



MiningWatch Canada

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Submission on Newfoundland Labrador Mineral Strategy

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To: Minerals Strategy Working Group, mineralstrategy@gov.nl.ca

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MiningWatch Canada appreciates the opportunity to submit comments to the government of Newfoundland and Labrador as it moves forward with developing a mineral strategy for the province. This is an important initiative given the significance of the industry in the province and the fact that many aspects of the policy and regulatory framework for mining in NL have not been reviewed for many years. Below we will elaborate on the following topics with recommendations for the strategy:

- A framework for sustainability
- Balancing access to land
- Subsidies, tax benefits and program spending
- Ensuring lasting social benefits
- Improving environmental protection
- Monitoring and communication
- Tailings management
- Uranium

These comments are based on discussions with Newfoundland and Labrador NGOs, on our experience reviewing mining projects in the province and elsewhere, our experience with developing mining legislation in other jurisdictions and our knowledge of the relevant literature.

A Framework for Sustainability

With the passing of the Sustainable Development Act in 2007, sustainable management of the province's natural environment was identified as a central policy for the provincial government. Though cited in the Discussion Paper, the Act is used more as a source for a definition than something that provides a central policy framework. The Discussion Paper gives the appearance that sustainability is more of an afterthought as the concept is not elaborated beyond a simple definition nor is it integrated throughout the paper's various sections.

To be consistent with the Sustainable Development Act the final Mineral Strategy should integrate sustainability throughout. This will require integration of sustainability strategies from other ministries and crossing the bureaucratic silos which typically separate them.

The approach to sustainability should be one that recognizes the priority of ensuring the maintenance of natural systems in which our social system operates, a subset of which is our economic system. The economic system is meant to provide benefits to the people and has no inherent utility so should not be put on par with the environment or society (Figure 1). This is a more contemporary vision of sustainability from how sustainability was first articulated in the 1980s as balancing environment, society and economy.

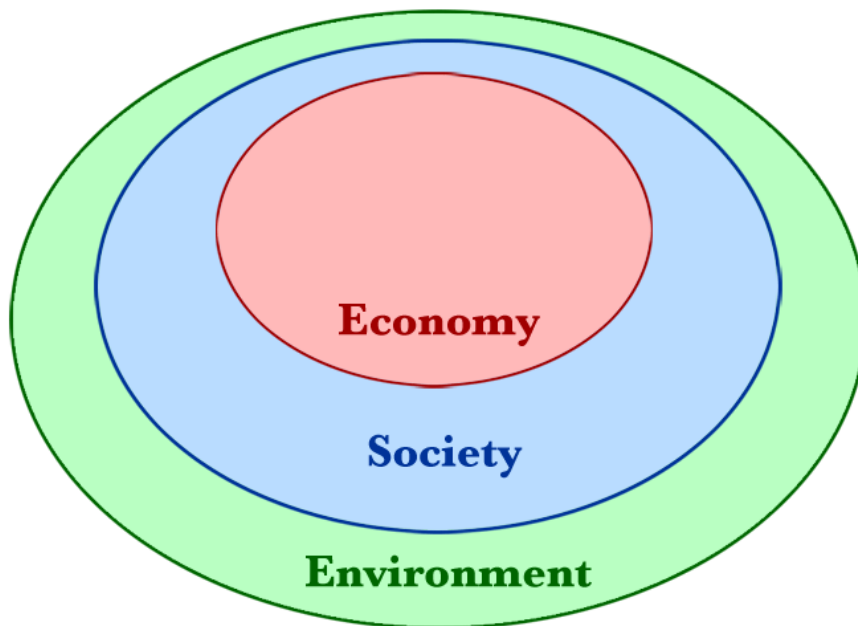


Figure1. Sustainability as nested systems with environment encompassing, society and economy.

The discussion paper states that “sustainable mining” ensures extraction of minerals does not adversely affect the surrounding ecosystem. This definition is, however, incomplete. The Sustainable Development Act goes further and is meant to: “ensure nonrenewable resource developments benefit future as well as present generations by controlling the pace of development, promoting value-added product manufacturing, and spending royalties in ways that have long-term benefits across generations”¹.

Most fully developed definitions of sustainability also address equity and the importance of ensuring benefits are distributed fairly within and between generations. The discussion paper provides solid consideration of ensuring benefits to current generations but gives little consideration to current distribution of these benefits within NL or of intergenerational equity. (See Social Benefits section below for additional recommendations).

Access to Land

The Discussion Paper asks: “How can the need to protect land for ecological reasons be balanced with mineral exploration’s need for access to land?” **The clear way forward on this issue is for Newfoundland and Labrador to settle land claims, complete the protected areas network and develop regional land-use plans.**

The settlement of the Nunatsiavut land claim has provided greater clarity for mineral exploration and potential developments. The government should pursue good faith, negotiations with the Innu Nation to complete a land claim agreement in the Innu territory.

The UN Declaration on the Rights of Indigenous Peoples and the International Labour Organization’s Convention 169 require the Free Prior and Informed Consent of Indigenous people on whose traditional territories projects are proposed. In addition, the Canadian Constitution Act and numerous subsequent court decisions clearly state there is a requirement for governments to consult and accommodate Aboriginal peoples before making decisions that could affect their rights. **The government needs to accept and acknowledge its responsibility for implementation of these requirements and in partnership with the Inuit and Innu Nations come to mutually agreed upon processes for ensuring their rights are protected.**

Newfoundland and Labrador lags behind most of Canada and many international jurisdictions in its efforts to complete a representative network of protected areas to ensure the protection of biodiversity and ecosystem functions. As part of the 1994 Whitehorse Mining Initiative, representatives of the mining industry, environmental groups and governments all agreed on the importance of completing protected area

¹ Government of Newfoundland and Labrador, Environment and Conservation. 2007. <http://www.releases.gov.nl.ca/releases/2007/env/0606n06.htm>

networks². Completion of a system provides greater degree of certainty for all and reduces the potential for future conflicts between mineral development and conservation. **While a province wide protected areas system is needed, priority for planning and creation of protected areas should be placed on those ecoregions where there is currently no or little ecological representation and where there is high potential for mineral development.**

A relatively small percentage of Newfoundland's land base is privately owned. On a provincial scale this land (5% of the province) is likely of little consequence to the industry but the potential for conflict between surface rights owners and the industry is significant to landowners who could be affected. This is of particular concern for landowners that are pursuing conservation objectives for their properties. In its recent Mining Act Modernization process, Ontario withdrew all private lands in the south and gave northern landowners the opportunity to request that their land be withdrawn from staking. **NL should prevent future conflicts by giving landowners the right to withdraw their properties from staking.**

Subsidies, Tax Benefits and Program Spending

The Discussion Paper identifies a number of subsidies and incentives the government currently provides for the industry. We suggest that the cost and effectiveness of these subsidies be examined and that a full-cost accounting of support for the industry be undertaken. This would consider the subsidies and incentives with the calculation of royalties and other benefits received from mineral development.

Governments are being encouraged by the OECD and others to shift their spending and taxation regime to favour renewable, lower material input industries and not subsidize non-renewable and environmentally costly industries (such as mining).

Of particular concern to MiningWatch is the flow-through shares program that can stimulate highly speculative exploration spending that is high risk, has a low likelihood to proceed to mineral development and can have negative environmental impacts. Exploration spending is closely correlated to commodity prices and we are not convinced that flow through shares are able to offset market trends in a significant way. University of Calgary taxation specialist Jack Mintz has also commented that flow through shares are a government expenditure that should be eliminated³.

Where the government decides to provide spending for the minerals sector it should be focused on reducing environmental impacts and improving social benefits (see sections below).

² Whitehorse Mining Initiative, Land Access Issue Group, Final Report 2004. <http://www.nrcan.gc.ca/mms-smm/poli-poli/pdf/wmi-env-eng.pdf>

³National Post, Jan 27, 2010.

<http://network.nationalpost.com/np/blogs/fpcomment/archive/2010/01/27/jack-mintz-leading-the-way.aspx>

Ensuring Lasting Social Benefits

We were pleased to see the emphasis placed within the Discussion Paper on community development and a fair return for the people of Newfoundland and Labrador.

Ensuring that Newfoundland and Labrador residents, and especially indigenous people have access to the training they need to take advantage of opportunities in the sector should be a priority for the government.

While project proponents will propose a project timeline that maximizes benefits for the company, **considerations for maximizing local and regional employment and other benefits should be considered by the government in the review of applications for new mines.** This could mean requiring a lower extraction rate and therefore longer mine life or staging the opening of new projects to be timed with the availability of workers following the closure of other projects. This approach is consistent with the intent of the Sustainable Development Act to “control the pace of development”. **Considerations and planning for social impacts of mine closure, and commitments for mitigation must also be considered as part of the review and permitting process.**

Given the importance of organized labour and of workers’ contributions to the industry, we were surprised at how weakly the Discussion Paper presents issues and opportunities from a labour perspective. The importance of labour organizing in improving working conditions and wages has been fundamental to the progress of social benefits in the sector. **The Mineral Strategy should do more to engage and reflect the interests and concerns of the labour movement.**

Changes in workplace culture and practices may be required if there is to be effective retention of those who do not traditionally occupy jobs in the sector – in particular indigenous people and women. How the government can play a positive role in this is less clear but supporting research and communication about work place conditions and best practices with and between mine workers could contribute to finding solutions.

Given the long strike at Voisey’s Bay which finally ended earlier this year there is clearly an important role for the government in supporting dispute resolution. This role should be articulated in the Mineral Strategy. We recognize that Vale’s ability to maintain operations during the strike was one of the key factors that prolonged the conflict. To reduce the likelihood of future prolonged strikes **the NL Government should act on the labour movement’s long-standing demand to introduce measures to prevent hiring of replacement workers..**

Newfoundland and Labrador currently retains a comparable percentage of gross mineral production values as royalties to BC and the territories. Given projected increases in demand for mineral commodities and potential for rising prices and company profits, many mining jurisdictions are re-examining royalty regimes. The Australian proposal for a “Super Tax” was the subject of much attention, and though aggressively opposed by

industry was supported by the OECD⁴. Saskatchewan currently has an additional tax on uranium production when the price rises, which results in an overall effective tax on gross production of between 9% and 10%, considerably better than NL's current rate of 5% to 6% of gross production values. **NL should examine the potential of additional tax measures to capture greater revenues.**

Revenues from a windfall tax or existing royalties should be used for long-term investment and to help provincial and local economies weather the inevitable low periods in the commodity cycle. A sovereign wealth fund is a regularly used vehicle for investing revenues for non-renewable resources and can assist with the contribution of mineral development projects to sustainable development.

Ensuring tax revenues from an increasingly globalized industry is a challenge and we appreciate that the Discussion Paper identifies this challenge. **Addressing issues of tax havens in collaboration with the federal government and providing support to regionally based companies should be considered within the strategy.**

Improving Environmental Protection

Newfoundland and Labrador has many orphaned and abandoned mine sites that pose both environmental and safety risks. Dedicated program funds are needed to ensure progress on rehabilitating these sites. **We recommend shared contributions from existing government revenues and an additional levy on operating mines contribute to a rehabilitation fund.** The US currently has a levy on coal mines for this purpose and President Obama has proposed a new levy on hard rock mines. It is in the industry's best interest to see these sites remediated as it could contribute to improving their social license. In broad strokes, the steps for dealing with orphaned and abandoned mines are relatively straight forward: inventorying sites, review and prioritizing of sites based on environmental and health and safety risk, review of site specific remediation alternatives, environmental assessment of proposed remediation measures for complex sites and implementation of remediation programs.

The risks of creating new orphaned or abandoned sites from operating mines is addressed through closure assurances posted by mine operators. At present the amounts and form of assurances are considered confidential. This creates problems with transparency, the ability of the public or interest groups to scrutinize the amounts posted and eliminates an opportunity for increasing public trust in the existing closure process. **We recommend that the amounts and types assurances posted for a mine be made available to the public.**

The Nunatsiavut government has introduced comprehensive exploration regulations that will improve oversight and ensure remediation of exploration sites. It is too often assumed that exploration activities have no impact on the environment or nearby communities. Impacts on water, wildlife, quality of life, traditional practices can all occur

⁴ Reuters May 22, 2010. <http://www.reuters.com/article/2010/05/22/australia-tax-idUSB17746320100522>

from exploration activities. **The Nunatsiavut exploration regulations should be adopted throughout the province.**

The Voisey's Bay environmental assessment (EA) was pioneering in Canadian EA for its consideration of sustainability issues. **The province should formalize sustainability assessment criteria for EAs of mineral development projects.** Other important aspects of EAs of mineral projects include: examination of risk and uncertainty, cumulative effects, contribution to and effects of climate change on a project, life cycle assessment of costs for alternative mine plans and waste management techniques, post-closure environmental and social impacts, and accounting the loss or impacts on ecological services and natural capital.

Newfoundland and Labrador is unusual in the Canadian context for the high percentage of greenhouse gas (GHG) emissions which come from the province's mineral sector. Reducing GHGs at mines is a significant challenge, especially given the trend towards exploiting lower grade and more remote deposits. In some cases, providing increased connection to renewable energy through the grid would prove beneficial in reducing GHG emissions. This, however, has to be weighed against potential environmental and economic impacts of expanding the grid and energy supply to service a single sector.

Monitoring and Reporting

While industry will often comment on the extensive monitoring done at its mine sites, public access to this information is often limited. **The government should establish a public registry where regular monitoring reports, notices of infractions and other information could be readily available.** This should include both summary information as well as more detailed data.

Periodic monitoring is essential to ensuring compliance and verify company monitoring for environment and health and safety. We are concerned that with a growth in the sector there may not be adequate inspectors or budget for inspections necessary to provide the rigorous oversight needed. **The government should ensure that it projects the need for inspectors as the industry grows and provides the necessary resources.**

The creation of independent monitoring agencies has been an important improvement to communications and transparency at several mine sites across the country. **NL should require the establishment of independent monitoring agencies for major mineral developments.** The funding and maintenance of these organizations should be a requirement of mineral leases, not based on the goodwill of a company. Adequate funds should be made available for independent expert review of monitoring reports and other technical reports.

Tailings Management

The Mineral Strategy Discussion Paper raises the controversial issue of using natural water bodies to confine mine waste. Though acknowledging the controversy the paper justifies the practice based on geologic stability of natural basins and fish habitat compensation. There is no scientific basis for the presumption that entire lake or extensive stream ecosystems can be re-created or compensated for. The federal review panel examining the proposed Prosperity Gold-Copper Mine in BC noted that:

“the success of re-creating a lake with adjacent spawning and rearing channels is questionable as no information was presented regarding the successful replacement of an entire lake and stream system as a self-sustaining ecosystem.”

Furthermore, reviews done by the Auditor General and peer-reviewed publications by DFO staff point to the lack of success with habitat compensation and the poor compliance monitoring that occurs.⁵ Avoiding destruction of aquatic ecosystems should be prioritized over attempts at recreating them.

In addition to the protection of aquatic ecosystems, construction of impoundments and dry land disposal options have important advantages including: preparing the impoundment bottom with artificial or clay/till liners to reduce infiltration, and the isolation of wastes from natural water flows.

It is worth noting that while permitted in most of Canada, Quebec’s Directive 019 does not allow the disposal of mine wastes into lakes streams and rivers. With a geography similar to NL, the Quebec industry is doing well and the province is considered a top destination for mineral development. Also of note are the International Finance Corporation’s Environmental Health and Safety Guidelines for Mining (2007), which state that disposal in lakes and rivers is not considered an international best practice.⁶ **The government of NL should follow this guidance and insist companies find viable alternatives to converting healthy aquatic ecosystems into mine waste disposal areas.**

⁵ Harper, D.J. and J.T. Quigley. 2005A. A comparison of the areal extent of fish habitat gains and losses associated with selected compensation projects in Canada. Fisheries 30: 18-25. / Harper, D.J. and J.T. Quigley. 2005B. No net loss of fish habitat: a review and analysis of habitat compensation in Canada. Env. Mgmt. 36: 343-355. / Quigley, J.T. and D.J. Harper. 2006. Effectiveness of fish habitat compensation in Canada in achieving no net loss. Env. Mgmt. 37: 351-366. / Auditor General. 2009 Spring Report of the Commissioner of the Environment and Sustainable Development.
http://www.oag-bvg.gc.ca/internet/English/parl_cesd_200905_01_e_32511.html

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[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_Mining/\\$FILE/Final+-+Mining.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_Mining/$FILE/Final+-+Mining.pdf)

Uranium

MiningWatch Canada maintains a position that further expansion of uranium mining is not in the public interest due to the risks associated with the mining, processing and use of uranium including disposal of nuclear waste and the risks associated with depleted uranium and nuclear weapons.

Uranium has proven a controversial topic in areas across Canada with Nova Scotia and BC implementing bans on uranium mining and New Brunswick stating it will also implement a ban. With a host of other mineral commodities, NL does not need to pursue uranium extraction to have a viable mineral sector. **We recommend, prior to permitting any uranium developments, the NL government undertake a policy review with broad public participation to examine uranium mining, processing and end uses.** Given the industry's interest in uranium deposits in several parts of the province conducting this review should be an immediate priority.

In closing, we would be happy to provide additional information about any of the above comments and recommendations and look forward to continued dialogue as the Mineral Strategy is developed and implemented.