Modernizing BC's Free Entry Mining Laws for a Vibrant, Sustainable Mining Sector

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WEST COAST ENVIRONMENTAL LAW is dedicated to safeguarding the environment through law. For almost 40 years West Coast has played a role in shaping BC and Canada's most significant environmental laws, and provided legal support to ensure citizens' voices are heard in environmental decision-making. We believe in a just and sustainable society where people are empowered to protect the environment and where environmental protection is enshrined in law. www.wcel.org

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FAIR MINING COLLABORATIVE joins with First Nations people and local communities in British Columbia in the quest to shape the future for families, land, water, and wildlife. Fair Mining Collaborative provides technical and practical assistance around the issues and impacts of mining. We spend time in communities to provide two-way knowledge sharing for strengthening local capacity to manage the full spectrum of mining concerns: mapping traditional resource inventories and raising awareness of social impacts; staking, permitting, exploration; and operation, closure and reclamation. The legal best practices highlighted in this report are set out in detail in the Fair Mining Collaborative publication *Fair Mining Practices: A New Mining Code for British Columbia* (May 2013) by Maya Stano, Emma Lehrer, and Tara Ammerlaan, available online: http://fairmining.ca/.

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Introduction

The mountainous terrain and vast Pacific coastline of British Columbia have given rise to a variety and richness of life that is "unparalleled in the rest of Canada."[1] This geology has shaped the character not only of our environment, but our communities and economy over time.

The early economic and political development of BC was closely intertwined with mining activity. Key aspects of BC's laws governing mining date back over 150 years to the gold rush era of the 1850s and early 1860s. As thousands of prospectors made their way to the west, early colonial legislation gave them a right of "free entry" to most lands in the colony, and established a system for them to acquire mineral rights by "staking a claim". Over 150 years later, the presence of mineral claims, new or historical, still gives mining activity priority over virtually all other land uses in BC.

A relic from another time: Key aspects of BC's mining laws pre-date the historic Morden mine near Nanaimo, BC. The structure shown here was built in 1913.

BC's economy has changed, but our laws have not kept pace. While mining has played a key role in BC's economy over the decades, it certainly no longer holds the dominant role it did in the 19th century.

> *BC's economy has been maturing into a more diverse, less resource-dependent structure. We are no longer "hewers of wood and drawers of water" for the rest of the country or indeed, for the world. Forestry, fishing, mining and agriculture together with related processing activities are still important, especially in some communities where they are key employers. However, they are no longer the dominant and driving force in BC's economy.*[2]

Today, other industries that rely on the natural bounty of BC, like tourism, make a greater contribution to provincial GDP than mining and employ far more people. Yet

our anachronistic mining laws continue to privilege the mining industry over other sectors. For example, mining gets a free pass from zoning bylaws and land use plans that apply to other sectors. It's time for change.

Conflict over mineral staking in BC has been on the rise since 2005, when amendments to the *Mineral Tenure Act* began to permit online staking with the click of a mouse and a credit card. The result was a dramatic increase in the number of claims staked and exploration activity in BC.[3] Once a claim has been staked, the provincial government has no discretion to deny the holder a lengthy mining lease.

Most recently tempers flared on Pender Island when two local prospectors registered more than 20 mineral claims covering a large portion of North and South Pender, including the location of a Capital Regional District water improvement project. In commenting to the media, Gary Steeves, North Pender trustee with the Islands Trust emphasized that: "A lot of the people living here are retired and this is scaring the living daylights out of them." The local RCMP reports that "landowners are getting legal advice and a lot of people are up in arms."[4]

BC's archaic laws, under which local governments may not prevent mining within their boundaries, are also a root cause of the controversy over projects such as the Ajax Mine in Kamloops and the Raven Underground Coal Project on Vancouver Island, both of which are located very close to residential communities.

A large portion of scenic Pender Island in the Southern Gulf Islands was recently staked under the Mineral Tenure Act.

The existing combination of online staking, automatic entitlement of a claimholder to a lengthy mining lease when they apply, and the expectation of taxpayers paying huge compensation if land use priorities change, is simply not conducive to good business. It is not in the best interest of the environment, the public, First Nations, landowners or others with vested interests in the land.

> *Free entry thwarts sensible land use planning and elevates miners to a form of extraordinary privilege. It has negative fiscal implications for governments, it interferes with the exercise of Aboriginal Title and Rights, and the exercise of private property rights. While free entry may have been viable in the 19th century, when there were relatively few other uses for land, when mining occurred far away from human settlement, and when it did not occur in the large scale industrial manner in which it is now conducted, it is clearly anachronistic in the 21st century.*[5]

These costs of the free entry system are not just borne by communities and First Nations, but by mining companies themselves. Despite record commodity prices and a reduced regulatory burden, from 2001 to 2012 no new mines entered production in BC. Instead, from Taseko's Prosperity Mine to the proposed Kemess North copper-gold mine, to the Tulsequah Chief in Taku River Tlingit Territory, mining proposals have remained mired in controversy and delayed by protests and court challenges. Few of the First Nations, civil society groups, local governments or concerned citizens involved are opposed to mining *per se*. But too many mines are proposed for locations that make little sense in terms of environmental, cultural, societal and economic impacts because of the all-encompassing nature of the free entry system.

This report tells the story of a wide variety of people and places in BC and the negative impacts of the free entry system on them. It presents the results of extensive research about best practices from other jurisdictions to propose a simple platform for reform:

1. Establish commonsense restrictions on where mineral claims and mining leases are allowed.
2. Ensure that provincial and First Nations governments, private land owners and the public have a meaningful role in decisions about mineral tenure.
3. Limit the cost to taxpayers of *Mineral Tenure Act* modernization.

Modernizing BC's *Mineral Tenure Act* in this manner is key to creating a responsible, modern mining regime in British Columbia.

I. Establish commonsense restrictions on where mineral claims and mining leases are allowed

For over 150 years, free entry access has given mining precedence over virtually all other land uses and privileged the mining industry over other sectors of our economy. But in today's era of human rights and public awareness of the environment and its need of protection, this approach no longer enjoys any social licence. Much of the controversy surrounding proposed mines could be avoided with some commonsense restrictions on where mineral claims can be staked and mining leases granted. These include:

1. Residential, recreational and farm property

Although only a relatively small percentage of BC's land base is privately owned, these lands are of tremendous personal and economic value to their owners – whether they are rural residential properties where families are raising their children or enjoying their retirement, the family farm, or lands used for outdoor recreation like summer camps. Unfortunately, many landowners find out the hard way that their lands are open for mining activity. One of these was the Bepple family near Kamloops, BC.

MINING THE FAMILY FARM

Under British Columbia's free entry system, a validly staked claim automatically gives a variety of rights to the mineral claimholder, including (but not limited to) the right to enter onto the land and explore for minerals—even on land that is privately owned by another person.

The majority of landowners would likely be surprised to discover that the land which they thought was theirs can be stripped right out from under their feet, without their consultation or consent.[6] The Bepple family learned this the hard way, when a parcel of land they once lived on, a 16-hectare farm woodlot 40 kilometres from Kamloops, was staked. The farm provided grazing land for their cattle and timber for selective logging, which they milled into lumber for use on the farm with a portable sawmill.

But in 1989 the *Mineral Tenure Act* was amended to include diatomaceous earth, the main ingredient in kitty litter, in the legal definition of "mineral".[7] Unbeknownst to the Bepples, as soon as the legal change came into effect a company called Western Industrial Clay Products acquired the subsurface rights to their property by "staking" it under the *Mineral Tenure Act*.

Under BC's archaic laws, the Bepples could not stop the strip-mining of their property for kitty litter; the *Mineral Tenure Act* provides only that the landowner be compensated. In the Bepple's case this involved a process that started in 1993 and finally ended in 2003. The Mediation and Arbitration Board concluded that the company's right of free entry on the property took priority over their rights. Although the Bepples were paid $60,000 in compensation,[8] they believe that the amount fell far short of the value they placed on the land that they loved.

According to the Bepples, this mine was considered a small producer and below the annual tonnage threshold which would have required an environmental assessment

process to occur before any activity started. The right of free entry allowed entry, occupation and use of the Bepple land without any meaningful consultation regarding reclamation, without any detailed environmental baseline surveys in place before mining began, and without any environmental monitoring as the mining proceeds.

The right of free entry has no time limit, except when the mining is completed, nor is there a requirement for the company to minimize the length of time of the occupation. No one monitors the company's activities on the Bepple land to ensure they comply with the terms of entry.

The company continues to slowly strip-mine the property and the Bepples are powerless to stop the destruction of their land, thanks to BC's free entry mining laws. Despite their continued ownership of the land, the Bepples are indefinitely excluded from entering, using, occupying or enjoying their property.

About their personal experience with BC's free entry mining laws, Warren and Carolyn Bepple say: "You can only hope to live long enough to see your land returned and pray you're not left with something equivalent to a contaminated site."

BC's free entry mining laws have allowed the strip-mining of the Bepple family farm near Kamloops.

Did you know?

There are many jurisdictions around the world,[9] including our neighbours in Alberta, who require landowner consent to mining activities on their land.[10]

Many jurisdictions also restrict mining activities on agricultural lands.[11] These restrictions and procedures help ensure that due regard is granted to important agricultural lands so that mining activities are not granted an unreasonable preferential land use status:

- Under US federal law, use of "prime farmland" for surface coal mining is only permitted if, after consultation with the government authority responsible for agriculture, the regulatory authority finds that "the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards."[12] In addition, permission to mine on prime farmlands will contain specific conditions for soil removal, storage, replacement, reconstruction and redistribution.[13]
- In New South Wales (Australia), a landholder entitled to use land for agricultural purposes who is served a notice regarding the granting of a mineral claim on those lands may object to this occurring. Clear procedures for conflict resolution in such a case are outlined in the applicable legislation. [14]

- In Victoria (Australia), a miner applying to carry out mining activities on agricultural land must submit a statement of the economic significance of the work that compares the benefits of the proposed work (including employment and revenue considerations) to those benefits that would accrue if the mining activity was not carried out on the agricultural land. This statement must be shared with the owners and occupiers of the agricultural land within a set time period.[15] Where the regulatory authority decides "that there would be greater economic benefit to Victoria in continuing the use of the land as agricultural land than in carrying out the work proposed to be carried out on that land under the licence," a process is provided for excising the agricultural land from the mining lease.[16]

RECOMMENDATION 1a:

Legally place privately owned residential, recreational and farm property off limits to mineral claims and mining leases.

2. Important watersheds for drinking water, fisheries

Provincial community watershed and fisheries designations do not prevent mining activity in BC because of the *Mineral Tenure Act*[17]. Given the high value that British Columbians place on fish like salmon, and the central importance of clean drinking water, there are some watersheds where mines just don't belong. The experience and leadership of the Takla Lake First Nation reminds us of this.

SAFEGUARDING WATER AND FISH FROM HARM

The Takla Lake First Nation's territories cover approximately 27,250 square kilometers in what is today north central British Columbia. It is an area rich in rivers, lakes, forests and mountains, bordered on the west by the Skeena Mountains and on the east by the Rockies.

Takla territory is also rich in minerals, such as gold, copper and mercury, and, as a result, is "particularly vulnerable" to exploration and mining activity.[18] While mining has the potential to provide real benefits to First Nation communities, it also has the potential to create damaging and long-lasting impacts to the nearby land and natural resources — particularly to nearby water.

Water is a resource that is essential to the Takla people: "We're so proud of our water…We wake up in the morning and see that water, and it's just pure joy," says one community member.[19] The Takla people believe that the Creator gave them a role to play: to take care of and protect the land and waters.[20] "Living at the headwaters of three major watersheds, members of Takla feel an obligation to protect the fish not only for their own community, but for those who live downstream."[21] Because of water's high value to them, the Takla people believe that there are certain areas where mining activities and water do not, and should never, mix.

One of these areas is Bear Lake and the watersheds that feed into it. Bear Lake is an extremely important water body to the Takla Lake First Nation, for both cultural and spiritual reasons. It is home to the "last remaining viable salmon harvest in Takla territories ….[where] spring, sockeye, pink, coho and chinook salmon, as well as steelhead, swim up the Skeena River to spawn. [22] Salmon (as well as other fish species) remains a traditional food source and significant portion of the Takla diet.[23] There are also several burial and gravesites at Bear Lake, and this is one of the reasons the area is considered to be sacred by many Takla members.[24]

As such, the Takla Lake First Nation is adamant about preventing mining in this area, which, under BC's current free entry system, has been heavily staked with mineral claims. These claims, particularly Imperial Metals' mineral rights on Bear Mountain just west of Bear Lake, are of great concern to Takla and, given their past experiences with mining, understandably so.[25] A century of mining activity, from historical operations like the Bralorne-Takla and Ogden Mines to extensive mineral exploration and placer mining activities, to the Kemess South Mine (a large open-pit operation in the northern regions of Takla's territory), has led to contamination of the surrounding environment, especially water,[26] and the full level of impact is unknown because little to no water quality baseline data was collected.

The Takla Lake First Nation is not opposed to all mining activity, but there are some places mines just don't belong. Government-to-government land-use planning negotiations to determine, among other things, which areas of Takla Lake First Nation territory should or should not be open to mineral staking has never occurred. BC says they do not have an obligation to consult prior to staking because of their free entry mining laws, despite the fact that a similar argument was recently rejected by the Yukon Court of Appeal.[27] This places important areas like Bear Lake at risk, and may open the Province to legal challenges.

The watersheds that feed into Bear Lake have been heavily staked under BC's free entry mining laws.

Did you know?

Mining is explicitly prohibited in important watersheds in other jurisdictions. For example:

- In Nova Scotia, no mining is permitted in protected water areas, including areas surrounding any source or future source of water supply that have been protected by regulation.[28]
- In the US, specific protection is provided to wild rivers: minerals located in the bed or bank or situated within one-quarter mile of the bank of any river designated a wild river are withdrawn from mining activities.[29] This US federal law protects not only the watercourse itself, but also ensures that an adequate buffer is maintained to support the natural migration of the watercourse. Additionally, the Environmental Protection Agency administrator may prohibit, restrict or deny the discharge of dredged or fill material at defined sites, including wetlands, if the use would have an unacceptable adverse impact on municipal water supplies, shellfish beds or fisheries areas (including spawning and breeding areas), wildlife or recreational areas.[30]
- In Colombia, the *Mining Code* prohibits mining in certain protected moors and wetlands.[31] This legislative provision was recently relied upon by the Colombian Minister of Mines to prevent the development of an open-pit gold mine in a sensitive high-altitude wetland that supplied freshwater to more than a million people in nearby communities.[32]

RECOMMENDATION 1b:

Legally place domestic use watersheds and important fish habitat (e.g., fisheries sensitive watersheds) off limits to mineral claims and mining leases.

3. Private conservation lands

While only five percent of British Columbia's land base is privately owned, due to historic settlement patterns, some of our most at-risk ecosystems and species are found on private lands. Around the province, a growing number of British Columbians have made the decision to legally protect their private land in perpetuity by granting "conservation covenants" over their land to a conservation organization or government agency through a legal agreement that remains attached to the title of the property, forever. The legal restrictions in the covenant can also prevent development by any future owners of the land. In turn, if the Canadian Minister of the Environment certifies the land as "ecologically sensitive land… the conservation and protection of which is… important to the preservation of Canada's environmental heritage," the conservation covenant may qualify as an "ecological gift" which receives advantageous tax treatment.

However, as residents of Pender Island in the Southern Gulf Islands recently learned, even this binding legal protection cannot prevent mineral staking, or in a worst case scenario, the eventual strip-mining of a property.

UNDERMINING LANDOWNER CONSERVATION EFFORTS

Barrie and Nancy Morrison loved to sit out by their pond and enjoy the morning calls of the red-winged blackbirds on their property on Pender Island. The mature Coastal Douglas Fir forest on their land is increasingly important in a region where urban development and agriculture threaten the long-term survival of natural ecosystems. Western redcedar, grand fir, big-leaf maple and red alder are also found on rich moist sites, while arbutus occurs in the driest sites. Rare in the Gulf Islands, Black Cottonwood is found along the stream and forested wetland on the property, and these riparian ecosystems provide important linkages across the landscape and a movement corridor for birds and other wildlife.

"I'm a tree person," Barrie says. "I was raised in the Prairies. My grandfather, with whom I lived, was anxious to protect the trees and one of my jobs as a boy was carrying water out to the trees. I really appreciate the trees we have. The size of the trees in back on our land is really quite remarkable."

Barrie and Nancy were interested in a quiet location. Nancy was very interested in nature and was a great bird watcher. They found the right place for them on Pender Island and purchased their rural residential property in 1980. They first covenanted the land in 2003 and again in 2005 when they bought the adjacent land. Because the land was recognized as ecologically sensitive and "important to the preservation of Canada's environmental heritage" they received a tax credit.

By entering into the covenant agreement with the Islands Trust Fund Board and the Pender Islands Conservancy Association, the Morrison's committed themselves and all future landowners to protect, preserve and maintain a portion of their property from development, forever.

Even a conservation covenant intended to provide permanent land protection did not prevent staking of the Morrison's Pender Island property.

Then in 2012, like many other Pender residents, Barrie learned that mineral claims had been staked on the land. Over 1600 hectares of land on North and South Pender, including several parcels of private conservation land subject to conservation covenants, were affected. Now, because of BC's outdated *Mineral Tenure Act*, landowners like the Morrisons (and their family who will inherent the property or future owners) cannot prevent entry of the mineral claimholders on their property, nor can they stop mining activity like blasting and roadbuilding on their land—despite the terms of the conservation covenant.

Sadly, because of the *Mineral Tenure Act*, mineral claims trump even "permanent" private land protection.

Barrie Morrison (May 23, 1930 - April 25, 2013) was committed to justice and protection of the natural environment, and was a long-time advocate for conservation in the Gulf Islands.

Did you know?

There are many jurisdictions around the world, including our neighbours in Alberta, who require landowner consent to mining activities on their land.[33]

RECOMMENDATION 1c:

Legally place privately owned conservation lands off limits to mineral claims and mining leases.

4. Areas designated in First Nations, provincial, or local government land use plans for purposes incompatible with mining

At the municipal level, local governments prepare official community plans and then pass zoning bylaws to manage land uses accordingly. Unfortunately, the definition of "land" for the purposes of the *Local Government Act*[34] and the *Community Charter*[35] excludes minerals and mines, thus preventing local governments from using zoning bylaws to prevent mining.

A MINE IN YOUR BACKYARD?

The city of Kamloops is faced with the possibility of the development of an open-pit mine right within its city boundaries. British Columbia's mineral tenure laws have allowed a company called KGHM Ajax Mining Inc. to stake 58 mineral claims[36] in Kamloops for its proposed gold-copper mine, half of which would be located within six kilometers of several schools and seniors' residences, a hospital and a university, and hundreds of family homes.

With an expected mine life of 23 years and production capacity of approximately 60,000 tonnes of mineral ore per day,[37] it is feared that the mine's close proximity will have negative health impacts and effects on Kamloops residents. Toxic particulate dust, the leeching of chemicals from the mine tailings facility, and the contamination of drinking water from groundwater wells are all possible and even likely consequences of this mine's development.

Because of BC's free entry mining laws, the City of Kamloops is grappling with the possibility of an open-pit mine within its boundaries.

Other issues likely to be brought about by the proposed mine include heavy traffic in close proximity to a school, as well as negative impact on popular recreation areas near Inks Lake and the fish-bearing Jacko Lake, which lies immediately adjacent to the location of the proposed open pit. In addition, the existing Kinder Morgan pipeline (itself subject to a controversial expansion proposal) bisects the proposed mine site. The environmental and engineering challenges of the two projects converging on this location highlight the urgent need to rethink the archaic privilege of mining over other land uses.

The proposed project faces considerable opposition from citizens of Kamloops,[38] and understandably so. Unfortunately, the tools available to the City of Kamloops to respond to this opposition are quite limited. As it stands, British Columbia's *Mineral Tenure Act* provides no power for local governments to prevent mineral claims from being staked, mining leases from being granted, or to stop a mine from being developed within city limits.[39]

The proposed mine is subject to review under the *Canadian Environmental Assessment Act, 2012* and BC's *Environmental Assessment Act*, and is currently undergoing a cooperative environmental assessment process.

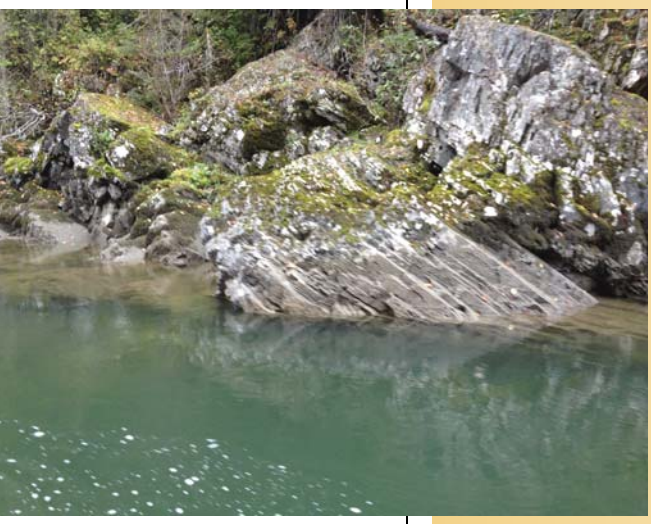
Outside of municipal areas, provincial and First Nations' strategic land use plans set out high level direction about the use of land and water in various regions. Beginning in the early 1990s, community members, stakeholders, industry and government representatives sat down around planning tables across the province and worked out strategic land use plans covering most of BC. These "Land and Resource Management Plans" determined where new parks and conservancies should be established and resource management zones and management objectives for vast areas outside of protected areas. Because most of these plans failed to engage First Nations at a government-to-government level, strategic land use negotiations between First Nations and the Crown are now one of the principal ways in which strategic land use direction is being developed in BC today. These plans and strategic land use agreements are then legalized through various conservation designations and establishment of legal objectives for resource management zones.[40]

Unfortunately, the mining industry gets a "free ride" from land use plans that apply to other industries and activities. In 2002, after most Land and Resource Management Plans had already been completed, the Province added a new provision to the *Mineral Tenure Act*, which provided that most land use designations or objectives outside of protected areas cannot prevent or limit mining activity.[41] This "two zone" system means that other important designations like old growth management areas or wildlife habitat areas typically don't apply to mining activities.

UNDERMINING LAND USE PLANNING

For millennia, the Gitanyow have exercised their authority and legal obligation to sustain and protect the land and resources of their territories (or Lax'yip), which encompass approximately 6,300 square kilometres in the mid-Nass, Upper Kitwanga, and Upper Kispiox Watersheds. Until recently the Gitanyow Lax'yip was one of the few places in British Columbia where strategic land use planning to provide overall direction for land and resources at a broader level had not been completed. Over a period of many years, the Gitanyow developed the *Gitanyow Lax'yip Protection Plan* to provide direction about land and resource use in their territories in accordance with their ancestral laws, and negotiated with the provincial Crown to achieve recognition of their plan.[42]

In March 2012, after years of planning and negotiation a far-reaching land use plan for the Gitanyow Lax'yip was ratified by the provincial Cabinet and the Gitanyow. The plan included a new proposed conservancy under the *Park Act* in the Hanna Tintina watershed, where over 80 percent of the sockeye salmon in the Nass River system spawn, and extensive "Biodiversity Areas" designed to conserve values such as water, hydroriparian ecosystems, old growth forest and grizzly bear in this biologically rich area.



BC's laws give mining companies a free ride from land use plan requirements designed to protect water and biodiversity.

Referred to as Biodiversity Areas in English, the Gitanyow have designated these areas as Ha'nii tokxw. "Ha'nii tokxw" means "our food table" and is the Gitanyow designation that encompasses the land, water, air and all resources associated with Hanna Tintina and the Biodiversity Areas. This designation reflects the intention to retain the landscape in a predominantly natural condition to maintain and enhance the availability of Gitanyow foods, and protect the water that is the lifeblood of the Gitanyow territories.

Among these Biodiversity Areas are the En'hlu4ik Sim'aks or Water Management Units. These areas encompass the valley walls and steep headwater bowls of many large rivers and streams. The forests are considered unique, with high conservation values for water quality and watershed hydrology. Roads are one of the greatest potential threats in these areas because of their potential to concentrate water, saturating and destabilizing the ground and increasing landslide risk, as well as their contribution to siltation. Thus, the Gitanyow and the Province agreed that no new roads for commercial harvesting would be allowed in certain Water Management Units and that existing roads would be deactivated after harvesting and silviculture.[43]

But then BC's free entry mining laws reared their head. Giving full legal effect to the management direction agreed to by the parties may not be possible, provincial officials have said, because of legislative provisions in the *Mineral Tenure Act* designed to guarantee mining interests access their claims[44]: a key elements of the free entry system.

If a solution can't be found, in the future the *Mineral Tenure Act* could allow mining interests roaded access into Water Management Units, despite a government-to-government agreement, a Cabinet approved land use plan, and legal orders to the contrary.

Did you know?

In contrast to BC, many other jurisdictions employ land use plans to limit areas in which mining activities may occur.

- In Northern Ontario, no mining claims can be staked on lands designated under community based land use plans for uses that are inconsistent with mineral exploration and development.[45] In addition, boundaries of protected areas designated under community land use plans may be enshrined under regulation,[46] and no prospecting, staking, exploration, or new mines may be carried out in these protected areas.[47]
- In the Northwest Territories, no prospecting or mineral claims can be staked in areas prohibiting such activities under land use plans that have been approved under federal legislation or a land claims agreement.[48] Furthermore, planning in the Mackenzie Valley is carried out under its Protected Areas Strategy by Aboriginal land use boards, pursuant to the *Mackenzie Valley Resource Management Act*.[49]
- In the Yukon, all proposed mining activities must be evaluated to determine whether they are in conformity with existing land use plans.[50]
- In the US, federal law requires individual states to establish planning processes "based upon competent and scientifically sound data and information" to determine which lands are unsuitable for all or certain types of surface coal mining operations. Operations deemed to be unsuitable include those that are incompatible with existing State or local land use plans or programs, or that could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems, or in a substantial loss or reduction of long-range productivity of water supply or of food or fibre products.[51]
- In West Virginia, determinations of unsuitability of land for surface mining must be integrated as closely as possible with both present and future land use planning processes at all levels of government (local, state and federal).[52]
- In New Zealand, on the request of an iwi, a minerals program may provide that defined areas of land of particular importance to the iwi shall not be included in any mining permit.[53]

RECOMMENDATIONS:

1d. Level the playing field so that current land use plan requirements apply to mining activities.

1e. Legally place off limits to mineral claims and mining leases areas designated in First Nations, provincial, or local government land use plans for purposes incompatible with mining.

1f. Require strategic land use agreements with First Nations to be in place before mining activity occurs. Strategic land use agreements should address whether and where mineral rights within the planning area may be made available to third parties.

Summary:

The experiences of the citizens and governments highlighted above suggest that a cornerstone of *Mineral Tenure Act* modernization should be a set of commonsense restrictions on where mineral claims and mining leases are allowed. In our opinion, in addition to existing restrictions,[54] it would make good sense to evolve our laws so mineral claims and mining leases would no longer be allowed in/on:

- residential, recreational or farm property;[55]
- domestic use watersheds;[56]
- private conservation lands;[57] and,
- areas designated in First Nations, provincial, or local government land use plans for purposes incompatible with mining, i.e.,
  - areas subject to conservation designations, zoning, objectives or targets in a strategic land use plan that are incompatible with mining activity;[58] and,
  - areas subject to objectives set by government[59] that are incompatible with mining activity (e.g., special management areas, old growth management areas, wildlife habitat areas, fisheries sensitive watersheds).

In this context, strategic level plan should be defined broadly to include:

- regional or subregional land use plans approved by the Lieutenant Governor in Council;
- official community plans[60] or a zoning or other land use bylaw;
- First Nations land use plans given effect through a strategic land use agreement; between a First Nation and the Province of British Columbia;
- water management plans[61] or a drinking water protection plans;[62] and,
- recovery strategies and action plans for a species at risk.[63]

Best practices from other jurisdictions make it clear that these changes are not novel but rather a foundation of good public policy.

CHANGE IS POSSIBLE – THE ONTARIO EXPERIENCE

Ontario recently amended its mining laws to prohibit the staking of privately-owned land in Southern Ontario without landowner consent.[64] It also implemented a province-wide regime for First Nations' consultation and dispute resolution. It didn't used to be this way: private property-owners and First Nations fought long and hard for these amendments.

Cottage owners in southern Ontario had long been upset to discover that their land could be staked, their trees cleared, their soil dug up, their peace and quiet destroyed, and their expensive property devalued. However, in 2007, a proposed uranium mine in North Frontenac brought this issue to a head. Cottagers organized community groups and worked with the Ardoch Algonquin First Nation ("AAFN") and the Shabot

Obaajiwam First Nation to voice their opposition to the proposed mine. Together they organized protests, fundraising concerts, press-releases, and interviews with the media. They also set up blockades to prevent the proponent, Frontenac Ventures, from accessing the claim area. Frontenac Ventures filed a lawsuit against the AAFN and, to remove the blockage to claim area, obtained a court injunction. The AAFN refused to remove the blockade and was consequently fined $25,000. In addition, AAFN member Robert Lovelace was fined $10,000 and sentenced to 6 months in jail. This decision was successfully appealed to the Court of Appeal, bringing even more attention to this controversial project and the inability of the current laws to reflect different interests and conflicting land uses.

Opposition to the North Frontenac mine instigated a growing movement to ban uranium mining, and included a 68 day hunger strike, petitions and letter-writing campaigns (including letters from Margaret Atwood, Stephen Lewis, and David Suzuki), involvement of several international organizations, including Amnesty International, the support of local Members of Parliament and First Nations across Canada, and resolution by local governments to petition the provincial government. Adding to this controversy was opposition to the Platinex Inc.'s platinum mine in northern Ontario, which resulted in members of the Kitchenuhmaykoosib Inninuwug and non-native opponents being held in contempt of court and sentenced to time in jail.

This growing discontent between mining industry and First Nations, fueled by public outcry against the projects, became an issue the government could no longer ignore. Finally, after protracted protests and court proceedings, then-Premier Dalton McGuinty committed to reforming Ontario's *Mining Act* and released its proposed changes in April 2009. The Ontario *Mining Act*[65] was amended and a new statute, the *Far North Act 2010*, was enacted.[66]

The *Far North Act* sets the goal of protecting "at least half of the Far North of Ontario in an interconnected network of protected areas"[67] which are off limits to mining, commercial timber harvest, oil or gas exploration or production, and electrical generation. To achieve this goal the *Far North Act* provides for a joint planning process between First Nations and the Ontario government to develop "community based land use plans".

Ontario recently modernized its free entry mining laws: prohibiting the staking of privately-owned land in Southern Ontario and aiming to protect at least half of the "Far North" of Ontario in an interconnected network of protected areas through community-based land use planning.

II. Ensure that provincial and First Nations governments, private land owners and the public have a meaningful role in decisions about mineral tenure.

Mining interests currently thwart other land users and landowners, without merit, consultation or consent. With the click of a mouse, a nominal fee and some minimal paperwork, proponents can obtain a free miner certificate, stake a claim, and obtain a mining lease. Under the *Mineral Tenure Act*, the provincial government has no discretion to deny a proponent these rights,[68] irrespective of other values and rights on the land, the proponent's relationship with First Nations, their commitment to local employment, their financial or technical capacity, or their track record of compliance with environmental or occupational health and safety regulations. Although proponents are required to provide notice to landowners before entering private land to explore for minerals, landowners cannot prevent a proponent from doing so.[69] Similarly, proponents are not required to engage with First Nations upon whose traditional territories the claim is staked prior to staking a claim or entering the land. The provincial government has taken the position that the staking of mineral claims does not trigger a constitutional duty to consult. Unlike other forms of tenure no opportunity is provided for public hearings or public comment before mining leases are granted.

Yukon court decision could force BC to overhaul its antiquated mining laws

The decision of the Yukon Court of Appeal in *Ross River Dena Council* v. *Government of the Yukon* late in 2012 may force governments across Canada, including in BC, to rewrite their mining laws. The decision essentially holds that the free entry system—the system of allocating mineral rights that is central to mining law in much of Canada, including BC—is inconsistent with the obligation of the Crown to consult First Nations on decisions that may impact their Aboriginal title and rights.

The territorial government, like the BC Crown, has taken the position that with the free entry system, which provides for the acquisition of mineral rights through staking, it has effectively legislated itself out of its constitutional duties to First Nations. This position was rejected by the Yukon Court of Appeal in the recent Ross River Dena case.

FIRST NATIONS AND FREE ENTRY: *ROSS RIVER DENA COUNCIL* V. *GOVERNMENT OF THE YUKON*

The territory of the Ross River Dena, who are part of the Kaska Nation, stretches over a vast area of 63,000 square kilometres^2 in the south-eastern Yukon. The Ross River Dena Council recently challenged the Yukon's free entry system, asserting that the Government of the Yukon had an obligation to consult with them before recording quartz mining claims in the Ross River Area.

The Yukon Supreme Court held that the Crown did have a duty to consult with First Nations on the recording of a mining claim, but could meet this duty by simply giving notice to the affected First Nation after the grant of the mineral claim. The Yukon Court

of Appeal has soundly rejected this approach, holding that something more than mere notice is required:

> *It is apparent that the judge considered the open entry aspects of the Quartz Mining Act to be essential to the mining industry, and considered that any requirement of consultation greater than the mere furnishing of notice claims would be impractical.*
>
> *I am of the opinion that the judge erred in his analysis. I fully understand that the open entry system continued under the Quartz Mining Act has considerable value in maintaining a viable mining industry and encouraging prospecting. I also acknowledge that there is a long tradition of acquiring claims by staking, and that the system is important both historically and economically to Yukon. It must, however, be modified in order for the Crown to act in accordance with its constitutional duties.*
>
> *The potential impact of mining claims on Aboriginal title and rights is such that mere notice cannot suffice as the sole mechanism of consultation. A more elaborate system must be engrafted onto the [free entry] regime set out in the Quartz Mining Act. In particular, the regime must allow for an appropriate level of consultation before Aboriginal claims are adversely affected.*

On the basis of this reasoning, the Court of Appeal allowed the appeal, and held that the Government of the Yukon "has a duty to consult with the plaintiff in determining whether mineral rights on Crown lands within lands compromising the Ross River Area are to be made available to third parties", as well as prior to allowing mineral exploration activities.

The Court in this case was not actually asked to strike down the *Quartz Mining Act;* nevertheless, the judges chose to address the possibility of statutory change, suggesting that existing provisions available for accommodating First Nations under the *Quartz Mining Act* may not be "ideal".

All provinces that use a free entry approach to mining claims should sit up and take notice. But that goes double for British Columbia because:

- Most First Nations territories in BC, like those of the Ross River Dena Council, are not yet subject to treaties.
- Although BC's mining laws do provide for government approvals before exploration can occur, mineral claims can be staked online and with no opportunity for Aboriginal consultation, and the BC *Mineral Tenure Act* purports to require that a mining lease, and the substantial rights it bestows, to be granted to the holder of a mineral claim regardless of the outcomes of consultation with First Nations.
- The Yukon Court of Appeal is made up of judges of the BC Court of Appeal. So even if the judgment of a Yukon court is not technically binding on the BC Supreme Court, for all intents and purposes it is, since a BC Supreme Court judge will know that his or her appeal may be heard by one or more of the same judges of the BC Court of Appeal.

In our view, BC will need to change its free entry system sooner or later. If the government doesn't act on the Ross River Dena Council case and work with First Nations in BC to reform its *Mineral Tenure Act*, then it will inevitably face similar court cases.

Did you know?

There are many jurisdictions around the world that require First Nations consent to mining activities. For example:

- In the Philippines, the consent of Indigenous peoples is required for all activities affecting their lands and territories, including the exploration, development and use of natural resources.[70] The country's mining laws clearly provide that "no ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned".[71]
- Guyanese legislation requires consent to be obtained prior to authorization of mining on Indigenous lands, as does Peruvian legislation pertaining to protected areas.[72]
- In Alberta, the consent of the Métis settlement council must be obtained before any exploration can be carried out on land within the boundaries of a Metis settlement.[73]
- In Australia, legislation in five states has long mandated that consent be obtained in connection with mining through statutory, indigenous-controlled Land Councils.[74]
- In New Zealand, Maori consent must be given for all access (including access for only minimum impact activities) to Maori land regarded as *waahi tapu* (sacred areas).[75] Indigenous owners of Maori land also have an absolute veto right on all mining activities on their land (other than those with minimum impacts).[76] Furthermore , In New Zealand, an "access arrangement" is a

Members of the Tahltan First Nation recently served Fortune Minerals Limited with an eviction notice to pack-up a controversial exploration camp in the Sacred Headwaters of the Skeena, Nass and Stikine Rivers. There are other jurisdictions where companies must secure the free, prior, and informed consent of Indigenous peoples before undertaking mining activities.

necessary precondition to explore on land owned or occupied by the Maori people.[77] Where there is no single Maori landowner, a Maori Trustee serves as the counter-party in negotiations over the access arrangement with miners.[78]

- In Queensland (Australia), Indigenous peoples have the right to be consulted and enter into access agreements before prospecting activities occur in their territory.[79]
- Under Colombian mining legislation, Indigenous communities' authorities may indicate places in which mining activities are to be excluded based on the existence of special cultural, social and economic reasons according to their beliefs and customs.[80]

Several jurisdictions also require the surface landowner to consent to mining activities before proponents may proceed. For example:

- In Alberta, "no person shall conduct exploration on private land, except with the consent of the owner of the land or a person authorized by the owner to give that consent".[81] A similar requirement is in place in Newfoundland and Labrador.[82]
- In New Brunswick, a miner must submit a written agreement to the regulatory body that indicates that the owner of the land consents to work being done on the land. The agreement must be submitted before an application for a mining licence is made.[83]
- In Victoria (Australia), a holder of a mining licence must also obtain the written consent of owners or occupiers of private land before commencing mining activities.[84]
- Germany's *Federal Mining Act* requires the consent of the owner to undertake any prospecting or exploration activities on the land.[85]
- In Mali, legislation provides that exploration and mining rights are not valid without the consent of the land owner.[86]

Negotiating Solutions

Greater involvement of landowners, First Nations and the public in decisions about whether and where mineral tenure should be granted does not mean that mining activity will not occur. Such involvement does have the potential to bring more balance to the relationship between mining companies and other actors to ensure that other rights and values are taken into account, and increase the likelihood that future mining projects are located in places, and carried out in a manner, that have the social licence to proceed.

One of the rights that must be re-examined is the automatic right of mineral claimholders to a long-term mining lease, which provides little opportunity for balancing mining activity with other rights and values. This process should be changed to one in which careful consideration is given to the merit of granting a mining lease. As part of this process, in addition to government-to-government First Nations

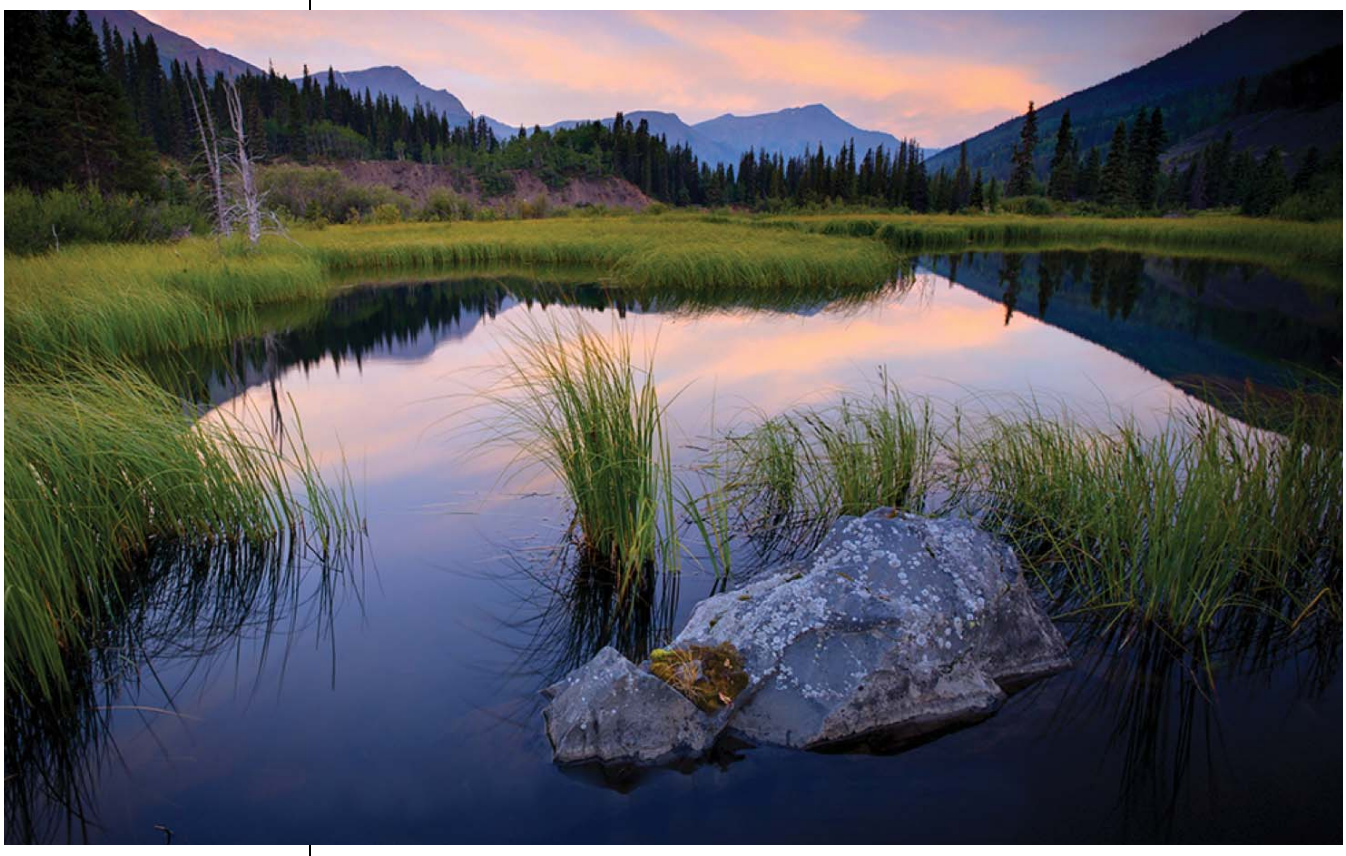
consultation public hearings or other meaningful opportunity for the public to be heard should be provided, and the outcomes demonstrably taken into account in the decision made. Furthermore, agreements reflecting landowner consent and upholding First Nations title and rights should be in place before mineral rights are granted.

Two types of agreements are of particular importance and should be explicitly referenced in the modernized *Mineral Tenure Act*:

Access Agreements: There are several reasons why access agreements should be finalized prior to allowing prospectors to enter land. First, they provide landowners, including First Nations, with prior notice of the intended prospecting activities. Second, they provide an opportunity for landowners, including First Nations, to exercise some control over the timing, location and type of prospecting activities. Third, reaching an agreement could help to foster more positive relations between proponents and landowners/First Nations.

The ecologically and culturally significant Sacred Headwaters are no place for a mine, but responsible mining activity may be welcome elsewhere in Tahltan Territory.

Strategic Land Use Agreements: Strategic Land Use Agreements reflect the outcomes of negotiations between First Nations and the Crown with respect to strategic land use planning designations, zones, and related resource management objectives and targets. Despite the fact that most strategic land use plans in BC did not involve First Nations at a government-to-government level, the Province's current policy is that it will initiate new land use negotiations only where there is a "business case" to do so.[87] However, in order for the Crown to live up to the direction of the court in the *Ross River Dena*



decision, and its constitutional duties to First Nations, achieving strategic land use agreements with First Nations must become a priority, and these plans must address the question of whether and where mineral claims will be available to third parties. Past land use negotiations, to the extent that they were constrained by the Province's current laws and policies (e.g., the free entry and "two-zone" systems) will not fully meet this obligation.

We note that the Supreme Court of Canada has emphasized the critical importance of involving First Nations in "strategic planning" for the use of resources, stressing that without it, consultation at the operational level (e.g., on subsequent *Mines Act* permits for more advanced exploration and mine development) may be of "little effect".[88]

Other forms of agreements also have an important role to play at different stages of the mining cycle. A number of these are laid out in the First Nations Mining policy adopted by the First Nations Summit and the Union of BC Indian Chiefs.[89]

Staking has historically served a critical role in giving the claimholder a priority over any other person wishing to explore or produce minerals from an area. New rules can be designed to maintain this priority without undermining other valid rights and interests. For example, a modernized *Mineral Tenure Act* could maintain the claimholder's priority interest while making any rights and entitlements associated with the claim conditional upon the completion of agreements with landowners and First Nations and other legal requirements.

RECOMMENDATIONS:

2. Before entering private land, a prospector must enter into an access agreement with the owner (and occupier if applicable) of the land.

3. Before entering any land that is subject to a treaty with a First Nation or a claim of Aboriginal title and/or rights, a prospector must enter into an access agreement with potentially impacted First Nation(s).

4. All rights and entitlements associated with a mineral claim must be made conditional upon the completion of a strategic land use agreement between the Crown and First Nations that allows mineral claims in the area in question.

5. The practice of automatically granting mining leases upon application by claimholders must be ended.

6. In addition to government-to-government First Nations consultation, public hearings or other meaningful opportunity for the public to be heard should be provided, and the outcomes demonstrably taken into account in the decision whether or not to grant a mining lease.

Heading off problems from the beginning

Currently, anyone holding a free miner certificate may stake a claim online in BC. A free miner certificate may be acquired for a minimal fee by anyone over 18 ordinarily resident in Canada[90] (or eligible to work in Canada), or by a Canadian corporation, and the provincial government has no discretion to deny the certificate.

Moving to a system requiring access agreements prior to prospecting will also require shifts in this approach. A number of jurisdictions instead use a prospecting permitting system,[91] a version of which is likely a better fit for a modernized BC *Mineral Tenure Act*. Unlike an open-ended free miner certificate, a prospecting permit would require the applicant to describe the general area in which the applicant intends to search or explore of minerals during the term of the permit (e.g. a year). As noted above, demonstrating that required access agreements with landowners, including First Nations are in place should be a condition for acquiring a prospecting permit. A prospecting permitting system could also provide the opportunity to head off some other common problems from the beginning.

For example, in BC, miners are not required to have any knowledge or understanding of First Nations rights and concerns. By contrast, other jurisdictions have taken affirmative steps to encourage cultural sensitivity among miners operating in First Nations' traditional territories. For example:

- In Ontario, potential prospectors must successfully complete, within 60 days *before* the submission date of a prospecting licence application, a prospector awareness program on issues related to Indigenous interests before becoming eligible to obtain a prospector's license.[92]
- Similarly, in the United States, training is required for employees of the Department of the Interior engaging with Indian Tribes on a government-to-government basis.[93]

In BC, the chief gold commissioner may cancel a free miner certificate, with 30 days prior notice and an opportunity for a hearing, if satisfied that a free miner has, with respect to activities related to the operation or use of a mineral title, contravened the *Mineral Tenure Act*, the *Criminal Code*, the *Heritage Conservation Act*, the *Mines Act*, the *Mining Right of Way Act* or the *Health, Safety and Reclamation Code*.[94] However, there are no legal requirements to consider an applicant's past conduct with respect to these laws *prior* to granting the free miner certificate (or issuing a permit for exploration activities under the *Mines Act*).

In contrast, other jurisdictions clearly mandate that the applicant's past practices be considered. For example:

- In Zambia, a prospecting licence will not be granted if the applicant is the holder of another mining right and is in breach of any condition of that right or any provision of the mining legislation.[95] Similar legal requirements are also in place in New South Wales.[96]

- In New Mexico, an exploration permit application will be denied "if that person's failure to comply with the provisions of the New Mexico *Mining Act*, the regulations adopted pursuant to that act or a permit issued under that act has resulted in the forfeiture of financial assurance".[97]
- In Sweden, an exploration permit may not be granted to a party who has proven to be unsuitable to carry out exploration. Examples of situations where permits may be refused on this basis include previous failure to consider the landowner's interests, or engaging in conduct harmful to the natural or cultural environment.[98]
- In Mozambique, an application to extend the geographical limits of the exploration licence will be denied when the applicant has not met its obligations with respect to other mining licenses it might hold.[99]

In BC, applicants are not required to provide any details about their financial resources or technical competence to obtain a free miner certificate, and considerable activity on the land can occur before *Mines Act* permits are required. In contrast, other jurisdictions mandate that the applicant provide details about its financial resources and technical competence early in the exploration process. For example:

- In Zambia, when the regulatory authority reviews a permit application, it must take into account whether "the applicant has, or has secured access to, adequate financial resources, technical competence, and experience to carry on effective prospecting operations".[100]
- In New South Wales, the application for an exploration permit must include "particulars of the financial resources and relevant technical advice available to the applicant".[101]
- In Papua New Guinea, an application for an exploration permit must include "a statement giving particulars of the technical and financial resources available to the applicant".[102]
- In Western Australia, the exploration permit application must include a statement of the applicant's technical and financial resources.[103]

RECOMMENDATION 7:

The current free miner certificate should be replaced with a requirement to obtain a prospecting permit, which would be contingent on an applicant:
a) completing an Aboriginal awareness training program; and,
b) securing access agreements with landowners, including First Nations within the area described in the permit.
The chief gold commissioner should also have the discretion to deny a prospecting permit to the applicant on the basis of the applicant's past environmental and legal compliance record, or lack of technical/financial ability to undertake prospecting and exploration activities.

III. Limit the cost to taxpayers of *Mineral Tenure Act* modernization

The free entry system and BC's outdated *Mineral Tenure Act* come at a significant cost to the taxpayer. That's because when, to protect the environment or uphold its constitutional obligations to First Nations, the Province creates a new protected area, the *Mineral Tenure Act* provides for compensation to mineral claim holders.[104] Multi-million dollar legal claims may seek compensation for the future lost profits the company would have reaped if they had been able to develop the minerals. Especially in light of the ease with which staking now occurs with a 'click' over the internet, the time has come to phase out this expensive barrier to responsible land use by limiting the amount of compensation payable.

CLINE MINING

Located next to the World Heritage Sites of Waterton Lakes National Park in Alberta and Glacier National Park in Montana, the Flathead River Valley in the southeast corner of BC is one of the most biologically diverse and naturally abundant areas in North America. Spanning more than 160,000 hectares of forest, river and mountain landscape, the BC portion of the valley is home to an incredibly diverse range of species, including cougar, big horn sheep, elk, moose and wolverine. It also contains the greatest variety of plant and wildflower species in Canada, has the highest concentration of grizzly bears within the interior of North America, and holds significant deposits of coal and gas.

The Flathead Valley.

In November 2011, the BC government legislated a ban on mining and energy development in British Columbia's Flathead Valley though the passage of the *Flathead Watershed Area Conservation Act* (the Act)[105] and Regulation 41/2010, which created a Mineral and Coal Land Reserve on all lands within the Flathead River Watershed Area.[106] The legislation prevents the registration of new mineral claims and applications for coal tenures by establishing coal and mineral reserves;[107] prohibits Crown land dispositions for mining purposes;[108] prohibits the issuance of oil and gas activity permits for oil and gas exploration and development;[109] and prohibits the disposition of petroleum and natural gas rights.[110]

While a positive step in terms of protecting the Flathead Valley, the BC government has since been negotiating settlements with several mining companies who had mineral claims in the area. Although the courts had historically held that mineral claims were not the type of property interest that requires compensation when impacted by government regulation,[111] BC amended the *Mineral Tenure Act* and *Coal Act* a number of years ago to provide for compensation for impacted mineral claims when parks were created.[112] In this case, a park has not been created, and the *Mineral Tenure Act, Coal Act* and *Flathead Watershed Area Conservation Act* are silent on the question of compensation when a mineral reserve is created. Nevertheless, a centuries old common law rule of statutory interpretation holds that the Crown does not intend to expropriate without compensation unless the statute clearly says so,[113] and despite ambiguity about whether mineral claims are compensable in this case, as of June, 2013, the Province had settled with 6 of the 10 mineral tenure holders in the Flathead Watershed Area, bringing its running total of compensatory payments to $4.9 million. [114]

Local conservationists and allies have worked long and hard to secure protection of the Flathead and BC's mining laws have increased the cost of doing so.

One tenure holder, however, remains un-swayed by the government's settlement proposal: Cline Mining, a company that applied to the Ministry of Energy and Mines to have a mountaintop removal coal mine in the Flathead area, is suing the BC government for expropriation of its coal licence and coal licence applications.[115] Cline had the most advanced projects in the area, with its 157.8-million-tonne Lodgepole coal project at the permitting stage and its Sage Creek project hosting 154.8 million tonnes of potentially open-pittable coal.[116]

Cline is seeking a declaration that its rights under its coal licenses[117] and coal license applications[118] for the Lodgepole, Sage Creek and Cabin Creek properties were expropriated, taken or injuriously affected by the Province's passing of the *Act* and Regulation 41/2010.[119] Cline is also seeking $500 million in compensation for the loss of the value of the licenses and applications for licenses for these properties, estimated on a net present value basis over the expected life of the mines. The matter still remains in court.

BOSS POWER

On April 24, 2008, the Province of British Columbia established a mineral reserve for uranium and thorium over all mineral lands in the province,[120] to give effect to the Province's commitment to avoid nuclear power. Although the Province's intent was to ensure "that all uranium deposits will remain undeveloped,"[121] the original regulation was silent on the fate of existing mineral claims. The Province subsequently issued an order pursuant to the *Environment and Land Use Act* prohibiting the chief inspector under the *Mines Act* from issuing permits required for exploration of uranium or thorium, thus effectively preventing existing claims from being developed.

At the time of the ban on uranium mining, a corporation by the name of Boss Power was developing a uranium-mining project in the Kelowna-Kamloops area of BC. Boss Power had pre-existing claims (the "Blizzard Claims") to uranium deposits in that area pursuant to the *Mineral Tenure Act*. Up until the ban, Boss Power had reportedly spent millions of dollars in developing its project.[122]

In response to the ban, Boss Power announced in 2009 that it was suing the BC government for $42-69 million in compensation for the expropriation of its mineral claims, and for damages for misfeasance in public office for refusing to issue permits for the site.[123] However, minutes before court proceedings began, the province announced that it had reached a negotiated settlement with the mining company. Boss Power agreed to surrender to the Province of British Columbia all claims to its uranium exploration and mining rights to the uranium deposit in the Kamloops-Kelowna region, in exchange for a $30 million cash payment (plus legal costs).[124]

The burden on taxpayers in this case was especially significant, as it was discovered that the government appeared to have overpaid Boss Power by $21.3 million. It was reported that an independent evaluator was commissioned to value the claim and apportioned Boss Powers losses at $8.7 million. Yet the settlement that was reached totaled $30 million. BC's Premier, however, defended the settlement amount, stating that the criminal justice branch of government decided that $30 million was fair compensation.[125]

RECOMMENDATION

8. Compensation payable to mineral title holders as a result of *Mineral Tenure Act* modernization, if any, should be restricted by statute to limit the cost to the taxpayer.

Conclusion

The problems with free entry are legion: it presents barriers to protecting important wildlife habitat and watersheds, undermines the ability of local communities to plan for their future, threatens private residential and farm property, and creates conflicts between businesses on the land. These problems, and the conflicts they engender, in turn prevent the mining industry from obtaining the social licence it needs to move forward with mining projects that *do* make sense.

Everyone would gain if the *Ross River Dena* judgment and current mining controversies around the province were to become a driver for dealing with this long-standing problem in a way that works for all British Columbians and our environment while upholding Aboriginal title and rights.

This ochre colored earth can be mined for paint pigments.

Modernizing BC's *Mineral Tenure Act* – Summary

The report *Modernizing BC's Free Entry Mining Laws for a Vibrant, Sustainable Mining Sector* (West Coast Environmental Law, Fair Mining Collaborative, September 2013) draws on best practices from around the world and on-the-ground experience in BC to recommend the following approach to updating BC's antiquated *Mineral Tenure Act* in the interests of all British Columbians.

I) Establish commonsense restrictions on where mineral claims and mining leases are allowed.

Recommendations:

1a: Legally place privately owned residential, recreational and farm property off limits to mineral claims and mining leases.

1b: Legally place domestic use watersheds and important fish habitat (e.g., fisheries sensitive watersheds) off limits to mineral claims and mining leases.

1c: Legally place privately owned conservation lands off limits to mineral claims and mining leases.

1d. Level the playing field so that current land use plan requirements apply to mining activities.

1e. Legally place off limits to mineral claims and mining leases areas designated in First Nations, provincial, or local government land use plans for purposes incompatible with mining.

1f. Require strategic land use agreements with First Nations to be in place before mining activity occurs. Strategic land use agreements should address whether and where mineral rights within the planning area may be made available to third parties.

II) Ensure that the provincial and First Nations governments, private land owners and the public have a meaningful role in decisions about mineral tenure.

Recommendations:

2. Before entering private land, a prospector must enter into an access agreement with the owner (and occupier if applicable) of the land.

3. Before entering any land that is subject to a treaty with a First Nation or a claim of Aboriginal title and/or rights, a prospector must enter into an access agreement with potentially impacted First Nation(s).

4. All rights and entitlements associated with a mineral claim must be made conditional upon the completion of a strategic land use agreement between the Crown and First Nations that allows mineral claims in the area in question.
5. The practice of automatically granting mining leases upon application by claimholders must be ended.
6. In addition to government-to-government First Nations consultation, public hearings or other meaningful opportunity for the public to be heard should be provided, and the outcomes demonstrably taken into account in the decision whether or not to grant a mining lease.
7. The current free miner certificate should be replaced with a requirement to obtain a prospecting permit, which would be contingent on an applicant:

   a) completing an Aboriginal awareness training program; and,

   b) securing access agreements with landowners, including First Nations, within the area described in the permit.

   The chief gold commissioner should also have the discretion to deny a prospecting permit to the applicant on the basis of the applicant's past environmental and legal compliance record, or lack of technical/financial ability to undertake prospecting and exploration activities.

III) Limit the cost to taxpayers of *Mineral Tenure Act* modernization.

Recommendation:

8. Compensation payable to mineral title holders as a result of *Mineral Tenure Act* modernization, if any, should be restricted by statute to limit the cost to the taxpayer.

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1 Biodiversity BC, <online: www.biodiversitybc.org>.

2 Province of BC, "A Guide to the BC Economy and Labour Market," online: <www.workbc.ca/Statistics/Documents/GTBCE_2010.pdf>.

3 The area of land staked in BC increased fourfold in the immediate aftermath of the introduction of online staking, from 1.08 million hectares in 2004 to 4.87 million hectares in 2005: British Columbia Ministry of Energy, Mines and Petroleum Resources, "Overview of Trends in Canadian Mineral Exploration" (2008), online: <http://www.empr.gov.bc.ca/Mining/MineralStatistics/IndustryOverviews/Pages/BCProvTrends2008.aspx>.

4 Judith Lavoie, "Pender residents still on alert over mineral claims" *Victoria Times Colonist* (7 December 2012), online: <http://www.timescolonist.com/news/local/pender-residents-still-on-alert-over-mineral-claims-1.17711>.

5 Karen Campbell, *Undermining Our Future - A Discussion Paper on the Need to Reform Mineral Tenure Law in Canada* (Vancouver: West Coast Environmental Law, 2004), online: West Coast Environmental Law <wcel.org/resources/publication/undermining-our-future-how-mining%C2%92s-privileged-access-land-harms-people-and-en>.

6 Although proponents are required to provide notice to landowners before entering private land to explore for minerals, landowners cannot prevent a proponent from doing so. See *Mineral Tenure Act,* RSBC 1996, c 292, s 19(1) [*Mineral Tenure Act*].

7 *Miscellaneous Statutes Amendment Act (No. 1), 1989*, SBC 1989, c 71, s 14.

8 *Bepple v Western Industrial Clay Products Ltd*, 2004 BCCA 497.

9 Including places as diverse as Germany and Mali.

10 See text accompanying footnotes 81-86.

11 In BC, mineral claims may be staked and, with the proper authorization, proponents may conduct mining activities on agricultural land. See *Mineral Tenure Act*, s 11(2)(d); *Agricultural Land Commission Act,* SBC 2002, c 36, s 20(3).

12 *Surface Mining Control and Reclamation Act*, USC tit 30 §1260(d)(1) (1977) [*SMCRA*].

13 *SMCRA*, *ibid* at §1265(b)(7).

14 New South Wales (Australia), *Mining Act* 1992 (NSW), s 179 and Schedule 2 [*Mining Act* 1992 (NSW)].

15 Victoria (Australia), *Mineral Resources (Sustainable Development) Act* 1990 (VIC.), s 26A(2), (4).

16 *Ibid*., s 26B-26D.

17 See subsection 14(5).

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19 *Ibid* at 30.

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21 *Ibid* at 34-35.

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23 *Bearing the Burden* at 29.

24 *Ibid* at 144.

25 *Takla Lake First Nation Mining Backgrounder* at 4.

26 *Bearing the Burden* at 117.

27 *Ross River Dena Council v. Government of Yukon*, 2012 YKCA 14.

28 *Nova Scotia Environment Act,* SNS 1994-95, c 1, ss 106(1)(5)(6); see, e.g., *North Tyndal – Designation and Regulations*, NS Reg 200/92, s 12.

29 *Wild and Scenic Rivers Act,* USC tit 16 §1280(a)(iii).

30 *Clean Water Act,* 33 USC §1251, s 404(c).

31 República de Colombia, *Mining Code*, Law 685 of 2001, art 34 (excluded mining areas), online (Español): <http://www.simco.gov.co/english/Home/DocumentsofInterest/MiningCode/tabid/415/language/en-US/Default.aspx>. This law was recently amended to expand the areas in which mining is prohibited. Under the old provision, no mining activity could take place in national natural parks, natural parks with regional character or forest reserves. Under the amended legislation, this prohibition is extended to the *paramo* ecosystem and wetlands designated under the Ramsar Convention. Note that the amendments of Law 1382/2010, to add requirements for concession contracts proposals, mining zones and extensions and renewals of contracts, etc., were declared unconstitutional by the Colombian Constitutional Court C366/2011. However, the effects of the decision have been deferred for two years in order to protect the ethnic groups' rights, until the Congress enacts a constitutional version of the law to regulate this matter.

32 República de Colombia, Ministry of Environment, Housing and Territorial Development, Resolution No 1015: denying an environmental license to Canadian company Greystar; online (Español): <http://www.minambiente.gov.co/documentos/normativa/gaceta_ambiental/2011/res_1015_310511.pdf>; "Canadian Miner Gives Up on Gold Project in Columbia" *Latin American Tribune,* online: <http://www.laht.com/article.asp?ArticleId=389769&CategoryId=12393>.

33 See text accompanying footnotes 81-86.

34 *Local Government Act, RSBC 1996, c 323,* s 5.1 [*Local Government Act*]

35 See *Community Charter,* SBC 2003, c 26, Schedule (definitions)[Community Charter]

36 KGHM Ajax Mining Inc., Draft Application Information Requirements for the Proposed Ajax Mine Project (11 January 2012), online: Environmental Assessment Office <http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_project_doc_list_362_p_tor.html>.

37 City of Kamloops, "Proposed Ajax Mine," online: <http://www.kamloops.ca/ajax/land-ajaxmine.shtml>.

38 Many citizens have expressed their opposition to the proposed Ajax mine through letters to local newspapers. For example, see *Kamloops: The Daily News*, online: <http://www.kamloopsnews.ca/apps/pbcs.dll/search?Category=kamloops&q=ajax%20mine%20letters&SearchCategory=kamloops%25&Kat=kamloops%25&Simple=0&Max=352&Start=0>.

39 As noted above, the definition of "land" excludes "mines and minerals" from the ambit of zoning bylaws local governments can pass: *Community Charter*, Schedule (definitions) which is incorporated as per the *Local Government Act*, s 5.1. Note, however, that while they cannot directly regulate minerals, mineral extraction or related activities that must be carried out on the site, local governments can use zoning bylaws to regulate related mining activity that is not necessary for extraction, like crushing rocks, as long as the result is not to completely prevent mining. Similarly local governments may exercise some regulatory authority over mining activity through Soil Removal and Deposit Bylaws as long as the result is not to completely prevent mining: Ethan Krindle with Alix Tolliday, *Mitigating Community Impacts of Mining Operations: Options for Local Governments* (Victoria: Environmental Law Centre, 2012).

40 Typically using *Land Act*, RSBC 1996, c. 245, s.93.4 [*Land Act*].

41 Bill 54, *Miscellaneous Statutes Amendment Act (no. 2) 2002*, 3rd Sess, 37th Leg BC, 2002, s 51 adding section 14(5) to the *Mineral Tenure Act*, which currently reads:

> 14(5) Unless the location is one of the following, a land use designation or objective does not preclude application by a recorded holder for any form of permission, or approval of that permission, required in relation to mining activity by the recorded holder:
> (a) an area in which mining is prohibited under the *Environment and Land Use Act*;
> (b) a park under the *Park Act* or a regional park under the *Local Government Act*;
> (c) a park or ecological reserve under the *Protected Areas of British Columbia Act*;
> (d) an ecological reserve under the *Ecological Reserve Act*;
> (d.1) an area of Crown land if
> (i) the area is designated under section 93.1 of the *Land Act*, for a purpose under that section, and
> (ii) the order under that section making the designation, or an amendment to the order, precludes the application by the recorded holder;
> (e) a protected heritage property.

42 Province of British Columbia and Gitanyow Hereditary Chiefs, *Gitanyow Huwilp Recognition and Reconciliation Agreement* (2012), online at: <http://www.newrelationship.gov.bc.ca/shared/downloads/gitanyow_full_agreement.pdf>.

43 Water Management Units in the Nass South portion of the Gitanyow Lax'yip are not subject to this restriction due to different topography.

44 *Mineral Tenure Act*, ss 11.1 and 14 (re: certainty of access to mineral titles), and similar provisions in the *Coal Act*, SBC 2004, c. 15, s. 10 (re: certainty of access).

45 *Mining Act*, RSO 1990, c M 14, s 30.

46 *Far North Act, 2010*, SO 2010, c 18, s 11(1).

47 *Ibid*, s 14(2). No mining can be carried out "if a community based land use plan has designated the lands for a use inconsistent with mineral exploration and development," *Ontario Mining Act*, RSO 1990, c M 14, s 30(g).

48 *Northwest Territories and Nunavut Mining Regulations*, CRC, c 1516, s 11(1) (f).

49 NWT Protected Areas Strategy Advisory Committee, *Northwest Territories Protected Areas Strategy: A Balanced Approach to Establishing Protected Areas in the Northwest Territories*, (NWT Protected Areas Strategy Advisory Committee: February 15, 1999); *Mackenzie Valley Resource Management Act*, SC 1998, c 25, part 2 "Land Use Planning", online: <www.nwtpas.ca>.

50 *Yukon Environmental and Socio-economic Assessment Act,* SC 2003, c 7*,* s 44.

51 *SMCRA*, §1272(a).

52 *Surface Coal Mining and Reclamation Act*, W Va Code §22-3 (2010); *Surface Coal Mining and Reclamation Act*, W Va Code §22-3-22(a)(4).

53 *Crown Minerals Act* (NZ), 1991/70, s 15(3).

54 See note 41 above for current restrictions on the right of free entry, e.g., provincial parks.

55 As defined in the *Prescribed Classes of Property Regulation*, BC Reg. 438/81.

56 Proposed definition: "Domestic use watershed" means the drainage area upslope of a domestic water system, as defined in the *Drinking Water Protection Act*, SBC 2001, c 9.

57 Proposed definition: "Private Conservation Lands" means land, including a servitude for the use and benefit of a dominant land, a covenant or an easement, that is certified by that federal Minister of the Environment, or a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister, or that person, important to the preservation of Canada's environmental heritage. See *Income Tax Act*, RSC 1985, c 1 (5th Supp.), s 118.1(1), definition of "ecological gift".

58 Proposed definition: "Incompatible with mining" means that mineral development has the potential to compromise the conservation objectives for which the area was designated or zoned.

59 E.g., pursuant to sections 93.1 or 93.4 of the *Land Act* or the *Government Actions Regulation*, BC Reg 582/2004.

60 Including without limitation development permit areas and heritage conservation areas established therein.

61 See Part 4 of the *Water Act*, RSBC 1996, c 483.

62 See Part 5 of the *Drinking Water Protection Act*, SBC 2001, c 9.

63 *Species at Risk Act*, SC 2002, c 29. I.e., in the critical habitat of a species at risk described in a recovery strategy or action plan for the species.

64 *Mining Act*, RSO 1990, c. M 14, s 35.1.

65 Bill 173, *Mining Amendment Act*, 1st Sess, 39th Leg, Ontario, 2009, (assented to 21 October 2009), SO 2009, c 21.

66 *Mining Act*, RSO 1990, c M 14.

67 Ontario Ministry of Natural Resources, online: http://www.mnr.gov.on.ca/en/Business/FarNorth/.

68 *Mineral Tenure Act*, ss 8(2), 6.2, 6.3, 42(4).

69 *Ibid*, s 19(1). This notice requirement applies to surface landowners; Crown land lease holders; and Crown land disposition holders; *Mineral Tenure Act Regulation*, BC Reg 529/2004, s 2.1(1). The chief gold commissioner may exempt persons from this requirement where reasonable efforts to serve notice have been unsuccessful (s 2(1.1)).

70 *Philippine Mining Act of 1995*, (Rep Act No 7942) s 16 [*Philippine Mining Act of 1995*]; *Philippines Indigenous Peoples Rights Act of 1997*, (Rep Act No 8371), ss 7(c), 32, 46(a), 58.

71 *Philippine Mining Act of 1995*, *ibid.,* s 16.

72 Guyana, *Government's Policy for Exploration and Development of Minerals and Petroleum of Guyana.* (Georgetown: Government of Guyana, 1997); *Supreme Decree 038-2001-AG (2001 amendment to 1997 Law No. 26834*), Peru.

73 *Exploration Regulation*, A Reg 284/2006, s 8(1)(i); *Metallic and Industrial Minerals Exploration Regulation*, A Reg 213/1998, s 21.

74 *Aboriginal Lands Rights* (NT) *Act 1976* (Cth), Pt IV; *Aboriginal Lands Rights Act 1983* (NSW), sec 45(5); *Aboriginal Land Act 1991* (Qld), sec 42; *Torres Strait Islander Land Act 1991* (Qld), sec 80; *Mineral Resources Act 1989* (Qld), sec 54; *Mineral Resources Development Act 1995* (Tas), Pt 7, and; *Aboriginal Land (Jervis Bay Territory) Act 1986* (Cth), sec 43, 52A(1), (2).

75 *Crown Minerals Act 1991* (NZ) 1991/70, ss 49, 51-54; *Te Ture Whenua Maori Act 1993* (NZ), 1993/4*; Legal Commentary on the Concept of Free Prior and Informed Consent,* UNCHR, Working Group on Indigenous Populations, 23d Sess, UN Doc E/CN.4/Sub.2/AC.4/2005/WP.1, (2005).

76 *Crown Minerals Act 1991* (NZ) 1991/70, *ibid*., ss 51, 54(2)(a) and 80.

77 *Ibid.,* s 54(2).

78 *Ibid*.,s 80(1).

79 *Mineral Resources Act 1989* (Qld), ss 25AA, Schedule 1A s 433-435.

80 República de Colombia, *Mining Code*, Law 685 of 2001, art 127 (Restricted Indigenous Mining Areas), online (Español): <http://www.simco.gov.co/english/Home/DocumentsofInterest/MiningCode/tabid/415/language/en-US/Default.aspx>. Note that art 127 of the *Mining Code* was not modified by Law 1382, which was the subject of a successful constitutional challenge.

81 *Surface Rights Act*, RSA 2000, c S-24, s 12(1); *Exploration Regulation*, Alta Reg 284/2006, s 8(1)(a).

82 *Mineral Act*, RSNL 1990, c M-12, s 12(2). Note that section 13, however, allows for the minister to grant an order to dispense with the consent requirement.

83 *Mining Act*, SNB 1985, c M-14.1, s 68(1)(c)(iv)(B)(II).

84 *Mineral Resources (Sustainable Development) Act 1990* (Vic), s 42(2)(c)(i). Note that consent may not be required if: the owners or occupiers are instead compensated; the licensee purchased the land; or the regulatory authority believed that all reasonable efforts were taken to determine the contact information for such owners and operators, and these efforts were unsuccessful.

85 Germany*, Federal Mining Act* (Bundesberggesetz) 13 August 1980 (BGBI I S 1310), §§ 39, 40.

86 Code Minier, Republique du Mali, Looi No 2012-015 du 27 Fev 2012, Titre III, art 73; Koh Naito, Felix Remy and John P Williams, *Review of Legal and Fiscal Frameworks for Exploration and Mining* (London: Mining Journal Books Ltd, 2001) at 130.

87 Integrated Land Management Bureau, *New Direction for Strategic Land Use Planning in BC - Initiating Planning Projects and Developing a Business Case: Policies and Procedures*, (2007), online: <http://ilmbwww.gov.bc.ca/slrp/lrmp/policiesguidelinesandassessements/index.html>.

88 *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para 76.

89 BC First Nations Mining Policy (Jan 2012), online: < <http://fnbc.info/first-nations-mining-policy-template-march-2012>http://fnbc.info/first-nations-mining-policy-template-march-2012 >. The policy references agreements such as: exploration agreements with First Nations that are based on detailed work plans and impact analyses; Impact-Benefit Agreements with First Nations as a pre-condition to acquiring and retaining a mineral lease; and other agreements with proponents such as Indigenous Knowledge Protocols, Environmental Certificate Process Protocols, negotiation protocols and funding arrangements etc.; as well as Government-to-Government Agreements relevant to the project that address shared decision-making, revenue/benefit-sharing, land use designations and objectives, socio-cultural issues etc.

90 For at least 183 days a year.

91 See for example *Northwest Territories and Nunavut Mining Regulations*, CRC, c 1516, ss 29-33. Note that in the Northwest Territories and Nunavut there are requirements for both prospecting licences and prospecting permits. Only a holder of a prospecting permit may stake a claim. However, it may be possible to simplify these requirements into one form of approval.

92 *Mining Act*, RSO 1999, c M14, s 19(1).

93 Department of Interior, *Tribal Consultation Policy*, 2011, at s V, online: <http://www.doi.gov/cobell/upload/FINAL-Departmental-tribal-consultation-policy.pdf>.

94 *Mineral Tenure Act*, s 10.

95 *Mines and Minerals Development Act*, (No 7 of 2008) Zambia, s 15(3)(b).

96 *Mining Act 1992* (NSW), s 22(2)(a).

97 NMSA 1978 § 69-36-13(B).

98 Eva Liedholm Johnson, *Mineral Rights: Legal Systems Regulatory Exploration and Exploitation* (Stockholm: Royal Institute of Technology, 2010) at 71, online: <http://kth.diva-portal.org/smash/get/diva2:300248/FULLTEXT01>.

99 *Mozambique Mining Regulation* (Decree nº 62/2006 of 26 December), art 41.

100 *Mines and Minerals Development Act*, (No 7 of 2008) Zambia, s 15(1)(a).

101 *Mining Act 1992* (NSW), s 13(5)(b).

102 *Mining Act 1992* (Consolidated to No 49 of 2000, Papua New Guinea), s 24(b)(ii).

103 *Mining Act 1978* (WA), s 58

104 When the BC courts held that mineral claims were not the kind of property interest for which compensation is required, the provincial government changed the *Mineral Tenure Act* to give them compensation.

105 See *Flathead Watershed Area Conservation Act*, SBC 2011, c 20.

106 See *Mineral and Coal Land Reserve (No Mineral or Placer Mineral Registrations) Regulation*, BC Reg 280/2007, online: <http://www.canlii.org/en/bc/laws/regu/bc-reg-280-2007/latest/bc-reg-280-2007.html>.

107 *Flathead Watershed Area Conservation Act,* s 5.

108 *Ibid, s 2.*

109 *Ibid, s 2.*

110 *Ibid*, s 4.

111 *Cream Silver Mines Ltd. v. British Columbia*, 75 BCLR (2d) 324 at paras 30 and 31.

112 *Mineral Tenure Act*, s 17.1; *Coal Act*, SBC 2004, c 15, s 4.

113 *Attorney-General v. De Keyser's Royal Hotel Ltd.* [1920] A.C. 508 at 542: "The recognized rule for the construction of statutes is that, unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation"; the Supreme Court of Canada has set out the tests that must be met to demonstrate that a mineral tenure holder is eligible for compensation in such circumstances: *R. v. Tener*, [1985] 1 SCR 533 at paras 24-25.

114 The Canadian Press, "Coal company sues B.C. over Flathead mining ban" *Canadian Broadcasting Corporation* (30 May 2012), online: CBC <http://www.cbc.ca/news/business/story/2012/05/30/bc-flathead-cline-mining.html>.

115 Cline Corporation's notice of claim was filed with the British Columbia Supreme Court on May 20, 2012.

116 The Northern Miner, "Cline Mining sues B.C. government for $500 million" *Canadian Mining Journal* (31 May 2012), online: Mining.com <http://www.canadianminingjournal.com/news/cline-mining-sues-b-c-government-for-500-million/1001425476/>.

117 *Coal Act*, s 9.

118 *Ibid*, s 12.

119 CNW Telbec | Mining/Metals, "Cline Mining Corporation files suit against the Province of British Columbia for expropriation of coal properties" *Mining.com* (29 May 2012), online: Mining.com <http://www.mining.com/cline-mining-corporation-files-suit-against-the-province-of-british-columbia-for-expropriation-of-coal-properties/>.

120 *Uranium and Thorium Reserve Regulation*, BC Reg 82/2008, pursuant to s. 22 of the *Mineral Tenure Act*.

121 Province of British Columbia, Media Release, "Government Confirms Position on Uranium Development", (24 April 2008).

122 Jordan Bateman, "BC: Boss power settlement cost taxpayers $21 million too much" (25 April 2012), online: Taxpayer <http://taxpayer.com/blog/bc--boss-power-settlement-cost-taxpayers--21-million-too-much>.

123 *Boss Power Corp. v. British Columbia*, 2010 BCSC 1648; CBC News, "Uranium mine lawsuit costs B.C. $30M" *Canadian Broadcasting Corporation* (21 October 2011), online: CBC <http://www.cbc.ca/news/canada/british-columbia/story/2011/10/21/bc-boss-uranium-mine.html>.

124 Jake Jacobs, "Uranium mining claims settled" *BC Newsroom* (19 October 2011),online: BC Newsroom <http://www.newsroom.gov.bc.ca/2011/10/uranium-mining-claims-settled.html>.

125 CBC News, "NDP accuses Liberals of paying off uranium company" *Canadian Broadcasting Corporation* (25 April 2012), online: CBC <http://www.cbc.ca/news/canada/british-columbia/story/2012/04/25/bc-boss-energy-settlement.html>.

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