



# WILDLANDS LEAGUE

*A chapter of the Canadian Parks and Wilderness Society*

July 3, 2009

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Ministry of Northern Development and Mines  
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**Dear Mr. Boynton,**

**RE: Proposed legislative amendments to the *Mining Act*  
(EBR Registry Number: 010-6559)**

Wildlands League is a leading, not for profit, environmental organization in Ontario. We combine credible science, visionary solutions and bold communication to save, protect and enhance Ontario's wilderness areas.

We welcome the opportunity to provide comments on proposed legislative amendments to Ontario's *Mining Act* to reflect modern day values associated with our public lands, alleviate land-use conflicts, and to protect the public interest.

On April 30, 2009 Wildlands League was pleased to see several changes proposed by Minister Gravelle with respect to Ontario's *Mining Act*. In particular, we believe there is potential in the proposed new dispute resolution process for Aboriginal-related issues to mining, withdrawals of areas that are culturally significant and an increased regulatory system for exploration. Bill 173 also proposes to enshrine in law the requirement for approved community land use plans prior to the opening of new mines in the Far North. This is precedent setting and we look forward to working with MNDMF and MNR on operationalizing this requirement. Overall, we'd like to recognize the Minister and his staff for working diligently to find creative solutions to seemingly intractable problems.

As you may be aware, Wildlands League supports the proposed alternative regulatory framework in, **Balancing Needs and Minimizing Conflict: A Proposal for a *Mining Modernization Act*, 2008**<sup>1</sup>. Further, in 2008 we summarized the principles needed in an

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<sup>1</sup> By CIELAP and Ecojustice

amended *Mining Act*. They form the basis for the alternative regulatory framework to the free entry system:

- Land use planning mechanisms that respects all land uses equally by including a pause on mining activities until a comprehensive land use plan is in place;
- Environmental assessment at each stage of the mining cycle;
- Protection for Aboriginal rights, including rights to consultation, accommodation, and free prior and informed consent;
- Increased regulatory oversight of mining activities and operations;
- Increased rights for surface rights only landowners;
- Increased transparency of mining operations, including public notice, consultation and reporting;
- Financial securities for 100% of clean-up and reclamation costs; and
- A self-funded regulatory scheme.

After reading Bill 173, *Mining Amendment Act, 2009*, there are several areas where significant improvements are needed to the Bill to reflect a modernization of the law. These are:

- a) Consent of Aboriginal peoples
- b) Prioritizing land use planning
- c) Environmental Assessment
- d) Improved permitting
- e) Sufficient rules for Uranium Mining
- f) Financial security for 100% of clean up costs

Below, we propose amendments to assist the Minister in making changes to Bill 173, *Mining Amendment Act, 2009*. Wildlands League worked with Ecojustice Canada and CIELAP on these amendments and we are grateful to them for their legal expertise.

## **a) Consent of Aboriginal peoples**

We recommend that section 2 of Bill 173 be amended to refer to the necessity of consultation with Aboriginal peoples and accommodation of their interests as follows:

2. The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult and accommodate, and to minimize the impact of these activities on public health and safety and the environment.

We also recommend that a definition of consultation be included in the Act rather than being left to regulatory development:

**[Section]** “Consultation” is a process of good faith negotiations by the Minister that determine whether and how Aboriginal interests should be addressed through accommodation.

We recommend section 12 of the Bill be amended to allow Aboriginal communities to withdraw areas from prospecting as follows:

29.1(1) An Aboriginal community may designate an area in which they have an interest as withdrawn from prospecting and exploration by writing to the Minister in the prescribed form.

(2) Any claims staked in an area withdrawn under subsection 29.1(1) section remains valid if they were staked previous to a withdrawal being made.

We recommend section 40 be amended to include reference to accommodation as follows:

78.1 (1) No person shall carry out an activity prescribed for the purposes of this section on a mining claim, mining lease or licence of occupation for mining purposes unless the person has submitted an exploration plan, in accordance with any prescribed requirements, including any Aboriginal community consultation and accommodation that may be prescribed.

We also recommend that wherever the Bill refers to consultation that accommodation be added as well to reflect honour of the Crown duty as set out by Supreme Court of Canada jurisprudence.

To ensure Aboriginal communities have a role in choosing individuals responsible for dispute resolution processes, section 80 of the Bill ought to be amended to add subsection 170(3) to the Act as follows:

(3) The Minister shall designate the individuals or body under subsection (1) only if the Aboriginal community agrees to the individual or members of the body being considered by the Minister for designation.

## **b) Prioritizing land use planning**

We recommend that section 12 of the Bill be amended to prevent staking of claims in the areas subject to community land use planning in the Far and Near North and in areas where a municipal plan has designated such areas as off limits to staking as follows:

30(g) that is located in the Far North or Near North, if a community based land use plan has designated the lands for a use inconsistent with mineral exploration and development.

(h) that is designated as an area withdrawn from mining activities as part of a municipal official plan approved under the *Planning Act*.

We recommend that section 14 be amended to add reference to natural heritage as a reason for a withdrawal by the Minister and additional subsections to require that the Minister withdraw certain areas from prospecting:

**14. (1) Subsections 35 (1), (2), (3) and (4) of the Act are repealed and the following substituted:**

### **Withdrawal of lands**

(1) The Minister may, by order signed by him or her, withdraw from prospecting, staking, sale and lease any lands, mining rights or surface rights that are the property of the Crown, and the lands, mining rights or surface rights shall remain withdrawn until reopened by the Minister.

### **Factors to consider**

(2) In making an order under subsection (1), the Minister may consider any factors that he or she considers appropriate, including,

(a) whether the lands, mining rights or surface rights are required for developing or operating public highways, renewable energy projects or power transmission lines or for another use that would benefit the public, whether the order would be consistent with any prescribed land use designation that may be made with respect to the Far North and whether the lands meet the prescribed criteria as a site of Aboriginal cultural significance or area of natural heritage; and

(b) any other factors that may be prescribed.

### **Pre-existing rights and tenure**

(3) A withdrawal order issued under subsection (1) does not affect pre-existing mining rights and tenure such as mining claims, mining leases or licences of occupation.

### **Minister to withdraw**

(3.1) The Minister shall, by order signed by him or her, withdraw from prospecting, staking, sale and lease any lands, mining rights or surface rights that are the property of the Crown in areas:

(a) subject to active land use planning by Aboriginal communities in the Far North and Near North;

(b) withdrawn by Aboriginal communities which the Minister has received written notification under subsection 29.1(1).

## **c) Environmental Assessment**

The Ministry of the Environment has recently granted MNDM's request for extensions of the two declaration orders that exempt mining activities from environmental assessment. Although the Ministry has indicated that no further extensions will be granted to MNDM, we are not confident that an extension will not be provided once again. As a result, we recommend that a new section be added to the Bill that amends the *Environmental Assessment Act* as follows:

### **Consequential Amendment**

104. The *Environmental Assessment Act* is amended to add the following subsections:

3.2 (3) Declaration Orders MNDM-3 and MNDM-4 which expire on December 31, 2012 shall not be extended or renewed by the Minister.

(4) For additional clarity, by December 31, 2012, environmental assessment shall be required under this Act or under a class environmental assessment approved by the Minister for prospecting, exploration, advanced exploration, mining and closure activities permitted or otherwise approved by the Ministry of Northern Development and Mines under the *Mining Act*.

## **d) Improved permitting**

Permitting is needed at the prospecting phase that ensures Aboriginal peoples and the Minister are aware of planned prospecting activities. As a result, we recommend the following amendment be included in the Bill:

### **Directors of Prospecting Plans and Permits**

41.2 The Minister may appoint one or more officers or employees in the Ministry as Directors of Prospecting and Exploration.

### **Prospecting plan**

41.3 (1) No person shall carry out prospecting unless the person has submitted a prospecting plan, in accordance with any prescribed requirements, including Aboriginal community consent to the activity.

### **Activities to comply with requirements**

(2) All activities described in a prospecting plan that are carried out shall be carried out in accordance with any prescribed requirements.

### **Transfer to prospecting permit**

(3) If a prospecting plan includes a prospecting activity prescribed for the purposes of section 41.3, or if the prescribed circumstances apply, the person shall not carry out any such activity unless the person has obtained an exploration permit.

### **When prospecting permit required**

41.4 (1) No person shall carry out an activity prescribed for the purposes of this section within a prospecting area unless the person has applied for and been issued a prospecting permit.

### **Application for prospecting permit**

(2) An application for a prospecting permit shall be made to a Director of Prospecting and Exploration, and in deciding whether to issue a permit and what terms and conditions should apply to the permit, the Director shall consider,

- (a) the purpose of this Act;
- (b) whether Aboriginal community consent has been obtained, which may include consideration of any arrangements that have been made with Aboriginal communities that may be affected by the prospecting;
- (c) any arrangements that may have been made with surface rights owners; and
- (d) any other prescribed circumstances.

### **Conditions**

(3) A prospecting permit is subject to the prescribed standard terms and conditions and to any additional terms and conditions that the Director determines are appropriate.

### **Activities to comply with requirements**

(4) All activities described in a prospecting permit that are carried out shall be carried out in accordance with the terms and conditions of the permit and the regulations.

### **Amendment of permit**

(5) The Director may amend a prospecting permit if, in his or her opinion, there is a change in circumstances that warrants an amendment.

### **Exclusive right to prospect and stake claims**

(6) A prospecting permit shall grant the prospector exclusive rights to prospect and stake claims in the prospecting area designated in the permit.

### **Prescribed prospecting areas**

(7) The Minister may prescribe prospecting areas through regulations or through individual permits in any manner the Minister decides.

### **Contravention**

41.5 (1) Where it is found that a prescribed activity is being carried out in contravention of this Act or the regulations relating to prospecting plans or prospecting permits, an inspector or a Director may by order,

- (a) require that the prospecting activities cease until the contraventions are addressed to the satisfaction of a Director and the order to cease activity has been revoked; or
- (b) where the contravention is with respect to a prospecting permit, cancel the permit.

### **Other permits**

(2) A person who submits a prospecting plan or obtains a prospecting permit under this section is not exempt from complying with any other requirements that are set out under

this Act or any other Act.

### **Offence continues**

(3) A person who continues an activity or causes an activity to be continued in contravention of an order made under clause (1) (a) is guilty of an offence and, in addition to any other penalty imposed under this Act, is liable on conviction to a fine of not less than \$25,000 for each day the activity is continued in contravention of the order.

We also recommend that section 78.2 of the Bill in relation to exploration plans and permits be amended to mirror the changes set out above for prospecting plans and permits.

We also recommend that section 80 of the Bill be amended to ensure that a dispute resolution process be put in place in relation to consultation and accommodation for mining claims, including existing claims, where disputes may exist on top of exploration permits, advanced exploration and mining as follows:

170.1(1) The Minister may designate one or more individuals, or a body, to hear and consider disputes arising under this Act relating to consultation and accommodation with Aboriginal communities, Aboriginal or treaty rights or the assertion of Aboriginal or treaty rights, including disputes that may occur,

(a) in relation to decisions on the issue, amendment, renewal or cancellation of, or the terms and conditions imposed on, a prospecting permit issued under section 41.4;

(b) in relation to decisions on the issue, amendment, renewal or cancellation of, or the terms and conditions imposed on, an exploration permit issued under section 78.2;

(c) under clause 140(1)(c) or 141(1)(c); and

(d) in any other prescribed circumstance.

## **e) Rules for Uranium Mining**

We recommend the following section be added to the Bill:

**[Section]** No one shall prospect, explore or mine for uranium in Ontario<sup>2</sup>.

Or alternatively, to protect drinking water in a precautionary fashion, the following amendment be added to the Bill:

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<sup>2</sup> *There are precedents to support this in British Columbia and New Brunswick. See British Columbia News Release, Government Confirms Position on Uranium Development, April 28, 2008, available online at: [http://www2.news.gov.bc.ca/news\\_releases\\_2005-2009/2008EMPR0029-000624.htm](http://www2.news.gov.bc.ca/news_releases_2005-2009/2008EMPR0029-000624.htm) and New Brunswick Media Release, Province amends uranium exploration and mining regulations, July 4, 2008, available online at: <[http://www.gnb.ca/0078/minerals/PDF/Uranium\\_exploration\\_mining\\_reg-e.pdf](http://www.gnb.ca/0078/minerals/PDF/Uranium_exploration_mining_reg-e.pdf)>.*

**[Section]** No prospecting, exploration or mining for uranium shall be undertaken by any person in an area identified as a source of drinking water through the *Clean Water Act*.

Or alternatively, until a process is created to assess risks, the following amendment be added as an additional consequential amendment to the *Environmental Assessment Act* under s.104 of the Bill:

3.3 No prospecting, exploration or mining for uranium shall be undertaken by any person until environmental assessment requirements are in place for the activities referred to in subsection 3.2(4) that are permitted or otherwise approved by the Ministry of Northern Development and Mines under the *Mining Act*.

## **f) Financial security for 100% of clean-up costs**

We recommend the following section be added to the Bill to remove the corporate financial test option to meet financial assurance requirements under the Act:

**[Section]** Subsection 145(1) of the Act is repealed and the following substituted:

145. (1)The financial assurance required as part of a closure plan shall be in one of the following forms and shall be in the amount specified in the closure plan filed with the Director or any amendment to it:

1. Cash.
2. A letter of credit from a bank named in Schedule I to the Bank Act (Canada).
3. A bond of an insurer licensed under the Insurance Act to write surety and fidelity insurance.
4. A mining reclamation trust as defined in the Income Tax Act (Canada).
5. Any other form of security or any other guarantee or protection, including a pledge of assets, a sinking fund or royalties per tonne, that is acceptable to the Director.

Please feel free to contact me at any time to discuss these proposed amendments. Thank you.

Sincerely,



Anna Baggio  
Director, Conservation Land Use Planning  
CPAWS Wildlands League

Cc: Environmental Commissioner of Ontario