TO: Yukon Government, via email: newmineralslegislation@yukon.ca

RE: Public Engagement on New Minerals Legislation Discussion Paper

May 9, 2023

Thank you for the opportunity to comment on the New Minerals Legislation Discussion Paper (February 2023). We do so in our capacity as conservation scientists with Wildlife Conservation Society Canada's Yukon program.

WCS Canada (www.wcscanada.org) is a national non-government organization with a mission to save wildlife and wild places in Canada through science, conservation action, and by inspiring people to value nature. We have been conducting field-based research and contributing our scientific knowledge and expertise to policy development in Yukon for almost 20 years. We have previously submitted comments and recommendations on the Yukon Mineral Development Draft Strategy and Recommendations.

We offer strong support for Yukon Government's initiative to replace existing mineral legislations and associated processes. We appreciate the recognition that these laws are too outdated to be fit for purpose and require substantial revision. We strongly assert that new mineral legislation must: recognize and be compliant with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Canada's United Nations Declaration on the Rights of Indigenous Peoples Act; explicitly recognize that the spirit and intent of the Umbrella Final Agreement includes Indigenous co-governance of all non-private lands in the territory; and, that mineral resources found on or under land that is not privately owned are common property belonging to all Yukon citizens.

We agree that "critical minerals" will be important to strengthen supply chains in support of the energy transition from fossil fuels to renewable energy sources to address climate commitments. However, other values and services provided by areas with mineral resources, including carbon and climate regulation and biodiversity and Indigenous rights, among others, must be carefully considered. We refer you to our comments to Natural Resources Canada on Canada's Critical Minerals Strategy, and would welcome Yukon Government leading a discussion on this topic.

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Our comments are organized below by the structure of the Discussion Paper, with the questions (*in italics*) and our responses in regular font.

We look forward to future opportunities to discuss and contribute to this important initiative.

Sincerely,

Hilary Cooke

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WCS Canada Submission To Yukon Government's Public Engagement On 'New Minerals Legislation Discussion Document'

Prepared By Donald Reid & Hilary Cooke

VISION FOR NEW MINERALS LEGISLATION

1.1. Do you have any thoughts or concerns about the set of draft principles we're considering or additional things that you think we should consider?

Although the principles, as drafted on p. 8, are generally reasonable and quite comprehensive, there are several important deficiencies.

First, the principle recognizing Aboriginal and treaty rights is incomplete. The principles are obliged to explicitly recognize that the spirit and intent of the Umbrella Final Agreement ("treaty") includes Indigenous co-governance of all non-private lands in the territory, AND that non-Indigenous Yukoners continue to have a legal interest in mineral deposits on those lands.

The principles do not explicitly acknowledge the fact that mineral resources belong to Yukon citizens including Indigenous peoples. We recommend including the follow principle, "the recognition and honouring of the fact that mineral resources found on or under land that is **not** privately owned (including First Nations settlement lands) are common property belonging to all Yukon citizens as well as being subject to consideration in light of the rights of Indigenous First Nations on those lands".

In addition, principles regarding environmental protection and how the new legislation will be implemented or enforced are critical. We recommend the forward-looking timeframe in the principle related to economic benefits be applied to the environment protections principle as well. We also recommend an additional principle speaking to enabling the government to effectively enforce its own legislation and regulations.

Finally, there is some variance in wording of the principles that is confusing, in that some speak to an outcome, (e.g. ensuring environmental protection) and others to a process (e.g. set out how industry is responsible, etc.). We suggest that combining a process and outcome would make each of these stronger, for example, "establish rigorous requirements for the use of environmental best practices, and the means to enforce these, in order to ensure long-term environmental protections and ecosystem health".

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MINERAL TENURE – DISPOSITION AND ACQUISITION

2.1. Do you have any thoughts or concerns about the approaches we're considering for disposition and acquisition, or additional things that you think we should consider?

Yukon legislation will have to recognize and be compliant with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including Articles 11, 28 and 29, which state that Indigenous Peoples must give "free, prior, and informed consent" to activities or processes affecting their lands before those activities can go ahead. The Discussion Paper fails to even mention this important consideration. It is specifically important because Canada is a signatory nation to UNDRIP and has federal legislation in place since June 2021 ratifying UNDRIP.

Canada's United Nations Declaration on the Rights of Indigenous Peoples Act means that mineral exploration within traditional territories of Yukon's Indigenous peoples needs the free, prior and informed consent of the First Nations involved. Also, the onus on the revised legislation to implement free, prior and informed consent does not just stem from UNDRIP. It should be a central principle of governance of all common property resources by governments, made available to all citizens. Therefore, the only logically tenable approach laid out in the Discussion Paper is the 'alternative' to the current model (p. 10): "to no longer provide the rights to enter an area to prospect, stake claims, explore or mine. Instead, proponents would have to seek permission to do so, which would be granted through a licence or similar mechanism. This type of system is used in other resource regimes like oil and gas and forestry, but it is not typical of mining."

Accordingly, proponents should be required to seek permission, through consent processes involving Indigenous governments and Yukon citizens, to enter an area to prospect. Any other approaches laid out in the Discussion Paper do not require "prior" consent, before investment, activity, and expectations have already been established by the proponent. They therefore do not provide any more certainty than the approach that requires up-front free, prior, and informed consent, because they just delay the consent. The bottom line is that the "free-entry staking regime" has to be made obsolete, and replaced with a system that is more in line with regimes historically used for oil and gas exploration. The fact that this "has not historically occurred" with mining should be irrelevant to a serious discussion of a modern approach and their legal underpinnings. It has not happened historically because colonial governance did not recognize Indigenous rights and did not recognize sustainability as a principles in dealing with natural resource extraction. Now is the time to take a principled approach, in line with multiple court decisions.

It is important to underscore that there should be no loss of "certainty" for proponents. In fact, by ensuring that engagement with relevant governments and stakeholders occurs before any investment on the part of the proponent, there is greater ability to avoid unnecessary expenditures. Moreover, investors are increasingly demanding this kind of behaviour by proponents, e.g., incorporating

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environmental, social and governance (ESG) factors. We note that any clearly laid out process provides certainty, as "certainty" means a clear understanding of where authority and accountability lie and the steps a proponent must take; certainty does not mean default approval, which is perhaps the way it has been interpreted in the context of free-entry staking.

The current rights-based system for mining proponents also effectively removes claims from other uses, in some cases for extensive time periods, whether or not they are being put to the intended use. Permits and licenses are, and should be, designed to allow multiple uses of public land to overlap where feasible and safe. The new regime should remember this in considering how tenure is defined; for instance, tenure to a large area may include only a small portion of active mining; other land uses such as agriculture or forestry should be able to overlap where it can be done safely (and of course following regulatory regimes that include authorization of different land uses from all pertinent governments and in accordance with any land use plans). This has the benefits of allow multiple users to access similar time-limited infrastructure, like temporary access roads, and concentrates a development footprint which, if done effectively, can better preserve the integrity of the larger landscape.

2.2 How important is it to have mineral tenure granted as a legal right, in which claimholders have a legal right to explore and extract minerals? Please explain.

As noted previously, mineral resources belong to Yukon citizens including Indigenous peoples. Legislation should provide for authorization (through licenses, permits, and as part of the regulatory process) to explore and extract minerals, but not a legal right. Permits and licenses can confer certainty while at the same time ensuring that if a tenure-holder is in violation of terms of those permissions they can be held to account and their tenure revoked. Moving away from a rights-based approach to an authorization approach for mineral exploration and development means that enforcing regulations in the case of such violations gets moved out of the court system and into the regulatory system. Tenure holders retain the rights of appeal that are granted in legislation, but no longer have the legal right to the land just because they were able to stake a claim before anyone else, as is the case in the current regime.

The elimination of the free entry system would then remove the need for staking. Once consent is given by Indigenous and non-Indigenous governments for mineral exploration in a region, the "competition" for access to that region should be through a lottery or competitive bid process, with just one proponent ultimately being granted authorization to explore. Staking should not be required because there would be exclusive access, not competitive access.

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2.3 How important is it for the regulator to be able to decide whether or not to grant mineral tenure?

It is absolutely necessary for the regulator to have the authority to decide whether or not to grant mineral tenure. But there is not a single regulator. There are both Indigenous and non-Indigenous authorities involved, as established by Final Agreements and UNDRIP and upheld by multiple court decisions. The new legislation must deal with a process that acknowledges two sources of regulatory authority, and a mechanism for mutual sharing of regulatory responsibility and authority.

2.4 How important are the following to you?

Establishing in advance where mineral activity can occur

It is essential that geographical regions where "mineral activity" (exploration most specifically) is allowed to occur be mutually agreed to by all governments, through free, prior and informed consent. The onus on the revised legislation to implement free, prior and informed consent does not just stem from UNDRIP and Canada's United Nations Declaration on the Rights of Indigenous Peoples Act. It should be a central principle of governance of all common property resources by governments, made available to all citizens. And, it is also the logical consequence of another principle listed in the Discussion Paper: "ensure environmental protection and ecosystem health". Ecosystem health and protection of environmental values is best accomplished by restricting mineral activity to discrete geographic areas rather than allowing for a dispersed footprint, which leads to incremental erosion and often unaccounted for cumulative effects. This principle is the core of environmental sustainability, and pursuit of that objective should be priority for all governments.

Reducing the impacts of staking

It is important that the negative impacts of staking be reduced. Staking, as historically done, has a number of negative effects: displacement of wildlife from key ranges; unnecessary carbon emissions in transportation (largely helicopters); littering in the back-country; use of hard-won financial resources on a possibly unnecessary activity. However, as described above we strongly recommend an authorization regime and a subsequent lottery or competitive bid process, which would remove the need for staking entirely.

Allowing online map staking

As noted previously, the solution is a legislative and regulatory regime based on the principles of requiring free, prior, and informed consent, which will eliminate the need to stake entirely.

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MINERAL TENURE – MAINTENANCE

3.1 Do you have any thoughts or concerns about the approaches we're considering for mineral tenure maintenance, or additional things that you think we should consider?

Keeping tenure in good standing

A proponent should hold tenure for a region, not a specific set of claims. Keeping that tenure in good standing should require annual reporting to all applicable governments on investments spent in the past year. There should be a minimum annual investment threshold based on the size of the region to which the tenure applies. The level set for the threshold does need to demonstrate the proponent's clear interest in the region and, by extension, in the communities/governmental relationships that should have been developed in becoming the tenure holder.

Renewals and length of tenure

For a proponent to acquire tenure for a region, they should have developed a strong partnership with the local Indigenous government and community. This involves establishing a set of expectations in the various governments regarding adequate behaviour by the proponent in terms of sustainability (environmental, social, cultural, and economic). Therefore, governments should have the option of closing down tenures when they judge the proponent's behaviour to be not meeting expectations. That judgement should flow from periodic inspections regarding environmental compliance, adequate annual reporting, adequate economic returns to the local communities, and the perception that communities/governments have of true partnership. We suggest initial tenure should last a maximum of 10 years, with options for automatic renewals if all pertinent governments agree, for additional periods of 5 years. At the 10 and 5 year milestones, governments must have the option of ending the current tenure, and, if desired, seeking new tenure holders through a renewed lottery/competitive bid. A rigorous review and renewal process, including real opportunity at each review for any of the relevant governments to revoke tenure, should remove the requirement for an upper limit on tenure length.

Reporting requirements

Where annual reporting is required for a variety of permits, licences, or other tenure holding needs, it makes sense that a single reporting structure and format be designed and implemented. That does not mean that the resultant reporting process reduce the scope and extent of information provided to governments by the proponent; only that duplication of effort is avoided. This may also require revisions to other pieces of legislation.

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Transfer, relinquishment and lapsing of tenure

The primary issue here is the likelihood of a detrimental environmental or socioeconomic legacy (e.g., fuel spills; waste materials and infrastructure; un-remediated trenching; roads and trails; damage to communities from an increase in gender-related violence or substance abuse etc.) being left by the tenure holder. It is essential that any proponent who is granted tenure must post a security bond of sufficient value that governments can clean up environmental legacies when a tenure is relinquished or lapses (because it is not renewed at the periodic intervals, or when annual payments for ownership are not made). This is analogous to the requirement for a security bond when a mine development licence is established with a company intent on extracting a proven reserve. However, there should be a security bonding process for mineral exploration in place prior to the issuance of the first exploration tenure, with an adequate security bond being one of the necessary conditions for tenure to be granted at all.

The face value of security bonds should be reviewed at least every two years because their ability to do the work they are intended to do is always diminishing given inflation, and the scope of the on-the-ground work is often changing as exploration moves through successive levels of intensity with increasing human footprint. Separate bonding processes should be established for mineral exploration, and for operations (development and extraction).

In the process of mineral exploration leading on to development and extraction, any transfer (i.e. most often sale, or transfer to an affiliated legal entity) of tenure must be approved by the governments who originally granted the tenure. All pertinent governments need to have rights of refusal on such sales, to make sure that the buyer (new owner) is as intent on satisfying local place-based interests (economic, environmental, social, cultural) and can demonstrate a track record of good behaviour and performance.

Compliance

The four bulleted points listed in the Discussion paper all warrant explicit inclusion in the legislation and associated regulations. All should be brought into play through mechanisms at the legal and practical levels for enforcement. They are:

- Specifying that only work done with the proper permits can be used to keep claims in good standing;
- Enabling the regulator to request additional information to verify the work done;
- Allowing the regulator to consider a claimholder's compliance history as a grounds to refuse work or take other actions;
- Ensuring that mineral tenure is being used for purposes directly related to exploration or mining.

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3.2 How important is it to establish clear rules for expropriation and compensation of mineral tenure?

The new legislation needs to explicitly deal with expropriation and compensation. Governments (i.e. regulators) will have various reasons for ending a tenure (expropriation) and mechanisms need to be in place to allow this to be a real option. Such expropriation warrants compensation for the tenure holder in line with their investment to date.

SECTION 4. LICENSING

4.1 Do you think the approaches we're considering will:

Lead to better licensing outcomes

A class-based approach, with classes varying with size of project footprint and intensity of activities, is still a necessary approach. However, there are some problems with the current class structure. The lack of upper limit for Class 4 Quartz licenses means that the same information requirements exist for projects that range considerably in physical footprint and nature and intensity of activities. In the case of placer mining, there is minimal permitting/reporting required for Class 1 projects yet they can still have significant impacts. We recommend that all proponents, regardless of scale of operation, be required to engage with affected Indigenous governments, communities, and stakeholders at the beginning of their process (e.g., via a YESAB assessment). We re-iterate that legal and ethical obligations exist to ensure that Indigenous governments are not simply "engaged" or "informed" but have genuine regulatory authority over the licensing of projects in their traditional territories.

Help to identify and mitigate project impacts

It is not clear that the suggested changes will expose or mitigate impacts more than current processes, given the existence of YESAA and its assessment and regulatory input. The potential to include more specificity of the types of adverse environmental and socio-economic effects might be useful, not necessarily in legislation but in associated guidance, provided this includes the caveat that no list is exhaustive, and can be added to with evidence and experience.

We support making regular reporting mandatory and publicly available, as this will support social accountability to affected communities, and the Yukon public as a whole, by allowing for transparency of which operators are upholding their agreements. Social license gained in this way will allow responsible operators increased ease of access for future projects, and make it more difficult for irresponsible ones to continue. This is in keeping with the high market demand for

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environmental disclosure that is growing around the world (e.g., Target 15 of the Kunming-Montreal Global Biodiversity Framework).

4.2 Do you have any thoughts or concerns about the approaches we're considering for licensing and regulatory alignment, or additional things that you think we should consider?

We recommend maintaining the need for Class 3 and Class 4 quartz projects to get YESAB screening and assessment. There is no need to change YESAA and its assessment process, nor the need for water licensing through the Yukon Water Board. We do, however, recommend the inclusion of a provision to rescind licences that remain inactive for 5+ years. We also recommend including better cost recovery for government in the review of licence applications and their provisioning. We absolutely agree that the regulator should consider Indigenous interests as well as rights (see comments in Section 2.3 on including Indigenous governments as co-regulators).

4.3 How important are the following to you:

Establishing different licensing requirements for small-scale and larger-scale placer operations

We can support different licensing requirements because of the increased downstream impacts of large-scale compared with small-scale placer operations. However, this does not mean that small-scale placer operations should be free of licensing requirements.

Allowing longer term authorizations

We can support longer-term authorizations, provided the authorization system includes a regular and robust review and renewal process, with real opportunity for all pertinent governments to amend or terminate tenure.

An ability to manage project activities differently in some areas

This would be useful for situations that still lack clear land use planning under Chap 11 of the Umbrella Final Agreement, or situations where high value resources other than minerals (e.g., cultural hot spots; key habitats for wildlife) are identified for which there is no other legislative mechanism for their protection. However, the role of YESAB in adequate assessment and recommendation of mitigation measures will still be crucial. Where land use plans are developed, they should provide enough clear direction as to how to deal with some areas of high contention or specific values (e.g., cumulative effects thresholds in certain land management units).

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COMPLIANCE, MONITORING AND ENFORCEMENT

5.1 Do you think the tools we're considering will encourage and improve compliance?

Yes, the new and improved tools laid out in the Discussion Paper represent a positive set of steps forward, especially increases in penalties for non-compliance, and increases in the ability of Natural Resources officers to apply the regulations and have a strong and immediate effect on non-compliant activities. Escalating penalties for repeat offenders is an important new provision.

5.2 Do you have any thoughts or concerns about the approaches we're considering for compliance, monitoring and enforcement, or additional things that you think we should consider?

We strongly support improved transparency and public accountability through public registries. As we have previously noted, social license is an important part of positive relations between resource extractors and the public, particularly communities, and provides benefits to both parties, while serving as a deterrent to irresponsible behaviour. Moreover, there is a growing global demand for disclosure by companies of their environmental and social impacts.

The initiative to have First Nations government staff more involved in compliance and enforcement is a positive step. This needs to be coupled with explicit supports to get interested First Nations' citizens the necessary education and background to become Natural Resources Officers with the same standing as the non-Indigenous compliance and enforcement officers. First Nation governments should also be provided with necessary supports to ensure they have the capacity to staff these positions. On-the-job participatory employment will be a valuable part of the education. The goal should be to establish one level of compliance and enforcement officer who can take on all responsibilities, whether that person is Indigenous or non-Indigenous.

FINANCIAL SECURITY

6.1 Do you think the approaches we're considering for security will reduce risks for taxpayers? Please explain.

Yes, the approaches being considered should reduce risk for taxpayers. That is because these approaches are aimed at making sure the security is acquired before any risk is incurred, is adequately priced, and is readily available to use. Key here is the need for a proponent to provide security before any licence can be issued, or transferred, or relinquished. Transparency about all securities held by government is also an important issue, for all involved.

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6.2 Do you have any thoughts or concerns about the approaches we're considering for security, or additional things that you think we should consider?

Security should be required explicitly for all steps of a mining project, including exploration, operations, care and maintenance, reclamation, and closure. We strongly support the initial statements in the discussion paper speaking to sufficiency of security. We would also recommend that the new security regime not just reduce the likelihood of public funds being required for clean-up, but also minimize, or drastically reduce that likelihood.

There is a lack of clarity in the text as to what form security might take. It cannot be in the form of a potential debt owing by a negligent proponent, as that debt will likely not be repaid. It could be in the form of a surety or security bond issued by a third party financial institution who is willing to take on the risk of non-compliance by the proponent. However, this approach has some weakness in that there could be disagreement between the third-party and the government when trying to reclaim the value of the security. It would be best if a proponent (perhaps having secured the money via a bank loan or other interested investors) is obliged to provide the full value of the security in equivalent to cash value directly to government. Government should then invest at least part of the security to gather interest in the hope of maintaining its value in the face of inflation. Only this way can government be guaranteed of certain access to the necessary funds.

Security valuation should be based on the best available scientific data on reclamation costs for similar sites, taking into account projected increases due to inflation by the time reclamation takes place, and should consider carefully the definition of success for reclamation, including as defined by the pertinent First Nation government and community.

6.3 How important are the following to you:

Requiring financial security for all or some exploration and mining projects;

All exploration and mining projects (quartz & placer) should be required to provide financial security. There are risks to common property resources and there are real environmental liabilities at each stage of the mineral exploration and extraction process, whether for placer or quartz mining. The issuance of tenure to a proponent must come with corresponding responsibility to clean up liabilities and adequately remediate sites.

Re-assessing financial security every two years

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Yes, securities should be re-assessed every two years, because their face value is highly likely to lose ability to cover the costs of liabilities and remediation the longer they sit, just because of inflation. Also, as a project proceeds the conditions and processes on the ground change, with variable risks over time, so initial valuation may become inaccurate. Further, new science and technologies may become available that could potentially alter the amount projected to be required and social conditions may as change, influencing the acceptable outcomes of reclamation. Additional security is likely to be required as a project proceeds; on occasion the required valuation may drop.

Taking stronger measures if a company fails to pay the required security

There should be no need to "take stronger measures" if the existing measures include an absolute need for the company to provide security before permission is granted to do work on the ground (including in cases of transfer of ownership). In other words, the company must pay the required security up front, and not in some form of promised or staged payment into the future.

ROYALTIES

7.1 Do you have any thoughts or concerns about the approaches we're considering for royalties for quartz mining, or additional things that you think we should consider?

Calculating royalties for all mines (quartz and placer) based on production is preferable to based on profit. It is too easy for a company to significantly reduce its reported profits with creative tax accounting and derivation of expenses. A royalty rate based on production may not need to be progressive (as in a rate that changes with different levels of production). We would also support a threshold system whereby all mines pay a standard royalty rate on production, and above a certain threshold of profitability, pay additional royalties, or a progressive system, provided the baseline is a reasonable royalty on all production. Legislation needs to include the ability for governments to change royalty rates over time without reopening legislation for debate. Inflation and changing (often increasing) commodity prices mean that fixed royalty rates will not provide fair return to the public in the long term.

7.2 Do you have any thoughts or concerns about the approaches we're considering for royalties for placer mining, or additional things that you think we should consider?

Placer royalty rates are abysmally low. Basing them only on gold exported is also unsatisfactory, because it is easy to stockpile the metal, not report its long term whereabouts, and sell it later. As for quart mining, we contend that royalties based on production are preferable to royalties based on profit. It is too easy for a company to significantly reduce its reported profits with creative tax

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accounting and derivation of expenses. Legislation needs to include the ability for governments to change royalty rates for placer mining over time as well as inflation and changing (often increasing) commodity prices mean that fixed royalty rates for placer mining will also not provide fair return to the public in the long term.

RECLAMATION

8.1 Do you think the approaches we're considering will improve reclamation and closure outcomes?

Yes, a number of the approaches being considered would improve reclamation and closure outcomes. However, this is a very challenging subject to deal with because targets for reclamation are difficult to quantify: there is a continuum from un-reclaimed, through various levels of reclamation, to restoration. Where along that continuum does society consider that reclamation has been achieved? The answer will always be somewhat subjective, depending on the values/ecological conditions/aesthetic conditions that the reclamation has to "re-claim". Also, reclamation techniques are changing, and gradually improving. As a result, a reclamation plan (laying out the values and processes to be reclaimed, the techniques to be used, and the end-point of successful reclamation) is a necessary component of any approach, including any level of permitting or licensing, for both placer and quartz. This plan needs to be fully developed in advance of any operations commencing (with the acknowledgement that they may need to be amended if conditions change) and the end goal of the plan (i.e. definition of reclamation or restoration success) needs to be agreed to by affected First Nations and communities.

Reclamation plans should be necessary components of all license applications and assessment processes through YESAB. What constitutes a sufficient reclamation plan would then be subject to discussion and scrutiny from all governments, scientific advisers, and the public. Making reclamation plans integral components of a license application and/or YESAB assessment would save effort for the proponent, because these plans would refer to many of the same sets of information (baseline conditions; Indigenous and community values; timelines) already required by the licensing and assessment bodies. There is no need to repeat these efforts in separate regulatory reviews or assessments.

The idea of establishing thresholds of activity on the ground below which a reclamation plan is not required, but for which pre-established standards of reclamation, as set by the regulator, would apply, may be appropriate and feasible for the early exploration stages (e.g., Classes 1 and 2, that do not require YESAB assessments) in the mineral development process. This approach requires the regulator to continually update these reclamation standards based on reviews of the most current science and technologies.

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While we support the concept of progressive reclamation, it may or may not be feasible, depending on project circumstances. We recommend proponents evaluate the feasibility of progressive reclamation as part of their reclamation plan and be required to justify if it is not included in the plan.

8.2 Do you have any thoughts or concerns about the approaches we're considering for *reclamation and closure, or additional things that you think we should consider?*

We are in favour of the options presented to provide stronger enforcement options and discourage non-compliance of reclamation responsibilities. Please see answer to question 8.1 above, plus the following.

We recommend incentives to ensure reclamation is completed prior to closure. First, reclamation can be linked to financial security. A substantial security bond paid up-front to governments, that would only be repaid to the proponent if the work is done, would be one incentive approach. Another incentive to get work done is not to allow a tenure holder to move on to a more intensive stage of development until reclamation plans for previous stages have been implemented. This means that financial security should be acquired by governments in three stages: (i) initial exploration (i.e. quartz stages 1 and 2); (ii) more advanced exploration (e.g. quartz stages 3 and 4) that require YESAB assessment; (iii) mine development (a separate YESAB assessment).

The riskiest situations are those where a tenure holder decides that there is no further economic value in the area that has been impacted, and decides to leave without reclaiming it, and finds no buyer. In such cases, the legislation could preclude that legal entity (company) from continuing to work in the Territory (e.g., on other properties, or any new properties) unless it implements the reclamation plan. Obviously, their security is forfeit until the plan is complete, which if valued appropriately should be a significant deterrent. This scenario will quite likely occur with placer mining operations, because they tend to exhaust the resource and are often under-capitalized, and will have relatively onerous reclamation objectives because of the very destructive nature of their operations.

8.3 How important are the following to you:

Progressive reclamation

As noted repeatedly, we support progressive reclamation planning and implementation. However, it may be difficult to achieve for a proponent who is working the same landscape repeatedly over the duration of the tenure. An incentive to encourage progressive reclamation is the necessary

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imposition of financial security requirements given to governments up-front with knowledge that recovery of those funds cannot occur until the work is done. The precise definition of reclamation is important here as well; for example, if revegetation needs to reach a certain coverage or maturity over a proportion of the site, as opposed to simply 'being reseeded or revegetated', proponents will have an increased incentive to carry out progressive reclamation.

Reclamation and closure reporting

Reporting on reclamation and closure is very important. Various governments and agencies need to know, and be repeatedly updated on, the state of the land, water, and other values in the face of ongoing developments so that they can assess their potential liabilities (e.g., likelihood of government having to do the reclamation, and being able to pay for it; risk of requiring long-term maintenance and monitoring, and who is paying for this) and have a handle on cumulative risks to various values.

Public access to reporting about reclamation and closure

Public access to reporting on reclamation and closure is essential. The landscapes that need to be reclaimed, and development activities that have to be closed out, will be affecting public and individual citizens' values. The public is ultimately at risk of having to pay for these activities, through funds other than financial securities required of proponents, if governments do not demand sufficient financial security. Various governments in Canada are already paying huge sums from general revenues to pay for lack of reclamation and adequate closure of abandoned mines. Also, they are at large risk of having to repeatedly do so in the future because the financial security they have raised from industry is known to be insufficient to cover costs of reclamation and closure if those costs fall to government. Public reporting including how and why costs fall to governments, and then to taxpayers, may increase the public's desire for accountability on the part of industry if they understand the direct ramifications to their tax dollars, which could otherwise be spent on infrastructure, healthcare etc. We support transparency not only about how the government is spending public funds, but why those costs are being incurred and if alternatives exist.

CLOSURE AND ABANDONMENT

Note – This section is titled 'Closure and Abandonment', yet all questions reference the latter and not the former. We have also addressed Closure where relevant.

9.1 Do you think the approaches we're considering will improve the management of abandoned sites?

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Regarding closure, the regulators should be able to impose long-term maintenance and monitoring requirements on a tenure holder to perform beyond the end of reclamation activities (and prior to final closure), on a project-specific basis when there will be a lingering risk of impacts, such as water pollution (even if that pollution is just potential and not yet evident). Many mines run the risk of long-term pollution, often not evident above ground. To do this, means that the conditions around closure will need to be explicit in licences (or licence renewals) for mine development and production. Post-reclamation activities should not be paid for by the financial security held by government to clean up in the case of abandonment; it should be part of the proponent's cost of doing business.

In the situation of abandonment, the ability of government to quickly step in and use the existing infrastructure and equipment to carry out care and maintenance is critical. There should be enough financial security held by the government to cover whatever activities are needed to bring the site to closure and/or take responsibility for long-term maintenance and monitoring. In these circumstances, the proponent should not be issued a closure certificate.

In the circumstance of the selling or transfer of property by a tenure holder, all the reclamation and closure responsibilities for the original owner must be transferred directly to the new owner as conditions on existing and new licensing. Ideally such transfers should trigger new licensing, to give government the opportunity to change license requirements and responsibilities when conditions have changed during the original owner's tenure (e.g., as a result of wild fire, flooding, landslides) thereby changing pollution risks.

9.2 Do you have any thoughts or concerns about the approaches we're considering for abandonment, or additional things that you think we should consider?

The process of closure – including reclamation and long-term maintenance and monitoring – must be planned for throughout the full life of the mine and needs to be explicitly addressed in impact assessments (through YESAB), licensing (through Water Board), and in reclamation plans. The desired state of the land, water and other values at the point of closure must be defined by the affected First Nations and communities and articulated in reclamation plans prior to licensing. Final decisions on this desired end state could be made by a board or committee (independent 3rd party) and should be used to establish clear criteria that will be used at the end of operations and reclamation to determine whether and when closure (as in end of responsibility) has been achieved. Making these requirements clear from the start of the process provides certainty to proponents and allows proponents to make decisions in full knowledge of the likely consequences.

We recommend Yukon follow the lead of the Northwest Territories and establish a protocol of flagging individuals involved in irresponsible practices, and increasing security requirements for new

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projects involving such individuals. Sharing this information among governments would lead to overall improvements in accountability within the sector, and lessens the effectiveness of corporate 'shapeshifting' to help individuals avoid responsibilities and liabilities. We also recommend YG seek changes to the federal Bankruptcy and Insolvency Act and Companies Creditors Arrangements Act to ensure that directors and individuals with company leadership have more accountability to the public.

9.3 How important is reporting on reclamation and closure efforts and spending of security?

As with reclamation (above), reporting on closure efforts and spending of security is essential, both for governments (as regulators) and for the public. The public should be notified every time public funds are used, in the case of abandonment. Clarity around costs of reclamation, which could come partially through transparency around spending of security, would also support a more robust security valuation regime.

RESOURCE REVENUE FUND

10.1 Do you think it's more important for a resource revenue potential fund to mitigate impacts or provide benefits?

First, the question is "loaded" with inappropriate meaning in its wording. To "mitigate negative impacts of mining" is a huge benefit to society, when the private sector is not held accountable and fails to do the job. Mitigation of negative impacts is also essential to ensure environmental protection and ecosystem health, a key principle for new mining legislation, regardless of whether done by private sector or by government and paid for by resource revenue.

A Resource Revenue Fund should be put towards mitigating impacts first. The sources of money for this fund (royalties, fees, fines) are gathered by government because the mining operation is being given a large privilege of gaining profits from common property resources. Any money that governments gain from having bestowed that privilege must go back to rectifying problems that mining has created on the land and in water (the common property resources of Yukon citizens) before any citizens benefit financially.

10.2 If to mitigate impacts, which ones?

The Fund should mitigate impacts of mining, not being covered by proponent, and thus falling to Yukon Government, including environmental and socio-economic impacts. Under the current

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regime and historically for mining in Canada and globally, the financial security that governments obtain from mining companies (to be used for adequate reclamation, long-term maintenance and monitoring, and closure if the companies fail) is insufficient to cover cleanup. Mining companies have managed to negotiate insufficient financial security repeatedly over the years, such that governments are chronically under-resourced to take on full cleanup following bankruptcies and abandonments. Partly contributing to this is the fact that governments (or any responsible agents) lack the ability to accurately project what issues will arise in cleanup (reclamation and closure), such that surprises are almost inevitable. Given the near impossibility of projecting adequate financial security, funds must be made available to fill the short-fall. That is what the Resource Revenue Fund should try to fill, rather than government using general revenues for this purpose.

10.3 If to provide benefits, what types of benefits?

The only "benefits" that a Resource Revenue Fund should pay for might be "increased community infrastructure and services needed due to nearby mining", and this only if a large surplus becomes available over time while the fund pays the cost of clean-up left to the government. The other "benefits" listed (Direct payments to Yukoners; Funding future Yukon economic development and diversification; Covering the costs of administering the mining regime) are not appropriate ways to spend these funds.

Most importantly, it is not appropriate for Yukoners to be receiving "direct financial payments" from a Fund. Doing so would bias decisions about whether mining operations should go ahead. The likelihood of personal financial gain as a result of supporting a mining proposal is almost a bribe to citizens by governments and industry. It would certainly be an incentive to citizens to look favourably on mining; influences like that should not be part of an evidenced-based assessment of whether a mine should go ahead or not. A direct financial payment would also become politicized, with some political interests promising to provide/increase/ guarantee certain levels of payment if voted into power.

"Funding future Yukon economic development and diversification" is also inappropriate because that would mean using funds that were raised by the private sector liquidating common property resources in order for government to support other interests also aiming to do take advantage of common property resources. Governments need to be making their responsibility for sustaining common property resources a higher priority. There are plenty of other sources of capital for economic development in the private sector, including banks and the large amounts of private wealth invested regularly in mineral exploration and development.

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"The costs of administering the mining regime" should be covered by general government revenues and independent of what projects are operational and contributing to the fund. By linking these, again a bias is created.

10.4 Do you have any other comments?

A Resource Revenue Fund should not be viewed as a Fund that has to be used up, or fully committed in spending, every year or every decade. It should be viewed as a savings account available to fill in for unexpected costs of mine cleanup that will almost inevitably arise in the future. Without it, other government programs would have to suffer because their funding would be diverted to mine cleanup, OR cleanup would not be adequately funded. This speaks to "sharing the benefits between present and future generations" as described in the discussion paper; future generations will certainly have to bear costs associated with current mining operations.

Administrators of a Fund would have to decide on ranking various options for spending. New legislation should provide some broad direction to that ranking process, by prioritizing certain issues and ranking others lower. We suggest that chemical pollution of water systems (the water table, aquifers, ground-water streams and lakes) should be highest priority, followed by remediation of sources of chemical contamination by leaching or blowing from exposed bedrock and tailings followed by upland remediation and reclamation. Any consideration of repairing, upgrading, or establishing new public infrastructure (e.g., roads, airstrips) to accommodate mineral development activities should get much lower priority.

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