

# Wilderness Tourism Association



BRITISH COLUMBIA | CANADA

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## **BC Mineral Tenure Policy and Mine Waste Management Standards - Time for Reform**

### **British Columbia's Mineral Tenure Policy**

There are a number of mining projects currently proposed in wilderness areas throughout British Columbia. Mineral tenure holders still enjoy a “free entry” system in BC, which allows proponents to stake a claim on the subsurface minerals of lands including private property, First Nations Territory, and some parks and recreation areas if granted a permit.<sup>1</sup> Individuals use an online application to stake a claim, without requirement to first visit the land or consult with landowners, First Nations or other stakeholders that might be impacted by mineral development in the claim area.<sup>2</sup> Once the claim has been staked, a claim holder has the right to “prospect” in the claim area without notifying a landowner or First Nation in whose traditional territory the claim is staked.

A claim holder must submit a “Notice of Work” application to the Ministry of Energy and Mines before exploration activity can begin in the claim area, however the Chief Inspector of Mines may exempt a claim holder from this application. Once an application is approved and a permit is granted, the permit holder must give 8 days notice to landowners (but not First Nations) before entering the property. Once the 8 days has commenced, a permit holder is then allowed “free entry” onto the claim property for exploration development, such as road building or blasting.<sup>3</sup>

Providing “notice” is not the same as requesting landowner or First Nations consent, it is simply notification that mining activity will take place. Gaining First Nations or landowner consent for exploration activity, with the exception of Indian Reserve Lands, is not a requirement of the exploration permit application.<sup>4</sup> If a landowner wishes to oppose the “right of entry” of a permit holder onto their property, and are unable to resolve the issue directly, then the landowner must apply to the chief gold commissioner or the Surface Rights Board to settle the dispute.<sup>5</sup>

A claim holder may extend a claim by applying to convert it to a lease. By adhering to a few inexpensive requirements<sup>6</sup>, which do not include public consultation, consideration of other land-use plans, or environmental assessment, the government is obligated to award the lease to the proponent.<sup>7</sup> In this way, mining interests still take priority over all other land-use interests in BC.

This free entry system undermines local land-use planning goals and does not require sufficient social license on the part of the claim holder. Requirements for consultation with or compensation to First Nations and landowners are inadequate. Further, there is no requirement for environmental assessment for mineral exploration or for mines producing less than 75,000 tons of ore per year<sup>8</sup>, unless the minister deems it necessary<sup>9</sup>, which is rare. By increasing annual mine size incrementally, mines can avoid ever having to complete an environmental

assessment<sup>10</sup> despite the fact that as mines grow in size, so does disturbance of the land base and waste production.

This antiquated legal framework is now 150 years old and harkens back to a time when wilderness resources were thought to be inexhaustible, when First Nations interests were ignored, and when the frontier mentality of resource exploitation guided our economic models. Today, our economic paradigm is shifting toward favouring sustainable models of resource use, including nature-based tourism. Moreover, there is a growing legal requirement for developers to consult meaningfully with First Nations and other stakeholders.

### **The Risks of Mining in Iconic British Columbian Wilderness**

To place the issue in context we can take the example of the Sacred Headwaters, one of British Columbia's most spectacular intact wilderness areas, which is receiving mining proposals at an unprecedented rate. This remote wilderness area in northwestern BC is where three of the province's most important wild salmon-bearing rivers, the Nass, the Stikine and the Skeena, make their start.

The Sacred Headwaters supports thriving populations of wild caribou, wolves, grizzly bears, moose, mountain goats, Stone sheep, migratory birds and wild salmon by providing quality, relatively undisturbed wildlife habitat. It has also been home to the Tahltan people for thousands of years. The Tahltan still depend on the land for subsistence hunting and trapping, medicinal and food plants and cultural well-being. The region exists as an important and globally rare refuge of intact wilderness and, as such, is a revered travel destination for visitors from across the country and around the world.

There are a number of stakeholders in the wilderness areas of the Sacred Headwaters, including dozens of nature-based tour operators that are threatened by mining development in the region. Despite long-standing opposition by First Nations, local communities, tourism operators and environmental groups, mineral tenure is still granted without preliminary consultation. The certainty of environmental destruction and contamination by mine construction and operation and the risk of serious downstream impacts from mine waste effluent cannot be ignored. And yet, BC's archaic mineral tenure policy continues to do just that.

### **Mine Operation and Waste Management Policy: Improved Standards Needed to Mitigate Risks**

Wilderness areas are fragmented and contaminated by mining projects, especially when catastrophic accidents occur. The Mount Polley Mine disaster of August 2014 is one such accident and is considered by many to be among the worst environmental disasters in Canadian history. When Mount Polley's tailings storage facility breached due to a collapse of the dam foundation, it contaminated neighboring Quesnel Lake and subsequently the Quesnel River, which joins downstream with the Fraser River<sup>11</sup>. Quesnel Lake is the major destination for Fraser River Sockeye. This disaster released millions of cubic meters of water, toxic slurry and debris into the watershed's pristine, salmon-rich lakes and rivers and will likely require spill containment management and impact mitigation for decades.

An Independent Review Panel tasked by the BC government to assess the Imperial Metals-owned Mount Polley disaster advised that newer, safer mine waste storage technologies, namely dry-stack tailings, be adopted by all future mining operations<sup>12</sup>. However, despite the

recommendations of the Panel and the severe and lasting environmental damage caused by the Mount Polley failure, the BC Minister of Energy and Mines permitted another Imperial Metals-owned open-pit mine, the Red Chris Mine located in the heart of the Sacred Headwaters, to begin filling Black Lake with mine tailings using a design strikingly similar to the Mount Polley dam. Black Lake is located in the headwaters of the Iskut River, which merges 236 km downstream with the Stikine River. Furthermore, the July 2015 approval to reopen the Mount Polley mine without requirement for dry-stack tailings storage is proof that environmental catastrophes are considered “business as usual” for the mining sector.

The risk of potential downstream contamination by mine activity in our wilderness areas cannot be overstated. Hundreds of local communities and nature-based tour operators depend on the intact wilderness areas of British Columbia and associated downstream watersheds for their livelihoods. The lower Iskut-Stikine watershed, for example, supports numerous sport, commercial and subsistence fisheries. Even in the absence of a major mine failure like Mount Polley, local and downstream communities will be impacted by chronic noise, air and water pollution, habitat fragmentation and destruction, and the related strain on fish and wildlife populations.

The risk of a mine disaster in the pristine wilderness areas of the province is just too high, especially given the status quo of mining policy in BC which allows such risky practices as freshwater tailings storage. The recommendations of the expert review panel were meant to inform government mine permitting standards, not to simply be developed and then ignored. With so many communities and wilderness tourism operations relying on the unspoiled rivers, lakes, forests and wetlands of our wilderness areas, there is no excuse for allowing such laxity around mine permitting and management.

### **WTABC Recommendations for Mineral Tenure and Mine Operation Standards Reform**

It’s clear that BC’s mineral tenure laws and mine operations standards are in need of an update. Requirements for mineral claim and exploration permit applicants should be expanded to include greater consultation with stakeholders and First Nations, consent to enter private property and traditional territory, and should consider local long-term land-use objectives. There should be greater restriction placed on mining activity in ecologically sensitive areas, watersheds, parks and other protected areas and more accountability around post-operation site remediation.

In addition to modernizing mineral tenure policy, safer mine waste storage technologies, such as dry-stack tailings, should be adopted by all mining operations in the province, as the expert panel has advised, in order to safeguard against another Mount Polley disaster in our globally significant British Columbian wilderness.

## NOTES

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<sup>1</sup> See Mineral Tenure Act, RSBC 1996, c292, s 14(5).

<sup>2</sup> See Government of British Columbia. (December 7, 2015). *Claims: Mineral & Placer Titles*. Retrieved from <http://www2.gov.bc.ca/gov/content/industry/mineral-exploration-mining/mineral-titles/mineral-placer-titles/claims-mineral-placer-titles>.

<sup>3</sup> See Mineral Tenure Act, RSBC 1996, c 292, s 19(1); Mineral Tenure Act Regulation, BC Reg 529/2004, ss Definitions “technical exploration and development”, 2.1 & 2.2.

<sup>4</sup> See Government of British Columbia, FrontCounter BC (December 7, 2015). *Guide: Notice of Work*. Retrieved from <http://www.frontcounterbc.ca/guides/mines/notice-of-work/overview/>.

<sup>5</sup> See Mineral Tenure Act, RSBC 1996, c292, s 19.

<sup>6</sup> See Mineral Tenure Act, RSBC 1996, c292, s 42(1).

<sup>7</sup> See Mineral Tenure Act, RSBC 1996, c292, s 42(4).

<sup>8</sup> See Reviewable Projects Regulation, BC Reg 370/2002, s 3(1), Table 6.

<sup>9</sup> See Environmental Assessment Act, SBC 2002, c 43, s 6.

<sup>10</sup> See Reviewable Projects Regulation, BC Reg 370/2002, s 3(2), 8(1), Table 6.

<sup>11</sup> See Imperial Metals *Imperial Reports on Tailings Storage Facility Breach at Mount Polley Mine* [Press Release]. Retrieved from [http://www.imperialmetals.com/s/News\\_2014.asp?ReportID=667962](http://www.imperialmetals.com/s/News_2014.asp?ReportID=667962).

<sup>12</sup> See Independent Expert Engineering Investigation and Review Panel (January 30, 2015). *Report On Mount Polley Tailings Storage Facility Breach*. Retrieved from <https://www.mountpolleyreviewpanel.ca/sites/default/files/report/ReportonMountPolleyTailingsStorageFacilityBreach.pdf>.