



MiningWatch Canada

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Suite 508, 250 City Centre Avenue, Ottawa, Ontario, Canada K1R 6K7
tel. (613) 569-3439 — fax: (613) 569-5138 — info@miningwatch.ca — www.miningwatch.ca

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Raymond Bonin, M.P.
Chair, Standing Committee on Aboriginal Affairs,
Northern Development and Natural Resources
House of Commons
Ottawa K1A 0A6

Dear Mr. Bonin,

Re: Yukon Environmental and Socio-Economic Assessment Act (Bill C-2)

I am writing to present you as Chair, and the Standing Committee, the concerns that MiningWatch Canada has with this Bill. While we understand that Bill C-2 is being presented as the implementation of a negotiated tripartite agreement, and the fulfilment of Chapter 12 of the Umbrella Final Agreement, it is our position that it should be carefully scrutinized with respect to its conformity to the UFA as well as to its integration into Canada's environmental safety net – the framework of environmental assessment laws and regulations in all jurisdictions that are intended to protect the environment and promote sustainable development.

We are concerned that Bill C-2 as it stands will erode the environmental assessment standards that Canada has developed over the years, and will undermine existing assessment regimes both federally and under land claims agreements as well as undermining efforts to strengthen and improve those regimes such as the current Bill C-9, now before the House Standing Committee on Environment and Sustainable Development. The fact that your Committee does not seem to be contemplating any joint discussions with that Committee is only cause for further alarm.

By way of background, MiningWatch Canada is a pan-Canadian, non-government organization established in Ottawa in 1999. Our aims are to: 1) ensure that mineral development practices are consistent with the goals of sustainable communities and ecological health; 2) strengthen technical and strategic skills within communities and organisations faced with impacts of mineral development; 3) impose appropriate terms and conditions on mining and in some cases prevent the development of projects that would adversely affect areas of ecological, economic and cultural significance; and 4) advocate policies to improve the efficiency and reduce the risks of mineral development. Our membership consists of environmental, labour, aboriginal, and international organizations with an interest in responsible mining. A full list, as well as all of our documents and publications, can be found on our web site at www.miningwatch.ca.

Through our policy work we have come to develop an understanding of the regulatory and legal context in which the mining and mineral exploration industries operate worldwide. We have reviewed the Yukon Environmental and Socio-Economic Assessment Act and have significant concern with section 79. As this Act is now before your committee for review, we offer our comments for your consideration.

One of our member organisations, Yukon Conservation Society, has also presented their concerns to you, and we fully support the recommendations they have brought forward. We would specifically reinforce the idea of a statutory five-year review, a process that has gained currency in recent years as a planned and predictable opportunity to re-visit and improve legislation by bringing it back to the legislators once there has been some experience with its implementation.

We are also concerned by the overlap and duplication presented in this Bill where it does not recognise the jurisdiction of the Inuvialuit Final Agreement and its screening and assessment provisions on the Yukon North Slope, potentially violating the “one project, one assessment” principle as well as the constitutionally-protected validity of the Inuvialuit Final Agreement itself.

Furthermore, our reading of this Bill indicates that it falls far short of the provisions of Chapter 12 of the UFA by not giving the proposed Yukon Environmental and Socio-economic Assessment Board final decision making powers, either directly or through its designated offices, executive committees, or panels. In view of the numerous overrides and conditions applied to the work of the Board, it is clearly advisory in nature, and we are concerned that this is clearly not the intent of the UFA. Additionally, it is unclear how the work of different designated offices will be coordinated and how regional or trans-boundary impacts within Yukon will be assessed.

Given our mandate, however, we would like to focus our comments on one specific section of Bill C-2 that directly addresses mining and mineral development: section 79. It reads:

Notwithstanding sections 75 and 76, where a project involves a right to work mines and minerals situated in category B or fee simple settlement land of Tetlit Gwich'in Yukon land, and decision documents must be issued in relation to the project by a first nation as well as by a federal decision body or the territorial minister, neither of those decision bodies may reject or vary any recommendation made in respect of the project except on the ground that a recommended term or condition is

- (a) insufficient to prevent unacceptable environmental or socio-economic effects in Yukon;*
- (b) more onerous than necessary to prevent such effects; or*
- (c) so onerous as to undermine the economic viability of the project.*

This section is of great concern to MiningWatch as it would seem to make the substance of the environmental assessment (EA) and the recommendations flowing from it entirely superfluous, at least where mining is concerned. Section (a) allows decision bodies to override an EA in

order to “prevent unacceptable environmental or socio-economic effects” – a laudable goal, but one that is presented with absolutely no decision-making criteria or implementation mechanisms. Sections (b) and (c), on the other hand, allow decision bodies to determine that mitigation measures should be ignored if the decision body thinks that the mitigative measures are excessive, or if they could undermine the economic viability of a mining project. It is hard to imagine a circumstance that would not fulfill one of the three criteria presented (a, b, or c); in other words, this section is simply reserving to the decision bodies and the Minister the ability to override the recommendations of the Board.

This is a serious violation of the fundamental principles of environmental assessment and responsible public policy. Environmental assessment is meant to objectively evaluate the ecological, economic, social, and cultural impacts of a given project, activity, or policy in order to protect the natural environment as well as the health and well-being of human communities. In any rational discussion of sustainable development, the economic viability of a given project is seen as the outcome of a thorough consideration of all of these factors. Environmental assessment is also a public decision-making process, both transparent and accountable to the public. It is inappropriate for this process to be overruled behind closed doors based on political and economic interests. If, at the end of the day, the decision body can overrule the independent assessment work and allow the project to proceed based on economic considerations with full disregard for the environment and the communities faced with the development, what indeed is the point of going through the assessment process, or even establishing such processes in the first place?

This clause is symptomatic of the approach that seems to be taken throughout this Bill, but it is perhaps one of the most egregious examples. It is ironic that Bill C-9, amending the Canadian Environmental Assessment Act, is helping establish greater accountability and transparency through its public registry, justification of decision, and follow-up provisions at the same time as this Bill erodes them.

It is our hope that your work on this Bill will allow you to correct these deficiencies, and produce an Act that will serve Yukoners and all Canadians for a sustainable future.

Thank you for your dedicated work on this important piece of legislation.

Sincerely,

Joan Kuyek
National Coordinator

c.c. Yukon Conservation Society
Canadian Arctic Resources Committee
Kwanlin Dun First Nation
Kaska First Nation
Council of Yukon First Nations