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Susan Capling
Assistant Deputy Minister
Mines and Minerals Division
Ministry of Energy, Northern Development and Mines
933 Ramsey Lake Road, Level B2
Sudbury ON P3E 6B5
Tel.: 705-670-5819

November 19, 2020

RE: Proposed administrative changes to the Mining Act relating to mining claims and leases

Dear Ms. Capling

Thank you for the opportunity to provide comment on the proposed administrative changes to the Mining Act relating to mining claims and leases. Wabun Tribal Council receives direction from and is accountable to our Board of Directors, the Chiefs of our First Nations (which includes Flying Post, Matachewan and Mattagam). Our First Nations are signatories to Treaty 9, and the traditional territories of our First Nations extend across a large area of North Eastern Ontario. Our member Nations' traditional territories are among the most heavily developed regions of Ontario, with considerable forestry, mining and hydroelectric activity.

Wabun Tribal Council values our positive relationship with the Ministry, and we agree that increased efficiency in the claims and leases process is an important goal. In addition, we want to ensure that these changes have no unintended consequences for our Member Nations' rights and aspirations. Our comments on the proposed changes are organized below in accordance with the numbering in the letter sent from your office to Wabun Tribal Council on October 6, 2020.

- 1. Allow the Minister to provide a blanket extension or exclusion to claim holders to keep their mining claims in good standing during special circumstances.**

Our understanding is that this amendment allows the Minister, in special circumstances, to grant all the claim holders, simultaneously or in large groups, an extension so that they are not required to perform work on their claims and submit the required paperwork to keep their claims in good standing. The effect of this change on the ground, as we understand it, would be

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potentially less work on claims, and lowered opportunities for claims to change hands in times of crisis.

We would like to see this same change reflected for First Nations consultation, where crisis such as Covid-19 would prompt the Minister to issue a blanket increase in consultation timelines, so that our communities can safely consider proposals in accordance with our protocols, and to reduce our burden of consultation requests while also using our limited resources in response to crisis.

Further, while the ability to provide blanket extensions for mining claim holders is useful to reduce regulatory burden during periods of uncertainty like the Covid-19 crisis, it also allows a major increase in regulatory discretion that could potentially be mis-used. In order to limit this power, the “special circumstances” where it applies should be carefully described and constrained in the *Mining Act*, perhaps by limiting its coverage to serious health and safety circumstances with accessing claims, and ensuring that declaring a crisis comes is based in science or in a declared state of emergency, so that direction of decisions reside outside the Ministry of Energy, Northern Development and Mines.

Wabun Tribal Council requests a process for First Nations engagement with the Minister prior to the issuance of blanket approvals, to provide comments and perspective and ensure that our Member’s right’s and aspirations are protected.

2. Allow the Minister to reinstate a mining claim in certain situations after it has cancelled

Our understanding of this change is that it is constrained to specific situation concerning boundary claims, which are claims that were staked prior to adoption of the Mining Lands Administration System (MLAS), and which don’t fully align with the cell grids that are currently online. The Minister already has the power to reinstate cancelled mining claims, and this change would extend that power to include boundary claims.

Wabun Tribal Council has not identified any issues with this administrative change, however, we would like to have an opportunity to review mining claims that have been cancelled, before these claims are reinstated.

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3. Make the Minister’s power to waive interest on outstanding rent for leases consistent across all types of leases

Currently, the Minister has the power to waive interest on outstanding rents from all leases, except in one specific case, and this proposed change would ensure that the Minister’s discretion can be universally applied to waive interest on outstanding rent across all leases.

There are two ways to ensure that the Minister’s power to waive interest applied universally. The first is, as proposed, extends the Minister’s discretion to the specific case where it currently does not apply. The second option would be to remove the Minister’s discretion to waive interest on outstanding rent entirely. As a general principle, good environmental laws limit regulatory discretion, and ensure that all proponents are treated equally so they can proceed with certainty regarding their obligations. Ideally, all lease holders should be paying rents and interest on outstanding rents.

4. Enable the ministry to add very small parcels of land to a lease upon application

This change would allow the Minister to add “small slivers or gaps of land” to a lease, that may not have originally been part of the claim. Wabun Tribal Council has two comments related to this change.

First, consultation and values assessment should still be required on small areas of land because there may be values that have not yet been brought forward as they are not located directly on claims. Even a small sliver can contain a vital and important cultural area, significant culture site, or heritage area. Further, if values or concerns don't fall directly within the project footprint, the Ministry cannot impose conditions on the permit. Thus, if land is being added to a proponent's properties, First Nations should be provided the opportunity to raise concerns.

Second, the letter does not provide a definition for “small slivers or gaps of land.” The wording of the legislation should clearly describe what constitutes a “small” area of land, to ensure that there are adequate limits on this discretionary power.

5. Lease Renewals

This change would move lease renewals online, so that proponents can renew leases through the MLAS system. Wabun Tribal Council has not identified any issues with this change.

However, Wabun Tribal Council understands that the MLAS system is being continually improved, and would like to see further increases in the functionality of the MLAS system

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consider the needs and priorities of First Nation resource workers. Our staff would be happy to provide further comments on the functionality that would best serve our needs.

6. Removal of a cross-reference to section of the Act that no longer exists

This change would remove a cross-reference to section 81(9) of the *Mining Act*, which no longer exists. In the 2011 version of the act, section 81(9) stated “The Minister may refer an application for renewal of a lease to the Commissioner, who shall, upon notice to all interested persons and after hearing such of them as appear, report to the Minister thereon with his or her recommendations.” Thus, this section allowed for public input on lease renewals. Our review of these proposed changes did not include a line-by-line review of the existing act to determine if First Nations consultation and public input on lease renewals is currently included in the *Mining Act*. If there is currently no opportunity for input on the renewal of leases, we submit that this opportunity should be returned.

We thank you for your time and diligence in reaching out to us and hope that our comments are helpful in refining and prioritizing changes to the *Mining Act*. We look forward to reviewing the draft changes in the *Mining Act*.

Sincerely,

ORIGINAL SIGNED

Jason Batise
Executive Director.
Wabun Tribal Council