

DE BEERS GROUP

Mr. Michael Ball
Committee Clerk
Standing Committee on Economic Development and Environment
Government of Northwest Territories
P.O. Box 1320
Yellowknife, NT X1A 2L9
Email: Michael_ball@gov.nt.ca

May 14, 2019

Attn: Mr. Michael Ball:

Re: Bill 34, Mineral Resources Act

On behalf of De Beers Canada Inc.(De Beers) I am pleased to provide the Standing Committee on Economic Development and Environment with review comments on the proposed Bill 34: Mineral Resources Act.

As you know, De Beers is a member of the NWT & Nunavut Chamber of Mines as well as the Chamber of Commerce. The Chambers provide important forums for Industry members to work together to understand and provide input on proposed government legislation, regulations, programs and policies. The Chambers have been working hard to understand the implications of a series of legislative changes that the Government of the Northwest Territories (GNWT) has recently proposed. Recently, the NWT & Nunavut Chamber of Mines provided a submission to the Standing Committee on the proposed Mineral Resources Act (May 8, 2019). De Beers continues to contribute to the work of the Chamber of Mines and we continue to support the positions and feedback that the Chamber provides to the GNWT, including the recent submission.

In some instances however, when the implications of a proposed legislative change, program or policy substantially increases the risk to our business, the future of our Industry, or poses risks to our Indigenous Partners or the environment, our company also provides direct feedback to the GNWT. From our review and current understanding of the proposed Mineral Resources Act, we feel that parts of this legislation may pose substantial risks to our business and to the future of exploration and mining in the NWT. We are pleased to provide our comments herein for your consideration.

We would also like to take this opportunity to commend the GWNT on taking the initiative to develop a home grown Mineral Resources Act. It is our hope that this Act, as well as thoughtful regulations arising from this Act will improve the regulatory climate for mining in the NWT. We remain committed to contributing expertise to the GNWT during the development process.

De Beers Canada inc.

1601 Airport Road NE Suite 300 Calgary Alberta T2E 6Z8
Tel +1 403 930 0991 | www.debeersgroup.com/canada | info.canada@debeersgroup.com
Incorporated in Canada | Registration number 889569596

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Part 5: Benefits for People and Communities

Section 52 (1) of Bill 34 commits all lease holders to entering into benefits agreements. If implemented as written, this legislation has the potential to dissuade further mining investment in the Territory.

There are several issues associated with the GNWT taking a legislative approach to what has traditionally been a negotiated process between Proponents and Affected Parties. These issues include:

- The economics of mining in the NWT is already tenuous. Placing another financial burden on companies within the early stages of the life of their Projects may dissuade investment in the industry. Developing a site from the exploration phase to the mining phase requires significant investment by companies and shareholders. Additional costs or uncertainty introduced during these early phases is likely to have a significant chilling effect on those investment decisions.
- The legislation indicates that all lease holders must negotiate these benefit agreements if a) the Minister considers it appropriate, b) if a production project for the mineral lease meets the prescribed threshold and c) when also in accordance with the regulations. The circumstances under which the Minister would consider it appropriate are not defined. The prescribed threshold and the regulations are also not yet defined. These aspects matter hugely but without understanding the limits of each, it is difficult to support the enabling legislation.
- It is also important to be clear that owning a lease does not guarantee an economically viable deposit. Because claims can only be held for 10 years, claim holders are currently required to relinquish their claims or seek a mineral lease after 10 years. In many cases, the economic value of the resource may not be defined at the time of this transition from claim to lease. Lease holders may not have the information they need to confidently project production or negotiate a benefit agreement for many years following the establishment of a lease. Requiring companies to establish Benefit Agreements before their Projects are fully planned, understood, and approved by the regulators and Investors may put their Project at risk, reducing the attractiveness of the Project to investors and reducing the viability of the Project itself.
- The provisions for deferring an Agreement, under exceptional circumstances, are at the discretion of the Minister or his/her designate (52 (3,4)). On what grounds will she/he make this determination? Although it is good that there is a provision to defer, it does not necessarily make sense to provide that authority to the Minister. The decision as to whether or not to enter into a Benefits Agreement should be made by the company and the Affected Party together, based on mutual interest, not by a Minister. There are a multitude of factors which would need to be considered, not all of which could be identified ahead of time. Putting this decision in the hands of the

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Minister would create a burden on the Government to establish clear rules to guide this decision. Establishing those rules would be difficult to get right in order to predict all possible circumstances and avoid future court challenges.

- The GNWT already has the right to charge royalties against the extraction of mineral resources. These royalties are one of the many means by which the citizens of the NWT obtain financial benefit from mining. Perhaps this regime could be used more effectively to ensure benefits are obtained by those people and communities most affected by a given development rather than creating an additional regulated regime (the benefit agreements) which could put more administrative and financial burden on industry.
- The relationship between signing a Benefit Agreement and receiving other permits and approvals is not clear. Will the Mackenzie Valley Land and Water Board for instance be willing to issue water licences and land use permits without proof of a Benefit Agreement with all Parties? If not, which seems likely, then the Indigenous Parties or groups will have significant leverage in a negotiation, which can hold up Project progress and cause delays. This adds significant uncertainty and risk to Projects.

Part 3 Interests in Minerals

There is some confusion in the proposed legislation regarding who can conduct exploration and where. Prospecting/exploration is a pre-requisite for the establishment of any mineral claim. It should be permitted to occur throughout the Territory ahead of the establishment of any claims.

- Section 26(a) indicates that prospecting licences are required to “*prospect for the purpose of staking a claim.*” This essentially means that an individual may prospect prior to staking a mineral claim.
- Section 30 however suggests that a recorded claim is required prior to conducting prospecting an exploration activities. “*No person shall conduct an activity for which a recorded claim is required by this Act or the regulations, except as authorized under a valid claim recorded under section 28.*” This section is also reinforced by section 43 in Part 4 which states that “*The holder of a recorded claim or a mineral lease may prospect and explore for minerals on the area of the claim or lease in accordance with this Act and the regulations.*”
- Clarity is required to delineate; (1) activities for which no recorded claim is required and (2) activities for which a recorded claim is required.

In closing De Beers supports the NWT & Nunavut Chamber of Mines request that Part 5 be removed from the Act for further study to investigate less risky approaches to helping ensure

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benefits flow to people and communities of the NWT. Part 3 also requires clarification to ensure exploration can continue throughout the NWT without the need to establish a claim first.

Should you have any questions or comments about our view on this legislation, please do not hesitate to contact either David Willis at David.Willis@dbeersgroup.com or Sarah McLean at Sarah.McLean@dbeersgroup.com.

Thank you kindly,



Sarah McLean

Environment and Permitting Manager
De Beers Canada Inc.

c.c.: NWT & Nunavut Chamber of Mines

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