

POST CONSULTATION REPORT

**Regarding
Quartz Mining Act and Placer Mining Act Review:
Class 1 Mining Use**

August 2013

INTRODUCTION

The Department of Energy, Mines and Resources conducted a public consultation from June 3 to July 31, 2013 on proposed changes to mining legislation and regulation. The purpose of the consultation was to identify issues and concerns with the current regime for Class 1 exploration programs and to find possible solutions.

All comments received during the review period have been compiled and summarized in this report. The comments received are also being considered in the finalization of the amendments to the Quartz Mining Act (QMA), the Placer Mining Act (PMA) and their regulations.

Information and feedback provided to the Yukon government in this review has been published or disclosed in accordance with the Access to Information and Protection of Privacy Act. No personal information has been published or reproduced.

PART 1

Quartz and placer mining act amendments: Summary of comments received

The Chamber of Mines strongly opposes any amendments to the Quartz or Placer Mining Acts; any changes should apply to the regulations only.

-Yukon Chamber of Mines

Changes should apply to the QMA only.

-Klondike Placer Miners Association

Concern that placer operations do not have the option to pay “in lieu” as is the case with quartz programs. This means that any delays caused by consultation could result in the loss of a field season and the possibility of accruing the necessary assessment work to retain mineral tenure.

- Klondike Placer Miners Association, individual prospector

Should be restricted to Class 1 activities on Category B Settlement Land (for settled First Nations) or to activities which “pose a substantial threat to native land claims” for unsettled First Nation’s. There should be no prior notification for below threshold activities on vacant Crown Land.

-Yukon Prospectors Association, Yukon Chamber of Mines, individual prospectors, individual from Whitehorse

Notification should be restricted to the traditional territory of the Ross River Dena Council only.

-Prospectors and Developers Association of Canada

The notifications should only apply to quartz exploration in the Ross River Dena Council traditional territory.

- Klondike Placer Miners Association

Suggestion that government use a phased approach to implementation (i.e. Ross River Dena Council first, phased in over the rest of Yukon) or restrict the notification requirements only to Ross River Dena Council.

-Yukon Prospectors Association, Klondike Placer Miners Association, Yukon Chamber of Mines

There should be one set of standard operating conditions that apply to the entire territory with no provisions for additional conditions in specific areas.

-Yukon Prospectors Association, Yukon Chamber of Mines, Klondike Placer Miners Association

There should be no changes to the Acts to allow for the designation of identified areas (there seemed to be confusion that the identified areas would include prohibition from staking).

- Yukon Chamber of Mines

Generally supportive of the establishment of identified areas in legislation. Want land withdrawals or staking moratoria for Ross River area until the details of how Yukon government will address the Ross River decision are worked out.

-Dan Keyi (Kluane) RRC, Carcross-Tagish RRC, Champagne and Aishihik First Nation, Liard First Nation, Wildlife Conservation Society of Canada Canadian Boreal Initiative, Ross River Dena Council (Note that RRC stands for Renewable Resource Council.)

Should develop decision criteria for what constitutes an identified area and have it available for stakeholders to reduce potential conflicts. The Minister should have the power to designate an identified area where land use plans are not in place.

-Ducks Unlimited Canada, Wildlife Conservation Society of Canada

Identified areas should include the full spectrum of areas being contemplated under regional land use plans.

-Canadian Boreal Initiative

Need to develop conditions and mitigations to be applied in identified areas. These should be subject to public review. Should not replace the land use planning process

-Canadian Boreal Initiative, Wilderness Tourism Association of Yukon, Carmacks RRC

Wildlife key areas should be used in developing identified areas for Class 1.

-Yukon government department of Environment

There should be no additional regulatory power for the Minister to define identified areas in the legislation. It should be established under Chapter 11 of the final agreements.

-Carmacks RRC, MiningWatch

The powers of the Minister to define "identified area" should be limited and specific.

-Prospectors and Developers Association of Canada, individual from Vancouver

Should be using land withdrawals instead of "identified areas"

-Selkirk First Nation

Managing multiple resource users in identified areas should not be part of the notification process. Impacts are mitigated by existing terms and conditions

-Individual from Whitehorse

Notification does not constitute "meaningful consultation". Yukon still had "duty to consult" on proposed changes.

-Selkirk First Nation, Tr'ondëk Hwëch'in, Liard First Nation, Kluane First Nation, Tă'än Kwachan Council, White River First Nation, Champagne and Aishihik First Nation, Christian Aboriginal Infrastructure Development, Ross River Dena Council

There should be prior notification to the First Nation before staking can take place on Category B Settlement Land.

-Tr'ondëk Hwëch'in, Selkirk First Nation, First Nation of Na-Cho Nyäk Dun, Wildlife Conservation Society of Canada

There should be public consultation before staking occurs.

-Wilderness Tourism Association of Yukon, MiningWatch

There should be notification to the First Nation before any exploration activity occurs in the traditional territory.

-White River First Nation, Ross River Dena Council

Consultation period for amendments is too short.

-Yukon Prospectors Association, Klondike Placer Miners Association, Yukon Chamber of Mines, Prospectors and Developers Association of Canada, Ross River Dena Council

There should have been earlier communication/engagement with stakeholders and First Nations.

-Ross River Dena Council, Carcross/Tagish RRC, Canadian Boreal Initiative, Christian Aboriginal Infrastructure Development

Revisions should be made to update the entire Act(s), not just the Class 1 provisions.

-Tr'ondëk Hwëch'in, First Nation of Na-Cho Nyäk Dun, Tä'än Kwachan Council, Champagne and Aishihik First Nation, Kluane First Nation, Selkirk First Nation, Christian Aboriginal Infrastructure Development, Wildlife Conservation Soc., Council of Yukon First Nations

Should move to "desktop" or paper staking as in BC.

-Yukon Fish and Wildlife Management Board

Concern that the proposed amendments will mean the end of the free entry system in Yukon.

-Individual prospectors

There should be an independent environmental assessment of proposed Class 1 projects. Mining Lands may not be the best agency to assess potential adverse environmental effects.

-Carmacks RRC

Class 1 should be part of the YESAB process.

-Christian Aboriginal Infrastructure Development

First Nations want to review and comment on draft legislation before it is brought forward at the fall legislative sitting.

-Champagne and Aishihik First Nation, Selkirk First Nation

There should be an intergovernmental working group to develop new legislation.

-Kluane First Nation, Tā'ān Kwachan Council, White River First Nation, Selkirk First Nation, Liard First Nation, MiningWatch, Christian Aboriginal Infrastructure Development, Ross River Dena Council, Council of Yukon First Nations

Yukon government must provide funding to First Nations to support their participation in the process.

-White River First Nation, Ross River Dena Council, Liard First Nation, Selkirk First Nation, MiningWatch, Christian Aboriginal Infrastructure Development

Any changes to the current QMA and PMA and regulations needs to harmonize with the relevant First Nation laws and permitting requirements.

-Tr'ondëk Hwëch'in

Changes should take into account First Nation Resource Management Plans.

-Christian Aboriginal Infrastructure Development Ross River Dena Council, Selkirk First Nation

There should be notification for all classes of exploration programs.

-Christian Aboriginal Infrastructure Development, Ross River Dena Council

PART 2

Quartz and placer mining regulation amendments: Summary of comments received

Industry concern that Class 1 notification thresholds exclude certain exploration activities that have minimal impact (no surface disturbance) Yukon Chamber of Mines suggests that the threshold be defined as low impact activities that do not involve “self-propelled mechanized equipment”. They also support the Yukon Prospectors Associations revised Class Criteria thresholds.

-Yukon Prospectors Association, Yukon Chamber of Mines, exploration company, Prospectors and Developers Association of Canada, individual prospectors

Thresholds need to be based on real and quantifiable environmental impacts.

-Yukon Chamber of Mines

Need to highlight the Mining Land Use Regulations operating conditions as they provide environmental mitigation and this was not made clear during the consultation.

- Klondike Placer Miners Association, Yukon Chamber of Mines, Yukon Prospectors Association

Heavy equipment is required to do Class 1 work for Placer; the thresholds should reflect this.

- Klondike Placer Miners Association

Notification should include all Class 1 activities.

-Carmacks RRC, Carcross/Tagish RRC, Canadian Boreal Initiative, Selkirk First Nation

Concern over construction or improvement of roads/trails and helicopter activity in key wildlife areas.

-Carcross-Tagish RRC, Wildlife Conservation Society of Canada

Some activities exceed the provisions of the Final Agreements and require consultation and accommodation, specifically section 18.4 of the Final Agreements. Need consent from First Nation before engaging in these activities regardless of provisions of QMA/PMA.

-Champagne and Aishihik First Nation, Tr'ondëk Hwëch'in

Notification should include a clean-up and rehabilitation plan and timeline for any site disturbances. It should also be provided to any municipalities or residents in a 2km radius of the claims.

-MiningWatch

Need to include time and distance thresholds and access routes as operating conditions to minimize wildlife disturbance.

-Wildlife Conservation Society of Canada

Reclamation plans should be mandatory for all Class 1 activities.

-Selkirk First Nation

Concern that the 25 day timeline for the notification process is too long given the shortness of the exploration season. Suggest a 15 day maximum turnaround.

-Yukon Chamber of Mines, individual prospector

Timelines for the notification process are too short and the process is not well enough defined to provide guidance for companies or communities.

-Tr'ondëk Hwëch'in, Canadian Boreal Initiative, MiningWatch, Christian Aboriginal Infrastructure Development, Wildlife Conservation Society of Canada, Ross River Dena Council, Selkirk First Nation

Concern that with no solid timelines in place for consultation, the process could be dragged out indefinitely. Industry requires certainty to ensure that they don't lose operating seasons. There needs to be a maximum allowable period for review/consultation (additional 25 days).

-Yukon Prospectors Association, Klondike Placer Miners Association, Yukon Chamber of Mines, exploration company, Prospectors and Developers Association of Canada, Individual from Vancouver

Generally support the requirement for a consultation period with the option to extend.

-Dan Keyi (Kluane) RRC

Concern that security will tie up capital needed to do the exploration program. Need to ensure that any security requested is consistent with the level of activity and that inspections and refunds be completed promptly. Some framework that relates security to proposed activity should be created to ensure consistency across the board.

-Exploration company, individual from Vancouver

No security for Class 1 programs.

-Individual from Whitehorse

Security must be provided if there is a risk of significant adverse environmental effects.

-Carmacks RRC, Liard First Nation

Security should be mandatory for all Class 1 programs.

-Christian Aboriginal Infrastructure Development, Selkirk First Nation

Not enough detail given as to how the notification process will work.

-White River First Nation, Christian Aboriginal Infrastructure Development, Wildlife Conservation Society of Canada, Ross River Dena Council, Selkirk First Nation

Concern over the capacity of EMR to evaluate and monitor Class 1 programs.

-Carcross/Tagish RRC, Liard First Nation, Selkirk First Nation

Concern with the capacity of First Nations to have a good understanding of an exploration program and its impact on their traditional territories and what responses are appropriate.

-Individual from Vancouver

Concern that First Nations don't have the capacity to respond to notifications in a timely manner and that they will request extensions in all instances of notification. Suggest that government engage with First Nations to "pre-approve" a range of activities that are acceptable over large areas of Yukon.

-Exploration company

It needs to be made clear to all stakeholders that it is the Crown's obligation to consult with the First Nation, not the proponents.

-Individual from Vancouver

Proponents must contact First Nation before contacting the Yukon government Mining Lands office.

-White River First Nation, Tr'ondëk Hwëch'in

Notification should be in a form acceptable to the First Nation (may be problems with electronic format).

-Christian Aboriginal Infrastructure Development

There should be no additional power to the Yukon government Chief of Mining Lands to determine which projects can proceed and when consultation is complete.

-Selkirk First Nation, MiningWatch, Liard First Nation, Christian Aboriginal Infrastructure Development, individual from Whitehorse

The Yukon government Chief of Mining Lands should not have the authority to impose additional terms and conditions over and above those that already exist in the regulations

-Individual from Whitehorse

Recommend that the Department of Tourism be made an active member of the decision body for Class 1 notifications.

-Wilderness Tourism Association of Yukon

Want to participate in the drafting of the notification form.

-Tr'ondëk Hwëch'in

Concern over how government will deal with any changes to approved programs mid-season or mid-program? During the initial phases of exploration, programs are difficult to define and subject to sudden changes.

- Klondike Placer Miners Association, Yukon Prospectors Association, Yukon Chamber of Mines, Exploration company

Should be an arbitration board or appeal process in place if the notification results in issues that can't be resolved during consultation.

-Mayo RRC, Selkirk First Nation, Canadian Boreal Initiative

Concern that requiring public notification before claims are staked will lead to others staking the ground around the claims while the proponent is in the middle of the notification process.

-Exploration company, individual prospector

There should be no commercially sensitive information as part of the notification.

-Individual from Vancouver

Concern that if agreement cannot be reached with the First Nation, that the exploration program will be refused. What procedures would be in place to address this problem?

-Individual from Vancouver

There should be a process for refusing programs based on First Nation concern.

-Wildlife Conservation Society of Canada

The Yukon government Chief of Mining Lands should not have the power to refuse to allow a Class 1 program if impacts cannot be mitigated. Claimholders have the inherent right to evaluate their land.

-Prospectors and Developers Association of Canada, individual from Vancouver, individual from Whitehorse

Process only allows for mitigation, which is not accommodation. First Nation must have the right to refuse projects.

-Christian Aboriginal Infrastructure Development, Wildlife Conservation Society of Canada, Ross River Dena Council

Cumulative effects could be dealt with using post season reports to verify that mitigation and cleanup are complete and done to acceptable standards.

-Yukon Chamber of Mines, Yukon Prospectors Association

Cumulative effects need to be considered in notification reviews and decisions.

-Selkirk First Nation, Wilderness Tourism Association of Yukon

Notification should include mode of access (air, road, etc.) in order to assist in tracking cumulative effects.

- *Yukon government department of Environment*

Concerns that program activities will not be listed on the public registry. Different activities can have greater impacts.

-*Wilderness Tourism Association of Yukon*

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Class 1 QMA & PMA Consultation Report

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