

# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## OPTIONS PAPER

### ADAPTIVE MANAGEMENT

#### BACKGROUND

Adaptive management of Socio-Economic Agreements (SEAs) can be broadly described as the plan for evolving and improving SEA commitments and outcomes through engagement between a mining project, the Government of the Northwest Territories (GNWT), and Indigenous Governments and Organizations (IGOs) that creates a process to review socio-economic outcomes on a regular basis and address urgent items when they arise. Adaptive management emphasizes accountability, deals with uncertainty around NWT resident benefits, and allows for innovation and collaboration (through engagement).

Adaptive Management in the SEAs has a strong focus on engagement, but the MRA will allow adaptive management to focus more on changing benefit outcomes, and possibly making amendments to SEAs to enhance their success. This might include identifying new or enhanced implementation commitments to improve overall benefit outcome achievement.

#### **Defining Adaptive Management in the context of SEAs**

Adaptive Management can be defined as the pool of powers that exist to review SEA performance, and to suggest corrective action that supports achieving SEA objectives where SEA objectives are not being met.

SEAs often have an adaptive management section. The adaptive management sections of existing SEAs have been collected in Appendix A. Adaptive management in SEAs includes participation by Indigenous governments that are prioritized in the SEA, the mine proponent, and the GNWT. The sections will detail how recommendations for alternative measures are created, deliberated on, and responded to.

Adaptive management sometimes includes engagement deadlines between the GNWT, the mine proponent, and IGOs. This varies from SEA-to-SEA, and the dates for engagement are sometimes located in other sections of the SEA. While adaptive management includes engagement, adaptive management is a larger concept that addresses enforcement concerns and alternative ways to achieve SEA commitments.

Adaptive management in the context of SEAs is not to be confused with adaptive management in other contexts, such as environmental regulation.

### **Adaptive Management Currently in SEAs**

Adaptive Management is tied to information sharing activities, and the ability to adaptively manage responses to urgent concerns and recommendations is a clear benefit. SEA reporting feeds into adaptive management, but adaptive management creates a channel to communicate the concerns of IGOs and the public. A key part of adaptive management is identifying who can raise issues to the mine/GNWT, and where that information should come from.

#### **Diavik:<sup>1</sup>**

- Annual Meeting with IGO signatories<sup>2</sup>, GNWT and mine to split costs.
- IGOs identified in the SEA have ability to raise concerns or recommendations at any time; GNWT and/or mine have 90 days to respond.
- Submissions and responses are summarized in the annual SEA report.

#### **NorZinc:<sup>3</sup>**

- The Committee of IGOs identified in the SEA<sup>4</sup> can make recommendations at any time
- Ability to make recommendations after annual report
- Mine or GNWT must take reasonable steps to meet recommendations, and to where it does not, it must submit written reasons for not meeting the recommendation.
- Reasons and response to be published in next annual report of either the GNWT or mine, depending on which part the recommendation was made to.

#### **Gahcho Kue:<sup>5</sup>**

- Meetings at multiple levels:
  - o Annual meeting between Mine Chief Operating Officer and GNWT Deputy Ministers of ITI, ECE and H&SS;

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<sup>1</sup> Diavik SEMA Adaptive Management Article 5.5.

<sup>2</sup> Tlicho Government, Lutsel K'e Dene Band, North Slave Metis Alliance, Yellowknives Dene First Nation, and Kitikmeot Inuit Association

<sup>3</sup> Norzinc SEA Adaptive Management, Article 10.

<sup>4</sup> Nahanni Butte Dene Band, Liidlil Kue First Nation, Ache Dene Koe First Nation, Sambaa K'e Dene Band and Jean Marie River First Nation

<sup>5</sup> Gahcho Kue SEA Adaptive Management, Article 9.0.

- Annual meeting between Mine representatives and representatives of the Legislative Assembly of the NWT, arranged by the GNWT;
  - At least two meetings per year between working level representatives from mine and GNWT ECE, H&SS and ITI
  - Such other meetings or sharing of information as the Parties may mutually agree on.
- Mine or GNWT may recommend ways to improve performance and implement agreement.
  - Records are formalized, including action items that are agreed to.
  - Mine and GNWT to meet with IGOs<sup>6</sup> at least once per year, splitting costs for meeting(s).
  - Mine and GNWT must respond to Identified IGOs formal concerns within 90 days.
  - Summaries of recommendations received, and responses are to be published in the annual reports of mine and GNWT.

### **Corrective Actions: Net Benefit Exercise & Qualitative Corrections**

Where SEA commitments are not met, adaptive management would cover all forms of engagement related to enforcing SEAs before the GNWT would seek more advanced forms of enforcement. Beyond adaptive management, the GNWT is contemplating dispute resolution that may have the power to issue binding resolution (if that option is pursued) and the imposition of charges and/or fines to create layers of enforcement options beyond adaptive management. MRA dispute resolution is only being discussed at this stage, and the scope of that potential option is not yet known, but options (including addressing SEA performance) could be contemplated. The point of developing enforcement options (in this paper and forthcoming papers from the MRA development team at ITI) is to ensure that the GNWT has many tools to incentive compliance with SEA commitments.

Adaptive management could be enhanced to explore the cause of the problem and find a solution that addresses the specific issue or at least maintains the net benefits to the NWT. Some examples of how this might work include:

- If employment outcomes are below target levels:
  - To correct low percentage of Indigenous and NWT Residents for a certain skill level, one solution could be to have additional training efforts specific to that skill level

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<sup>6</sup> Tlicho Government, Yellowknives Dene First Nation, Lutsel K'e Dene First Nation, Deninu Kué First Nation, North Slave Metis Alliance, and Northwest Territory Metis Nation.

- If Indigenous participation is particularly low, a job fair, or a series of job fairs, in local communities could be deployed to look for more candidates.
- If business spending is below target levels:
  - Low Indigenous spending might be addressed by capacity building with IGO partners, or connecting IGOs with contractors for potential joint ventures
  - If business spending was low for Indigenous and NWT businesses, adaptive management may suggest that the mine make social investments such as some other form of benefits, such as local infrastructure, social legacy projects, or funding a new scholarship.

To maintain the total net benefits from an SEA, adaptive management should have the flexibility to investigate shortcomings, and to suggest something that balances out under performance. When benefits are not realized in one area, adaptive management should have the power to recognize benefits in other areas that exceed targets, and produce a net benefit (even with shortcomings in one area).

The idea of balancing out the budget, and maintain net benefits, will require that adaptive management assess the value of certain benefits. For most analyses, this would be a fairly simple dollar value, such as the wages a person would earn in a year of employment, or the difference between the spending commitment and the lower amount actually spent.

For measures that are not easy to quantify, or are purely qualitative, such as ‘use best efforts to achieve X’, adaptive management would be able to detail what best efforts should mean in the specific context. This would better define commitments, and lead to more success in achieving them. For example, if the commitment was for the mine to support local cultural events, adaptive management could improve the vague commitment by requiring reporting on each event and the amount of financial support a mine provided. Without actually changing the SEA, adaptive management could fill in additional context to make commitments measurable and clarify how they can be achieved.

The point of this net-benefit consideration is to consider innovative ideas that can be explored in adaptive management, to benefit the relationship between the mining proponent and the GNWT.

Adding enhanced adaptive management controls before heavy handed enforcement will reduce the need for the GNWT to pursue charges, fines, or punishments (while increasing benefit outcomes at the same time). Additionally, adaptive management helps maintain working relationships between the GNWT, mine, and IGOs. The net-benefit exercise is alternative to enforcement, in particular penalties, which gives the

GNWT more tools to address enforcement, but without the negative ramifications of a formal legal or litigated claim.

Adaptive management will need to consider the background behind an SEA commitment and explore why that commitment is not being met. The purpose of adaptive management is not to lower commitments, but to explore every way that current commitments can be achieved. When adaptive management concludes that existing commitments cannot be met under the current SEA, it will have the option to adjust commitments, but this power is meant to be a last option before harsh enforcement.

**Examples of Adaptive Management Recommendations**

<b>Problem</b>	<b>Potential Recommendations</b>
Mine reporting SEA performance data after deadlines	Mine submit reports on time and create a plan to submit reports on time in the future.
Employment below SEA targets	Training for employment levels that are not suitably saturated by NWT residents, to promote more NWT residents to those roles.
Procurement below SEA targets	Procurement commitments would remain, and as an additional requirement, proponents could be asked to advertise opportunities for contracts over the next 5-years or hold community procurement forecasting workshops in communities with potential contractors.
Mine has been paying for travel of southern employees	Increasing the Northern Retention bonus for all NWT resident employees.

This list of examples is only an example. Adaptive management would have the purview to set many different solutions to the same problem. So for any given problem, there would be multiple possible solutions. Adaptive management would select a solution based on reviewing all evidence available, fully considering the details and specifics of the situation.

**Findings of the SEA Program Review:**

The GNWT is currently conducting a top-to-bottom review of SEAs, focusing on improving the success in achieving SEA Objectives. The first phase, evaluation, is nearing completion. The rest of this section contains relevant recommendations that have been proposed by the GNWT contractor for that project.

The following recommendation was given on general redesign, and includes considerations for measuring and evaluating SEA performance:

#### **Redesign the SEA Program**

The review findings overwhelmingly demonstrate the need for a clearly defined program that will provide the regulatory requirements for the development of SEAs between the GNWT and resource development proponents. It is recommended that the existing SEA Program be redesigned to incorporate explicit goals, objectives, outcomes, a program logic model, and a performance measurement and evaluation framework.

The following recommendation addresses implementation, and how to operationalize commitments within the SEA:

#### **Include Implementation Plan**

The SEAs are developed without any direction on how they are to be implemented to ensure that the stated objectives and intent of the SEAs are achieved as intended. It is recommended that the SEAs include a commitment requiring the development of an implementation plan by each of parties, that details the steps that need to be taken to effectively operationalize the commitments. These plans should be developed in collaboration with the impacted communities and efforts should be made to coordinate efforts across plans to help streamline activities.

The following recommendation addresses creating periodic review of SEAs to ensure that they stay relevant over the life of mine:

#### **Regular Review of SEAs**

The SEAs generally span a project life time that can range from 10 to over 20 years, and as such it is important to confirm the continued relevance of the commitments. To help ensure that commitments remain suitable over time, it is recommended that:

- a. SEA commitments be aligned with specific phases of the mine (e.g., construction, operations, closure); and
- b. SEA commitments be regularly reviewed (e.g., at project milestones) by the named parties to ensure they continue to reflect the contextual environment that the parties are operating within.

#### **Implementation Plan and Other Policy Documents:**

Following the recommendation for an implementation plan, if a plan is pursued, the part of the plan dealing with adaptive management would likely need to be a collaborative effort between the mine proponent, the GNWT, and IGOs.

This could include many of the same considerations that are already included in adaptive management (mainly about engagement) of existing SEAs, but would also need to detail the process to complete the net benefit exercise, any other powers of adaptive management, and detailed timelines that would spell out commitments.

A program logic model, a performance measurement, and evaluation framework all have similar implications. Adaptive management is critical to implementation of the SEAs, so all policy documents that speak to evaluation of SEA performance and corrective actions will need to address adaptive management.

### **Year to Year Changes Made Through Adaptive Management - Transparency:**

In order to promote change and document adaptive management efforts, comments and concerns of stakeholders and the responses to those concerns could be published in annual SEA reports.

Any decisions that have been made under the net-benefit exercise, or another quasi-enforcement power, could also be documented.

The goal should be to better document adaptive management, so that it becomes a central part of implementation; covering monitoring and reporting, but also including the changes that are made to increase the success of objectives set out under the SEAs.

### **Impact on GNWT Programs and Services:**

It is quite possible that adaptive management will suggest alterations to GNWT programs and services to improve SEA performance. Adaptive management will likely need to address how the GNWT will act when decisions create responsibilities for departments outside of ITI, and even within ITI.

Addressing implications to the GNWT will likely require collaborative discussions on the scope of what kind of decision can be made, and how these changes would be funded. Without these discussions, adaptive management may overstep into the mandates of other departments without a clear path to resolving any disagreements.

## RELEVANT ENABLING SECTIONS OF MRA

Section 52 of the *Mineral Resources Act*:

### **Measures that benefit people of the Northwest Territories**

**52.** The Commissioner on the recommendation of the Minister may prescribe requirements in respect of measures that provide benefits to the people of the Northwest Territories.

## PRINCIPLES

Engagement and Adaptive Management for SEAs will contribute to the following goals from section 2 of the *MRA*:

- (a) to regulate mineral interests efficiently, effectively and in a transparent manner;

**(d)** to ensure that wealth generated by mineral resources will be used for the benefit of present and future generations of the people of the Northwest Territories;

**(e)** to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories;

**(f)** to respect Aboriginal and treaty rights;

**(g)** to complement the systems for collaborative management of land and natural resources in the Northwest Territories;

## PROBLEM

Adaptive management in its current state mostly deals with engagement. One problem to be addressed in this paper is to identify how adaptive management can provide oversight and manage benefit outcomes.

## INTERRELATED MRA REGULATIONS

Adaptive Management will potentially be linked to:

- Dispute Resolution for SEAs
- Enforcement of SEAs
- Net Benefit Calculations
- Engagement
- Advisory Bodies



OPTIONS CONSIDERED

OPTION 1: 14(1)(a)

14(1)(a)

14(1)(a)

IMPLICATIONS OF OPTION 1:

Legal:

- 14(1)(a)

Political:

- 14(1)(a)

Financial:

- 14(1)(a)

Implementation:

- 14(1)(a)

Change Management:

- 14(1)(a)

**OPTION 2:** 14(1)(a)

14(1)(a)

- 14(1)(a)

IMPLICATIONS OF OPTION 2:

Legal:

- 14(1)(a)

Political:

- 14(1)(a)

Financial:

- 14(1)(a)

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Implementation:

- 14(1)(a)

Change Management:

- 14(1)(a)

OPTION 3: 14(1)(a)

14(1)(a)

IMPLICATIONS OF OPTION 3:

Legal:

- 14(1)(a)

Political:

- 14(1)(a)

Financial:

- 14(1)(a)

Implementation:

- 14(1)(a) [REDACTED]

Change Management:

- 14(1)(a) [REDACTED]

RECCOMENDED OPTION FOR DEVELOPMENT OF REGULATIONS

14(1)(a) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DRAFT POLICY INTENTIONS LANGUAGE

Disclaimer: 14(1)(g) [REDACTED]

14(1)(g) [REDACTED]

- 14(1)(g) [REDACTED]

14(1)(g) [REDACTED]

- 14(1)(g) [REDACTED]
- [REDACTED]

14(1)(g)

- 14(1)(g)

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## REFERENCES

Diavik Diamond Mines Inc., *Diavik Diamonds Project Socio-Economic Monitoring Agreement*, October 1999

Diavik Diamond Mines Inc., *Diavik Diamonds Project Socio-Economic Monitoring Amendment Agreement*, January 2015.

NorZinc Ltd., *Prairie Creek Mine Project Socio-Economic Agreement*, August 2011

De Beers, *Gahcho Kué Socio Economic Agreement*, June 2013

De Beers, *Snap Lake Diamond Project Socio-Economic Agreement*, May 2004

# Appendix A: Adaptive Management in SEAs

## **Ekati SEA**

**Disclaimer:** Ekati does not have an “adaptive management” section, so a similar section has been added for comparison.

### **SCHEDULE “H”**

#### **PRINCIPLES FOR MONITORING OF ACTIVITIES**

Monitoring activities provide mechanisms whereby both Parties can objectively and systematically measure the degree to which obligations arising from this Agreement are met. Monitoring will be carried out in a manner which will benefit both Parties and will assist the Parties in carrying out their respective responsibilities.

To guide the monitoring process the Parties will:

- 1.0 Ensure that the information collected and analysed is accurate and respects the spirit and intent of this Agreement.
- 2.0 Exercise due diligence to ensure that no confidential information relating to specific individuals or businesses is disclosed to the public.
- 3.0 Subject to 2.0, apply the principle of transparency with respect to calculation and reporting of results.
- 4.0 Present, with any reporting of statistical information, written documentation which describes the methodology and assumptions used to develop the information.
- 5.0 Maintain, wherever possible, the assumptions and methodologies used in the monitoring and reporting processes in a consistent manner throughout the life of the Project.
- 6.0 Provide information reported in aggregate form.
- 7.0 Subject to 2.0, report information shall become public thirty (30) days after it has been provided to the Parties to this Agreement.

8.0 When not otherwise specified report statistical information on the basis of a calendar year.

9.0 Develop common approaches to improving the quality and the timeliness of information.

10.0 Establish working groups. When necessary, to discuss matters related to monitoring and reporting.



## Diavik SEMA

### Article 5.5 FOLLOW-UP AND ADAPTIVE MANAGEMENT

5.5.1 DDMI and GNWT shall make themselves available to jointly meet at least once per year with representatives of each Aboriginal Authority to discuss the results described in the applicable annual socio-economic reports<sup>7</sup> in order to provide an opportunity for input into discussions regarding the efforts of DDMI and GNWT to address socio-economic impacts.

5.5.2 Each of DDMI and GNWT shall bear its own costs for attending these meetings, while any costs associated with community participation in these meetings will be shared equally by DDMI and GNWT.

5.5.3 Each Aboriginal Authority may communicate concerns or recommendations regarding the socio-economic impact of the Project at any time. Any such communication shall be in writing and may be addressed to either DDMI or the GNWT and the recipient shall share the communication with the other. DDMI and GNWT may decide, in their sole discretion, to designate one of them to respond, respond jointly or provide separate responses. The appropriate Party shall use its best efforts to respond within 90 days of receiving any such concern or recommendation. The response may take the form of a written response, action plan or the adoption of (or revision to) an initiative or program.

5.5.4 DDMI and GNWT will use good faith efforts to summarize any recommendation received from Aboriginal Authorities and the response to such recommendation in the applicable annual report.

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<sup>7</sup> Localized reports for Tlicho Government, Lutsel K'e Dene Band, North Slave Metis Alliance, Yellowknives Dene First Nation, and Kitkmeot Inuit Association.

# Gahcho Kué SEA

## 2.1 PURPOSE OF AGREEMENT

2.1.1 The purpose of this Agreement is to establish the methods and procedures by which:

- a. the Parties will work together to maximize the beneficial opportunities, identify the impacts, and minimize and mitigate the negative socio-economic impacts arising from the Gahcho Kue Project;
- b. the implementation of commitments made regarding socio-economic issues arising from the Gahcho Kue Project and this Agreement will be monitored; and
- c. the Parties will work together to facilitate adaptive management in response to the monitoring data collected and reported by the Parties referred to in Part 8 of this Agreement in order to continually improve the implementation of this

Agreement.

## 2.2 PRINCIPLES

The Parties will carry out this Agreement consistent with the purpose in clause 2.1 and will be

guided by the following principles:

- a. co-operation;
- b. fairness;
- c. collaboration;
- d. support for the goal of sustainable development and monitoring progress towards it;
- e. respect for the rights, responsibilities and interests of each Party (including the requirement and interest of DBC in an economically viable Project); and
- f. adaptive management that is innovative, flexible and ensures feedback and remedies to achieve the goal of minimizing adverse socio-economic impacts and maximizing socio-economic benefits.

## APPENDIX A: DEFINITIONS

"Aboriginal Authority" includes the following:

- a. Tlcho Government,
- b. Yellowknives Dene First Nation,
- c. Lutsel K'e Dene First Nation,
- d. Deninu Kue First Nation,
- e. North Slave Metis Alliance, and
- f. Northwest Territory Metis Nation.

## **9.0 ADAPTIVE MANAGEMENT**

### **9.1 PURPOSE**

Adaptive management is the method by which:

- a. the implementation of commitments made by the Parties regarding socio-economic issues arising from the Gahcho Kue Project and this Agreement will be considered, discussed and publicly reported; and
- b. the Parties will work together to maximize the beneficial opportunities, identify the impacts, and minimize and mitigate any negative impacts arising from the Gahcho Kue Project.

### **9.2 ENGAGEMENT BETWEEN THE PARTIES**

9.2.1 The Parties shall meet regularly and at multiple levels in order to review and discuss the results of activities and programs undertaken by both Parties, and to identify challenges and opportunities for collaboration intended to improve socio-economic performance.

9.2.2 In particular, the following meetings shall occur:

- a. The DBC Chief Operating Officer shall meet annually with the GNWT Deputy Ministers of ITI, ECE and H&SS;
- b. DBC representatives shall meet with and appear annually before representatives of the Legislative Assembly of the NWT. Such meetings shall be arranged by the GNWT;
- c. working level representatives from DBC and GNWT ECE, H&SS and ITI shall meet at least twice per year; and
- d. such other meetings or sharing of information as the Parties may mutually agree on.

9.2.3 Each Party may, at any time, offer suggestions or recommendations to the other Party that are intended to improve socio-economic performance and better implement the purposes and principles of this Agreement.

9.2.4 A record of all meetings will be formalized between the Parties, including documentation regarding recommendations for adaptive management measures discussed by the Parties, and all action items agreed to between the Parties.

### **9.3 COMMUNITY ENGAGEMENT**

9.3.1 On providing their reports to the Aboriginal Authorities and the communities in the Local Study Area pursuant to clause 8.4, the Parties shall invite the Aboriginal Authorities' and the communities' comments, concerns and recommendations respecting the socio-economic impacts of the Gahcho Kue Project.

9.3.2 The Parties shall make themselves available to jointly meet at least once per year with

representatives of each community in the Local Study Area and of the Aboriginal Authorities to discuss the results in the annual reports in order to provide an opportunity for input into discussions regarding the efforts of the Parties to address socio economic impacts. Each party shall bear its own costs for attending these meetings, while any costs associated with community participation in these meetings will be shared equally by the Parties.

#### **9.4 FOLLOW-UP**

9.4.1 The purpose of this section is to set up a follow-up process through which the principles of adaptive management can be applied in the event there are deficiencies in implementing any commitments set out in this Agreement or any negative impacts that were unforeseen or of a magnitude greater than predicted in the Environmental Impact Review.

9.4.2 Each Party will respond to formalized concerns or recommendations received from Aboriginal Authorities or communities in the Local Study Area within 90 days after receipt thereof. Such response may take the form of a written response, an action plan or the adoption of or revision to an initiative or program.

9.4.3 The Parties will also consider proposals from the Aboriginal Authorities and communities in the Local Study Area for specific projects or initiatives relating to the Gahcho Kue Project's socio-economic impacts.

9.4.4 The Parties will work together to include, in their respective annual reports, reference to any recommendations for adaptive management responses made to each other or received from the Aboriginal Authorities or communities in the Local Study Area regarding how the Parties can improve the Gahcho Kue Project's socio-economic contributions or mitigate any negative socio-economic impacts. Each Party shall include a summary of how recommendations for adaptive management responses were addressed in its annual report.

## NORZINC SEA

### 2.2 PRINCIPLES

The Parties will carry out this Agreement consistent with the purpose in clause 2.1 and be guided by the following principles:

- a. co-operation;
- b. fairness;
- c. collaboration;
- d. support for the goal of sustainable development and monitoring of progress towards it;
- e. respect for the rights, responsibilities and interests of each Party (including the requirement and interest of CZN in an economically viable Project); and
- f. adaptive management that is innovative, flexible and ensures feedback and remedies to achieve the goal of minimum adverse socio-economic impact.

### [Purpose of Indigenous Advisory Committee]

8.1.2 The purposes of the Committee will be to:

- a. monitor performance of the commitments made by the Parties under this Agreement, provide recommendations to the Parties and comment on socioeconomic impacts arising from the Project;
- b. provide an ongoing forum for meaningful participation and involvement in the Project by the members of NAEC Communities;
- c. monitor the success of socio-economic mitigation measures and commitments by:
  - i. reviewing monitoring reports submitted pursuant to this Agreement;
  - ii. considering comment and observations of socio-economic impacts from the public; and
  - iii. considering the results reported in (i) and (ii) in the context of information relating to employment practices, human resource development, business development, social wellbeing and cultural well-being, and other related matters contemplated by this Agreement;
- d. make recommendations to the Parties respecting adaptive mitigation measures for achieving the purposes and commitments of this Agreement; and
- e. issue a report once every two years on the results of the Committee's work as set out in this clause 8 and in clauses 9 and 10 and present the report at a public meeting.

### 8.2 MEMBERSHIP

8.2.1 Each NAEC Community may appoint one representative and one alternate to the Committee.

- 8.2.2 CZN and GNWT shall each appoint a maximum of two representatives to the Committee.
- 8.2.3 In the event that some, but not all, NAEC Communities have appointed a representative to the Committee, the Committee may conduct its business and exercise its duties with such representatives as have been appointed.

#### **APPENDIX A: DEFINITIONS**

**"NAEC Communities"** means those groups that are currently members of the Nahendeh Aboriginal Economic Council, which are Nahanni Butte Dene Band, Liidlii Kue First Nation, Ache Dene Koe First Nation, Sambaa K'e Dene Band and Jean Marie River First Nation.

#### **10 ADAPTIVE MANAGEMENT**

The Parties will address any deficiencies in implementing any commitments set out in this Agreement or any negative socio-economic impacts that were unforeseen or of a magnitude greater than predicted in the environmental assessment in the following way:

- a. the Committee may make recommendations to the Parties at any time pursuant to clause 8.1.2.d;
- b. the Committee shall, upon review of the annual reports submitted by each Party, make recommendations pursuant to clause 8.1.2.d, to the relevant Party to undertake adaptive measures in respect of the commitments under this Agreement;
- c. the Committee will send recommendations made in clauses 10.a and 10.b to the Parties concurrently;
- d. a Party will, subject to clauses 10.e and 10.f, take reasonable steps to meet such recommendations;
- e. where a Party is unable to meet its respective commitments, or determines that any recommendation is unachievable or unreasonable, that Party shall provide the Committee with written reasons for not meeting the recommendation;
- f. the Party in clause 10.e shall submit written reasons to the Committee that contain the following:
  - i. a description of the commitment that is not being met;

- ii. the measures taken to meet the commitment in the first instance;
  - iii. a description of the recommendation from the Committee to improve achievement of the commitment identified in clause (i);
  - iv. the reasons for not implementing the Committee's recommendation;
  - v. the alternative steps taken to remedy deficiencies;
  - vi. the results in response to the steps set out in clause (v); and
  - vii. the Party's suggested measures, if any, to address the Committee's recommendation;
- g. the Committee shall review the written reasons provided by the Party pursuant to clause 10.f and make the reasons and its response available to the other Party and the public in its next annual report.

# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## OPTION PAPER

### BENEFIT AGREEMENT DISPUTE RESOLUTION

#### BACKGROUND

##### OVERVIEW

A benefit agreement is a term that describes an agreement that is the outcome of a negotiated process about a proposed resource extraction, project or development that has the potential to impact the rights or interests of an Indigenous nation.<sup>1</sup> Generally, a benefit agreement is between the proponent of the project and the Indigenous nation and is a contract between the two parties that set out what the Indigenous nation will receive in return for the industrial activity taking place on their land. Benefit agreements can also be entered into between government parties and an Indigenous nation in the same circumstance. Benefit agreements are negotiated on the basis that the Indigenous nation should share in the employment and financial development projects on their lands.<sup>2</sup>

A benefit agreement focuses on benefits meant to improve community outcomes and is not compensatory, for example providing a certain level of employment and contracting opportunities, supporting local community organizations, and assisting with infrastructure development. In several modern northern treaties (Northwest Territories, Nunavut, Yukon, and the Labrador Inuit) there are provisions requiring agreements to be reached with the appropriate Indigenous government before development can take place.

Where a benefit agreement is being negotiated between parties, issues can arise in that negotiation where parties are unable to agree on the terms of the benefits to be provided. These issues will likely focus on the amount or scope of benefits and how the benefits should be distributed or provided over the life of the project. If these issues impede the conclusion of the benefit agreement and there is a need for resolution by a dispute resolution body, it is likely that the parties do not agree on what is fair or appropriate in the circumstances in terms of the benefits offered. A dispute resolution body will need to assist parties in either completing the negotiation or by deciding on the terms of the benefit agreement (or by concluding an agreement is not required).

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<sup>1</sup> Woodward & Company, “Benefit Sharing Agreements in British Columbia: A Guide for First Nations, Businesses and Governments” at page I-2.

<sup>2</sup> Kielland, Norah. “Supporting Aboriginal Participation in Resource Development: The Role of Impact and Benefit Agreements” Legal and Social Affairs Division Parliamentary Information and Research Service Publication No. 2015-29-E 5 May 2015, at page 2.



## **ANALYSIS OF LAND CLAIMS MODELS**

The *Mineral Resources Act* (MRA) is the first resource management legislation that requires that a proponent enter into a benefit agreement with the appropriate Indigenous government or organization for specific undertakings, and that includes a dispute resolution mechanism to resolve any issues in reaching this agreement that is mandated by the legislation, or any issues regarding a material change in the agreement requiring renegotiation. Land claims agreements are currently the only legal mechanism in Canada that require a proponent to negotiate a benefit with the identified Indigenous government before obtaining a licence under the regulatory regime.

A jurisdictional scan of the four modern land claims agreements, the Nunavut Agreement, the Inuvialuit Final Agreement, the Tłıchǫ Agreement and the Labrador Inuit Land Claims Agreement (LILCA) shows that each land claim both requires a type of benefit agreement to be reached with a developer of a project of a certain threshold and contains dispute resolution mechanisms to address any issues arising out of the negotiation process when an agreement is unable to be reached. The Nunavut Agreement and the Labrador Inuit Agreement both have triggering events that engage the dispute resolution mechanism: 60 days after the start of negotiation with no agreement reached, at the request of a party in the Nunavut Agreement and a certain period after all other permits have been acquired with no agreement reached under the Inuit and Labrador Agreement.

The land claims agreements reviewed have either left it to the parties to select an arbitrator or mediator, or have established a single position to oversee the dispute resolution process or established a board. The powers of the administrator or board are provided for in the agreements and the funding of these boards is often covered by government. The dispute resolution process itself most often involves a progressive approach to dispute resolution: voluntary mediation or arbitration and then compulsory arbitration either in front of a single arbitrator or a panel. While these dispute resolution processes have all been developed through a negotiated process by Indigenous organizations, none of the agreements contain dispute resolution processes that explicitly include Indigenous methods of conflict resolution.

## **ANALYSIS OF OTHER ADMINISTRATIVE BOARDS**

The Surface Rights Board of the NWT provides an example of a classic approach to binding arbitration in front of a board, with the requirement that parties negotiate in good faith before the board will accept the dispute for arbitration. The composition of the Board is representative of the land claims agreement that established its foundation and does not provide a useful example for the MRA dispute resolution body, other than to demonstrate references to the requirement of “Aboriginal traditional knowledge” regarding the appointment of Board members.

The Surface Rights Board is established by its enabling legislation and is given powers of a superior court to compel witnesses and the production of evidence. The dispute resolution process is a classic adversarial process with a binding decision from the Board. The Board has not heard any disputes. The Government of the Northwest Territories funds all aspects of the Board, and the Board is subject to the financial reporting requirements of the government.

The Canada Labour Code is a piece of legislation that creates a complex system of regulation for employment relations for employers and employees under federal jurisdiction. However, the negotiation of a collective agreement is somewhat analogous to the negotiation of a benefit agreement and a review of the processes provided for are helpful. The process provides for a staged approach, where a Conciliation Officer, Commissioner or Board assists the parties to reach an agreement on the

terms and conditions of a collective agreement in a non-adversarial way. Disputes regarding negotiations can also be referred to the general Canada Industrial Relations Board for a hearing resulting in binding decisions on the terms and conditions of the agreement, with the possibility of amendment only on written consent of the parties.

## **INDIGENOUS PERSPECTIVES**

In this policy options paper, we acknowledge that all Indigenous nations in the NWT all have their own unique legal orders, laws, and methods of conflict resolution. These laws have not been altered by the common law and continue to operate and exist outside of the Canadian legal model.<sup>3</sup> Mainstream models of dispute resolution developed through the colonial perspective are distinct from Indigenous methods of conflict resolution. Mainstream approaches to dispute resolution can alienate Indigenous parties as they can favour the economically powerful participants and representative of the dominant culture and can be formalistic and inflexible.<sup>4</sup>

Each model proposed in this discussion paper, which is representative of a “mainstream” approach to dispute resolution can be hybridized to respectfully incorporate Indigenous laws and methods of dispute resolution.<sup>5</sup> While the structure of dispute resolution follows mainstream model, flexibility in process can be developed to acknowledge and incorporate the Indigenous nation’s own dispute resolution process through these regulations. However, any implementation of Indigenous law or dispute resolution mechanism must be Indigenous-led and reflect the specific community engaged in the negotiation’s traditions, values, and priorities.<sup>6</sup>

## **ANALYSIS OF TASK FORCE PROPOSAL**

The Task Force Proposal, completed in September 2018 as part of the Proposed Framework regarding Legislated Benefit Agreement, sets out some general expectations as to what the Dispute Resolution Mechanism for Negotiated Benefit Agreements will look like.

The definition of “benefits” used in the Task Force Proposal, “benefits that are fair and proportional benefits considering the size, scope, and commodity value of a project” provides a test that can be applied by a decision maker styled on other arbitration boards or tribunals designed to support the conclusion of negotiated agreements between parties.

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<sup>3</sup> Couturier, Don. “Walking Together, Indigenous ADR in Land and Resource Disputes” *Canadian Collaborative for Engagement and Conflict Management Inc. Volume One*. 2020 CanLII Docs 3641 at pages 63-64.

<sup>4</sup> Couturier, Don. “Walking Together, Indigenous ADR in Land and Resource Disputes” *Canadian Collaborative for Engagement and Conflict Management Inc. Volume One*. 2020 CanLII Docs 3641 at page 67.

<sup>5</sup> See examples in Beaucage, John, Alicia Kuin, Pal Icano, “Anishnabe N’Oon DA Gaaziiwin: an Indigenous Peacemaking Mediation Nexus, December 17, 2018,; Couturier, Don. “Walking Together, Indigenous ADR in Land and Resource Disputes” *Canadian Collaborative for Engagement and Conflict Management Inc. Volume One*. 2020 CanLII Docs 3641; First Nations Leadership Council, “Shared Territories and Overlaps Forum Discussion Paper: Western and Indigenous Dispute Resolution Mechanisms”; Natural Resources Canada Boundary Dispute resolution Unit (BDRU) “Findings From Research and Engagement” October 22, 2020.

<sup>6</sup> See Beaucage, John, Alicia Kuin, Pal Icano, “Anishnabe N’Oon DA Gaaziiwin: an Indigenous Peacemaking Mediation Nexus, December 17, 2018, Boundary Dispute resolution Unit (BDRU) “Findings From Research and Engagement” October 22, 2020 at page 6 and Couturier, Don. “Walking Together, Indigenous ADR in Land and Resource Disputes” *Canadian Collaborative for Engagement and Conflict Management Inc. Volume One*. 2020 CanLII Docs 3641.

The Task Force Proposal also provides some guidance as to topics it would be appropriate for the Benefits Agreements, and considerations for a decision maker to apply in resolving disputes arising from the negotiation of a Benefits Agreement. The topics and considerations identified in the report again suggest criteria that can be applied by a decision maker styled on other arbitration boards or tribunals.

There are rationales and precedents to support the form of decision maker discussed in the Task Force report, namely something mirroring the language of the LILCA with appropriate modifications. The establishment of an arbitration board with representatives from industry and Indigenous representatives, chaired by a Ministerial appointee, is suitable to the type of agreements and disputes concluding agreements envisioned by the legislation.

In developing options further to this discussion paper, we will assume the topics and considerations outlined in the report as a working draft of the topics and considerations the decision-maker will consider. We will further assume that the decision-maker will be a tripartite representative board or tribunal, with details as to how representation is achieved to be determined.

The challenges in implementing the Task Force report largely relate to the fact the MRA introduces a requirement for Benefits Agreements that [may be?] unique to the Northwest Territories. The dispute resolution body will need to balance the larger objectives identified in the report, such as the advancing reconciliation, maximizing benefits for Indigenous communities and reinforcing government-to-government relationships while working with mining operators with their own economic motivations. Additionally, the mechanism needs to be designed to accommodate the circumstances of all Indigenous governments and organizations in the NWT.

To achieve the objectives identified in the Task Force report, the Dispute Resolution mechanism created under section 55 of the *Mineral Rights Act* will have to be sufficiently precise to differentiate itself from other bodies such as surface rights boards. To achieve procedural fairness, the mechanism must provide sufficient detail to put affected parties on notice about the procedural and substantive expectations they will be expected to meet.

In this policy options paper, we explore further the three options for the general structure of a tripartite representative board or tribunal presented to the IGCS at the March 24, 2022, meeting to review options based on the arbitration/adversarial model. An arbitration model creates a body that has a final decision-making power, ensuring finality, and can be designed to promote efficiency in coming to this resolution to ensure an agreement is concluded in the necessary timeframe.

14(1)(a)



In this policy options paper, we focus on the third option based on direction from the IGCS meeting on March 24, 2022. We provide further details on two sub-options that would achieve similar outcomes using different structures and approaches. We also provide a review of the legal, political and financial implications of each option.

#### **POWERS OF A BOARD**

The MRA gives the Minister broad authority to establish a dispute resolution body and does not address the powers of this board, to be established by the regulations. Administrative boards like the dispute resolution body to be developed, can have a wide range of powers to enable them to fulfill their function. The following offers a broad overview of the potential powers of the dispute resolution board:

- Administrative powers
  - o The power to create its own bylaws respecting the management of its internal affairs
  - o To establish a list of mediators and/or arbitrators
  - o To establish rules and procedures for mediation
  - o To establish rules for arbitration
  - o Maintain a record of arbitration decisions
- Powers related to the dispute resolution process itself
  - o To sit as an arbitration panel
  - o Powers subject to the duties of an arbitrator under an *Arbitration Act*
    - Ability to order the production of documents
    - Ability to take oaths or solemn affirmations
  - o Powers of a superior court, as given to the Surface Rights Board would need to be set out in the MRA and may not be available to the dispute resolution body
- Powers to grant remedies
  - o Allow further time for negotiations
    - Option for this to be directed to a particular mediator depending on the model of the board
  - o Decide on the terms of the Benefits Agreement in dispute
  - o Order that the project can proceed without a Benefit Agreement

## RELEVANT ENABLING SECTIONS OF MRA

### **Part 5 Benefits for People and Communities**

#### **Benefit Agreements with Indigenous Governments and Organizations**

**S.53 (1)** Subject to this section, the holder of a mineral lease shall enter into an agreement for benefits in accordance with the regulations with each Indigenous government or organization that the Minister considers appropriate in the circumstance:

- a) if an undertaking authorized under the mineral lease meets the prescribed threshold; and
- b) when required by the regulations in respect of a production licence under subsection 47(3).

**(2)** For greater certainty, the holder of a mineral lease may satisfy the requirements in **subsection (1)** in respect of an Indigenous government or organization identified under that subsection by entering into any agreement with the Indigenous government or organization, provided that the agreement

- a) contains terms in respect of benefits that will be provided to the Indigenous government or organization and its members; and
- b) otherwise meets the requirements of this Act and the regulations.

(3) The holder of a mineral lease may satisfy the requirements in **subsection (1)** by entering into one agreement with the Indigenous governments or organizations identified under that subsection or separate agreements with one or more of them.

(4) If the Minister is of the opinion that exceptional circumstances exist, the Minister may, on the recommendation of the Executive Council, waive the requirement for any agreement under **subsection (1)**.

(5) The Minister may waive the requirement for an agreement to be entered into under **subsection (1)** between the holder of a mineral lease and an Indigenous government or organization, on receiving notification in the approved form that the holder and the Indigenous government or organization agree to the waiver.

(6) The holder of a mineral lease who is required to enter into an agreement under **subsection (1)** shall, in accordance with the regulations, notify the Minister when the holder has commenced negotiations in respect of each agreement to be entered into.

54. Subject to the regulations, an agreement under **section 53** shall be amended if there is a material change to the undertaking authorized under the mineral lease.

55. (1) The Commissioner on the recommendation of the Minister may by regulation

- a) establish a dispute resolution body to resolve disputes that arise under this Part;
- b) designate a board or other body as the dispute resolution body to resolve disputes that arise under this Part.

(2) The dispute resolution body referred to in **subsection (1)** has jurisdiction to resolve disputes that arise under this Part, in accordance with the regulations, in order to facilitate the conclusion of an agreement required under section 53 or determine that an agreement need not be concluded.

(3) No action lies against a person appointed to the dispute resolution body for anything done or not done by that person in good faith and in purporting to act in accordance with this Act or the regulations.

(4) For greater certainty, the establishment or designation of a dispute resolution body under this section does not affect the dispute resolution processes that are set out under a land, resources and self-government agreement.

## Part 11 Regulations

**114. (1)** The Commissioner on the recommendation of the Minister may make regulations for carrying out the purposes and provisions of the Act, and without restricting the generality of the forgoing, may make regulations

(u) respecting the requirement for a benefit agreement under section 53, including

(i) the principles to be applied to negotiating the scope and content of an agreement,

(ii) when an agreement is required,

(iii) what may be included as a benefit under an agreement,

(iv) notification of commencement of negotiations and any other required notifications,

(v) time requirements applicable to conclusion of an agreement, and

(vi) amendments to the agreement due to a material change in the production project;

(v) respecting a dispute resolution body to resolve disputes arising in respect of benefit agreements, including establishing or designating the body and timelines applicable to resolution of disputes;

## PRINCIPLES

The applicable principles supporting the development of the dispute mechanism regulations are the following:

**2.** The purpose of this Act is to provide a framework for responsible and balanced mineral prospecting, exploration, development and production, while recognizing the following goals:

and (c) to realize benefits from mineral development for Indigenous governments and organizations, communities and the people of the Northwest Territories;

(d) to ensure that wealth generated by mineral resources will be used for the benefit of present and future generations of the people of the Northwest Territories;

(e) to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories;

(f) to respect Aboriginal and treaty rights;

(g) to complement the systems for collaborative management of land and natural resources in the Northwest Territories;

## PROBLEM

Regulations need to be drafted to establish a resolution body to resolve disputes and provide for the mechanisms of dispute resolution to accomplish the goals of section 53. The enabling legislative provisions provide broad discretion in the regulations to develop the dispute resolution body and process, and regulations will need to be developed that cover all aspects of the dispute resolution process.

## POTENTIAL IDEAS AND OPTIONS

If it is accepted that the decision-making body is to be a board tripartite representative board or tribunal, the following are some possible names for the body:

- Mining Benefits Dispute Resolution Tribunal
- Mining Benefits Dispute Resolution Panel
- Benefits Agreement Resolution Tribunal
- Benefits Agreement Resolution Panel
- Indigenous Benefits Tribunal
- Indigenous Benefits Panel
- Indigenous Benefits Adjudication Tribunal
- Indigenous Benefits Adjudication Panel

For the purposes of this Discussion Paper, will refer to the decision-making body simply as the Board.

## TRIGGERING OF DISPUTE RESOLUTION

The requirement for a negotiation of a benefit agreement under section 53 will be triggered by a proponent's project meeting the prescribed threshold, and when required by the regulations in respect of a production licence under 47(3). Section 53 also provides that the Minister is to determine which Indigenous governments or organizations the proponent is required to enter into a benefits agreement with.

There are several options for the triggering of the dispute resolution process itself, that can be further explored once the structure of the dispute resolution body is further developed:

- The parties be required to notify the GNWT and/or the Board when the negotiation process has started, and a timeline is triggered that gives the parties 90 days to complete negotiations before the parties are required to proceed to arbitration.
- The parties are not required to notify the GNWT and or the Board of the start of negotiations but have a period of 120-180 days after the Minister has designated the Indigenous governments or organization that a proponent is required to negotiate with to complete the negotiations or the process will be referred to dispute resolution.
  - This option can be shifted to different triggering timelines in the process

## OPTION 1 – 14(1)(a)

14(1)(a)

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14(1)(a)

[Redacted]

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[Redacted]

14(1)(a)

[Redacted]

[Redacted]

[Redacted]

[Redacted]



14(1)(a)

[Redacted]

**Estimate of Costs:**

14(1)(a)

**Rates:**

- 14(1)(a)
- [Redacted]
- [Redacted]
- [Redacted]

**Orientation and Training:**

- 14(1)(a)
- [Redacted]
- [Redacted]

**Policies and Procedures:**

- 14(1)(a)
- [Redacted]

**Board Meetings (Screening and Assignment of Mediator or Panel):**

- 14(1)(a)
- [Redacted]
- [Redacted]

- 14(1)(a) [REDACTED]

Disbursements:

- 14(1)(a) [REDACTED]
- [REDACTED]

Mediation and Hearing Costs:

14(1)(a) [REDACTED]

- 14(1)(a) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

TOTALS:

- 14(1)(a) [REDACTED]

- §14(1)(a) [REDACTED]

IMPLICATIONS OF OPTION 1:

Legal:

- 14(1)(a) [REDACTED]
- [REDACTED]

Political:

- 14(1)(a) [REDACTED]
- [REDACTED]

Financial:

- 14(1)(a) [REDACTED]

Implementation:

- 14(1)(a) [REDACTED]
- [REDACTED]

Change Management:

- 14(1)(a) [REDACTED]

OPTION 2 – §14(1)(a) [REDACTED]

14(1)(a) [REDACTED]  
[REDACTED]  
[REDACTED]

14(1)(a)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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14(1)(a)

- 14(1)(a)

- 14(1)(a) [Redacted]
- [Redacted]

14(1)(a) [Redacted]

**Estimate of Costs:**

14(1)(a) [Redacted]

**Rates:**

- 14(1)(a) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

**Office and Staff:**

14(1)(a) [Redacted]

- 14(1)(a) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

**Education and Facilitation:**

- 14(1)(a) [Redacted]
- [Redacted]
- [Redacted]

**Orientation and Training:**

- 14(1)(a) [Redacted]
- [Redacted]
- [Redacted]

**Policies and Procedures:**

- 14(1)(a)

- 

**Board Meetings (Screening and Assignment of Mediator or Panel):**

- 14(1)(a)

- 

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- 

**Disbursements:**

- 14(1)(a)

- 

**Mediation and Hearing Costs:**

14(1)(a)

- 14(1)(a)

- 

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14(1)(a)

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TOTALS:

- 14(1)(a)

- 

IMPLICATIONS OF OPTION 2:

Legal:

- 14(1)(a)

- 

Political:

- 14(1)(a)

- 

Financial:

- 14(1)(a)

Implementation:

- 14(1)(a)



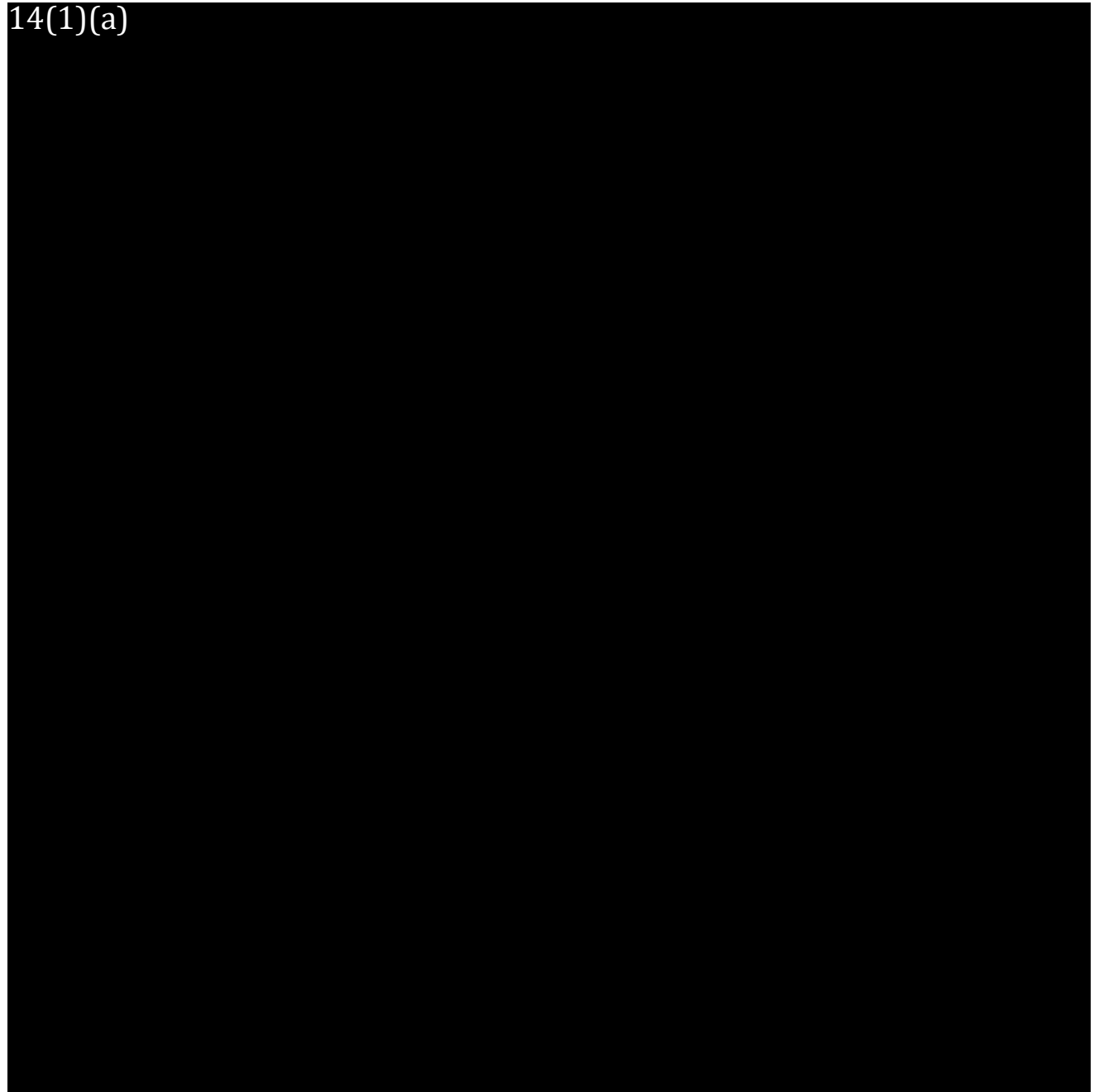
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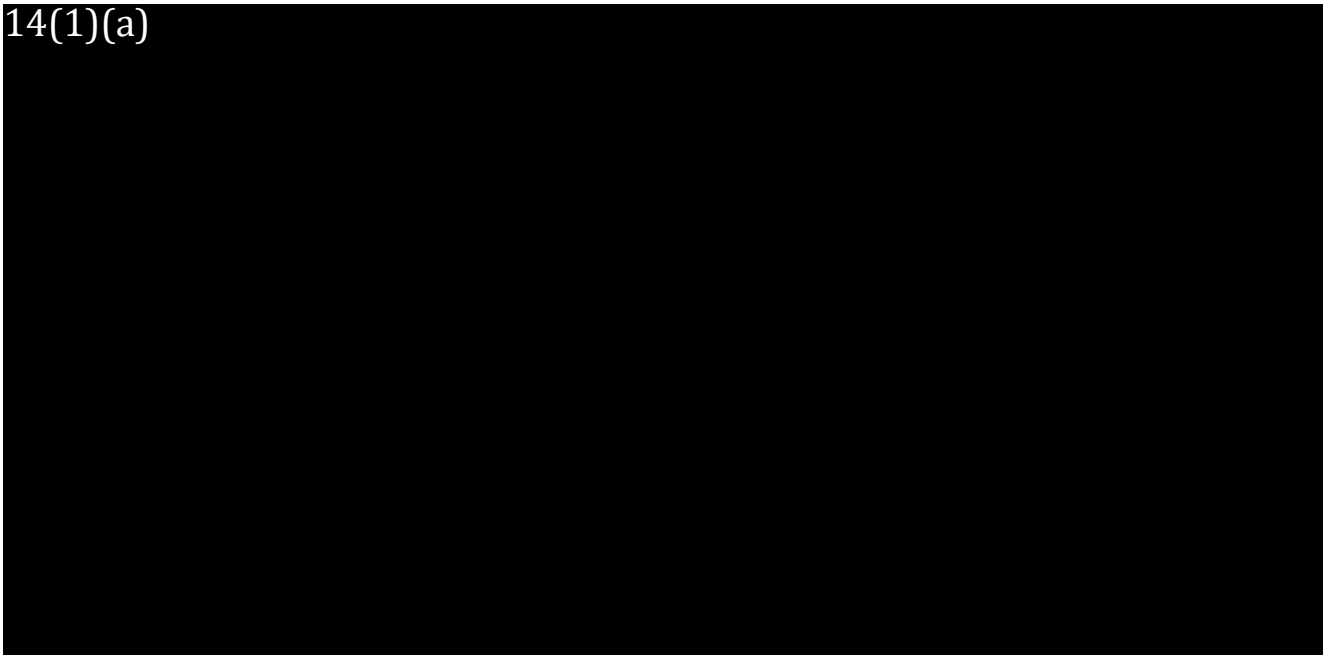
- 14(1)(a)

OPTION 3 – 14(1)(a)

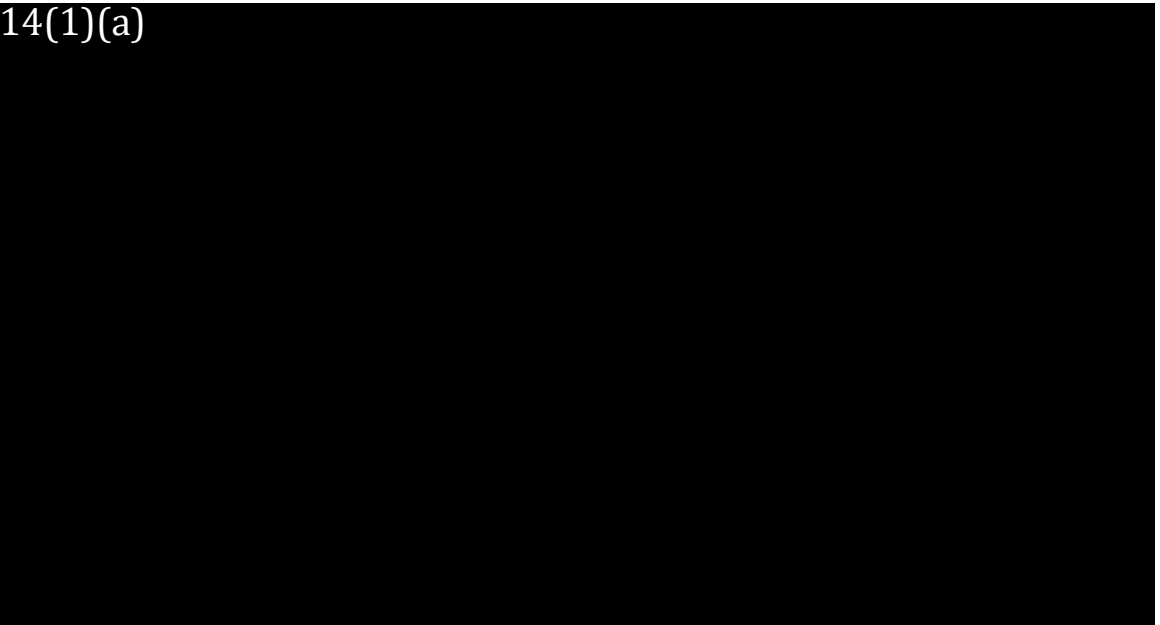
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14(1)(a)



- 14(1)(a)



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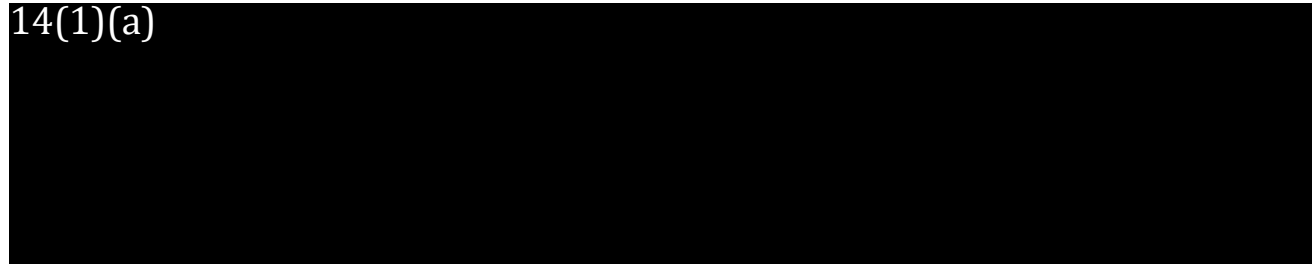
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SUB-OPTION 3A – 14(1)(a)

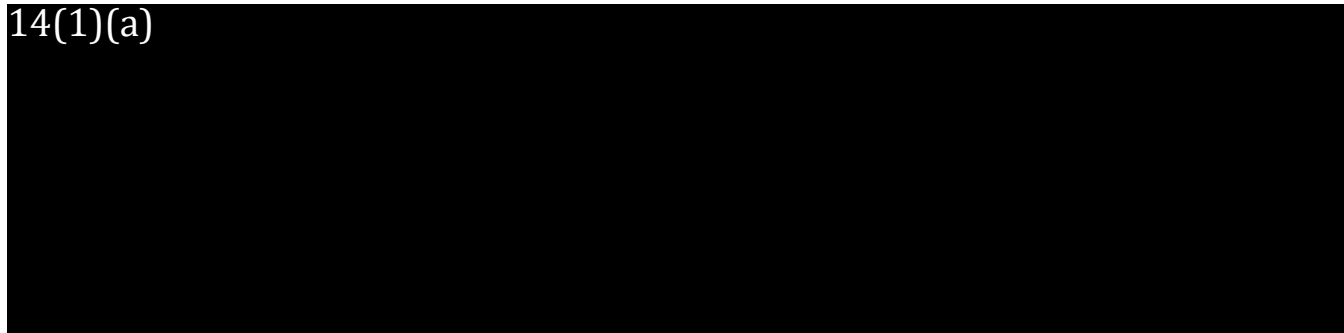


14(1)(a)

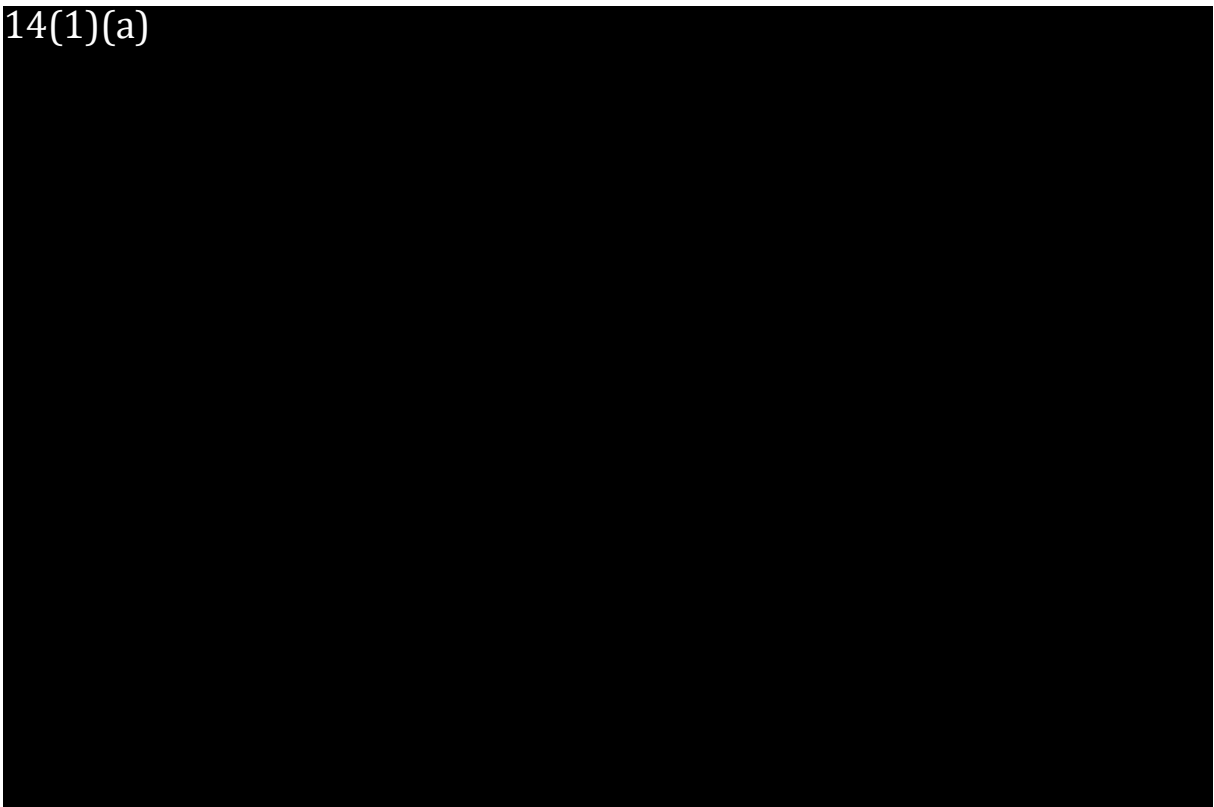


**Appointment of Arbitration Board:**

14(1)(a)



- 14(1)(a)



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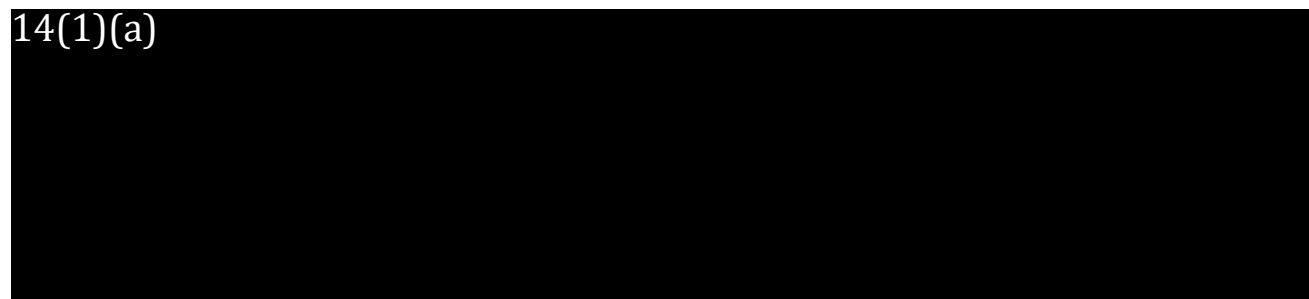
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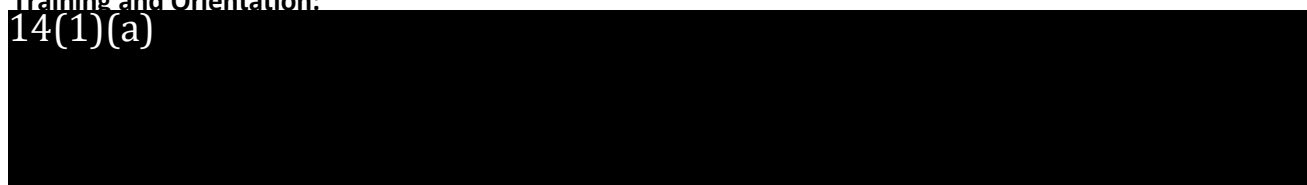
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14(1)(a)



**Training and Orientation:**

14(1)(a)



14(1)(a)

- 14(1)(a)

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14(1)(a)

**Policies and Procedures:**

14(1)(a)

- 14(1)(a)

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14(1)(a)

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14(1)(a)

**Screening for Arbitration:**

14(1)(a)

**Database of Agreements:**

14(1)(a)

• 14(1)(a)

•

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14(1)(a)

**Estimate of Costs:**

14(1)(a)

**Rates:**

- 14(1)(a)
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

**GNWT Administrative Support:**

14(1)(a)

- 14(1)(a)
- [Redacted]
- [Redacted]
- [Redacted]

**Orientation and Training:**

- 14(1)(a)
- [Redacted]
- [Redacted]

**Policies and Procedures:**

- 14(1)(a)
- [Redacted]

**Mediation and Hearing Costs:**

14(1)(a)

- 14(1)(a)

14(1)(a)

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**TOTALS:**

- 14(1)(a)
- 

**IMPLICATIONS OF OPTION 3A:**

Legal:

- 14(1)(a)
- 

Political:

- 14(1)(a)

- 14(1)(a)

Financial:

- 14(1)(a)

- 

Implementation:

- 14(1)(a)

- 

Change Management:

- 14(1)(a)

SUB-OPTION 3B - 14(1)(a)

14(1)(a)

**Appointment of Arbitration Board:**

14(1)(a)



14(1)(a)

- 14(1)(a)

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14(1)(a)

- 14(1)(a)

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14(1)(a)

Training and Orientation:

14(1)(a)

[Redacted]

[Redacted]

[Redacted]

**Policies and Procedures:**

14(1)(a)

[Redacted]

[Redacted]

- 14(1)(a)
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

14(1)(a)

**Screening for Arbitration:**

14(1)(a)

- 14(1)(a)

14(1)(a)

**Database of Agreements:**

14(1)(a)

- 14(1)(a)
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14(1)(a)

Option 3B – Estimate

of Costs:

14(1)(a)

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14(1)(a)

**Rates:**

- 14(1)(a)

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**Orientation and Training:**

- 14(1)(a)

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**Policies and Procedures:**

- 14(1)(a)

- 

**Board Meetings (Screening and Assignment of Mediator or Panel):**

- 14(1)(a)

- 

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**Disbursements:**

- 14(1)(a)

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**Mediation and Hearing Costs:**

14(1)(a)

- 14(1)(a)

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TOTALS:

- 14(1)(a)

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IMPLICATIONS OF OPTION 3B

Legal:

- 14(1)(a)

-

Political:

- 14(1)(a)

-

Financial:

- 14(1)(a)

Implementation:

- 14(1)(a)

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Change Management:

- 14(1)(a)

## RECOMMENDED OPTION FOR REGULATIONS

14(1)(a)

## QUESTIONS

This policy options paper highlights several questions to be considered moving into the next stage towards determining policy intentions:

- What is the desired level of involvement of the GNWT in the creation and implementation of the Board?
- Should the regulations provide an appeal provision, and if so should it be limited to question of law and jurisdiction?
- Should industry and IGO's be able to appoint board members directly, or recommend appointees to the Minister?

- Should the regulations requires parties to pay for the costs, not only of mediation, but also of arbitration?
- Will Indigenous dispute resolution methods be explicitly incorporated into the regulations, or will the regulations allow this to take place in an individualized fashion?

## NEXT STEPS

The next steps are for the IGCS to provide direction as to the preferred option to be expanded upon in the policy intentions paper. In providing this direction, some desirable features of other options can be incorporated into a classic model with collaborative features.

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## APPENDICES

### Appendix A – Options Cost Estimates Breakdown

# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## INTERNAL REGULATIONS OPTIONS PAPER

### SEPARATION OF IMPACTS AND BENEFITS

**Disclaimer: This document has been prepared as an initial starting point for discussion and will need to be revisited.**

#### BACKGROUND

##### Separation of Impacts and Benefits

The development of the *Mineral Resources Act* (MRA) has had a focus on separating positive benefits from negative impacts to the environmental and Indigenous rights. This was done intentionally, and in partnership with the Intergovernmental Council (IGC), so that constitutional requirements for adverse impacts to Indigenous rights could remain the responsibility of the *Mackenzie Valley Resource Management Act* (MVRMA), while a new statutory requirement for benefits would be covered under the MRA regulations.

##### New Statutory Requirement for Benefits

The MRA contains a new statutory requirement for mines to provide benefits, which can be demonstrated by several examples:

- Terms that would connote mitigation or compensation have been avoided, such as “adverse”, “mitigation”, “impact”.
- The purposes of the Act focus on benefits, and do not mention impacts.
- The enabling power for NWT resident benefits is only benefits.
- The Act requires that proponents “enter into an agreement for benefits”, where the agreement “contains terms in respect of benefits that will be provided to the Indigenous government or organizations and its member”.
- Finally, as the above wording facilitates, the design of benefit agreements also contemplates IBAs, but does not require them. A benefit agreement can form part of an IBA, but would remain distinct as the MRA does not consider impact mitigation clauses.

The MRA has been built as a channel to direct benefits to NWT Indigenous peoples and residents. Benefits would not and do not include an mitigatory or compensatory elements that address negative impacts to Indigenous rights or the environment. This has been a major priority in the development of the MRA and applications. Benefits can and should be contrasted against including mitigative measures required by other legislation to repair negative impacts to Indigenous rights or the environment.

## Constitutional Requirements around the Duty to Consult

Benefit agreements are intended to ensure positive benefits are generated from projects and not to fulfil the duty to consult and accommodate, including mitigating adverse impacts. These duties would have to additionally be met through the processes which are currently in place to address them.

The duty to consult and accommodate (also known as the duty to consult) is a legal duty that flows from the Honour of the Crown, and was first recognized by the Supreme Court of Canada in *Haida Nation v BC (Minister of Forests)* in 2004.<sup>1</sup> “The duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.”<sup>2</sup> Not only did they find a duty to consult, but “subsequent decisions [of the Supreme Court of Canada] have affirmed the duty to consult and accommodate aboriginal communities with respect to resource development and conservation; it is a constitutional duty, the fulfilment of which is consistent with the honour of the Crown”.<sup>3</sup>

The content of the duty to consult is variable, based on significance of the adverse impact and the strength of claim.

## The MVRMA’s Role Addressing Impacts to Indigenous Rights

The MVRMA process should fully address any measures necessary to mitigate significant adverse effects to the environment (and Indigenous rights). One of the guiding principles of the Mackenzie Valley Environmental Impact Review Board (MVEIRB) and its recommendations is to have regard to: “the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the Constitution Act, 1982 applies and who use an area of the Mackenzie Valley.”<sup>4</sup> Additionally, a purpose of the MVEIRB “process comprising a preliminary screening, an environmental assessment and an environmental impact review in relation to proposals for developments” is to “to ensure that the concerns of aboriginal people and the general public are taken into account in that process.”<sup>5</sup> The board process features extensive consultation with Indigenous governments, and accommodation of Indigenous rights are also featured prominently in the recommendations and mitigatory measures of the MVEIRB.

In drafting the MRA, co-development has established consensus to not interfere with the MVRMA’s jurisdiction to fully address adverse impacts to Indigenous rights, and the duty to consult. Benefits under the MRA speak only to the benefits from a project *beyond* mitigation

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<sup>1</sup> *Haida Nation v BC (Minister of Forests)*, 2004 SCC 73. [*Haida Nation*]

<sup>2</sup> *Haida Nation*, para. 35.

<sup>3</sup> *R v Kapp*, 2008 SCC 41, [2008] 2 SCR 483, at para. 6. Also quoted in *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103.

<sup>4</sup> *Mackenzie Valley Resource Management Act*, SC 1998, c 25, s. 115(1)(c).

<sup>5</sup> *Mackenzie Valley Resource Management Act*, SC 1998, c 25, s. 114(c).

and compensation for negative impacts (representing benefits that are not tied to a negative impact). While ITI has tried to ensure that references to benefits avoid mitigation, discussions over the course of MRA and regulations development lead ITI to the conclusion that more should be done to emphasize and clarify this separation.

### Distinction between Benefit Agreements and Impact Benefit Agreements

During the MRA development, and currently during the regulations development, ITI is frequently asked about the relationship between benefit agreements and Impact Benefits Agreements (IBAs). The practice of forming IBAs is widespread and standard practice among Canadian jurisdictions, that typically includes sections on both benefits and impacts (mitigation/compensation). The MRA does not require the benefit agreement to be an additional separate agreement. It allows for a benefit agreement to be the benefits-related clauses inside an IBA and the MRA will simply not consider the impact-related clauses. Practices to address impacts should be maintained, and any required BA could—and very often would—be contained in a broader voluntary IBA that would be negotiated between the IGO and the proponent. This maintains the separation of impacts and benefits. The requirement for concluded benefit agreements (at the production licence stage) is later than an IBA would normally be formed, so the benefit agreement requirement should not disturb the status quo for timing of IBA negotiations. Non-legal guidelines could provide public education on how:

- Benefits are considered differently than impacts;
- An IBA and BA can be contained in one agreement; and
- BAs will not interfere with another process that use IBAs as evidence that consultation and accommodation has occurred.

A requirement to conclude BAs is timed to occur after EAs are complete and the Minister has released reasons for the decisions. However, the proponent and IGO may voluntarily meet the requirement at an earlier time. Timing it after the EAs is appropriate because the EA process:

- Provides parties with information helpful for negotiating agreements;
- Will have addressed the adverse impacts and public concern; and,
- Currently facilitates the best practice of IBAs, so requiring conclusion of a BA before Environmental Assessment is completed could negatively alter the way IBAs support and implement Aboriginal rights.

A BA requirement under the MRA will layer on top of existing effective practices (particularly IBAs), and not alter positive aspects of the status quo.

### Potential Options to Further Separate Impacts and Benefits

To separate the concepts to the greatest extent possible, ITI should review the MRA to see where there could potentially be references to impacts, particularly in regard to benefits. ITI could ensure that any references, definitions, or regulatory requirements reference benefits, and exclude mitigatory or compensatory benefits.

There may be no legally reliable way to separate the concepts of benefits and impacts as the case law continues to evolve. The duty to consult ties impacts to benefits that accommodate (or compensate), which is the predominate lens through which cases are viewed. The duty to consult was created by the courts, outside of legislation, from the Honour of the Crown. Relying on the MVRMA to discharge the duty to consult has worked for the NWT, but it is a possibility that a court will find a new duty under Honour of the Crown or that new positive benefits are related to constitutional rights. However, the current law still turns on adverse impacts, and MRA development is based on the ability to view impacts and benefits as distinct effects of a project, relative to the baseline environmental conditions.

## PRINCIPLES

Separating benefits and impacts contributes to the following goals from section 2 of the *MRA*:

- (a) to regulate mineral interests efficiently, effectively and in a transparent manner;
- (e) to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories;
- (f) to respect Aboriginal and treaty rights;
- (g) to complement the systems for collaborative management of land and natural resources in the Northwest Territories;

## PROBLEM

The MRA was designed with the intention to separate impacts and benefits. This was done to address any potential for Act to make decisions regarding mitigating adverse impact to Indigenous rights and ensuring these are still addressed within the jurisdiction of the MVRMA. The MRA drove decisions to ensure positive benefits and co-development could explore how this goal can be improved through enhancing benefits without the lens of impacts.

## INTERRELATED MRA REGULATIONS

- Benefit Agreements
- NWT Resident Benefits
- All topics involving Indigenous rights, recognition of Indigenous governments, etc.

## POTENTIAL OPTIONS IDEAS

The following list is meant to support discussion at this stage, and the options presented are only examples that could be included in a full options paper. It is not an exhaustive list, and the GNWT invites alternative options. For this issue, the GNWT would likely pursue all options that clarify the separation of benefits and impacts, and reduce the potential of a constitutional challenge or a duty to consult claim based on Indigenous rights.

**Disclaimer:** The following options look to use the definitions of ‘benefits’ and ‘benefit agreements’ to help solidify the separation of impacts and benefits. The language in the options below is not finalized, as IGCS has requested to develop the definition of benefits further. The proposed language is based off of the definition of benefits proposed for SEAs, and is intended to clarify the GNWT’s intentions so that they can be aligned with the IGCS.

### POLICY OPTION 1: 14(1)(a)

14(1)(a)

- 14(1)(a)

### POLICY OPTION 2: 14(1)(a)

14(1)(a)

14(1)(a)

- 14(1)(a)

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## QUESTIONS

- Every option relies upon the MVEIRB to address impacts, but what can the GNWT put in the regulations to make that clear to everyone else?
- Does any part of the MRA speak to impacts or the mitigation of impacts, and if yes, how should it be addressed?

## REFERENCES

### Legislation

*Mineral Resources Act*, SNWT 2019, c 34

*Mackenzie Valley Resource Management Act*, SC 1998, c 25

*The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11

### Jurisprudence

*Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103

*Haida Nation v BC (Minister of Forests)*, 2004 SCC 73

*R v Kapp*, 2008 SCC 41, [2008] 2 SCR 483

*Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 2 SCR 257



# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## OPTIONS PAPER

### SEA KEY ELEMENTS

#### BACKGROUND

The enabling language of the *Mineral Resources Act* (MRA), at section 52, allows the GNWT to set benefit requirements related to mining projects. This has been generally understood to be an extension of Socio-Economic Agreements, agreements to secure benefits for residents of the NWT, prioritizing Indigenous residents.

The Department of Industry, Tourism and Investment oversees the implementation of these agreements and coordinates Government efforts under each agreement while monitoring how well each company carries out its respective responsibilities. There are seven SEAs currently in Place:<sup>1</sup>

- Ekati Diamond Mine
- Diavik Diamond Mine
- Snap Lake Mine
- Mackenzie Gas Project
- Prairie Creek Mine
- Gahcho Kue
- Nico Project

The GNWT currently relies on the Mackenzie Valley Environment Impact Review Board to set the requirement for an SEA. The MRA benefit regulations will allow the GNWT, to set requirements for SEAs on mineral resource projects. This would include many elements, but the purpose of this paper is to identify the basic elements that would be directed towards requirements, or as guidelines for negotiation. SEAs are quite similar and the process of creating SEAs has been to build on requirements in every generation. This paper will identify key elements and separate them into appropriate streams.

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<sup>1</sup> The complete agreements can be found at the following link on ITI's website:  
<https://www.iti.gov.nt.ca/en/services/socio-economic-agreements>

## **Current Status**

The following consolidated table of contents from past SEAs should be considered the starting point for any SEA. In the past, these terms were all negotiated, but still relied on past SEAs for a basic framework to build on during negotiations. The framework below is mainly excerpted from the Gahcho Kue SEA:

- Purpose & Guiding Principles
  - o Purpose of Agreement
  - o Principles
  - o Signatories\* (From Diavik SEA)
- Employment Practices:
  - o Employment Priorities
  - o Employment Objectives
  - o Employment Incentives
  - o Employment Requirement and Standards
- Human Resources and Development:
  - o Recruitment & Retention Strategies
  - o Apprentice & Trade Positions and Training
  - o Literacy Programs
  - o Promoting Equal Opportunity
  - o Transitioning Upon Closure
- Business Development:
  - o Purchasing Priorities
  - o Purchasing Objectives
  - o Business Opportunities Management
- Social Wellbeing:
  - o Health System
  - o Wellness Initiatives
- Cultural Wellbeing:
  - o Working Together
  - o Promoting Cultural Preservation and Understanding
- Monitoring and Reporting:
  - o Project Reporting
  - o GNWT Reports
  - o Public Release of the Reports
  - o Employee Survey
  - o Personal, Proprietary and Commercially Sensitive Information
- Adaptive Management:
  - o Purpose
  - o Engagement Between the Parties
  - o Engagement
  - o Follow-Up
- Commencement, Suspension and Termination:

- Commencement of Agreement
- Termination of Agreement
- Suspension of Operations
- Matters Beyond Reasonable Control
- Material Change
- Dispute Resolution:
  - Application of Alternative Dispute Resolution Process
  - Efficiency, Costs, Disclosure and Confidentiality
  - Negotiation
  - Mediation
  - Arbitration
- Notices
- General Provisions:
  - Interpretation
  - Definitions
  - GNWT Support for SEA initiatives
  - Applicable Law
  - Contract Issues (Further Assurances, Assignment, Severability, Amendment, Waiver, etc.)

### **Signatories:**

The SEAs are generally signed by GNWT departments and the mine proponent. The GNWT currently forms a team of dedicated staff during the Environmental Assessment process to assist in bringing socio-economic benefits into consideration to the EA. ITI then seeks a mandate from the Legislative Assembly to negotiate SEAs, including identifying which GNWT departments will be signatories to the agreement. This allows the GNWT to include the departments that will be most active in SEA implementation as signatories, while other participating departments have less involved roles in SEA implementation.

One notable exception to the mine/GNWT model is the Diavik SEA, which treats IGOs as potential signatories to the agreement. That clause is reproduced below:<sup>2</sup>

#### Article 1.3 SIGNATORIES

1.3.1 Aboriginal Authorities may exercise an option to be Signatories or Parties to this Agreement. For greater certainty, an Aboriginal Authority Signatory may exercise an option to be a Party to this Agreement.

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<sup>2</sup> Page 2 of the Diavik SEA, which can be found online here: [https://www.iti.gov.nt.ca/sites/iti/files/2015-02-09\\_gnwt\\_consolidated\\_sema\\_final.pdf](https://www.iti.gov.nt.ca/sites/iti/files/2015-02-09_gnwt_consolidated_sema_final.pdf).

## **5 Point Negotiation Strategy (Current Policy)**

Whatever is not included in the regulations as key elements of SEAs will need to be negotiated. The ITI's current 5-Point Negotiation Strategy is the primary policy that guides the negotiation of SEAs. The policy connects the management of socio-economic benefits (and impacts) as a result of resource development. Critically, this policy will no longer need to address impacts, so all references have been changed to benefits:

1. direct employment and business opportunities;
2. benefits to culture and the traditional economy;
3. social benefits to communities, families and individuals;
4. net effect on government; and
5. sustainable development.

The 5-point negotiation strategy ensures that the GNWT follows a consistent approach to interventions on socio-economic issues under Environmental Assessment. Environmental Assessment will still be a critical stage for the negotiation of SEAs, as information gleaned from this process will help establish appropriate levels of financial, cultural, and social benefits.

## **RELEVANT ENABLING SECTIONS OF MRA**

Measures that benefit the people of the Northwest Territories

**52.** The Commissioner on the recommendation of the Minister may prescribe requirements in respect of measures that provide benefits to the people of the Northwest Territories.

## **PRINCIPLES**

Mineral Resources Act, Section 2 – Purpose<sup>3</sup>

- 2(a): “to regulate mineral interests efficiently, effectively and in a transparent manner”;
- 2(b) “to support the economy of the Northwest Territories”;
- 2(c) “to realize benefits from mineral development for Indigenous governments and organizations, communities and the people of the Northwest Territories”;
- 2(d) “to ensure that wealth generated by mineral resources will be used for the benefit of present and future generations of the people of the Northwest Territories”;
- (e) “to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories”;
- (f) “to respect Aboriginal and treaty rights”; and,

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<sup>3</sup> *Mineral Resources Act*, Bill 34. See section 2. Date of Assent: August 23, 2019.

- 2(g): “to complement the systems for collaborative management of land and natural resources in the Northwest Territories”.

## PROBLEM

SEAs are negotiated contracts. The key elements of an SEA will likely be set in the regulations, while other conditions will be left for negotiation. This paper seeks to identify the key elements of SEAs and seeks to answer which options should be standard for all SEAs.

## INTERRELATED MRA REGULATIONS

- Enforcement
- Reporting Timelines
- Negotiation Guidelines
- Benefit agreements definition or description of “benefits”

OPTIONS CONSIDERED FOR REGULATIONS

LEGISLATIVE OPTION 1: 14(1)(a)

14(1)(a)

Required Elements:

14(1)(a)

- 14(1)(a)

14(1)(a)

Negotiated Elements:

14(1)(a)

- 14(1)(a)

IMPLICATIONS OF OPTION 1:

Legal:

- 14(1)(a)

Political:

- 14(1)(a) [Redacted]

Financial:

- 14(1)(a) [Redacted]

Implementation:

- 14(1)(a) [Redacted]

Change Management:

- 14(1)(a) [Redacted]

LEGISLATIVE OPTION 2: 14(1)(a) [Redacted]

14(1)(a) [Redacted]

[Redacted]

[Redacted]

IMPLICATIONS OF OPTION 2:

Legal:

- 14(1)(a) [Redacted]

Political:

- 14(1)(a) [Redacted]

Financial:

- 14(1)(a) [Redacted]

Implementation:

- 14(1)(a) [Redacted]

Change Management:

- 14(1)(a) [Redacted]

LEGISLATIVE OPTION 3: 14(1)(a) [Redacted]

14(1)(a) [Redacted]

[Redacted]

[Redacted]

14(1)(a) [Redacted]

- 14(1)(a) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]



- 14(1)(a) [redacted]

- 14(1)(a) [redacted]
- 14(1)(a) [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

IMPLICATIONS OF OPTION 3:

Legal:

- 14(1)(a) [redacted]

Political:

- 14(1)(a) [redacted]

Financial:

- 14(1)(a) [redacted]

Implementation:

- 14(1)(a) [redacted]


Change Management:

- 14(1)(a) [redacted]

RECOMMENDED OPTION FOR DEVELOPMENT OF REGULATIONS


14(1)(a) [redacted]

14(1)(a)

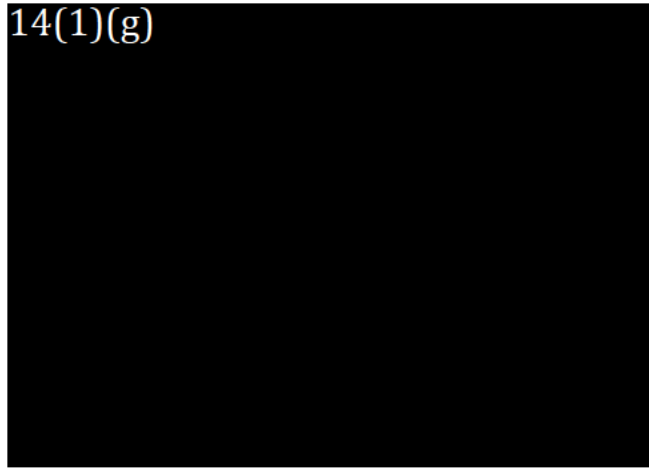
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DRAFT POLICY INTENTIONS LANGUAGE


14(1)(g)

A black rectangular redaction box covering the text under section 14(1)(g).

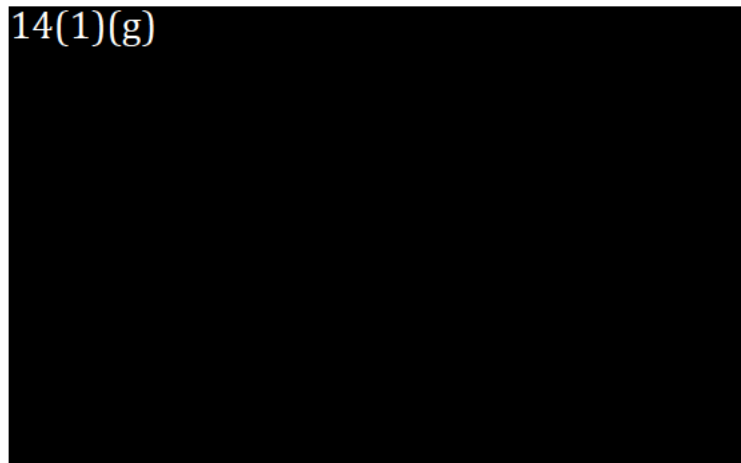
14(1)(g)

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14(1)(g)

A black rectangular redaction box covering the text under section 14(1)(g).

14(1)(g)

A large black rectangular redaction box covering the text under section 14(1)(g).

## REFERENCES

### SEAs:

Canadian Zinc Corporation (CZN), Prairie Creek Mine, signed August 2011

De Beers, Gahcho Kué Project, signed June 2013

Diavik Diamond Mines (2012) Inc. (Diavik), signed October 1999, amended January 2015

Dominion Diamond Corporation (DDC), Ekati Diamond Mine (Ekati), signed October 1996

## APPENDICES

# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## OPTIONS PAPER

### ADVISORY BODIES

#### BACKGROUND

Advisory bodies are made up of Indigenous Government and Organization (IGO) representatives, along with Government of the Northwest Territories (GNWT) and mine representatives. The purpose of the Advisory bodies is to monitor the performance of commitments made under Socio Economic Agreements (SEAs), to provide recommendations to the mine and/or GNWT, and to comment on the socio-economic benefits arising from a project. The GNWT and mines are responsible to report back on recommendations, crafting responses and identifying any changes that have been made in response to a recommendation. Advisory bodies are meant to provide a meaningful path for participation and involvement in a project by IGOs. Duties of advisory boards include reviewing performance data and public comments/input against the commitments in the SEAs (such as employment, social and cultural wellbeing, etc.).

For background information, the relevant sections of the SEAs that deal with Advisory bodies have been collected in Appendix A.

Unfortunately, advisory bodies have had mixed success. Diavik's Socio-Economic Monitoring Agreement (SEMA) originally had commitments related to a community advisory board. In 2015, the Diavik SEMA was updated to remove most references to the advisory board and to wind it down.<sup>1</sup> Snap Lake's SEA has a major part detailing the formation of a "De Beers Socio-economic Monitoring Agency".<sup>2</sup> This board was never formally incorporated, and never came to be.

Nonetheless, advisory bodies remain a clear way to build enhanced engagement and participation by IGOs into SEAs and can be improved by discussions on structure and technical capacity.

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<sup>1</sup> Diavik SEMA Amendment Agreement, clauses 3-10.

<sup>2</sup> Snap Lake Diamond Project Socio-economic Agreement, May 2004, part, pages 18-24.

The composition and structure of advisory bodies varies between SEAs. As examples, the Diavik mine SEMA set up the Diavik Project Communities Group Advisory Board, which had one member from the North Slave Métis Alliance, the Kitikmeot Inuit Association, and Łutselk'e Dene First Nation, two members from the Yellowknives Dene First Nation (one from Dettah and one from Ndilq), four members from the Tlicho Government (one member from Behchokq, Whati, Gameti, and Wekweeti), two GNWT members, and two Diavik members;<sup>3</sup> while Prairie Creek mine SEA requires that Norzinc (proponent) create the Prairie Creek Mine Socio-Economic Advisory Committee, which will be made up of one member from 5 community IGOs, up to 2 GNWT members, and up to 2 NorZinc members.<sup>4</sup>

### **Current Advisory Board Powers:**

Advisory Boards have the following structure:

- Purpose of the advisory committee
  - o Purpose
  - o Responsibilities
  - o Powers
- Membership
  - o Addressing IGO, mine, and GNWT participation
- Confidentiality
  - o Any disclosure requires release of confidential information
- Funding, budget, and costs
  - o GNWT and mine costs
  - o IGO costs (split by mine and GNWT)
  - o Annual budget
  - o Review of GNWT and mine agreement costs every three years
- Frequency and location of meetings
  - o X times per year
  - o Locations for meetings
- Winding up of committee
- Committee substitutes (currently a small section)

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<sup>3</sup> Diavik Diamonds Project Socio-Economic Monitoring Agreement, October 1999, part 2.

<sup>4</sup> Prairie Creek Mine Project Socio-Economic Agreement, August 2011, part 8.

### **Expanding Advisory Bodies Powers:**

The primary powers that would be granted to the advisory body under an expansion of their power would be the quasi-enforcement powers of the adaptive management paper. The advisory body would have the power to develop to recommendations to the GNWT on the determination of net benefit, and to clarify qualitative commitments of the SEA.

Granting the advisory body a role in balancing the net benefits of an SEA would take the form of the body issuing proposals for mines to provide alternative benefits when a committed benefit is not achieved. For example, an advisory body may recommend allowing a mine to pay for southern travel (against SEAs), if in exchange, the mine offered to increase spending on apprenticeship and/or training by an equivalent amount. The GNWT would have the power to accept this alternative, and determine if the net benefits of a project have been maintained (or increased).

An alternative to the net-benefit exercise would be clarifying qualitative commitments. Often, the qualitative commitments of an SEA may not be measurable. To fix existing commitments that are ambiguous, the advisory body would have the power to determine where commitments need to be further defined with achievable measures that are not ambiguous.

If after a year of the initial recommendation, a mine has not met the recommendation, the advisory board would also have the power determine options with the mine to address potential penalties. i.e. if the advisory body addressed a list of priority areas (specific training, on-the-land initiatives, etc.) that the mines can invest in lieu of penalties to the GNWT. The prioritization list of initiatives would be a stock list that the body decides annually.

In order to expand representation for the objective of increasing benefits to Indigenous women of the NWT, the GNWT would propose that the Native Women's Association of the NWT is included in future advisory boards. The GNWT has a priority to advance the standing of women in the workforce in its mandate, and across SEAs.

### **RELEVANT ENABLING SECTIONS OF MRA**

Section 52 of the *Mineral Resources Act*:

#### **Measures that benefit people of the Northwest Territories**

**52.** The Commissioner on the recommendation of the Minister may prescribe requirements in respect of measures that provide benefits to the people of the Northwest Territories.

### **PRINCIPLES**

Engagement and Adaptive Management for SEAs will contribute to the following goals from section 2 of the *MRA*:

(a) to regulate mineral interests efficiently, effectively and in a transparent manner;

(d) to ensure that wealth generated by mineral resources will be used for the benefit of present and future generations of the people of the Northwest Territories;

(e) to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories;

(f) to respect Aboriginal and treaty rights;

(g) to complement the systems for collaborative management of land and natural resources in the Northwest Territories;

## PROBLEM

Whether or not an advisory body of some form should be regulated. The MRA is an opportunity to modernize the SEAs to have optimal engagement. However, it has been the experience of ITI that a one-size fits all approach does not work for each mining project.

## INTERRELATED MRA REGULATIONS

Engagement and Adaptive Management will potentially be linked to:

- Key Elements
- Dispute Resolution
- Enforcement of SEAs
- Reporting Timelines

OPTIONS CONSIDERED FOR REGULATIONS

OPTION 1: 14(1)(a) [Redacted]

[Redacted]

14(1)(a) [Redacted]

[Redacted]

[Redacted]

[Redacted]

IMPLICATIONS OF OPTION 1:

Legal:

- 14(1)(a) [Redacted]

Political:

- 14(1)(a) [Redacted]
- [Redacted]
- [Redacted]

Financial:

- 14(1)(a) [Redacted]

Implementation:

- 14(1)(a) [Redacted]

Change Management:



- 14(1)(a) [Redacted]

OPTION 2: 14(1)(a) [Redacted]

14(1)(a) [Redacted]

[Redacted]

IMPLICATIONS OF OPTION 2:

Legal:

- 14(1)(a) [Redacted]

Political:

- 14(1)(a) [Redacted]
- [Redacted]
- [Redacted]

Financial:

- 14(1)(a) [Redacted]

Implementation:

- 14(1)(a) [Redacted]

Change Management:

- 14(1)(a) [Redacted]

OPTION 3: 14(1)(a) [Redacted]

14(1)(a)

14(1)(a)

IMPLICATIONS OF OPTION 3:

Legal:

- 14(1)(a)

Political:

- 14(1)(a)

Financial:

- 14(1)(a)

Implementation:

- 14(1)(a)

Change Management:

- 14(1)(a)

RECCOMENDED OPTION FOR DEVELOPMENT OF REGULATIONS

14(1)(a)

14(1)(a)

[Redacted]

DRAFT POLICY INTENTIONS LANGUAGE

Decision A: 14(1)(g)

[Redacted]

- 14(1)(g)

[Redacted]

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Decision B: 14(1)(g)

[Redacted]

- 14(1)(g)

[Redacted]

- 
- 

14(1)(g)

[Redacted]

Decision C: 14(1)(g)

[Redacted]

## REFERENCES

### Socio-Economic Agreements:

De Beers, Gahcho Kué Project, signed June 2013

De Beers Canada Incorporated, Snap Lake Mine, signed May 2004

Diavik Diamond Mines (2012) Inc. (Diavik), signed October 1999, amended January 2015

Dominion Diamond Corporation (DDC), Ekati Diamond Mine (Ekati), signed October 1996

NorZinc, Prairie Creek Mine, signed August 2011

### Other:

Diavik Diamond Mines Inc., *Diavik Diamonds Project Socio-Economic Monitoring Agreement*, October 1999

Diavik Diamond Mines Inc., *Diavik Diamonds Project Socio-Economic Monitoring Amendment Agreement*, January 2015.

NorZinc Ltd., *Prairie Creek Mine Project Socio-Economic Agreement*, August 2011

De Beers, *Gahcho Kué Socio Economic Agreement*, June 2013

De Beers, *Snap Lake Diamond Project Socio-Economic Agreement*, May 2004

## Appendix A: Advisory Bodies in SEAs

### **8 PRAIRIE CREEK MINE SOCIO-ECONOMIC ADVISORY COMMITTEE**

#### **8.1 PURPOSE OF THE ADVISORY COMMITTEE**

8.1.1 For the purposes set out in clause 8.1.2, the Parties agree to establish and implement a socio-economic advisory committee (the "Committee"), prior to the commencement of Construction, composed of the Parties' representatives and representatives from NAEC Communities in accord with this clause 8.

8.1.2 The purposes of the Committee will be to:

- a. monitor performance of the commitments made by the Parties under this Agreement, provide recommendations to the Parties and comment on socioeconomic impacts arising from the Project;
- b. provide an ongoing forum for meaningful participation and involvement in the Project by the members of NAEC Communities;
- c. monitor the success of socio-economic mitigation measures and commitments by:
  - i. reviewing monitoring reports submitted pursuant to this Agreement;
  - ii. considering comment and observations of socio-economic impacts from the public; and
  - iii. considering the results reported in (i) and (ii) in the context of information relating to employment practices, human resource development, business development, social wellbeing and cultural well-being, and other related matters contemplated by this Agreement;
- d. make recommendations to the Parties respecting adaptive mitigation measures for achieving the purposes and commitments of this Agreement; and
- e. issue a report once every two years on the results of the Committee's work as set out in this clause 8 and in clauses 9 and 10 and present the report at a public meeting.

8.1.3 The Committee will operate in an advisory capacity and the Parties will report back to the Committee on any changes made in response to recommendations received from the Committee.

8.1.4 The Parties may from time to time review the effectiveness of the Committee in meeting its mandate.

#### **8.2 MEMBERSHIP**

8.2.1 Each NAEC Community may appoint one representative and one alternate to the Committee.

8.2.2 CZN and GNWT shall each appoint a maximum of two representatives to the

Committee.

8.2.3 In the event that some, but not all, NAEC Communities have appointed a representative to the Committee, the Committee may conduct its business and exercise its duties with such representatives as have been appointed.

### **8.3 CONDUCT OF FIRST MEETING**

The GNWT representative will propose an agenda and set the date and act as chair for the first meeting.

### **8.4 CONFIDENTIALITY**

The Parties may require Committee representatives to sign confidentiality agreements before releasing confidential information to the Committee.

### **8.5 FUNDING, BUDGETS AND ADMINISTRATIVE COSTS**

8.5.1 The Parties will bear the costs of their respective representatives' participation on the Committee.

8.5.2 The Parties will bear the costs of the NAEC Community representatives' participation on the Committee and will fund the Committee and its work in equal amounts. If a Party is unable to pay its respective share of the annual cost of the Committee, no Party will be liable for the unpaid share of the other Party.

8.5.3 The Parties will determine and contribute in equal shares to an annual budget of not more than \$100,000 for each of the first three years of operation of the Committee. If, for any reason, GNWT becomes unable to continue its obligation to fund the Committee after the first three-year term, the Committee shall be wound up in accord with clause 8.7.

8.5.4 Not later than six months prior to the end of every three-year term, the Committee shall submit a proposed work plan and budget for the next three-year term for review and approval of the Parties, who shall have sole discretion to agree between themselves on the level of funding to be provided equally for each successive term of three years. If the Parties are not able to reach agreement between themselves on funding for any three-year term, the greater of:

- a. the prior approved budget; or
- b. the initial budget shall apply.

8.5.5 The Committee shall not incur expenses in excess of the budget approved under clauses 8.5.3 and 8.5.4. Neither CZN nor GNWT shall be obliged to accept any obligations for expenditures expected or incurred in excess of the budget approved under clauses 8.5.3 and 8.5.4.

8.5.6 The Committee will have no borrowing powers.

## **8.6 FREQUENCY AND LOCATION OF MEETINGS**

8.6.1 It is intended that the Committee will meet at least two times in each year, unless otherwise agreed between the Parties.

8.6.2 CZN will provide reasonable access and facilities at the Project site for a meeting of the Committee once a year.

8.6.3 The Committee will be encouraged to hold its meetings in each of the NAEC Communities on a rotating basis.

## **8.7 WINDING UP OF THE COMMITTEE**

Once the Project has ceased commercial production, the Parties, after consultation with Committee representatives, may agree to a schedule for winding up and concluding the operations of the Committee, which shall occur no later than one year after commencement of Closure, unless the Committee is continued under clause 8.8.

## **8.8 COMMITTEE SUBSTITUTE**

8.8.1 If the Committee does not meet in any one-year period, or if the Committee does not prepare a report under clause 8.1.2(e) of this Agreement in any two-year period, the Parties will arrange and conduct a public information session in each community in the Dehcho Region within one year following either occurrence.

8.8.2 GNWT is responsible for the cost of the attendance of its representative(s) at the information sessions.

8.8.3 CZN is responsible for all other costs associated with the information sessions, on a mutually agreed-upon budget.

8.8.4 The purpose of the information sessions is for the Parties to:

- a. inform the public about the monitoring reports submitted pursuant to this Agreement;
- b. consider comment and observations of socio-economic impacts of the Project from the public; and
- c. receive recommendations from the public respecting adaptive mitigation measures for achieving the purposes and commitments of this Agreement.

8.8.5 The Parties will publicly report on any changes introduced as a result of each information session.

# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## OPTIONS PAPER

### ENGAGEMENT

#### BACKGROUND

Socio-Economic Agreements (SEAs) each include methods to engage with Indigenous Governments and Organizations (IGOs) and NWT communities directly impacted by mine projects. Obligations and depth of engagement can differ between SEAs. One notable similarity between the agreements is that SEA commitments call for separate meetings with each community.

Currently, there is no formal policy requiring the Government of the Northwest Territories (GNWT) to seek engagement as a part of SEAs. However, engagement is a priority for the GNWT, and can be seen in the MRA's principles below.

Engagement sections from active SEAs are reproduced below:

#### **Ekati [signed 1996]**

**8.4** BHP and the GNWT agree to ***consult annually*** with Points of Hire communities and other Northwest Territories communities to review the results of the report referred to in 8.2 hereof and to consult with Northern Residents living in those communities on how to improve the results.

#### **Gacho Kue [signed 2014]**

**9.3.2** The Parties shall make themselves available to jointly ***meet at least once per year*** with representatives of each community in the Local Study Area and of the Aboriginal Authorities to discuss the results in the annual reports in order to provide an opportunity for input into discussions regarding the efforts of the Parties to address socio economic impacts. Each party shall bear its own costs for attending these meetings, while any costs associated with community participation in these meetings will be shared equally by the Parties.

#### **Diavik [signed 1999]**

**5.5.1** DDMI and GNWT shall make themselves available to jointly meet at least ***once per year*** with representatives of each Aboriginal Authority to discuss the results described in the applicable annual socio-economic reports in order to provide an opportunity for input into discussions regarding the efforts of DDMI and GNWT to address socio-economic impacts.



### **Prairie Creek [signed 2011]**

#### **8.8 COMMITTEE SUBSTITUTE**

8.8.1 If the Committee does not meet in any one-year period, or if the Committee does not prepare a report under clause 8.1.2(e) of this Agreement in any two-year period, the Parties will arrange and conduct a public information session in each community in the Dehcho Region **within one year** following either occurrence.

Prairie Creek generally relies on the “Prairie Creek Mine Socio-economic Advisory Committee” to conduct engagement. However, Section 8.8 details annual engagement when it does not occur through the advisory committee. This concept was new to the Prairie Creek, as a way to funnel as much engagement through the advisory committee as possible.

### **Snap Lake [signed 2004]**

#### **5.6 GNWT SUPPORT**

To support long term economic and business opportunities for NWT Residents in relation to the Project, GNWT will, subject to and in accord with GNWT policy and programming in effect from time to time:

- d. meet with DBCMI and the Aboriginal Parties **at least annually** to review GNWT program and service delivery plans to identify areas for collaboration;

### **RELEVANT ENABLING SECTIONS OF MRA**

Section 52 of the *Mineral Resources Act*:

#### **Measures that benefit people of the Northwest Territories**

**52.** The Commissioner on the recommendation of the Minister may prescribe requirements in respect of measures that provide benefits to the people of the Northwest Territories.

### **PRINCIPLES**

Engagement and Adaptive Management for SEAs will contribute to the following goals from section 2 of the *MRA*:

- (a) to regulate mineral interests efficiently, effectively and in a transparent manner;
- (d) to ensure that wealth generated by mineral resources will be used for the benefit of present and future generations of the people of the Northwest Territories;
- (e) to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories;

(f) to respect Aboriginal and treaty rights;

(g) to complement the systems for collaborative management of land and natural resources in the Northwest Territories;

## PROBLEM

Given that engagement is a priority under the MRA, and that all SEAs have some form of engagement requirement, the MRA is an opportunity to modernize the SEAs to have optimal engagement. However, it has been the experience of ITI that a one-size fits all approach does not work for each mining project. The second problem will be to determine which parts of engagement should be set as requirements in the MRA regulations and which aspects of engagement should be negotiated for each project.

## INTERRELATED MRA REGULATIONS

Engagement will potentially be linked to:

- Dispute Resolution for SEAs
- Enforcement of SEAs
- Adaptive Management

OPTIONS CONSIDERED

OPTION 1: 14(1)(a) [Redacted]

14(1)(a) [Redacted]  
[Redacted]  
[Redacted]

OPTION 2: 14(1)(a) [Redacted]  
[Redacted]

14(1)(a) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

OPTION 3: 14(1)(a) [Redacted]  
[Redacted]

14(1)(a) [Redacted]  
[Redacted]  
[Redacted]

- 14(1)(a) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

14(1)(a) [Redacted]  
[Redacted]  
[Redacted]

IMPLICATIONS OF OPTION 3:

Legal:

- 14(1)(a) [Redacted]

Political:

- 14(1)(a) [Redacted]

Financial:

- 14(1)(a) [Redacted]

Implementation:

- 14(1)(a) [Redacted]

Change Management:

- 14(1)(a) [Redacted]

DRAFT POLICY INTENTIONS LANGUAGE

Decision A: 14(1)(g) [Redacted]

- 14(1)(g) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Decision B: 14(1)(g) [Redacted]

## REFERENCES

Diavik Diamond Mines Inc., *Diavik Diamonds Project Socio-Economic Monitoring Agreement*, October 1999

Diavik Diamond Mines Inc., *Diavik Diamonds Project Socio-Economic Monitoring Amendment Agreement*, January 2015.

NorZinc Ltd., *Prairie Creek Mine Project Socio-Economic Agreement*, August 2011

De Beers, *Gahcho Kué Socio Economic Agreement*, June 2013

De Beers, *Snap Lake Diamond Project Socio-Economic Agreement*, May 2004

# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## OPTIONS PAPER

### PROOF OF BENEFIT AGREEMENTS

Updated in response to the IGC meeting on October 7, 2021

#### BACKGROUND

Benefit agreements (BAs) will be agreements between Indigenous Governments and Organizations (IGOs) and proponent companies, dealing with the flow of benefits of a project to the community.

As set out in the Task Force proposal for the *Mineral Resources Act* (MRA):

The term “benefits” refers to new opportunities or advantages received by an IGO from a proponent. A BA would function to provide benefits to an IGO. The benefits provided under a BA would not be compensatory in nature and would not be intended to mitigate adverse environmental or socio-economic impacts of a project or to accommodate adverse impacts on Aboriginal or Treaty rights. Impact mitigation/accommodation would be addressed in other processes (such as, through the regulatory regime created by the *MVRMA* and through Aboriginal consultation).

Benefit provisions can be distinguished from impact mitigation provisions. Impact provisions serve to mitigate negative effects created by the project; the purpose is to compensate loss/damage caused by the project. **Benefits, on the other hand, are not compensatory in nature; rather, benefits aim to furnish communities with greater capacity and prosperity flowing from the project**

Moreover, the Task Force also recommended that the BA sections avoid overly prescriptive language and, to the greatest extent possible, avoid GNWT involvement in the content of a BA.

“NWT is a leading jurisdiction on Indigenous self-determination and co-management responsibility over natural resources” and these principles underpin BAs. Indigenous communities should determine the best combination of benefits for themselves:

Quite simply, if both the IGO and the proponent are satisfied with the BA they have negotiated, the GNWT would have no role in “looking behind the curtain” and assessing the substance or adequacy of that BA.

BAs (and the MRA) will rely on the regulatory framework of the *Mackenzie Valley Resource Management Act* (MVRMA) for production projects to mitigate negative impacts on NWT communities and to address Aboriginal rights and discharge the duty to consult. There are additional layers of regulation, such as the *Canadian Environment Protection Act* and the *Fisheries Act*, but these generally focus on environmental protection as opposed to Aboriginal rights.

The interaction of IBAs and BAs was contemplated during MRA development. The current proposal for BAs would allow for BAs to be separate from IBAs, or to be incorporated into portions/parts/sections of an IBA. BAs should not interfere with the positive and accepted practices which are in place.

#### RELEVANT ENABLING SECTIONS OF MRA

Section 53(1) & 53(2) of the *Mineral Resources Act*:

##### **Requirement for agreement for benefits**

**53.** (1) Subject to this section, the holder of a mineral lease shall enter into an agreement for benefits in accordance with the regulations with each Indigenous government or organization that the Minister considers appropriate in the circumstances,

- (a) if an undertaking authorized under the mineral lease meets the prescribed threshold; and
- (b) when required by the regulations in respect of a production licence under subsection 47(3).

##### **Satisfaction of requirement in subsection (1)**

(2) For greater certainty, the holder of a mineral lease may satisfy the requirements in subsection (1) in respect of an Indigenous government or organization identified under that subsection by entering into any agreement with the Indigenous government or organization, provided that the agreement

- (a) contains terms in respect of benefits that will be provided to the Indigenous government or organization and its members; and
- (b) otherwise meets the requirements of this Act and the regulations.

#### PRINCIPLES

The proof of completed BA will contribute to the following goals from section 2 of the *MRA*:

- (c) to realize benefits from mineral development for Indigenous governments and organizations, communities and the people of the Northwest Territories;
- (d) to ensure that wealth generated by mineral resources will be used for the benefit of present and future generations of the people of the Northwest Territories;
- (e) to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories;
- (f) to respect Aboriginal and treaty rights;

## PROBLEM

The GNWT needs some mechanism to verify that there is a concluded agreement that contains “terms in respect of benefits that will be provided to the Indigenous government or organization” (MRA S.53(2)(a)).

## INTERRELATED MRA REGULATIONS

Production licence regulations will be highly interrelated with this topic.

Section 53(2)(b) allows for other requirements to be set in the regulations, which would add more content to what needs to be ‘checked’ when issuing a production licence (and/or at threshold levels).

Proof of BA is interrelated with the confidentiality issue. The MRA Task Force proposed that minimum disclosure follow a three-tier structure. In this structure, disclosure to the public would only state the parties and the fact a BA had been completed. The confidentiality issue was not finalized during the MRA development, and can still be discussed separately from what is required to prove the BA requirement has been met.

Although related, this topic deals with what the proponent must provide the Minister to prove the requirement has been met, and not what is ultimately disclosed to the public or others.


## POLICY RECOMMENDATION

**POLICY OPTION:** 14(1)(a) [REDACTED]

14(1)(a) [REDACTED]



14(1)(a)



# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## OPTIONS PAPER

### REPORTING TIMELINES

**Disclaimer: This document has been updated in response to the November 25 meeting of the IGCS on the *Mineral Resource Act* Regulations.**

#### BACKGROUND

Currently, the NWT's active Socio-Economic Agreements (SEAs) have different reporting timelines. This was caused from SEAs being negotiated on a case-by-case basis, and without having an established ITI policy to standardize reporting.

#### **Ekati [Last day of February]**

Schedule "A" EMPLOYMENT OBJECTIVES, CONSTRUCTION PHASE

- 2.0 BHP will report annually, within two (2) months of the end of the calendar year, on Northern Resident employment. The first Northern Resident employment report will report on the 1997 year.

#### **Diavik [March 31]**

Article 5.4 Reporting

- 5.4.1 Within three (3) months following the end of each calendar year, DDMI and the GNWT will prepare an annual socio-economic report incorporating the data, analysis and interpretation collected or prepared by each of them as described in Articles 5.2.1 and 5.2.2 respectively for the then most recently-ended calendar year. DDMI and the GNWT may prepare such report jointly or separately in respect of their respective data, analysis and interpretation. DDMI and the GNWT will deliver a copy of each such report to each other and to each Aboriginal Authority promptly upon completion.

#### **Gahcho Kue [May 2]**

8.4 Public Release of the Reports

- 8.4.1 The Parties shall, to the extent practicable, prepare the required annual reports by June 1 in each year, and make them publicly available on that day.
- 8.4.2 Each Party shall provide the other Party with a copy of its annual report at least thirty days in advance of its public release.

## **Snap Lake [no timeline]**

### **9.2 REPORTING BY PARTIES**

To facilitate continual improvement each Party will prepare an annual report, submit it to the Agency, circulate it to the other Parties, and be prepared to present it publicly. The said annual report will outline the efforts made by the Party during the previous calendar year to fulfill its commitments under this Agreement and the specific information set out in this clause 9.

#### **Timelines for Other information in the SEA Report:**

The GNWT draws data from a variety of sources, which can sometimes make lining up GNWT reporting with mine reporting difficult. As an example, a breakdown of GDP is reported in the SEA. Stats CAN first releases release an estimate of Q4 for the previous year, but this is considered a rough estimate. A revised and definitive measure of GDP is provided in the June Updates. GNWT reporting in SEAS allows the GNWT to cite the latest report for any given indicator, which can be between 1-5 years old, depending on how frequently it is released.

#### **What is Reported?**

The reporting of indicators under the SEAs are largely the same from one agreement to another, so ITI has generated a generic list of annual reporting commitments based on existing SEAs.<sup>1</sup> Currently, this information is reported annually, but options for more frequent reporting and for adaptive management will be suggested, and each item has been sorted by frequency. The indicators have evolved over time and have expanded since the first SEA with Ekati Mine in 1996. For this reason, any list of indicators will remain open to monitoring what is relevant to socio-economic wellbeing.

#### **List of Current Reporting Requirements:**

##### **Mine Reporting:**

- a. Hiring by Hiring Priority and job category in total numbers and percentage of total hires
- b. hiring by NWT community in total numbers and percentage of total hires
- c. total employment in person years by Hiring Priority and job category in total numbers and percentage of the workforce
- d. total employment in person years by NWT community in total numbers and percentage of the workforce
- e. participation in and results of training activities to provide a minimum number of trades training positions:
  - a. A minimum of number of training positions, made over the life of mine, with a certain number made available within 3 years of production
  - b. A minimum number of apprenticeships, made over the life of mine, with a certain number made available within 3 years of production

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<sup>1</sup> Examples from SEAs have been collected in an appendix at the end of this document.

- c. A number of professional development sponsorships at any given time over the mine life
- f. the value of goods and services purchased during the calendar year by category of purchase in relation to each phase of the mine project and the purchase priorities. Purchases will be calculated based on the gross value of all purchases of goods and services produced in the NWT and goods and services produced outside of the NWT that are purchased through NWT businesses
- g. a business forecast and assessment for the upcoming year
- h. allocation of scholarships to Aboriginal Persons and NWT Residents by gender and the study topic
- i. participation of Aboriginal Persons and NWT Residents in summer employment opportunities
- j. Pick-Up Point locations from previous year
- k. A report on healthy living food options available at the mine site, whether provided by mine or a contractor
- l. Promoting cultural preservation and understanding with activities related to:
  - a. Supporting the promotion of traditional practices of communities within an area
  - b. Promoting that school resources in an area include culture and traditions of local communities
  - c. Onsite cross-cultural training
  - d. Sponsoring celebrations of local communities within an area
  - e. Provide traditional foods on site when commercially available
  - f. Provide and maintain a space at the mine for spiritual and cultural pursuits; and
  - g. Provide core policies in the Indigenous languages of the local area, English, and French

GNWT Reporting:

The GNWT must produce an annual report. The annual report would record the most up to date compilation of individual reports that had been produced in the previous year.

- a. Average income
- b. Proportion of high-income earners
- c. Income assistance cases
- d. Employment
- e. Employment participation rate
- f. Registered businesses, bankruptcies, and start-ups
- g. Highschool graduation rate
- h. Percent of workforce engaged in traditional activities, by age group
- i. Ratio of home-language use to mother tongue, by age groups
- j. Injuries, by age group
- k. Lone-parent families
- l. Number of mothers and children referred to shelters
- m. Police-reported crimes, according to the following categories: client, property, drug related, other

- n. Communicable diseases (sexually transmitted infections, tuberculosis, COVID-19), and
- o. Children in care

### **Annual Reporting**

A standardized date for reporting is critical to reporting in any form. This will create consistency in timelines for all stakeholders, mines, the GNWT, IGOs, and the public.

The following topics have been identified as being suitable for annual reporting:

#### **Mine Reporting:**

- a. a business forecast and assessment for the upcoming year
- b. allocation of scholarships to Aboriginal Persons and NWT Residents by gender and the study topic
- c. participation of Aboriginal Persons and NWT Residents in summer employment opportunities
- d. Pick-Up Point locations from previous year
- e. A report on healthy living food options available at the mine site, whether provided by mine or a contractor

#### **GNWT Reporting:**

The GNWT must produce an annual report. The annual report would record the most up to date compilation of individual reports that had been produced in the previous year.

- a. Average income
- b. Proportion of high-income earners
- c. Income assistance cases
- d. Employment
- e. Employment participation rate
- f. Registered businesses, bankruptcies, and start-ups
- g. Highschool graduation rate
- h. Percent of workforce engaged in traditional activities, by age group
- i. Ratio of home-language use to mother tongue, by age groups
- j. Injuries, by age group
- k. Lone-parent families
- l. Number of mothers and children referred to shelters
- m. Police-reported crimes, according to the following categories: client, property, drug related, other
- n. Communicable diseases (sexually transmitted infections, tuberculosis, COVID-19), and
- o. Children in care

### **Quarterly Reporting**

This option has been highlighted because quarterly meetings with mines have become a priority. These meetings are an excellent point to deploy adaptive management and would be improved by more frequent reporting. These topics benefit from reporting more frequent than annually and are more closely tied to adaptive management on an as needed basis.

Reporting at this frequency would necessitate more effort from proponents, as they would have to prepare data more frequently, and would likely have to do follow up to complete action items on a more frequent basis.

**Mine Reporting:**

1. Promoting cultural preservation and understanding with activities related to:
  - a. Supporting the promotion of traditional practices of communities within an area
  - b. Promoting that school resources in an area include culture and traditions of local communities
  - c. Onsite cross-cultural training
  - d. Sponsoring celebrations of local communities within an area
  - e. Provide traditional foods on site when commercially available
  - f. Provide and maintain a space at the mine for spiritual and cultural pursuits; and
  - g. Provide core policies in the Indigenous languages of the local area, English, and French

**Monthly Reporting to GNWT**

This option would give the GNWT regular updates on critical data and empower adaptive management. While there is some concern that reporting would be onerous on mines or and that some data is better suited to annual reporting, the GNWT has limited the topics of monthly reporting to critical areas.

This option could also align with IBA reporting mines do already. The GNWT is aware that monthly reporting occurs, and steps should be taken to align reporting so that data is available to the GNWT.

Reporting by mines and the GNWT would evolve under this option. Certain information could be made available online, while still maintaining an annual report with physical documents.

**Mine Reporting:**

- a. Hiring by Hiring Priority and job category in total numbers and percentage of total hires
- b. hiring by NWT community in total numbers and percentage of total hires
- c. total employment in person years by Hiring Priority and job category in total numbers and percentage of the workforce
- d. total employment in person years by NWT community in total numbers and percentage of the workforce
- e. participation in and results of training activities to provide a minimum number of trades training positions:

- i. number of training positions
  - ii. number of apprenticeships
  - iii. number of professional development sponsorships
- f. the value of goods and services purchased during the calendar year by category of purchase in relation to each phase of the mine project and the purchase priorities. Purchases will be calculated based on the gross value of all purchases of goods and services produced in the NWT and goods and services produced outside of the NWT that are purchased through NWT businesses

## RELEVANT ENABLING SECTIONS OF MRA

Section 52 of the *Mineral Resources Act*:

### **Measures that benefit people of the Northwest Territories**

**52.** The Commissioner on the recommendation of the Minister may prescribe requirements in respect of measures that provide benefits to the people of the Northwest Territories.

## PRINCIPLES

The requirement for SEAs would contribute to the following goals from section 2 of the *MRA*:

- (a) to regulate mineral interests efficiently, effectively and in a transparent manner;
- (d) to ensure that wealth generated by mineral resources will be used for the benefit of present and future generations of the people of the Northwest Territories;
- (e) to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories;

## PROBLEM

Timelines for reporting are required for all SEAs. Currently, inconsistent timelines are not conducive to collaboration with IGOs, nor adaptive management (i.e. engagement activities and socio-economic advisory committees with IGOs and mines). Including reporting timelines into the Act could standardize timelines, which would streamline reporting for the GNWT and eliminate the need to negotiate reporting timeline (making negotiation more efficient).

There is also a secondary issue about the frequency of reporting, where companies are hesitant to produce up to date numbers, and occasionally submit reports late based on inconsistent timelines.

## INTERRELATED MRA REGULATIONS

- Reporting commitments will be tied to enforcement mechanisms, possibly tied to Production licences or adaptive management provisions.
- Engagement/Collaboration efforts under BAs might be tied to reporting timelines for the SEAs.

## OPTIONS CONSIDERED FOR REGULATIONS

### LEGISLATIVE OPTION 1: 14(1)(a)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

### LEGISLATIVE OPTION 2: 14(1)(a)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

### IMPLICATIONS OF OPTIONS:

Implications for both option 1 and option 2 are the same in this options paper.

#### Legal:

- 14(1)(a) [Redacted]



Political:

- 14(1)(a) [REDACTED]

Financial:

- 14(1)(a) [REDACTED]

Implementation:

- 14(1)(a) [REDACTED]

Change Management:

- 14(1)(a) [REDACTED]

RECCOMENDED OPTION FOR REGULATIONS

14(1)(a) [REDACTED]

[REDACTED]

DRAFT POLICY INTENTION LANGUAGE

14(1)(g) [REDACTED]

[REDACTED]

## REFERENCES

### Socio-Economic Agreements:

De Beers, Gahcho Kué Project, signed June 2013

Diavik Diamond Mines (2012) Inc. (Diavik), signed October 1999, amended January 2015

Dominion Diamond Corporation (DDC), Ekati Diamond Mine (Ekati), signed October 1996

### Other:

Canada, Statistics Canada, *2021 Release dates*, Component of Statistics Canada catalogue no. 11-001-X (Ottawa, 2020) <<https://www150.statcan.gc.ca/n1/en/release-diffusion/2021-eng.pdf?st=9ZPM5zub>>.

## APPENDICES

### APPENDIX A: Statistics Canada Reporting Schedule

#### Stats CAN Schedule

#### Gross domestic product, income and expenditure

<b>Release date</b>	<b>Reference period</b>
March 2, 2021	Fourth quarter 2020
June 1, 2021	First quarter 2021
August 31, 2021	Second quarter 2021
November 30, 2021	Third quarter 2021
March 1, 2022	Fourth quarter 2021

## APPENDIX B: Monitoring and Reporting Sections from Socio-Economic Agreements

### Gahcho Kue Project Socio Economic Agreement: [Pages 24-26]

#### **8.0 MONITORING and REPORTING**

##### **8.1 REPORTING BY PARTIES**

Each Party will prepare an annual report outlining its efforts during the previous calendar year to fulfill its commitments under this Agreement and the specific information set out in this clause 8.

##### **8.2 DBC REPORTS**

8.2.1. DBC shall, in coordination with its Contractors, produce an annual report. In addition to the information set out in clause 8.1, the annual report may include a compilation of individual reports issued during or prior to Gahcho Kue Project phases. The DBC annual report will include but not be limited to data collection, analysis and projections on the following:

- a. hiring by Hiring Priority and job category, as defined by this Agreement and DBC respectively, in total numbers and percentage of total hires;
- b. hiring by NWT community in total numbers and percentage of total hires;
- c. total employment in person years by Hiring Priority and job category in total numbers and percentage of the workforce;
- d. total employment in person years by NWT community in total numbers and percentage of the workforce;
- e. participation in and results of training activities described in clauses 4.5.2.a
- f. a report on the gross value of goods and services purchased during the calendar year by category of purchase in relation to each phase of the Gahcho Kue Project and the purchase priorities outlined in clause 5.3.1. Purchases will be calculated based on the gross value of all purchases of goods and services produced in the NWT and goods and services produced outside of the NWT that are purchased through NWT Businesses;
- g. a business forecast and assessment for the upcoming year in accordance with clause 5.4.h;
- h. allocation of scholarships to Aboriginal Persons and NWT Residents by gender and the study topic;
- i. participation of Aboriginal Persons and NWT Residents in summer employment opportunities;
- j. Pick-Up Point locations for the previous year;
- k. a report on healthy living food options available at the Gahcho Kue Project site, whether provided by DBC directly or by its Contractors; and
- l. activities related to clauses 7.2.l(a) to (f).

8.2.2 The DBC annual report shall contain information relating both to DBC's progress in fulfilling its commitments under this Agreement and will include reporting on employment and training by gender.

##### **8.3 GNWT REPORTS**

8.3.1 GNWT shall produce an annual report in accordance with clause 8.1. The annual report may include a compilation of individual reports issued during the year. The data shall be collected in a manner that would be useful for analysis of the Gahcho Kue Project's impacts on NWT communities. This may be limited to reporting data by affected communities in aggregation or through the use of multi-year averages. The annual report will include but will not be limited to data collection and analysis on the following:

- a. average income;

- b. proportion of high income earners;
- c. income assistance cases;
- d. employment;
- e. employment participation rate;
- f. registered businesses, bankruptcies and start-ups;
- g. number of people 15 years and older with less than grade 9;
- h. number of people 15 years and older with high school diploma;
- i. percent of work force engaged in traditional activities, by age group;
- j. ratio of home-language use to mother tongue, by major age groups;
- k. injuries, by age group;
- l. lone-parent families;
- m. number of mothers and children referred to shelters;
- n. police-reported crimes, according to the following categories: violent, property, drug-related, other;
- o. communicable diseases (sexually-transmitted infections, tuberculosis); and
- p. children in care.

8.3.2 GNWT will also report annually on participation and results in training activities described in clause 4.8.

8.3.3 The GNWT annual report need not necessarily relate solely to the Gahcho Kue Project.

#### **8.4 Public Release of the Reports**

8.4.1 The Parties shall, to the extent practicable, prepare the required annual reports by June 1 in each year, and make them publicly available on that day.

8.4.2 Each Party shall provide the other Party with a copy of its annual report at least thirty days in advance of its public release.

8.4.3 On making its annual report publicly available, each Party shall ensure that copies are also provided to the Aboriginal Authorities and to the communities in the Local Study Area on the same date.

#### **8.5 Employee Survey**

DBC agrees to provide access to DBC employees on the Gahcho Kue Project site to the GNWT to enable it to conduct a survey for the purpose of measuring the socio-economic impacts of the Gahcho Kue Project. The survey shall be conducted not more than once annually, at such times and on such terms as are mutually acceptable to the GNWT and DBC.

#### **8.6 PERSONAL, PROPRIETARY AND COMMERCIAL SENSITIVE INFORMATION**

8.6.1 DBC will use best efforts to collect from its employees and Contractors any personal information that may be required to provide the data necessary to compile and provide its reports, subject to and in compliance with the *Protection of Personal Information and Electronic Documents Act* (Canada) or other applicable legislation.

8.6.2 DBC shall not be required to report or disclose information of a proprietary or commercially sensitive nature.

8.6.3 The Parties will, to the extent possible, report data in a manner that does not disclose personally identifiable information.

8.6.4 The reporting by DBC in clause 8.2.1.a and 8.2.1.b shall be subject to the information that employees of DBC and its Contractors agree in writing to provide in accordance with the *Protection of Personal Information and Electronic Documents Act* (Canada).

8.6.5 The Parties agree that, to the extent possible without breaching confidentiality, proprietary interests, commercial interests or intellectual property rights, information will be summarized so that it can be shared in public forums and reports.

8.6.6 GNWT shall only collect or disclose data subject to and in accordance with the applicable legislation, and shall decline to disclose data that would be likely to identify individuals.

Article 5.1 INTENT

5.1.1 Socio-economic monitoring of the Project will address the following categories:

- (a) non-traditional economy;
- (b) cultural well-being, traditional economy, land and resource use;
- (c) social stability and community wellness;
- (d) net effects on Government; and
- (e) sustainable development and economic diversification.

5.1.2 The Parties acknowledge that:

- (a) DDMI is best able to collect and provide data relating to employment, training and procurement;
- (b) the GNWT is best able to report public statistics collected at the national, territorial and community level relevant to the Project; and
- (c) Aboriginal Authorities are best able to collect and provide data interpreting Project-related experiences at the community level.

Article 5.2 MONITORING PROGRAM

5.2.1 DDMI will collect, analyze and interpret the following data:

- (a) employment and training data and initiatives pursuant to Part II;
- (b) procurement data and initiatives, and economic and business opportunity initiatives pursuant to Part III;
- (c) cultural well-being and community wellness initiatives pursuant to Part IV; and
- (d) the results of any exit surveys of people leaving the employment of the Project

5.2.2 The GNWT will collect, analyze and interpret the following data:

- (a) average income;
- (b) proportion of high income earners;
- (c) social assistance cases;
- (d) employment;
- (e) participation rate;
- (f) registered businesses, bankruptcies and start-ups;
- (g) number of people 15 years and older with less than grade 9;
- (h) number of people 15 years and older with a high school diploma;
- (i) employment and training data and initiatives pursuant to Part II;
- (j) procurement data and initiatives, and economic and business opportunity initiatives pursuant to Part III;
- (k) percent of work force aged group engaged in traditional activities;
- (l) ratio of home-language use to mother tongue, by major age groups;
- (m) age-standardized injuries;
- (n) single-parent families;
- (o) number of mothers and children referred to shelters;
- (p) police-reported crimes, according to the following categories: violent, property, drug-related, other;
- (q) communicable diseases (sexually-transmitted diseases, tuberculosis);

- (r) children in care;
- (s) any efforts to respond to or mitigate effects believed to arise from the Project;
- (t) the net effects on government of the Project will depend partly on how the Project affects other social, economic and cultural components over the life of the Project. The GNWT may develop a model to capture these net effects; and
- (u) secondary industry data and initiatives pursuant to Article 3.4 and the terms of the Memorandum of Understanding referred to in Article 3.2.

#### Article 5.3 EMPLOYEE SURVEY

5.3.1 DDMI agrees to provide access to the Project site and to DDMI employees for GNWT to conduct an annual employee survey.

#### Article 5.4 REPORTING

5.4.1 Within three (3) months following the end of each calendar year, DDMI and the GNWT will prepare an annual socio-economic report incorporating the data, analysis and interpretation collected or prepared by each of them as described in Articles 5.2.1 and 5.2.2 respectively for the then most recently-ended calendar year. DDMI and the GNWT may prepare such report jointly or separately in respect of their respective data, analysis and interpretation. DDMI and the GNWT will deliver a copy of each such report to each other and to each Aboriginal Authority promptly upon completion.

5.4.2 Notwithstanding any other provision of this Agreement, DDMI shall not be required to report or disclose information which DDMI, acting reasonably, considers to be of a proprietary or commercially-sensitive nature, or which would infringe the personal privacy of its employees or breach confidentiality obligations to third parties.

5.4.3 The Parties agree that, to the extent possible without breaching confidentiality, proprietary interests, commercial interests or intellectual property rights, summarized information may be shared in public forums and reports.

5.4.4 Aboriginal Authority Parties will, from time to time as each of them considers necessary or advisable, report on and interpret socio-economic effects of the Project to DDMI, the GNWT and the other Aboriginal Authority Signatories and Parties.

#### Article 5.5 FOLLOW-UP AND ADAPTIVE MANAGEMENT

5.5.1 DDMI and GNWT shall make themselves available to jointly meet at least once per year with representatives of each Aboriginal Authority to discuss the results described in the applicable annual socio-economic reports in order to provide an opportunity for input into discussions regarding the efforts of DDMI and GNWT to address socio-economic impacts.

5.5.2 Each of DDMI and GNWT shall bear its own costs for attending these meetings, while any costs associated with community participation in these meetings will be shared equally by DDMI and GNWT.

5.5.3 Each Aboriginal Authority may communicate concerns or recommendations regarding the socio-economic impact of the Project at any time. Any such communication shall be in writing and may be addressed to either DDMI or the GNWT and the recipient shall share the communication with the other. DDMI and GNWT may decide, in their sole discretion, to designate one of them to respond, respond jointly or provide separate responses. The appropriate Party shall use its best efforts to respond within



90 days of receiving any such concern or recommendation. The response may take the form of a written response, action plan or the adoption of (or revision to) an initiative or program.

5.5.4 DDMI and GNWT will use good faith efforts to summarize any recommendation received from Aboriginal Authorities and the response to such recommendation in the applicable annual report.

**Socio Economic Agreement BHP Diamonds Project [Ekati]: [Pages 16 and 17]**

SECTION 8.0: MONITORING

8.1 BHP and the GNWT agree that monitoring the results of this Agreement is important and they will mutually work toward the adoption of programmes and policies to improve the monitoring in accordance with the principles as set out in Schedule "H".

8.2 BHP agrees to provide an annual report providing information on the progress of Northern Residents and Local Businesses in training, employment, and business opportunities.

8.3 BHP and the GNWT agree to meet on an annual basis to review the report referred to in 8.2 hereof and to develop plans of action that could be undertaken to improve the results.

8.4 BHP and the GNWT agree to consult annually with Points of Hire communities and other Northwest Territories communities to review the results of the report referred to in 8.2 hereof and to consult with Northern Residents living in those communities on how to improve the results.

8.5 BHP and GNWT agree that their Representatives in 3.0 hereof will, if requested by the Minister of Resources, Wildlife and Economic Development, appear annually before an *ad hoc* Committee comprised of members of the Executive Council and the Legislative Assembly of the Northwest Territories to report on the progress of Northern Residents and Local Businesses in training, employment, and business opportunities.

# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## Options Paper

### SIMPLIFIED REPORTING

**Disclaimer: This document has been prepared as an initial starting point for discussion and will need to be revisited as part of the larger work package**

Prospectors have been significant contributors to the mapping and information accumulation covering many parts of Canada and the NWT. Simplified reporting is in the current mining regulations as an approach that allows prospectors to file reports on geoscience information even though they might not meet the professional standards as required by other NWT Acts.

In the NWT, there has always been a formalized – and in some instances complex – report filing process with strict requirements. With changes in the approaches to public reporting for companies and standards determined by professional associations, higher standards for reporting have made the process more complicated, which may act as a deterrent for prospectors in the NWT.

Simplified reporting is a method to creating flexibility within the tenure system allowing it to be accessible to all levels of the mineral industry in the Northwest Territories (NWT). Using the simplified process, the NWT has positioned itself in line with other Canadian jurisdictions to allow the continued participation of prospectors, while ensuring that the quality of information submitted remains high. Finding the balance between reporting geoscience data, while ensuring the overall quality of the information, reducing the incurred costs for exploration are essential challenges in determining the best path forward.

#### BACKGROUND AND CURRENT PERSPECTIVES

During the 2017 MRA research process, concerns were stated that space needed to be maintained within the larger tenure system for prospectors. One of the key ways the current *Mining Regulations*, under the *NWT Lands Act*, address these issues is through the simplified reporting regulations. Simplified Reporting is a means to file work assessment reports without the use of a professional geoscientist or engineer, with limits on work types and an overall cost cap. As the majority of Prospectors are typically not professional geologists and would have difficulties meeting the schedule 2 technical reporting requirements.

Before the MRA, there have been issues raised with the current simplified reporting regulations due to a lack of clarity in the *Mining Regulations* language.

Work filings and the use of simplified reporting required a legal opinion (in 2016)<sup>1</sup> to clarify whether the regulations allowed for \$10,000 per claim or \$10,000 per simplified report. The opinion was the wording of the regulations at that time allowed for multiple claims held by the same proponent to be included in one report, providing less than \$10,000 was spent per claim and it was clear which costs were for each claim reported on in the simplified report. In the current regulations, explorers can use the 'simplified reporting' for advancing claims that may not be full-sized, as spending \$10,000 less than a full-sized claim allows them to keep costs under the spending limit for simplified reporting.

Another concern identified was that under the current *Mining Regulations* restricted simplified reporting to an amount of no more than \$10,000, even though in the first two years of a full-sized claim of 1,250 hectares, explorers would have to spend \$12,500 to keep the claim current. Amendments were made in 2018 to update the *Mining Regulations*, and the current wording was clarified to allow for simplified reporting on a claim with expenditures up to \$10 per hectare. Submitting a 'simplified report' still has limitations, based on the activities allowed by the reporting under s. 41(1)(b)(i) of the current *Mining Regulations*.

Consequently, explorers have the opportunity to exclusively use simplified reporting throughout the life of claim within the allowable list of activities excavation, sampling, and examination of outcrops or surficial deposits) and were able to advance their mineral claims towards mineral leases, which are based on a dollar per hectare requirements.

The current wording of the *Mining Regulations* regarding simplified reporting is as follows:

41. (1) A report of the work that has been done in respect of a claim
  - (a) must be prepared in accordance with Part 1 of Schedule 2; or
  - (b) may be a simplified report prepared in accordance with Part 2 of Schedule 2 if
    - (i) the report deals only with excavation, sampling or the examination of outcrops and surficial deposits, or any combination of them, and
    - (ii) the work done in respect of the claim incurs a cost of not more than \$10 per hectare.
- (2) A report must be prepared and signed
  - (a) in the case of a simplified report, by the individual who performed or supervised the work;
  - (b) in all other cases, by a professional geoscientist or a professional engineer as those terms are defined in the *Engineering and Geoscience Professions Act*.

## PART 2 SIMPLIFIED REPORT

17. A simplified report provided for under subsection 15(2) or 41(1) of the regulations must be prepared in accordance with sections 2 to 11 of this schedule, but without the requirements set out in paragraphs 4(g), (m), (o), (p) and (q) and 5(a) and (e) of this schedule, and must contain the following information and documents:

- (a) a description of
  - (i) each sample or group of samples collected,
  - (ii) methods of preparation, processing, and analysis applied to samples,
  - (iii) the excavation methods and the equipment used for the excavation,
  - (iv) the field observations, and
  - (v) the results of the work performed and of geochemical analyses;

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<sup>1</sup> [Legal Opinion re Simplified Report Sept 27 2016](#)

- (b) maps or sections showing
  - (i) the area investigated and the traverses performed,
  - (ii) the locations of rock outcrops investigated,
  - (iii) the locations of the sampling sites, including the locations of any erratic blocks that were sampled,
  - (iv) the locations of any stripped areas and trenches, and
  - (v) features of interest such as significant results of geochemical analyses;
- (c) comments respecting follow-up work for the purpose of assessing the mineral potential of the area investigated.

The current regulations also limit activities to those activities that are reasonably performed by a prospector for both collection and analysis of data.

Under the *Mineral Resource Act* (MRA), tenure system reform is enabled. The work system under the MRA will see a shift in philosophy where the tenure system will tie mineral tenure instruments with different phases of the mining cycle. This shift affects how the simplified report will function under the MRA. The new lease phase will require an “evidence of deposit”, with work requirements extending over 30 years and the work credit requirements will move from a flat value to an escalating requirement throughout the claim life. To modernize the simplified reporting, all of these aspects must be accounted for in the resulting regulations.

## RELEVANT ENABLING SECTIONS OF MRA

42. (1) The holder of a recorded claim and, if the regulations require, the holder of a mineral lease, shall do work on the recorded claim or mineral lease, or make deposits, in accordance with the regulations.

114(n) respecting work requirements and notices of intended work, including:

- (i) the application of work requirements to mineral leases,
- (ii) reporting on work that has been done,
- (iii) the evaluation of work,
- (iv) the issuance of certificates of work,
- (v) the manner and frequency of filing a notice of intended work or an amended notice of intended work,
- (vi) exemptions from the requirement to file a notice of intended work and the circumstances where the Minister may waive the requirement,
- (vii) the time period for providing a notice of intended work and for making amendments to a notice of intended work,
- (viii) carrying forward work, and
- (ix) relief from deadlines;

## PRINCIPLES

The resulting regulations for simplified reporting will meet the following goals of the MRA:

- To regulate mineral interests efficiently, effectively, and in a transparent manner; and
- To improve geological knowledge in the territory.

## PROBLEM

The tenure system needs to create a work reporting stream that ensures prospectors and individuals have the means to maintain their mineral tenure without the use of a Qualified Person while maintaining alignment with the *Engineering and Geoscience Professions Act*. The simplified report must be modernized to the goals of a merit-based tenure system.

## CONSIDERATIONS

Looking forward to a merit-based tenure system, it was noted that the simplified reporting process would need to be modified to accommodate this change. These considerations include:

- How do we determine the dollar value of work in a merit-based tenure system where escalating work requirements are part of the work system?
- How do we ensure that simplified reports allow for prospectors to participate actively throughout the extended claim life?
- Calculated value based on variables such as area and period (advantage here is that claim can be advanced under simplified report with limitations)?
- Finding the balance needed to ensure that the revised dollar figure will align with GNWT to standards for submission of a simplified report. Current regulations use a dollar amount as the mechanism for ensuring that the risk to the government (and public) was minimized while keeping the administrative burden similarly minimized.
- Additionally, we need to quantify the GNWT's risk tolerance on data submitted via simplified reporting. Do the current activities eligible for the simplified reporting meet GNWT comfort level for risk? NWT could easily incorporate simplified geophysical surveys into defined work while keeping reporting requirements the same as listed in Schedule 2 for maps and schedules.
- A list of allowable activities would benefit from additional clarity to ensure that the allowable activities have clarity in language on what activities will be allowable for submission for simplified reporting. For example, VLF (very low frequency) geophysical surveys have been submitted in the past as "outcrop examination". This language requires more clarity.

## CROSS JURISDICTIONAL ANALYSIS

A cross-jurisdictional review of 'simplified reporting' across Canada and a few international jurisdictions shows the **NWT**, **Nunavut**, and **Quebec** is the only places that specifically legislate 'simplified reports' or 'simplified mining work report' and have upper monetary limits for using such reporting mechanisms. Each also requires that assessment (work, technical) reports must be prepared and/or signed by 'qualified professionals'. In the NWT, a registered professional is required.

**Nunavut** *Nunavut Mining Regulations* largely mirror the *NWT Mining Regulations*<sup>2</sup>, except the expenditure amount per claim is \$20,000<sup>3</sup>. This value under the new work requirements would see a proponent being able to meet the work requirements through simplified reporting through the life of the claim for (max size and max units). A simplified report can be used throughout the claim life to

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<sup>2</sup> Nunavut's regulations are undergoing some changes to adapt to the online staking but as of December 2020, the previous reporting clauses still apply.

<sup>3</sup> Marketplace Sensitivity Analysis by Isaac and Hoekstra, (page 37) suggested the \$20,000 amount in Nunavut was raised to allow for increased costs of exploration in that territory. [Market Place Sensitivity Analysis \(Cassels Brock & Blackwell\)](#)

qualify for a mineral lease. The simplified work reporting regulations were not updated as part of the work regulation update in 2021 despite changes to claim life and work requirements.

**Quebec** has several levels of monetary limitations, based on activities allowed. A work report on exploration and examination of outcrops and boulders must be signed by a qualified professional if \$5,000 or more is spent per mining right. This prospecting work is limited to the first term of a claim and can only consist of prospecting (examination of outcrops), sampling, and rock stripping or excavation of overburden or rock. A work report on excavation and stripping can be filed as a 'simplified exploration work report' if the amount of work does not exceed \$5,000 and the same applies to a report on sampling and work to open a face, as long as the value does not exceed \$10,000. Quebec provides a standardized form for the 'simplified mining work report' (specifically designed for reporting on excavation and opening of a face-type work). **Standardizing the collection and format of data from the simplified report. In the absence of data standards for simplified reporting, a standardized format would allow controls on database**

**British Columbia** has classifications for reporting based on activities, but they are not limited by dollar/expenditure amounts. Work is divided into physical (excavation and earthmoving) and technical (geological, geochemical, geophysical surveys, and drilling) reporting, although physical work reports can be filed with technical work reports. The Gold Commissioner (Mining Recorder) approves physical reports while the BC Geological Survey approves the technical reports. In BC, the Gold Commissioner will also accept reports written by an individual if they are the claim holder.

**Saskatchewan** demands that all reports be filed online but has made an exception and allowed for prospectors to file **paper copies** of reports as long as the expenditures are less than \$20,000 in the assessment work period. They do not classify what activities are allowed under such a report.

**Manitoba** currently allows for only one detailed prospecting report to be filed on a claim (presumably in the life of the claim) and demands that the author's qualifications be documented.

Similarly, **Nova Scotia** allows for prospectors to file a 'prospector's statement' for only the first two renewal periods of a claim.

**Newfoundland and Labrador** have a 'genuine prospector' designation<sup>4</sup> in their regulations, demanding completion of a prospecting course. They also provide fillable forms for prospectors but **only to be used**

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<sup>4</sup> Newfoundland and Labrador have not implemented a mandatory course like Ontario has mandated (and that NWT is seriously considering). A prospector can apply for 'genuine' status if they have completed the Department's prospector course OR be able to demonstrate significant previous experience in the exploration field. The application form requires details into their education/prospector training courses as well as some details about past prospecting activities and references. When they renew their status, which is good for five years, they must detail their prospecting activities for the last five years.

Newfoundland and Labrador delivers programs to and mentors prospectors. Their prospectors training course is 14 days long and was created by a committee of members from government and industry. They are still looking for perfect delivery but, in the future, it will involve some E-learning and in-class teaching supplemented with field exercises/trips and basic training requirements. They have an entire resource room dedicated to prospectors (providing rock and mineral identification, assays for prospectors and the public (limited number for free) and some help with promoting their properties) as well as a dedicated consultant. This would be similar to the outreach position that Landen at NTGS holds (?) but NTGS doesn't offer assays (I don't think) and/or help with promotion (although I think there were some attempts in the past).

Most importantly, their 'genuine' prospector designation provides some financial benefits to prospectors in participating in the online map staking system of Newfoundland/Labrador. Their system is designed to charge a work/security deposit per cell on top of any staking fees per cell – this was likely implemented to deter speculators or those not likely to really be staking for earnest mineral exploration reasons. 'Genuine prospectors' can stake up to 30 claims in no more than 5 licences in a calendar year without having to pay the security deposit.

**for claims held by individuals.** Individuals reporting on their claims can only charge themselves out at \$100 per day (8-hour day) in their expenditure accounting.

**New Brunswick** is similar in that prospectors can only claim twice the daily minimum wage for work costs, but legislation provides for activities like drilling and geophysical surveys under their definition of prospecting.

**Ontario** accepts technical reports on grassroots prospecting, which allow for some ground geophysical activities, without any dollar amount limitations. Under the new legislation, reports on topics like remote sensing, geological, geochemical, or geophysical surveys, modeling or reprocessing data, and drilling all require a certificate of qualifications of the author, or a signature page signed and stamped by a registered professional.

**Yukon** imposes dollar values on expenditure reporting for certain activities, like excavation work. Yukon's Schedule of Representation Work (Quartz Mining) 2003 also includes wording about misrepresentation in any statements sworn when filing work and that the results may be a refusal of applications for renewal, debarment of the applicant from the right to obtain and renew claims, and/or criminal charges.

In **Alberta**, reports are acceptable if the work is carried out under the supervision of a qualified person or by a prospector having qualifications acceptable to the Minister.

**New Brunswick** has some discretion for prospectors to have qualifications suitable to the Minister, while **Prince Edward Island** states that all geological, geochemical, and geophysical surveys shall be conducted under the supervision of a geologist, geophysicist, or an engineer having qualifications acceptable to the department.

**South Africa** has a definition for a 'competent person' but the term is only used in legislation in reporting on environmental or financial issues related to mine closures.

It is the GNWTs position that in general geoscience work activities must be overseen and signed off by a QP but and on the government assessment reviewed by a QP. Several presentations<sup>5</sup> related to such filings suggest the principles of good reporting should provide readers with confidence that the work is complete and contains relevant information and be filled with context and cautionary language to allow a reasonable reader to understand the nature, importance, and limitations of the data, interpretations, and conclusions of the report.

Under the [Engineering and Geoscience Professions Act](#), Part 2, section 11(1) says that no one other than a professional shall 'engage in the practice of professional engineering or professional geoscience' or hold themselves out or act in a manner as to imply that they are a professional engineer or professional geoscientist. More importantly, section 11(3) states:

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<sup>5</sup> [CRIRSCO International Reporting Template 2019](#) (page 9) and [PDAC 2018 Mining Disclosure Essentials](#) (slides 76 and 78) are both presentations related to NI 43-101 reports but the values of good reporting, attempts to curb misrepresentation and limitations of using 'qualified professionals' in report writing are well summarized.



(3) No person shall employ under a contract of service a person, other than a member, licensee, or permit holder, to practice professional engineering or professional geoscience.

The regulations should discourage the simplified reporting method from being a way to avoid filing more in-depth work reports that one might expect from companies or professionals working on larger claim holdings.

## POTENTIAL OPTIONS

### Policy Option 1:

14(1)(a) [Redacted]

[Redacted]

Pros:

- 14(1)(a) [Redacted]

Cons:

- 14(1)(a) [Redacted]
- 14(1)(a) [Redacted]

Option 1.2: 14(1)(a) [Redacted]

14(1)(a) [Redacted]

[Redacted]

14(1)(a)

Pros:

- 14(1)(a)

- 

Cons:

- 14(1)(a)

- 

### Policy Option 2:

Option 2.1: 14(1)(a)

14(1)(a)

Pros:

- 14(1)(a)

- 

Cons:

- 14(1)(a)

Option 2.2: Option: 14(1)(a)

14(1)(a)

14(1)(a)

14(1)(a)

Pros:

- 14(1)(a)

Cons:

- 14(1)(a)

### Policy Option 3:

14(1)(a)

14(1)(a)

Pros:

- 14(1)(a)

Cons:

- 14(1)(a)

- 14(1)(a)

# REGULATIONS UNDER THE *MINERAL RESOURCES ACT*

## OPTIONS PAPER

### THRESHOLDS

This document has been updated in response to the November 25, 2021 meeting of the IGCS.

#### BACKGROUND

During MRA development, two thresholds were considered around Benefit Agreements (BAs), one to commence negotiations and another for when they must be completed. There has been some confusion, so considerations for commencement and completion of Benefit Agreements will need clarification.

An important consideration that should be introduced as early as possible into discussions is that any requirement to commence negotiations is meant to apply to mines that intend to proceed to production. The requirement for benefit agreements was not intended to regulate exploration level companies.

While the GNWT would want even small mines to apply for a production licence (so that mines file statistical returns on mineral potential), low-end projects would not trigger the threshold to negotiate a BA (if they are too small).

The threshold for Benefit Agreements to be completed is tied to the production licence, which will have a requirement have completed Benefit Agreements with all identified Indigenous Governments and Organizations (addressed in a separate discussion paper). The Act directly links Benefit Agreements to the production licence and is intended to include issuance as well as being linked to keeping the production licence in good standing. When the production licence is discussed, one of its requirements will be linked to complete benefit agreements.

The Task Force considerations on thresholds have been reproduced in their entirety below:

#### **Commencing Negotiations [from BA Task Force]:**

Proponents with projects of the threshold size must notify the GNWT when they have commenced BA negotiations with each IGO.<sup>1</sup>

The Task Force proposes using the same thresholds as the Type A water licence (“TAWL”) requirement.<sup>2</sup> TAWL thresholds are based on the potential water usage, water disturbance and waste deposits of the project. TAWL applicants likely will undergo EA, and usually will move to production. As a result, they link to production but not directly to impacts.

*MRA* would match TAWL thresholds in determining which proponents have a BA notification requirement. The thresholds could either be simply mirrored in the *MRA*, or the numbers could be expressly incorporated by reference.<sup>3</sup> By keeping the BA notification requirement consistent with TAWL thresholds, the BA proposal streamlines regulatory points for proponents and complements existing frameworks.

The *MRA* triggers this requirement as soon as the proponent makes a *formal submission of intent* to become a project that meets the thresholds. The meaning of a “formal submission” will need further analysis, but the Task Force anticipates in most cases it will be the TAWL application. The Task Force discussed some other possible examples to be submissions to other regulatory authorities, or a letter to the Minister.

From filing of the TAWL application, pre-screening, EA scoping, and finally EA, the process typically takes 3-5 years. If the project moves to EA without pre-screening, then the scoping would extend, resulting in similar timelines.

A threshold size focuses the BA provisions on projects that are large enough to likely move to production. Later in the mining lifecycle, these projects will attract the BA conclusion requirement when seeking a production certificate (discussed in 6.0 of this paper).

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<sup>1</sup> The Task Force previously suggested using a definition of “major mining project” to set the threshold for the project size. “Major mining project” would be based on amount of persons employed and capital costs. The Task Force no longer prefers this option. But, should it one day be pursued, the Task Force recommends that the GNWT seek expert advice on creating this definition. A definition similar to the Tłchq Agreement was contemplated:

“major mining project” means a project, wholly or partly in Monfwi Gogha De Niitlee (NWT), related to the development or production of minerals, other than specified substances, oil or gas, that will employ an average of at least 50 persons annually for the first five years in Monfwi Gogha De Niitlee (NWT) and for which more than \$50 million (1998\$) will be expended in capital costs.

On the other hand, TAWL thresholds do not speak to persons employed or capital costs but a similar level of either would result in usages high enough to require a TAWL. Regardless, the person element would drive a class A land use permit application and be subject to further regulatory scrutiny and engagement.

<sup>2</sup> The idea to consider Type A water licence thresholds was suggested to the Task Force during a stakeholder consultation meeting.

<sup>3</sup> Additionally, TAWL thresholds are set in NWT legislation which creates more flexibility than matching thresholds to a federal law or land claim agreement.

By requiring proponents to notify the GNWT when negotiations have commenced, the legislation communicates that projects of this size should be starting negotiations as soon as possible. Negotiations should not wait until immediately before the proponent seeks a production certificate.

At the same time, the notification requirement provides flexibility. The proponent can commence negotiations whenever most appropriate for the project's evolution. For instance, parties may delay commencing negotiations for good faith reasons (such as, waiting until markets stabilize or until more information becomes available). Legislative drafting should clarify the proponent is free to commence negotiations prior to hitting the threshold size.

Policy tools will be used to follow up with proponents who have not submitted notification by a reasonable stage.

#### **Completing Agreements [from BA Task Force]:**

Proponents must conclude BAs with all IGOs entitled to one in order to obtain a production certificate (or other new instrument under the *MRA*).<sup>4</sup> The proponent only needs to show that an agreement has been concluded in order to meet the requirement – GNWT should not overly prescribe, oversee or interfere with content. Signature pages or joint letters from the proponent/IGO will suffice to assure the Minister that the requirements of the *MRA* have been met.

The *MRA* would create a new tenure instrument such as a production certificate or production lease. This option necessitates thoughtful design to overcome uncertainty. On the other hand, it does not rely on other departments or legislation. A mineral lease comes too early to require a BA to be concluded before issuance; proponents may be far from commencing production and parties may not have enough information to negotiate the agreement.

A requirement to conclude BAs will be triggered after EAs are complete and the Minister has released reasons for the decisions. *However, the proponent and IGO may voluntarily meet the requirement at an earlier time.* Timing it after the EAs is appropriate because the EA process:

- Provides parties with information helpful for negotiating agreements;
- Will have addressed the adverse impacts and public concern; and,

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<sup>4</sup> It is proposed that a provision be included in the *MRA* or the regulations that, similar to section 7.7.17 of the Labrador Inuit Lands Claims Agreement, prohibits proponents from splitting their project into “parts, phases or stages” in order to avoid the application of any obligations under the *MRA*. The Task Force previously proposed BAs as a requirement for obtaining a surface lease. To date, no positive feedback has been received on using the surface lease and that proposal has been removed from this updated draft of the Task Force’s recommendations.

- Currently facilitates the best practice of IBAs, so requiring conclusion before EA completion could negatively alter the way IBAs support and implement Aboriginal rights.

Parties can mutually agree that they need more time or waive the BA requirement by consensus.

A BA requirement under the MRA should layer on top of existing effective practices, and not alter positive aspects of the status quo.

### **Basic Timeline for Thresholds and Benefits Data:**

This description is meant to help readers understand the process of mining under the MRA, and how information required to trigger thresholds becomes available.

Based on the Evidence of Deposit discussion during the November 4, 2021 IGCS meeting, there is consideration for a requirement for evidence of deposit based on pre-feasibility studies data in order for projects to move to lease. The pre-feasibility study would be the first point in time that the GNWT and IGOs would have access to economic data related to person-years of employment, capital expenditures, and mine-life. At this stage, the GNWT would have enough information about the economic benefits of a project and trigger the requirement to negotiate Benefit Agreements. For clarity, this would be to commence negotiations; a second threshold is being proposed for completed benefit agreements (production licence).

Following a pre-feasibility study, the mine would generally move into the Environmental Assessment process. Once the Environmental Assessment was completed, the proponent would likely complete a feasibility study, reducing the margin of error from its pre-feasibility study, and creating the most realistic predictions of benefits that would be associated with the mining project.

It seems that the threshold to begin negotiations could be triggered after the pre-feasibility study is published, but there may be some follow-up role for the GNWT at the feasibility study stage. I.e. look for any material changes, confirm Qualified Indigenous governments, etc.

### **Other Mining Thresholds:**

Instructions at the last regulation development meeting on thresholds were to explore the Tłı̄ch̄ Final Agreement threshold against major mining projects. This has been completed. Two other standards were mentioned, the Nunavut Agreement and the Labrador Inuit Land Claims Agreement. The different structure of those thresholds (using 'or') has been applied to a second chart to show how those agreements differ from the Tłı̄ch̄ Agreement.

The legal difference between the words "and" and "or" creates a significant difference in which projects would require BAs.



To provide context and evaluate the Tłıchq Agreement definition, 5 current mining projects were reviewed. Evaluation of each project can be found in Table 1. The Nunavut and Labrador Inuit Land Claims Agreement definitions' structure is also reviewed against current mining projects in Table 2.

### **Tłıchq Agreement:**

The IGCS suggested reviewing which active mining projects would be captured under the definition of a "major mining project" which acts as a threshold in the Tłıchq Agreement.<sup>5</sup>

*"major mining project" means a project, wholly or partly in Monfwi Gogha De Niitlee (NWT), related to the development or production of minerals, other than specified substances, oil or gas, that will employ an average of at least 50 persons annually for the first five years in Monfwi Gogha De Niitlee (NWT) and for which more than \$50 million (1998\$) will be expended in capital costs.*

Accounting for inflation between 1998 to 2020, \$50 million would equal approximately \$78 million in 2020.<sup>6</sup> 50 persons annually for the first five years equates to a total of 250 person years. The definition, as written in the Tłıchq Agreement, requires both the criteria for capital cost and person years to be exceeded in order to trigger the threshold.

### **Nunavut Agreement**

Major Development Project in the Nunavut Agreement is also defined to create a threshold for in Article 26, in the definitions at 26.1.1<sup>7</sup>:

*Major Development Project" means any Crown corporation or private sector project that*

*(a) is a water power generation or water exploitation project in the Nunavut Settlement Area, or*

*(b) is a project involving development or exploitation, but not exploration, of resources wholly or partly under Inuit Owned Lands,*

*and either entails, within the Nunavut Settlement Area during any five-year period, more than 200 person years of employment, or entails capital costs in excess of thirty-five million dollars (\$35,000,000), in constant 1986 dollars, including, where Government is the proponent for a portion of a development project or directly- related infrastructure, the capital costs and employment projections for the government portion of the project;*

The definition, and the 'or' structure that is used, only requires that one criteria for capital cost

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<sup>5</sup> This can be found online at the Tłıchq Government website: <https://www.tlicho.ca/content/tlicho-agreement>.

<sup>6</sup> \$50,000,000 in 1998 is equivalent to \$78,344,298 in 2021. The price increase from 1998 to 2021, was found using the Bank of Canada Inflation Calculator, which can be found online at <https://www.bankofcanada.ca/rates/related/inflation-calculator/>.

<sup>7</sup> This can be found online at the Nunavut Tunngavik Inc. website: <https://nlca.tunngavik.com/>.

or person years to be exceeded in order to trigger the threshold. Accounting for inflation between 1986 to 2020, \$35 million would equal approximately \$76 million in 2020.<sup>8</sup> 200 person years of employment over the first five years equates to 40 full time positions.

### **Labrador Inuit Land Claims Agreement**

Major Development is also defined in the Labrador Inuit Land Claims Agreement to create a threshold:<sup>9</sup>

*"Major Development" means a Development within the Labrador Inuit Settlement Area that involves during any five-year period either more than 150 person-years of employment or capital expenditures of more than \$40.0 million in constant 1998 dollars;*

The definition, and the 'or' structure that is used, only requires that one criteria for capital cost or person years to be exceeded in order to trigger the threshold. Accounting for inflation between 1998 to 2020, \$40 million would equal approximately \$63 million in 2020.<sup>10</sup> 150 person years of employment in any five-year period equates to 30 full time positions.

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<sup>8</sup> By the same calculation in footnote 6, \$35,000,000 in 1986 is equivalent to \$75,780,303 in 2021.

<sup>9</sup> Major Development is defined in the general definitions in section 1.1.1 on page 10 of the Labrador Inuit Land Claims Agreement, which can be found online: <https://www.nunatsiavut.com/labrador-inuit-land-claims-agreement-3/>

<sup>10</sup> By the same calculation in footnote 6, \$40,000,000 in 1998 is equivalent to \$62,675,438 in 2021.

Table 1: Evaluation of active mining projects based on Tłıchq Agreement.

Project	Does the project exceed 250 Person Years?	Does the project exceed \$75 Million expended in Capital Costs?	Is the Threshold Triggered?
<b>NICO Cobalt-Gold-Bismuth-Copper Project</b>	3375 person years (225 persons for 15 years) <sup>11</sup>	\$346.5 Million <sup>12</sup>	The Threshold is triggered
<b>Prairie Creek Mine</b>	5760 person years (360 persons for 16 years) <sup>13</sup>	\$278.9 Million <sup>14</sup>	The Threshold is triggered
<b>Pine Point Project</b>	2580 person years (258 persons for 10 years) <sup>15</sup>	\$555.7 Million <sup>16</sup>	The Threshold is triggered
<b>Yellowknife Gold Project</b>	5475 person years (365 persons for 15 years) <sup>17</sup>	\$330.3 Million <sup>18</sup>	The Threshold is triggered
<b>Nechalacho North T Project (Vital Metals)</b>	320 person years (80 persons for 4 years) <sup>19</sup>	Less than \$20 million <sup>20</sup>	The Threshold is not triggered. Only one criteria is exceeded.

<sup>11</sup> Fortune Minerals Limited, *NICO Project Description Summary*. Page 7

<sup>12</sup> Fortune Minerals Limited, *Technical Report On The Feasibility Study For The NICO Gold-Cobalt-Bismuth-Copper Project*. Page 21

<sup>13</sup> Canadian Zinc Corporation, *Prairie Creek Property Feasibility Study NI 43-101 Technical Report*. Page xii

<sup>14</sup> Canadian Zinc Corporation, *Prairie Creek Property Feasibility Study NI 43-101 Technical Report*. Page xiv

<sup>15</sup> Pine Point Mining Limited, *Project Description for the Pine Point Project*. Page xi

<sup>16</sup> Osisko Metals Incorporated, *Overview of Pine Point PEA*.

<sup>17</sup> Tyhee Gold Corp., *Executive Summary Yellowknife Gold Project Feasibility Study*. Page 42

<sup>18</sup> Tyhee Gold Corp., *Executive Summary Yellowknife Gold Project Feasibility Study*. Page 46

<sup>19</sup> Vital Metals, *Investors Report*. Page 12

<sup>20</sup> Vital Metals, *Investors Report*. Page 11

Table 2: Evaluation of active mining projects based on “or” structure of Nunavut Agreement and the Labrador Inuit Land Claims Agreement.

Project	Does the project exceed 250 Person Years?	Does the project exceed \$75 Million expended in Capital Costs?	Is the Threshold Triggered?
<b>NICO Cobalt-Gold-Bismuth-Copper Project</b>	3375 person years (225 persons for 15 years) <sup>21</sup>	\$346.5 Million <sup>22</sup>	The Threshold is triggered
<b>Prairie Creek Mine</b>	5760 person years (360 persons for 16 years) <sup>23</sup>	\$278.9 Million <sup>24</sup>	The Threshold is triggered
<b>Pine Point Project</b>	2580 person years (258 persons for 10 years) <sup>25</sup>	\$555.7 Million <sup>26</sup>	The Threshold is triggered
<b>Yellowknife Gold Project</b>	5475 person years (365 persons for 15 years) <sup>27</sup>	\$330.3 Million <sup>28</sup>	The Threshold is triggered
<b>Nechalacho North T Project (Vital Metals)</b>	320 person years (80 persons for 4 years) <sup>29</sup>	Less than \$20 million <sup>30</sup>	The Threshold is triggered

<sup>21</sup> Fortune Minerals Limited, *NICO Project Description Summary*. Page 7

<sup>22</sup> Fortune Minerals Limited, *Technical Report On The Feasibility Study For The NICO Gold-Cobalt-Bismuth-Copper Project*. Page 21

<sup>23</sup> Canadian Zinc Corporation, *Prairie Creek Property Feasibility Study NI 43-101 Technical Report*. Page xii

<sup>24</sup> Canadian Zinc Corporation, *Prairie Creek Property Feasibility Study NI 43-101 Technical Report*. Page xiv

<sup>25</sup> Pine Point Mining Limited. *Project Description for the Pine Point Project*. Page xi

<sup>26</sup> Osisko Metals Incorporated, *Overview of Pine Point PEA*.

<sup>27</sup> Tyhee Gold Corp., *Executive Summary Yellowknife Gold Project Feasibility Study*. Page 42

<sup>28</sup> Tyhee Gold Corp., *Executive Summary Yellowknife Gold Project Feasibility Study*. Page 46

<sup>29</sup> Vital Metals, *Investors Report*. Page 12

<sup>30</sup> Vital Metals, *Investors Report*. Page 11

## RELEVANT ENABLING SECTIONS OF MRA

Sections of the *Mineral Resources Act*:

### **Requirement for agreement for benefits**

**53. (1)** Subject to this section, the holder of a mineral lease shall enter into an agreement for benefits in accordance with the regulations with each Indigenous government or organization that the Minister considers appropriate in the circumstances,

**(a)** if an undertaking authorized under the mineral lease meets the prescribed threshold; and

**(b)** when required by the regulations in respect of a production licence under subsection 47(3).

### **Issuance** [Related to 53(1)(b)]

**47. (3)** A Mining Recorder shall issue a production licence to an applicant who has applied in the approved form and meets the prescribed requirements.

### **Regulations**

**114. (1)** The Commissioner on the recommendation of the Minister may make regulations for carrying out the purposes and provisions of this Act, and without restricting the generality of the foregoing, may make regulations

**(u)** respecting the requirement for a benefit agreement under section 53, including

**(i)** the principles to be applied to negotiating the scope and content of an agreement,

**(ii)** when an agreement is required,

**(iii)** what may be included as a benefit under an agreement,

**(iv)** notification of commencement of negotiations and any other required notifications,

**(v)** time requirements applicable to conclusion of an agreement, and

**(vi)** amendments to the agreement due to a material change in the production project

## PRINCIPLES

The requirement for SEAs would contribute to the following goals from section 2 of the *MRA*:

(c) to realize benefits from mineral development for Indigenous governments and organizations, communities and the people of the Northwest Territories;

(e) to encourage positive relationships between proponents, Indigenous governments and organizations, communities and the Government of the Northwest Territories;

(f) to respect Aboriginal and treaty rights;

(g) to complement the systems for collaborative management of land and natural resources in the Northwest Territories;

## PROBLEM

The Regulations must determine what the precise meaning of “prescribed threshold” to complete agreements is, and also the threshold to commence negotiations for new mineral projects.

## INTERRELATED MRA REGULATIONS

### **No production except in accordance with Act**

**47. (1)** No person shall commence production from a mine except in accordance with this Act and the regulations.

### **Production licence**

**(2)** The holder of a mineral lease may apply to a Mining Recorder for a production licence in accordance with this Act and the regulations.

### **Issuance**

**(3)** A Mining Recorder shall issue a production licence to an applicant who has applied in the approved form and meets the prescribed requirements.

### ***Mackenzie Valley Land Use Regulations* permit**

**(4)** For greater certainty, the requirement for a production licence does not purport to affect eligibility for a permit under the *Mackenzie Valley Land Use Regulations* made under the *Mackenzie Valley Resource Management Act* (Canada).

### **Tailings, waste disposal, mine buildings**

**(5)** No person shall, for the purpose of commencing production from a mine, create a tailings, waste disposal area, dwelling, mill, concentrator or any other mine building, unless the person is a holder of a recorded claim or mineral lease, and the person has been issued

**(a)** a surface rights lease covered by the recorded claim; or

**(b)** a grant of land covered by the recorded claim. This option may also consider links to Production Licences (PLs), and which projects will require a Production Licence.

Discussions will have to address which activities should be too small to trigger a threshold to commence or complete negotiations.

May also be related to the identification of qualified Indigenous governments where BAs will be required, and timelines for that process.

## POTENTIAL THRESHOLD OPTIONS IDEAS

The following list is still at the discussion at this stage, and the options presented are only examples that could be included in a full options paper. It is not an exhaustive list, and the GNWT invites alternative options.

14(1)(a)

OPTION 1: 14(1)(a)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

14(1)(a)

OPTION 2: 14(1)(a)

[Redacted]

[Redacted]



14(1)(a)

**IMPLICATIONS OF OPTIONS:**

Implications for both option 1 and option 2 are the same in this options paper, 14(1)(a)

Legal:

- 14(1)(a)

- 

Political:

- 14(1)(a)

Financial:

- 14(1)(a)

- 

Implementation:

- 14(1)(a)

Change Management:

- 14(1)(a)

## RECCOMENDED OPTION FOR REGULATIONS

14(1)(a)

## DRAFT POLICY INTENTION LANGUAGE

14(1)(g)

14(1)(g)

## QUESTIONS

- Implementation Questions:
  - What soft touches to encourage communication between IGO and Proponents should the GNWT undertake?
  - Would GNWT monitoring and follow-up at the feasibility stage be necessary or beneficial?

## REFERENCES

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*Mackenzie Valley Land Use Regulations*, SOR/98-429.

*Waters Regulations*, NWT Reg 019-2014.

### Modern Treaties

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### Benefit Agreements (or Similar Agreements)

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<http://kivalliqinuit.ca/wp-content/uploads/2019/02/Meadowbank-IIBA-2017-02-17.pdf>.

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## APPENDICES