legislation, regulation or other guidance, and other changes to operational processes.

Key proposed action

In line with the Gowling recommendation, YG should establish a role of Resource Development Commissioner. This Commissioner (or other role or body willing and able to take on this role) should commit to monitoring the implementation of the initiatives recommended in this report and to producing a periodic (e.g. annual) report on its progress. To facilitate this role, the monitoring body should be provided access as extensive as possible to internal meetings and documents that would allow better visibility on processes. Timeline: one to three months.

1. Project coordination

In Yukon, there are three main bodies responsible for mining assessment and regulation, one of which is governed by federal legislation (YESAB), one of which is part of the Yukon Government, and one of which functions as an independent tribunal (YWB). The reason for this structure, which is fairly unique in

Canada, relates to how each agency was developed, which is described in Appendix A: Scope of assessment and regulatory bodies.

A central issue for mine assessment and regulation in Yukon is that there has not been a sufficiently coordinated approach to developing the project assessment and regulation process, and proponents need to navigate a variety of processes, some of which may be unclear. On the government side, the three bodies operate for the large part independently from one another, which can also lead to a lack of coordination and understanding.

Proposed solution

This problem underpins many other issues raised in this report, and therefore this proposed solution will augment other solutions proposed throughout.

We propose to establish a new role of a "project manager," a government staff member that would be assigned to each project. He or she would act as a go-to contact for proponents and would guide them through the assessment and regulatory process from start to finish. The project manager would inform proponents of their responsibilities at each stage and direct them towards available resources. On the government side, the role would be to coordinate between different assessment and regulatory bodies and help to ensure that interactions between the bodies are smooth and in line with any relevant agreements on communication protocols. Where possible, this person could also enable better understanding of the project when it comes to being reviewed by different staff, or in the case of staff turnover. This person would be trained to fully understand all the ins and outs of the processes. In order for this role to be effective, it is important that it be filled by senior staff members who will operate relatively autonomously, allowing them to act at arm's length with other government officials who are involved in any aspect of the assessment and regulation process.

This role should not be seen as a "project champion" that would promote approval of a project; rather, it would be a coordinator role that would smooth the process and act as a communication channel between proponents and assessors/ regulators. Some proponents that recently put projects through the assessment process described having such a coordinator; however, others said that no one was in this role. Additionally, the support available now is specific to each assessment or regulatory agency, rather than covering the entire process. We recommend that such a person be assigned to all applications for larger projects. We note that the governments of Quebec, British Columbia and Ontario have coordination offices that assign individuals to this role, which is described as being helpful for both governments and proponents.

Some elements of this role are currently being filled by existing roles within assessment and regulatory agencies. For major projects, Major Projects Yukon acts as the main point of contact for proponents and coordinates between YESAB and YG offices, but does not continue this role through the licensing stage. For certain projects, particularly in designated office screenings, the Mining Lands Officer may be available for proponents' questions during parts of YESAA assessment, as well as licensing stages. In the interest of not duplicating existing processes, we propose that the Mining Lands Officer and Major Projects Yukon be expanded to include the scope of the project management role described above for designated office screenings and executive committee assessments respectively.

This recommendation overlaps with a proposal made in a recent review by Gowling WLG to create a "Lifecycle Regulator" that would play a similar role to the project management role proposed here.[3]

Key proposed actions

A project manager role should be established that would work with proponents from the submission of their project proposal to Yukon Environmental and Socio-economic Assessment Board (YESAB) through to the end of licensing. Major Projects Yukon should establish this role for executive committee evaluations, while for designated office screenings, the Mining Lands Officer role should be expanded to include the project manager function. This role would help proponents understand the assessment and

[3] Gowling WLG (2020).

regulatory processes, and would promote coordination and understanding among assessors and regulators on the government side. Timeline: six to nine months.

2. YESAB scope

One of the top challenges that our review has uncovered is the scope of YESAB and Designated Office YESAA assessments. Proponents claim that during a YESAA assessment, at both the adequacy and the evaluation stages, the review often goes beyond its scope as laid out in the legislation and covers issues in a level of detail that, based on the relevant legislation, should be dealt with at the licensing stages. In this regard, we note that reducing duplication is part of YESAA's purpose, as laid out in Section 2 (i) of the act "to ensure that the assessment process is conducted in a timely, efficient and effective manner that avoids duplication." This statement echoes Section 12.1.1.7 of the Umbrella Final Agreement.

Section 42 of YESAA lays out the issues to be considered in a YESAB review at a high level, including "the significance of any environmental or socioeconomic effects of the project or existing project that have occurred or might occur in or outside Yukon, including the effects of malfunctions or accidents" (42(1)(c)) and "mitigative measures and measures to compensate for any significant adverse environmental or socioeconomic effects" (42(1)(f)). No additional documentation (such as regulations or rules) clarifies the level of detail required, leaving room for interpretation on what level of detail on potential impacts is required for the assessment. Based on our interviews with proponents, it appears that YESAB is requesting increasingly detailed technical information during assessments. The key point from a legal standpoint is that the YESAA process is an environmental assessment and screening process that makes recommendations on whether a project should go forward and how, and YESAB is not a regulatory body that can make decisions about the development and operation of a mine. The decision document issued by the decision body includes terms and conditions for consideration by the regulator in developing technical plans. Therefore, it runs counter to this process for YESAB to review those technical plans at the assessment stage. This role was confirmed in *Western Copper Corporation v. Yukon Water Board, 2011 YKSC 16*: "the development assessment process prescribed by YESAA is a planning tool that precedes the more technical regulatory licensing process under the Waters Act and the QMA. The development assessment process in YESAA is not for licensing or permitting projects but rather a process that ends with a decision document that accepts a recommendation and, in the wording of YESAA in s. 5(2), requires the consideration of environmental and socio-economic effects before projects are undertaken." The role of each body as laid out in their respective legislations is described in further detail in Appendix A.

To the extent that information requested during assessment is more detailed than what is strictly required for that stage of assessment, it can create a number of challenges for proponents. First, it may duplicate review for issues that are covered both by the YESAA assessment and at a later stage of licensing. This adds to the time and complexity of the assessment process while not providing any additional benefits. Secondly, certain requests may require a level of detail regarding operational matters such as mine plans that proponents have often not finalized at the point when a project is going through assessment. Preparing answers to these questions adds additional cost and time that would not otherwise be required at that stage in the project. Thirdly, clarifying highly technical matters can lead to additional back and forth between YESAB and proponents, which does not add value for either party because these issues will be dealt with at later stages (see Item 3).

One example cited by a proponent that recently went through a YESAB assessment was a request for repeated models of mine water balances. YESAB reviewers requested a level of detail on this topic that was previously not required until the water licensing stage. Because other elements of the mine plan that would affect the water balances would change, it adds significant cost and time delays for the proponent, as well as time and cost for YESAB to review the models for no meaningful benefit.

There is currently some communication between different agencies; for example, EMR may comment on YESAB and Water Board processes as an intervenor. However, there is no formal mechanism to resolve areas of potential overlap or duplication between scopes of review. As a result, there has been a lack of clarity to all parties, including the assessors and regulators as to what is required from each body and how the processes should work together to achieve the desired outcome of a new investment in

development that then provides a positive economic result with appropriate environmental and socio-economic impacts.

Finally, we observe that the current assessment process does not require a formal assessment of the negative and positive socioeconomic benefits that would enable a holistic view of risks and opportunities for Yukon (i.e. net benefit test). In the longer term, Yukon may want to consider such requirements. For example, the federal Bill C-69 provides for an assessment of net benefits.

Proposed solutions

We propose a two-part solution to this issue.

1. YESAB, YG, and YWB should develop a Memorandum of Understanding (MOU) that clearly delineates each body's role in the review process, with reference to the legislation that governs each body. As much as possible, these roles should not overlap in the level of detail reviewed. Where there is overlap, the MOU should define a clear protocol for communication and decision-making, ideally involving a coordinated review rather than separate processes.
2. YESAB should produce a guidance document that clearly sets out the scope and level of detail required for assessment (including noting those items that are outside its scope) and provides guidelines for how that scope should be applied. This document should also be specific in relation to the relationship of the scope to the mandated Purpose of YESAB under YESAA. This guidance should be referred to in directing staff and consultants as to the scope and level of detail of their review at specific points in the assessment and regulatory process.

The existing legislative framework dictates the role of each assessment and regulatory body and requires them to be mostly independent from one another. Within this framework, the best way to remove duplication, reduce timelines and increase certainty is to clearly delineate the role of each body and provide a framework for communication where required. There are a range of existing MOUs, Memoranda of Agreement (MOAs) and similar documents in place that cover, for example, clarifying roles and responsibilities where there is overlap in relevant legislation, establishing mechanisms for coordination and communication, and sometimes providing guidance for monitoring the agreement. We also recommend that existing agreements be reviewed by relevant parties to ensure that they are being followed, and that they are relevant and effective for their intended purposes.

Based on our understanding, no such agreement is in place between YESAB and either YG or the Water Board. YESAB has described current plans to work with the Water Board to reduce duplication while meeting their respective mandates, not necessarily through a formal agreement. YESAB has also had conversations along these lines with YG, not resulting in a formal agreement.

At a minimum, our proposed MOU would cover the following:

- A description of the appropriate scope and level of detail of review for each body, with reference to their governing legislation.
- Establishment of forums for communication, which may include standing periodic meetings and the ability to meet on an as-needed basis. Issues addressed may include:
    - areas where assessment and regulatory scope overlap, and the level of review required by each agency; and
    - changes to terms and conditions associated with decision documents, for example to ensure that they are enforceable and appropriate to the project.
- Agreed-upon wording for clauses to be used by YESAB when providing a recommendation for technical elements that will be covered by a subsequent licensing body. For example, instead of specifically stating what a Safety Plan should contain it would insert a standard clause that the project should have a Safety Plan that is "approved by the EMR."

The MOU should create a protocol for addressing issues that arise over the course of assessment and that will be dealt with in subsequent licensing stages to determine what information is required at the

assessment stage. YESAB should review issues at a level of detail that is sufficient to meet requirements under Section 42 of YESAA, but where possible should not attempt to review projects in a level of technical detail that will be addressed in later licensing stages. For example, a project will need a water licence to operate, once it is clear to YESAB that acceptable water quality impacts can be achieved, the fact that the project will go through water licensing should be sufficient assurance that water quality impacts will be acceptable. Where licences are already in place (such as water licences and exploration licences), YESAB should consider the terms and conditions that are already in place as part of the application, which may address many of their questions.

To the extent that the above changes to YESAB's scope are not feasible, another option would be for the relevant licensing bodies to be involved when issues in their scope are being reviewed. The other bodies would need to have input at that stage, and coordinate with YESAB on their review of materials so that work is not duplicated and the relevant bodies are aligned on their conclusions.

In the long term, it would be easier to facilitate communication and coordination between the three bodies if all three were within the jurisdiction of the Yukon government. However, YESAB is an independent body guided by federal legislation, and YWB is an independent quasi-judicial body. If YESAB was under the same jurisdiction as the Yukon Government and Yukon Water Board, it would be easier to make changes as needed, and for the bodies to communicate and coordinate. However, we recognize that such a change is a long-term legislative process that will not provide necessary change in the short term.

Key proposed actions

YESAB, Yukon Government and the Yukon Water Board should develop and implement an MOU that describes the scope of each body and provides a mechanism for meeting to resolve issues where scopes overlap, as well as providing a forum for communication on issues of common interest, as described above. Timeline: one to three months.

3. Information requests and communication with proponents

Information requests are an important part of the assessment and regulatory process, and are required so that reviewers have sufficient understanding of a proposed project. Information requests have been cited as a significant driver of timelines for key stages of the process, particularly during assessment and the water licence application review. For each information request issued, proponents must prepare a response, which typically involves engaging consultants, during which time the clock stops on the review process. The potential for ongoing rounds of information requests means that there is effectively no time limit on these assessment and regulatory processes. This result is contrary to the obligation under the YESAA to implement processes that provide certainty in relation to timelines per YESAA section 40.

It is reasonable that assessors and regulators ask questions of proponents, and for the clock to stop while proponents respond to requests. However, proponents described a number of trends that have increased the number of requests and questions, which has impacted proponents' ability to address them efficiently.

For example, proponents have cited duplication in rounds of comments, which adds to the length and administrative burden of the information request while not providing reviewers with any more information on a project. One reason for this may be turnover in the staff reviewing the file, which is discussed below under Item 7. A related issue is the challenge proponents have encountered in resolving comments once they are raised. Proponents described difficulty in understanding what was required to address the issue, or fully explaining the complexity in a paper-based back-and-forth system. In these cases, the process is not well set up to resolve the issues raised.

Finally, according to proponents, some information requests show a lack of understanding of the project being proposed. One reason for this may be that staff have rejected offers from proponents to conduct a visit to the proposed mine site or to workshop the proposal so that it is better understood. For many larger and more complex projects, it would be difficult for reviewers to fully understand the scope of what is being proposed without having seen the site or having conducted a workshop with the proponent.

Proposed solutions

There are two main elements to our proposed solution: facilitating in-person meetings between proponents and assessors and regulators, and enabling site visits. These apply specifically to YESAB and YWB, because we understand that YG already includes these elements as part of its reviews.

We recommend that assessors and regulators hold a series of technical workshops with proponents, with the first workshop occurring when an application is submitted and then subsequently as required. Paper-based back and forth dialogue on information requests takes a significant amount of time and is not always the most efficient or effective way to reach conclusions within a reasonable timeframe. Therefore, the information request process would be more efficient if proponents could meet face to face with staff to discuss and resolve the issues at hand. Specifically during the YESAB adequacy review period, assessors and regulators should hold working groups with all relevant bodies (e.g. YESAB, YG, YWB), where reviewers could ask questions of proponents. This could address several of the points discussed above including the inability to resolve issues and the lack of understanding of the project on the part of the reviewers. We understand that it is required for assessment and regulatory decisions to be transparent and that all materials used should be in the public record. With appropriate minuting of such working groups, this should be a feasible solution. To the extent that staffing constraints make such meetings difficult, larger and more complex projects should be prioritized. We note that similar working groups are a normal part of the assessment and regulatory process in other provinces, such as British Columbia and Quebec. According to government officials in those provinces, those working groups are effective in helping different government bodies understand the project and resolve issues relating to multiple bodies.

For the most part, such workshops would be feasible under the current legislative framework. Although YESAA, which governs YESAB evaluations by designated offices and executive committee, does not provide a mechanism for meetings with proponents, it does not prohibit them. Because YESAB is designed to be transparent, there are already processes in place to record matters such as phone calls to the public record. As long as there is a mechanism to record minutes of meetings between proponents and YESAB staff, and that the minutes can be shared on the public registry, it is possible to hold such meetings within the current framework.

There are more restrictions on communications between proponents and the Yukon Water Board and Secretariat. Prior to an application being submitted, the Yukon Water Board and Secretariat is able to engage with proponents. Based on the Water Board's interpretation of their governing legislation, which is supported by case law, the Board may not engage with proponents after an application has been submitted, while Secretariat staff may continue to do so. A limitation at this stage is that Secretariat staff are not be able to advise proponents on what the Board's decisions will be. Once an application is considered adequate and moves to public hearings, interactions with proponents for both the Secretariat and the Board are limited to the public hearings. Given these limitations, we recommend that workshops with proponents be conducted as part of the public hearing process. We understand that a version of this recommendation is being tested by the Water Board, with technical pre-hearing conferences where proponents, the Water Board and intervenors can workshop technical matters. We support continuing this process, and monitoring its effectiveness at promoting understanding and problem-solving. In the longer term, changes to the Waters Act would be required to enable other types of interaction between proponents and the Board.

We also propose that senior staff at assessment and regulatory bodies conduct site visits and produce a formal report on their findings as a standard step in the process. This experience can be valuable for understanding projects, and can reduce the number of questions asked. Proponents feel that staff are reluctant to conduct site visits because of a potential for perceived bias or closeness with the proponent. Making site visits a mandatory step as part of a review would remove potential implications of bias. This recommendation largely applies to staff at YESAB and the Water Board Secretariat, as we understand that YG staff are able and willing to conduct site visits as required. While YESAA does not provide any specific guidance on conducting site visits, no provisions advise against it; therefore, site visits by YESAB should be feasible within the current framework, given appropriate minuting as described above. Similarly, site visits by Water Board Secretariat staff are not prohibited under the current framework,

although no specific allowance is made for them. We note that in other jurisdictions, including British Columbia, site visits are a typical part of the review process.

With respect to information requests, assessors and regulators should make efforts to limit the number of "rounds" of information requests by including all potential concerns in the first information request, and tracking which questions and issues have been resolved so that they do not come up again in subsequent rounds of information requests, or in a subsequent stage of review. We note that British Columbia and Quebec both employ formal question trackers as part of their review processes.

Our recommendation under Item 2 regarding developing a document providing the required scope and detail at each stage of assessment and regulation, and using this document to direct staff and consultants, should also apply in this context to ensure that questions asked during evaluation are limited to the determined project scope.

Key proposed actions

YESAB should amend the Screening Rules and Designated Office Rules to include an initial meeting with proponents during the adequacy review period and subsequent meetings as needed. The rules should also be amended to require staff to conduct site visits as part of their review for sufficiently complex projects. YESAB and the Water Board should implement a system to track when and how comments are resolved. The Water Board should continue to conduct technical pre-submission hearings and monitor their effectiveness. Timeline: one to three months. Longer term, the Yukon Government should consider changes to the Waters Act that would reduce restrictions on the Board's and the Secretariat's ability to communicate with proponents.

4. Reassessment

A factor that can add to the time and complexity of an application is reassessment. If a proposed project undergoes certain changes, such as to the daily production rate, then the project must be reassessed. It is normal for mine plans to evolve over time, and reasonable that assessors have the option to reconsider how these changes would affect the environmental and social impacts of the project. However, proponents have described a lack of clarity and guidance around the reassessment process that creates uncertainty and makes it difficult to plan for how long the reassessment process may take. This is an issue for both applications for new mines (during the approval process) and changes to operating mines (projects that have already been approved).

One key challenge is a lack of guidance on what changes to an application would trigger the reassessment process.
Part 1 of Schedule 1 of the YESAA regulation on *Assessable Activities, Exceptions and Executive Committee Projects Regulations* defines "modification . . . of a mine" as an assessable activity, without defining the term "modification". This means that as proponents make changes to their plans, they do not know whether the changes would affect the timelines for review. A second problem is that proponents have described the reassessment applying to all aspects of the project, whether they have changed or not. Some changes may impact many aspects of a proposed project; however, proponents have described reviewers reassessing unrelated elements, sometimes coming to different conclusions than the original review. In addition, previous permitting and licensing that applies to the site is not taken into consideration in the re-evaluation, including terms and conditions that govern activity at the site, and that may mitigate potential concerns.

A common reassessment scenario is when a proponent is operating a mine and wants to dig a second mine pit, or develop an underground operation attached to an open pit. Proponents have described approvals for a second pit taking up to four years, which is a significant amount of time when large parts of the project have already been approved.

We note that Bill S-6, enacted in 2015, simplified the reassessment process by amending YESAA to exempt projects requiring renewal from reassessment, as long as there were not significant changes. Bill C-17, enacted in 2017, reversed this exemption. Since 2017, there have been no further changes to simplify renewals. In a letter to Canadian mining associations, the federal Minister of Crown-Indigenous

Relations expressed openness to address these issues following Bill C-17. However, no action has been taken with regards to providing greater certainty around timelines.

Proposed solutions

As described above, there are two key issues related to reassessment: what triggers reassessment, and what elements are in scope to be assessed as part of the reassessment.

- In order to clarify which changes would be considered a "modification" under YESAA regulations, we understand that a modification to the relevant regulation would be required, and should be considered as a longer-term solution. For example, we note that Quebec has high-level guidance on changes that require reassessment or permission from regulators. As a shorter-term way to address this issue, we recommend that when determining a project scope under section 51 of YESAA, assessors discuss with proponents which changes could be included in the scope and which would be considered a modification of the scope.

We note that a recent report prepared by Gowling addresses the issue of reassessment in detail. That report recommends that YESAB designated offices and executive committee work to define project scopes that are sufficiently broad to include activities that may become part of the proposed project as it evolves. Proponents would also have a role to play in defining projects broadly. We agree that this recommendation should be adopted and would reduce the need for the reassessment of projects.

For projects that are reassessed, we propose the following process improvements that would shorten the timeline for the reassessment to take place, and increase certainty: YESAB should develop and adhere to guidelines around which elements of an application need to be re-assessed. These guidelines should be linked to the triggers above; for each trigger, there should be clear guidance on which elements of the project would be affected by the change in a way that is material to the assessment. These guidelines should be adhered to unless there is a compelling reason for the reassessment to be more thorough. A full reassessment of the entire project should not be the default position.

The Gowling study also recommends that projects undergoing reassessment be expedited in scenarios where applicable First Nations and decision bodies agree that there have not been significant changes to the project or its socio-economic effects. This can be considered an alternative to our proposal described above.

Finally, another factor contributing to the length of the reassessment process is the fact that the Water Board review may not start until YESAB's review is finished. This is discussed under Item 9, and the recommendations made there should also be applied to the reassessment process.

Key proposed actions

When projects are reassessed, assessment and regulatory bodies should use the communication mechanisms established through the recommendations under Item 2 to coordinate areas of overlap. YESAB and proponents should adopt Gowling's recommendation to broaden the scope of a proposed project to include likely future modifications. Timeline (for all items): three to six months. In the long-term, parliament should consider modifying YESAA guidance to define what constitutes a modification to a proposed mine.

5. Adequacy review

Proponents raised two main concerns with respect to YESAB's adequacy review period: a lack of clarity both for assessors and proponents about what is required for a project proposal to meet adequacy requirements, and the length of time it takes, which has increased in recent years.

The lack of published guidance around what constitutes an adequate proposal means that assessors and proponents may be uncertain about what should be required, or how required information may vary from project to project. This adds additional time for review, and may lead to an inconsistent approach to new project proposals, or to assessors asking for more information than they truly require. Given that engineers and consultants may have very different ideas about what is required and how information should be presented, without guidelines there may be major inconsistencies in the information included in

each project proposal. A lack of clear requirements means that there could be many rounds of back and forth to arrive at an adequate project proposal. Additionally, once a project has passed the adequacy stage and changes are made, the lack of a clear standard makes it difficult for both assessors and proponents to determine whether a proposal still meets adequacy requirements.

As with other stages of the process, the possibility for continuing rounds of information requests means that the adequacy review stage can go on without a time limit. Proponents have noted that the adequacy period has lengthened considerably from when YESAB was first established and that the scope of questions has expanded to issues that earlier would have been covered during the evaluation stage.

Proposed solutions

YESAB's Screening Rules and Designated Office Rules should be amended to include clear submission guidelines around what is required for each class of application to be considered adequate. One specific area highlighted as having a lack of clarity is whether a project would have "significant" environmental and socio-economic effects, and what should be considered significant in different circumstances. This definition is central to YESAB's assessment, as it defines the scope of YESAB's review in Section 42 of YESAA, and defines the basis on which recommendations should be made by designated offices and executive committee in Sections 56 and 58, respectively.

This recommendation overlaps with an action proposed by Gowling WLG in their recent review, as well as a 2014 review by Rob McIntyre and Angus Robertson.[4] Gowling recommends that YESAB "engage with other regulatory bodies and First Nations in co-developing a rule that clearly sets out the level of information to be submitted as part of a proposal for a project (as per the YESAA, ss. 30(1)(a), 31(2)(a)) and that: (i) aligns with First Nations consultation needs at the assessment phase; and (ii) seeks to limit such level of information to that required to carry out its statutory obligations"

In developing these guidelines, assessors may look back at past environmental assessments and review what information was most important and how it should be presented. This step would be valuable both for proponents and for assessors, and could significantly decrease the time required for adequacy. Our research shows that implementation of such guidelines would be feasible and valuable in shortening and simplifying adequacy review. It would also be useful for this guidance to include examples of how adequate submissions should look for common types of projects in Yukon. Additionally, it would be valuable to have an overall time limit on the adequacy review process.

It is important to note that our recommendations on information requests (Item 3) should also be applied to adequacy review: reviewers should make best efforts to bring up any possible issues in the first round of information requests, and track issues as they are resolved to avoid reopening questions that were answered.

Key proposed actions

YESAB's Screening Rules and Designated Office Rules should be amended to include guidelines as to what is required for an adequate proposal. As part of this proposed action, YESAB should also develop a clear interpretation of when environmental and socio-economic impacts are considered to be "significant." Timeline: one to three months.

6. Opportunities for public participation

The main issue proponents have raised around public consultation is the number of opportunities for public participation involved in Executive Committee screenings by YESAB. There are four opportunities for public comment as part of this review, at different stages of completeness.[5] Proponents note that the number of consultation periods extends YESAB's review process because it stops YESAB's ongoing review of the project.

[4] McIntyre and Robertson, 2014.
[5] Note that YESAB's published process chart only includes three periods; however, proponents interviewed described four periods.

There are several opportunities for the public to provide input throughout the application and permitting process. There are consultation periods involved in the YWB process and EMR processes, as required by their respective governing legislations. In addition, project proponents generally conduct their own consultation with First Nations and stakeholders before bringing a project to YESAB. The number of consultation periods is also onerous for members of the public and stakeholder groups because it takes significant resources to review relevant materials and develop a response. The relatively short length of YESAB's consultation periods (30 days) adds to this pressure, although the length may be extended.

1. Proposed solutions

One solution to this issue is to reduce the number of opportunities for public consultation involved in YESAB Executive Committee screenings. The number of consultations is not prescribed by YESAA or in the relevant regulations (Decision Body Time Periods and Consultation Regulations); therefore it could be changed by amending YESAB's Screening Rules. In Section 2 of the YESAA, one of the purposes of the Act is to provide the opportunity and means for public comment on proposals before YESAB. A single, appropriately designed public consultation period would be sufficient to address YESAB's requirements to seek public comments, particularly given the other consultations that occur subsequent to the YESAB process when proponents apply for permits and licences. The one consultation period should be longer than the current periods to allow for commenters to properly review relevant materials and prepare their responses (e.g. 90 days). It should also happen relatively early in the review process, so that comments can be taken into account and responses reviewed by YESAB, and so that YESAB can consider the issues raised during their review of the proposal.

We understand that YESAB accepts comments from First Nations, regardless of whether they are submitted during a public consultation period. While we are not recommending that YESAB stop this practice, it highlights the fact that four opportunities are not required to ensure that input is gathered.

Key proposed actions

YESAB should amend Screening Rules to streamline the process for executive committee reviews to include one opportunity for public comment. Timeline: one to three months.

7. Staff skills and experience

The ways that staff and consultants are managed, as well as the skills and experience of those staff and consultants, can affect the functioning of the assessment and regulatory process. Although this is not necessarily the case with most staff, in some cases, proponents noted that staff lack the required technical background and/or the appropriate guidance to properly evaluate projects. This can lengthen the assessment and regulatory process by leading to more information requests, including some that proponents feel are not relevant for assessment, and may lead staff to be more conservative in their decision-making if they do not feel confident in their ability to understand and approve projects. One factor contributing to this situation is that relatively few major projects have undergone the Yukon assessment and regulatory process in the past few years. Therefore, some staff in the Yukon may not have had experience with major mining projects.

Proponents have also described a lack of consistency in approach to projects, which is exacerbated by staff who are assigned to a project changing, and by staff turnover. When new staff and consultants become involved in a project, it takes time for them to understand the proposal, which can lead to delays and additional information requests. Different staff may also make different decisions based on the same set of facts, leading to an inconsistent approach. Turnover has been described by proponents as a particular issue in Designated Offices.

A related issue is the quality of consultants hired and how they are managed. Some proponents claim that the caliber of certain consultants hired by governments is not the same as what the proponent would hire themselves. Consultants without the required technical background would not be able to sufficiently evaluate projects, again possibly leading to a more conservative approach. Proponents also note that consultants are sometimes not directed properly, for example, they may provide questions and comments on issues that are beyond the scope or level of detail of what should be reviewed at a given stage.

Proposed solutions

We have developed several possible solutions to the challenges described above, which are designed to increase efficiency and consistency in project assessment and regulation.

- Where feasible, assessment and regulatory bodies should give preference to engaging consultants that have already worked on a particular project, which would reduce duplication in review of the project and past work.
- As an alternative to sharing consultants, assessors and regulators should consider allowing proponents to provide a list of suggested consultants that have the required technical background, with the government body making the final decision on whom to engage.
- When technical expertise is required, assessors and regulators should develop an MOU that would enable them to hire staff from other government departments as an alternative to external consultants. Pending staff availability, this can be a way to tap into the significant expertise available in different areas of government (particularly YG), and has been a successful model in several states in Australia.
- To address the caliber of consultants hired by assessors and regulators, public tenders from the government should be reviewed to ensure that the requirements for technical experience are sufficient for the required tasks.
- Consultants should be provided clear and specific directions on what the scope of their review should be based on what aspect of the project is being evaluated, in line with the guidance on each body's scope developed under Item 2.

As noted in Item 3 above, we propose that assessors and regulators conduct site visits and engage with proponents more generally, which we believe would help to improve staff and consultants' understanding of the projects. Implementation of our recommendations under Item 2 would encourage more consistent evaluation of projects that is consistent with the intended role of each body.

Our recommendation under Item 1, to create a "project manager" from the government to advise proponents and coordinate between government bodies, would also help to address the inconsistency in approach by different staff.

Key proposed actions

YESAB, Yukon Government, and YWB should review existing procurement policies to ensure that the skills and experience being asked for is appropriate. Those policies should also be updated to reflect the following:

- give preference to using one set of consultants among all government bodies, and where possible, with the proponent;
- provide a channel to hire available staff from other government bodies as an alternative to external consultants; and
- allow proponents to provide a shortlist of suggested consultants (which the assessor/regulator would not be obligated to choose from).

Timeline: one to three months.

8. Reclamation and closure bonds

A clear instance of duplication in mining regulation is the review of security for mine closure and reclamation. Both EMR and the Water Board are required by their governing legislation to provide input into the value of the security that the government holds to address the risk that the proponent is unable to carry out closure and reclamation. The Water Board has the authority to request security and to specify the amount of security required, as governed by Section 15(1) of the Waters Act and the Waters Regulation. EMR can also request security under QMA Sections 139 and 149(n) and the related regulations. These provisions define more specific rules for bonds to the Security Regulation, O.I.C. 2007/77. These are given further expression in the Yukon Mine Site and Reclamation Closure Policy -

Financial and Technical Guidelines, September 2013. One of the noted purposes of these guidelines is to provide for guidelines for both production licences issued under the QMA as well as the Waters Act.

Currently, both EMR and the Water Board conduct separate reviews of the bond amount, each hiring consultants to review the estimate. Because closure and reclamation can be carried out in different ways, there is room for disagreement among specialists on the best way to do this and the associated costs. Therefore, this setup sometimes leads to disagreements between sets of consultants, adding time to the review process without necessarily increasing the quality of the estimate. The two reviews are carried out sequentially rather than as one coordinated process, again increasing the time spent.

We understand that EMR and the Water Board have agreed on a set of joint guidance for reclamation and closure costing, developed around 2012. While this is a positive step, duplication is still an issue according to proponents who have recently undergone the process. A barrier to coordination is that there isn't currently an opportunity for EMR and the Water Board to have in-depth technical conversations outside of the public hearing process. Currently, EMR can only provide feedback into the Water Board process along with other intervenors. The Water Board has indicated that they don't feel that the public review process is the appropriate forum for these in-depth discussions.

Proposed solutions

One solution to the duplication in bond review would be for EMR and the Water Board to coordinate on conducting one review of the security determination with one set of consultants to provide input. This would reduce the time required for review, and would mediate the view of two sets of government consultants, while allowing for both bodies to provide input into the determination. We note that the respective permitting processes by EMR and the Water Board may have limited or no overlap timing wise; therefore, the timing of this coordinated review should be carefully determined so as not to delay either process.

We understand that EMR and the YWB are currently developing an approach that will provide an avenue for the two bodies to cooperate on an approach. Under the new approach currently being discussed, the two bodies will meet with their technical teams to review the proponent's costing estimates and agree on a methodology and approach for their review. Close collaboration at this stage is intended to avoid conducting two sets of calculations, which would reduce time and duplication. This meeting will happen before the public portion of the regulatory process.

The approach being developed by EMR and the Water Board seems well-designed to achieve the objectives that we would recommend in response to this issue. Therefore, we recommend that both bodies implement and uphold this agreement, and that they periodically review the implementation to ensure that it is meeting its stated goals.

We also note that a clear understanding of the proponent's risk profile that is shared between EMR and the Water Board would provide the staff on both bodies more confidence in their decision-making, thus leading to less disagreements and a shorter process.

Key proposed actions

EMR and the Water Board should continue work on a single process for reviewing reclamation and closure bonds. The MOU they develop should be monitored and reported on to ensure that it is meeting its goals. Timeline: one to three months/ ongoing.

9. Water Board issues

This section describes specific challenges that proponents cited with the Yukon Water Board that are not covered under other items.

A top issue that proponents cited is the fact that the YWB often does not begin their review until after the project has been approved by YESAB. They claim that this extends the timeline of the overall approval and licensing process. Proponents claim that YWB does not hire consultants or begin to engage with proposed projects in earnest until after a decision document has been issued, leading to delays in the

overall assessment and regulatory process. A main reason for this is that a YESAA Section 83(2) requires that licences issued by the Water Board reflect the terms and conditions attached to the decision document. We also note that the Water Board recognizes that there is opportunity for improvement here, and are beginning to work more proactively with proponents at earlier stages, including before YESAB has issued a decision document.

Another problem with beginning their review later is that YWB may request major changes to a proponent's plan at a late stage in the process. A recent example is Victoria Gold's Eagle mine, where significant changes were required at the YWB stage. Several proponents have described circumstances where they were unclear about the requirements for a licence to be granted.

Proponents also cited a lack of consistency in timekeeping with regards to administrative adequacy and technical adequacy. Although these processes have finite timelines in the Waters Act, proponents claim that time is not kept consistently or with any transparency.

Finally, proponents noted that the Yukon Water Board Secretariat has a reluctance to engage with proponents, as described in Item 3.

Proposed solutions

We suggest that the Yukon Water Board Secretariat continue to proactively engage earlier with project proponents and begin to review and understand proposed projects as early as possible in the process, including the hiring of consultants and review of technical documents. Although this is currently possible and sometimes done, some proponents did not realize that this was possible, while others knew that but were reluctant to engage early because a water licence cannot be issued without a decision document. This apparent misunderstanding should be resolved with the existence of a dedicated project manager (see Item 1).

One reason that the two reviews are usually not conducted simultaneously is that the Water Board currently requires a YESAA decision document before proceeding to public comment. The proposed project may also change throughout the YESAA project, which would also affect YWB's review.

As described in Item 2, the Yukon Water Board Secretariat should act in a more proactive manner to make themselves available for engagement with proponents throughout the assessment and regulatory process, as much as possible informally before the application is submitted, and through public hearings thereafter.

With respect to timekeeping, YWB should develop a clear policy on the counting and tracking of days both for administrative review and technical adequacy. A real-time calendar should be added to Waterline (the online portal used by YWB) in each proponent's project file that shows how many days the Board has used under its regulated timelines so both the Board and the proponent are using the same information.

Key proposed actions

YWB should update its timekeeping system to increase transparency, as described above. The Yukon Water Board and Secretariat should proactively engage with proponents and raise potential issues as much as possible, and may consider updates to its Rules of Procedure in this regard. Timeline: one to three months.

10. Claim precedence

Under Yukon mineral law, there can be different types of claims that apply to the same plot of land. For example, placer mining claims relate to surface rights (down to 40 metres), whereas hard rock mining rights apply to the hard rock strata further down. As a result, because each of the QMA and the PMA cover different stratums of earth, a quartz claim may be staked over the same property as the PMA, and vice versa. This issue was less common in the past, when placer claims were generally located in different regions than quartz claims. However, for some deposits explored more recently, multiple levels of claims may apply. The law has not clarified which claims would take precedence in this case, creating a lack of clarity for proponents that wish to make changes underground or on the surface level. Currently,

there is no provision in the QMA, the PMA or the Surface Act to resolve disputes between quartz claim and placer claim holders. This issue can also create uncertainty in a situation where a road construction crosses others' placer claims.

Proposed solutions

We propose creating a venue for a neutral third party to be able to resolve the operational issues that may arise between overlapping quartz and placer claims. The goal would be to establish ground rules for each party to operate in co-existence, and if not possible, to allow the hard rock miner to effect expropriation proceedings. There are multiple options for providing this venue: for example, it could be the mining recorder (with resolution parameters set out in each of the QMA and the PMA), the Surface Rights Board (with applicable amendments), or simply have the matter left to the courts. We note that an amendment to the Surface Rights to allow for a dispute mechanism in that act would require changes to federal legislation through an act of parliament. Changes to the QMA and the PMA could be enacted at the territorial level.

We note that this mechanism should only be applied where there is a real operational impact that would prevent a mine from being developed. Hard rock mines may operate only on a fraction of total claimed land.

Key proposed actions

Enact changes to legislation that would provide a venue for a third party to be able to adjudicate between overlapping claims, in instances where it is likely to cause a problem for mine operations. Depending on which option is chosen, the responsible body would be the territorial or federal legislature. Timeline: 12 to 18 months.

11. Other issues raised

This subsection describes other issues identified during our review covered in any of the above sections. For the most part these issues were not given more prominence because solutions were not feasible without major legislative changes, or because they are unlikely to be feasible politically.

Under the current framework, assessment and regulatory processes do not have targets for finite timelines. This was raised by proponents we spoke to, and in earlier reports on mining policy in Yukon. For YESAB, the reason for this is Bill C-17, which repealed the timelines introduced by Bill S-6. Our recommendations target ways to reduce the length of assessment processes without set timelines.

Exploration permitting, particularly Class 3 and 4 Quartz mine exploration, was described by proponents as taking significantly longer than in comparison jurisdictions. Renewals of exploration permits are particularly frustrating to proponents because they can take up to one year, even when the project has not changed. Expedited renewals was another feature of Bill C-17 that was repealed by Bill S-6, and is therefore no longer possible, even with the permission of relevant stakeholders.

As noted above, proponents have claimed that YESAB accepts comments from First Nations at any point in the assessment process, not only during public comment periods. Although this can create some uncertainty for mining companies, First Nations' participation in this process is critical, and they may have challenges meeting set timelines for comments. Our recommendation for simplifying public consultation is designed to provide a platform for public comments early in the process. We have also recommended that YESAB be more proactive in engaging with First Nations, which may increase their ability to provide comments earlier in the process.

There were several issues raised around Yukon Government's treatment of Decision Documents, with regard to timing of issuing the document, as well as inconsistency between projects on which mandatory reports and studies are required. Within the current legislative framework, there is limited opportunity to issue any guidance or involve proponents in a more transparent way; therefore, addressing these challenges would be a more complex process.

Finally, the fact that the Water Board is able to make major changes to a project or reject an application at a late stage in the regulatory process creates uncertainty for proponents. However, given the strong legislative basis for this ability, major changes would be required to address this issue. This ability is a feature of the Waters Act, and was upheld in a 2011 Yukon Supreme Court decision relating to a case with Western Copper. In the past, the Water Board has resisted changes that would reduce its ability to make changes or reject projects.

Appendix A: Scope of assessment and regulatory bodies

YESAB

For YESAB, its scope is set out in Section 5(2) of the YESAA, and in general is to provide a comprehensive, neutrally conducted assessment process of environmental and socio-economic review for all projects on Territorial and First Nations lands, while providing opportunities for public participation in the assessment process, and to recognize the special relationship of First Nations with the environment. Section 5(2) enumerates a list of 10 purposes.

Prior to the Devolution Transfer Agreement in 2001, project assessment was conducted at the federal level. YESAA was established as a Yukon-based assessment agency to give effect to the provisions of Section 12 of the Umbrella Final Agreement (UFA). The UFA is the basis for the settlement of land claims in Yukon, which 11 of 14 Yukon First Nations have now adopted by their Final Agreements, and are land claims under Section 35 of the Constitution Act, 1982.

YESAA fully governs how all Yukoners will be involved in development assessment. The concept behind it, which establishes its scope in a similar way to other environmental assessment legislation, is two-fold: first for the early identification and evaluation of all potential socio-economic and environmental consequences of a proposed undertaking, and second, a decision-making process that considers the adequacy of the process and then reconciles the proponents' plans with environmental preservation and protection.

Water Board

Mine permitting and the technical regulatory licensing regime is covered by EMR (under the QMA) and the Yukon Water Board.

For the YWB, its scope is set out in its definitions in Section 1, and by Section 6. Under the Waters Act, the YWB has the authority to adjudicate applications for the use of and deposit of waste in Yukon waters. As the adjudicating body, the Board can deny an application or approve an application with conditions. For Type A Water Use Licence applications or Type B applications that were adjudicated on the basis of a public hearing, the Water Use Licence also requires the approval of the Yukon Government Minister responsible for the administration of the Waters Act before it can be issued by the Chair of the Board. The duty of enforcing conditions of a Water Licence is shared by Yukon's Department of Energy Mines and Resources (for mining undertakings).

The Board also has statutory obligations under the UFA. Section 14.8.0 of the UFA provides that the Board shall not authorize any substantial alteration of the quantity, quality or rate of flow of water on or adjacent to settlement land, unless it is satisfied that: a) there is no alternative that could reasonably satisfy the requirements of the applicant; and b) there are no reasonable measures by which the applicant could avoid causing the alteration.

More broadly, the Yukon Water Board is simply the licensing body for the issuance of permits to use water, which is necessary for any mine. Practically speaking, its role is largely defined by the licensing regime for Type A and Type B Water Use Licences, which authorize water use.

EMR

While the YWB governs water, the QMA, which is administered by the EMR, governs land use, and other issues related to mining. Its scope in the regulatory and licensing process is somewhat more broad.

The QMA and the PMA govern who has the mining rights to minerals under a particular parcel of land in the territory, as it is the territorial government that owns the rights to most of the subsurface minerals. Each statute governs different strata of the land – the Act governs hard rock mining in bedrock and the PMA governs alluvial mining, typically gold, from the surface to the bedrock. The QMA governs what kind of mineral may be acquired, who has rights to minerals, legal tenure and ownership over minerals, procedures to acquire rights, requirements to maintain claims, permits for work, and reclamation.

More broadly, the EMR is simply the licensing body for the issuance of permits to obtain rights to and use subsurface minerals, and the right to use the surface of the lands in relation to the mining of those minerals. Practically speaking, it is largely defined by a licensing regime for a Quartz Mining Licence, required for a mine, and the permits required for lesser undertakings, such as mineral exploration. The EMR is generally responsible for bonding and security for mineral projects, including mines. Royalties are imposed through the QMA.

Appendix B: References

Gartner Lee Limited (2007). *Draft Report to Yukon Regulatory Competitiveness Advisory Task Force.*

Gowling WLG (2020). *Recommendations for Increasing Clarity & Efficiency of Yukon Regulatory Processes.*

McIntyre, Robert L. and Angus Robertson (2014). *Existing Mine Licensing Process Improvements Summary.*

Quartz Mining Act, SY 2002, c. 14

Waters Act, SY 2003, C. 19

YESAA Assessable Activities, Exceptions and Executive Committee Projects Regulations (SOR/2005-379)

YESAA Decision Body Time Periods and Consultation Regulations (SOR/2005-380)

YESAA Rules for Evaluations Conducted by Designated Offices

YESAA Rules for Screenings Conducted by the Executive Committee

Yukon Environmental and Socio-economic Assessment Act, SC 2003, s. 7

Yukon Water Board Rules of Procedure

Appendix C: Limitations

Receipt of new data or facts: PwC reserves the right at its discretion to withdraw or revise this report should we receive additional data or be made aware of facts existing at the date of the report that were not known to us when we prepared this report. The findings are as of June 2020 and PwC is under no obligation to advise any person of any change or matter brought to its attention after such date that would affect our findings.

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This report and related analysis must be considered as a whole: Selecting only portions of the analysis or the factors considered by us, without considering all factors and analysis together, could create a misleading view of our findings. The preparation of our analysis is a complex process and is not necessarily susceptible to partial analysis or summary description. Any attempt to do so could lead to undue emphasis on any particular factor or analysis.

We note that significant deviations from the above listed major assumptions may result in a significant change to our analysis.

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