



WHAT WE HEARD

2022 Engagement on Resource Royalties

CE QUE NOUS AVONS ENTENDU

Échanges concernant les redevances sur les ressources minérales de 2022

*Le présent document contient la
traduction française su sommaire.*

Government of Northwest Territories
Gouvernement des Territoires du Nord-Ouest

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Executive Summary

The *NWT Mineral Resources Act* (MRA) passed by the 18th Legislative Assembly of the Northwest Territories (NWT) in 2019 is the first-ever legislation governing mineral resources drafted in the NWT.

Equally significant is the collaborative approach taken to its development by the NWT's territorial and Indigenous governments. Northern leaders working together as the Intergovernmental Council (IGC) are now developing the Mining Regulations needed to bring the MRA into force.

From the beginning, it was agreed that a fulsome review of the NWT's royalty regime would be part of this process.

To this end, public and targeted engagements were completed from February 3 - July 29, 2022, to solicit input from NWT residents, industry, non-governmental organizations (NGOs) and other

stakeholders on the development of regulations governing resource royalties in the NWT.

Engagement opportunities were provided primarily through an online portal. In addition to receiving submissions online, virtual meetings were arranged for stakeholders and organizations unable to meet in person due to the COVID-19 pandemic.

In total, eight virtual meetings were held and thirteen submissions were received electronically.

This report provides both verbatim excerpts and meeting notes in capturing the responses to discussion questions (developed for public engagement) and topic areas (identified for targeted discussions with stakeholders).

In both instances, summary statements are provided to help define the directive for policy development.

What We Heard: From General Public Engagement

Four questions were posed in the online engagement by which to consider royalty regulations for mineral development in the NWT:

Are NWT royalty regulations providing a fair share of the profit?

There is a strong desire to see a greater degree of transparency in the administration and collection of royalties. There is a general desire to see more of the information collected by the GNWT made public in a consistent and accessible fashion.

Ensure that the royalty evaluation and review are being conducted in the context of the total costs of

mining in the NWT. The economic analysis should be complete enough to account for all subsidies, costs, impacts, and benefits in the northern context to ensure that decisions and choices are made with full information.

The use of royalties in terms of creating long-term infrastructure, support institutions, and structures needed for the North and employment skills development are viewed as important priorities.

Are NWT royalty regulations contributing to a stable and competitive investment environment in the NWT?

This topic displays divided recommendations. On the one hand, there was feedback that the royalty rate should be increased and the calculations points for royalty tiers should be updated, with specific rate suggestions given.

Other respondents felt it was more important that the NWT increase the amount of mining, and this would increase the amount of royalties collected. This could be accomplished by positioning the jurisdiction as an attractive place for investment and by being competitive with other mining jurisdictions.

There is a desire to raise royalty rates to ensure greater revenues, while maintaining the competitive position of the NWT on at least a Canadian, if not global, basis.

Is the utility of NWT royalty regulations being maximized?

The governance and administration of the mineral resources are viewed as critical components to the overall governance of the NWT. The GNWT should ensure that there are no opportunities for companies to avoid paying their royalties and that the extraction of the resources is managed appropriately. Where geoscience information can be collected to benefit future generations, those opportunities should not be lost. The development of regulations is not sufficient to ensure effective management of the resources. The public should be able to see that the governance of their resources is actively undertaken.

Remediation of mine sites after mine closure is viewed as an important part of the mining cycle. The balance of costs should not be borne by the public government. Ensuring that the mining reclamation trust fund is functional in the Federal/Territorial context is a desired goal.

While ensuring that the mine employees live in the north is viewed as important, differences in opinion exist as to whether or not this goal should be incentivised through royalties.

Exploration is viewed as an important activity; differences were also expressed on whether it should be incentivized using the royalty regime. While deductions for mine site exploration costs are acceptable to ensure extended mine life, geoscience information should also be collected for that incentive.

Are there other ways to realize benefits for the NWT using royalties?

Royalty provisions regarding northern and indigenous ownership of mines in the NWT should be investigated.

Ensuring that the administrative burden of the royalty system does not exceed the capability of the NWT or become so expensive as to eliminate the public benefit.

Governance of the minerals industry should ensure maximization of resource utilization and not allow that to be abandoned for short-term political gains or excessively rapid/wasteful resource extraction.

What We Heard: From Targeted Engagement

(Eight topic areas were identified to examine the functionality of the royalty system in detail and to categorize the feedback)

Transparency & Confidentiality

The public release of total royalties and production information is not seen as an issue going forward. There is a desire to see more information collected by the GNWT and made public in a single consistent fashion.

Mine Project Definition (Ring Fencing)

The definition of mine property which is used for the “ring-fencing” of a mine will need to address the processing of ore from satellite deposits.

Current Profit Regime Royalty Rate Structure

Changing to a hybrid tax system by adding a minimum tax is not generally considered to be problematic but may have impacts on specific projects. Changes to the royalty rates could have long-term impacts especially if the changes impact the comparative investment indices used by investors (i.e. IRR and NPV). Even at current rates, the NWT does not compete with the incentives Ontario and Quebec have put into place for northern projects.

Property tax was consistently mentioned as an unfair tax as the mines receive no services for their payments and the tax does not consider the maturity of the mine and adjust appropriately. The addition of other indirect taxes further degrades the NWT’s competitive position in comparison to other jurisdictions.

Royalty Calculation Point / Saleable Product Point

The diamond mines expressed no major issues with the current process of calculating royalty on rough diamonds. Concerns were focused on streamlining the current Government Diamond Valuation (GDV) process to reduce delays and get rough diamonds to market quicker.

The diamond producers did comment that the current holdback process which allows for early shipment of up to 95% of the smaller rough diamonds (up to 70% of the total value) and the ability to request additional valuations (they pay the costs) were improvements over the original system. Suggestions were made that new technologies may allow for a more rapid or timely valuation without compromising the integrity and security of the NWT resource holders. The new regulations should incorporate the ability to assess new approaches as they can be verified.

For potential base metal mines or gold mines, the definitions of market value and saleable product are not the issue but establishing the royalty calculation point and determining the sales value for components contained in each concentrate will require more analysis. With no established trading hubs for unusual concentrates, rare earths, and other critical minerals, there may need to be an evaluation of transfer pricing options, or the establishment of a Government Valuator for purposes of determining market value for non-arm’s length sales.

Commencement of Production

The profit-based royalty offers the company the opportunity to get its mill and mining operation functioning properly before requiring royalties. A consistent definition of commercial production was wanted by numerous parties. The NRCan definition of Commencement of Production is a potential solution to accomplish this.

Allowable Costs over the Life of Mine

A number of areas were identified where direct and indirect costs to operate a mine are not being allowed as deductions from royalties. More analysis is needed to determine if changes are required.

A separate issue has been identified regarding existing regulations for the mining reclamation trust fund. This is an under-used element of the current regulations as the requirements for security deposits are uncertain as different government agencies have not harmonized the security requirements.

Royalty Reporting Requirements

Although the current reporting system (email submission of PDF files) is manageable, the current submission process should be reviewed to improve administrative efficiency. Also, current filing deadlines be reviewed.

Audit Process

The audit process is not producing an extraordinary administrative burden. The timeliness of the audits after the filing is viewed as important.

Other Comments

Upon completion of the new regulations, Guidelines for filing royalties are seen as an important next step.

The Feedback provided by both the public and industry participants will underpin the ongoing work by northern leaders to co-develop the regulations and policy guidance needed to bring the first made-in the-NWT Mineral Resources Act into force.

Sommaire

La *Loi sur les ressources minérales* (LRM) des TNO adoptée par la 18^e Assemblée législative des Territoires du Nord-Ouest en 2019 est la toute première loi élaborée aux TNO régissant les ressources minérales.

Il est également important de mentionner que cette toute première loi est le fruit d'une collaboration entre les gouvernements autochtones des TNO et le GTNO. Les dirigeants du Nord travaillent actuellement sur la rédaction des règlements nécessaires à son entrée en vigueur avec le Conseil intergouvernemental.

Dès le départ, on avait convenu qu'un examen approfondi du régime des redevances des TNO s'inscrirait dans le processus d'élaboration.

À cet effet, on a effectué des échanges ciblés et publics du 3 février au 29 juillet 2022 pour recueillir les commentaires des résidents des TNO, de l'industrie, des organisations non gouvernementales (ONG) et d'autres intervenants sur l'élaboration des règlements régissant les redevances sur les ressources aux TNO.

Nous avons principalement tenu des séances d'échanges avec le public sur notre portail. En plus des commentaires soumis virtuellement, nous avons organisé des rencontres virtuelles avec les parties concernées et les organismes dans l'incapacité de nous rencontrer en personne en raison de la pandémie COVID-19.

Au total, nous avons organisé huit rencontres virtuelles et reçu 13 soumissions par voie électronique.

Dans le présent rapport, vous trouverez des extraits du verbatim et des notes de réunions sur les réponses aux questions recueillis lors des échanges avec le public et lors des discussions sur des sujets ciblés avec les parties concernées.

Dans les deux cas, nous utiliserons les déclarations sommaires pour nous aider à définir plus facilement les directives d'élaboration des politiques

Résumé des échanges avec le public

Pour donner leur point de vue concernant les règlements sur les redevances l'exploitation minière aux TNO, le public pouvait répondre aux quatre questions suivantes sur le portail d'échanges avec le public :

Les règlements sur les redevances des TNO prévoient-ils une juste part des bénéfices?

On souhaite qu'il y ait une plus grande transparence dans l'administration et la collecte des redevances et que davantage de renseignements soient recueillis par le GTNO et qu'ils les rendent publics au moyen d'un processus cohérent et pratique.

Il faut également s'assurer que l'examen et l'évaluation du régime de redevances sont effectués en tenant compte des coûts totaux liés à l'exploitation minière aux TNO. L'analyse économique doit être assez détaillée pour pouvoir prendre en compte toutes les subventions, les coûts, les répercussions et les avantages (dans le contexte nordique) et ainsi faire en sorte que les décisions soient prises après avoir recueilli tous les renseignements pertinents.

On considère comme des priorités importantes l'utilisation des redevances pour créer des infrastructures à long terme et soutenir la mise en place d'installations et de structures qui seront utiles aux Ténois et à leur perfectionnement professionnel.

La réglementation sur les redevances des TNO contribue-t-elle à un environnement d'investissement stable et concurrentiel aux TNO?

À ce sujet, on fournit des recommandations partagées. D'une part, le taux et les types de redevances devraient être mis à jour pour augmenter les redevances reçues; et d'autre part, les TNO doivent demeurer un endroit propice aux investissements et concurrentiel avec les autres régions minières. D'un côté, on souhaite augmenter les taux de redevances pour générer des revenus plus importants; de l'autre, on doit demeurer concurrentiel au Canada, à tout le moins, si on n'y arrive pas à l'échelle internationale.

L'utilité de la réglementation sur les redevances des TNO est-elle maximisée?

On juge que la bonne gestion des ressources minérales est un élément essentiel à la gouvernance générale des TNO. Le GTNO doit s'assurer que les entreprises n'ont pas la possibilité d'échapper à l'obligation de payer leurs redevances et que l'extraction des ressources est réalisée de façon appropriée. Il faut éviter de rater les occasions de recueillir des données géoscientifiques qui pourraient profiter aux générations futures. L'élaboration de règlements ne suffit pas à assurer une gestion efficace des ressources. C'est pourquoi les Ténois doivent être en mesure de constater que l'on s'emploie activement à gérer ces ressources.

On considère également comme une étape importante du cycle minier la restauration des sites miniers après leur fermeture. Ce n'est pas le gouvernement qui devrait assumer le solde des coûts. On doit s'assurer que le fonds d'assainissement en fiducie fonctionne à l'échelle territoriale et fédérale.

Bien qu'il soit important que les employés qui travaillent dans les mines vivent dans le Nord, les points de vue divergent, à savoir si le régime de redevances devrait être utilisé pour inciter les gens à venir vivre dans le Nord.

Bien que l'exploration soit considérée comme une activité importante, les points de vue divergent, à savoir si le régime de redevances devrait être utilisé pour la stimuler. Bien qu'il soit acceptable d'accorder des déductions pour l'exploration minière qui permettrait de prolonger la durée de vie des mines, des données géoscientifiques devraient quand même être recueillies pour prolonger leur vie.

Existe-t-il d'autres moyens pour les TNO de tirer parti des redevances?

Les dispositions des redevances concernant l'appartenance des mines des TNO aux Ténois ou aux Autochtones devraient faire l'objet d'un examen.

On doit s'assurer que les TNO ont la capacité d'administrer le système de redevances, ou d'éviter que sa gestion devienne si coûteuse qu'elle élimine les retombées générées pour le public.

Les dirigeants de l'industrie minière devraient faire en sorte que les ressources soient utilisées de façon optimale. Les ressources ne devraient pas être utilisées pour réaliser des gains politiques à court terme et être ensuite abandonnées, ou être exploitées trop rapidement ou en engendrant du gaspillage.

Résumé des échanges ciblés

(Nous avons déterminé huit différents sujets pour examiner en profondeur le fonctionnement du système de redevances et classer les commentaires.)

Transparence et confidentialité

La diffusion publique des montants totaux payés en redevances et des renseignements sur la production n'est plus perçue comme un problème à l'avenir. On souhaite que davantage de renseignements soient recueillis par le GTNO et qu'il les rende publics au moyen d'un processus cohérent et pratique.

Définition du projet minier (réserve des fonds)

La définition de la propriété minière, utilisée pour créer une « barrière fiscale d'exploitation » d'une mine, doit tenir compte du traitement du minerai provenant de gisements secondaires.

Profit généré grâce à la structure tarifaire actuelle de redevances

Le passage à un régime fiscal hybride autorisant un impôt minimum n'est pas, en règle générale, considéré comme étant problématique, mais pourrait avoir une incidence sur des projets précis. Un changement aux taux de redevances pourrait avoir des répercussions à long terme, surtout si ces taux ont une incidence sur les indices d'investissement utilisés par les investisseurs (p. ex. TRI et VAN). Même aux taux actuels, les TNO ne font pas concurrence aux mesures incitatives mises en place en Ontario et au Québec pour les projets nordiques.

On a maintes fois mentionné que les impôts fonciers sont des impôts inéquitables, étant donné que les mines ne reçoivent aucun service pour l'argent payé, et que cet impôt ne prend pas en

compte le stade de développement de la mine et n'est pas bien ajusté à celui-ci. L'introduction d'autres impôts indirects érode davantage la position concurrentielle des TNO par rapport à d'autres administrations.

Processus de calcul des redevances et des produits commercialisables

Les mines de diamants n'ont exprimé aucun problème majeur avec le processus de calcul des redevances pour les diamants bruts. Les préoccupations des intervenants étaient axées sur la rationalisation du processus actuel d'évaluation gouvernementale des diamants. On souhaite que les délais soient réduits et que les diamants soient mis sur le marché plus rapidement.

Les producteurs de diamants ont formulé des commentaires sur le processus actuel de retenues de garantie qui permet d'expédier plus rapidement 95 % des diamants bruts plus petits (jusqu'à 70 % de la valeur totale) et de demander des évaluations supplémentaires (ce sont les producteurs qui paient les coûts). Ils ont mentionné qu'il s'agissait d'améliorations par rapport au système d'origine. Les producteurs ont également suggéré que les nouvelles technologies permettraient d'effectuer des évaluations plus rapides sans compromettre l'intégrité et la sécurité des détenteurs de ressources. On devrait incorporer la capacité d'évaluer les nouvelles approches à mesure qu'elles peuvent être examinées.

En ce qui concerne les mines de métaux ou les mines d'or, le problème ne repose pas sur la définition de la valeur de marché et des produits commercialisables, mais plutôt sur la

nécessité d'effectuer davantage d'analyses pour établir les points de calcul des redevances et déterminer la valeur de vente des composantes minérales contenues dans chaque concentré de minerai. Étant donné qu'il n'existe aucun centre d'échanges commerciaux pour les concentrés inhabituels, les terres rares et les autres minéraux essentiels, il faudra peut-être proposer des options d'établissement de prix de cession interne, ou mettre en place un évaluateur gouvernemental qui aurait comme objectif de définir la valeur du marché pour les ventes avec lien de dépendance.

Début de la production

Les redevances axées sur les profits permettent aux entreprises de veiller au bon fonctionnement de leurs activités d'exploitation ou de traitement avant de verser des redevances. De nombreux intervenants ont demandé l'élaboration d'une définition uniforme de l'expression « production commerciale ». La définition de RNCan pourrait être une solution potentielle.

Coûts admissibles pendant la durée de vie de la mine

On a défini un certain nombre de secteurs dans lesquels les coûts directs et indirects nécessaires à l'exploitation d'une mine ne peuvent pas être déduits des redevances. De plus amples analyses doivent être effectuées pour déterminer si des changements sont nécessaires.

On a soulevé une question distincte sur les règlements existants concernant la fiducie de restauration. Il s'agit ici d'une disposition sous-exploitée des règlements actuels, étant donné que les exigences relatives aux dépôts de garantie sont incertaines et que les organismes gouvernementaux ne se sont pas alignés à ces exigences.

Exigences sur la présentation de rapports sur les redevances

Bien que le système actuel de présentation de rapport (envoi de fichiers PDF par courriel) soit gérable, le processus de soumission devrait être examiné pour améliorer l'efficacité administrative. Les dates limites de production de rapport devraient également être examinées.

Processus d'audit

Le processus d'audit ne représente pas un fardeau administratif très lourd. On juge toutefois important d'examiner la rapidité du processus de vérifications après la production du rapport.

Autres commentaires

Une fois les nouveaux règlements élaborés, la prochaine étape importante serait d'élaborer des lignes directrices définissant la soumission de redevances.

Les commentaires fournis par le public et les intervenants de l'industrie serviront de base aux dirigeants du Nord pour élaborer conjointement les règlements et définir les orientations stratégiques nécessaires qui permettront de mettre en vigueur la première Loi sur les ressources minérales élaborée aux TNO.

Introduction

From February 3 - July 29, 2022, representatives of the Government of the Northwest Territories (NWT)'s Department of Industry, Tourism and Investment (ITI) completed a series of public and targeted engagements to inform the collaborative work of the Intergovernmental Council (IGC) to

develop regulations governing resource royalties in the NWT *Mineral Resources Act* (MRA).

This report summarizes the input and feedback that was received.

Background

The MRA was passed by the 18th Legislative Assembly of the Northwest Territories in 2019. It is the first-ever legislation governing mineral resources to be drafted in the NWT.

The collaborative approach taken in the development of the Act (which was completed in 2019) and its regulations (which are ongoing today) is the result of an historic partnership between territorial and Indigenous governments and organizations working collectively as the Intergovernmental Council (IGC); and is guided by mutually shared goals to:

1. regulate mineral interests efficiently, effectively and in a transparent manner;
2. support the economy of the NWT;
3. realize benefits from mineral development for indigenous governments and organizations, communities and the people of the NWT;
4. ensure that wealth generated by mineral resources will be used for the benefit of present and future generations of the people of the NWT;
5. encourage positive relationships between proponents, indigenous governments and organizations, communities and the Government of the NWT;
6. respect Aboriginal and treaty rights;
7. complement the systems for collaborative management of land and natural resources;
8. improve geological knowledge; and
9. recognize sustainable land use.

It was agreed early on, that as part of the process to develop the MRA's regulatory framework, a fulsome review of the NWT's resource royalty regime would be completed.

To shape this public discussion, the IGC developed a discussion paper setting out, in part, three broad measures by which to consider royalty regulations for mineral development in the NWT:

1. Are NWT royalty regulations providing a fair share of the profit?
2. Are NWT royalty regulations contributing to a stable and competitive investment environment in the NWT?
3. Is the utility of NWT royalty regulations being maximized?

A fourth question was added to the public engagement website. Are there other ways to realize benefits for the NWT using royalties?

To provide contextual baseline information, a series of resources were also commissioned and provided online. They included:

- *Benchmarking of the NWT Mining Fiscal Regime* – a 2020 report by PricewaterhouseCoopers (PwC);
- *Review of Royalty Regulations in the Development of Resources Legislation in the NWT* compiled by the GNWT; and
- *An Economic Analysis of the GNWT's Approach to the Mining Regime Fiscal Review* authored by Don Hubert of Resources for Development Consulting for the 19th Legislative Assembly's Standing Committee on Economic Development and Environment (SCEDE).

All elements of the NWT's royalty system (except for the resource revenue distribution formula) were considered open for discussion.

Eight topic areas were identified to examine the functionality of the royalty system in detail and to categorize the feedback:

1. Transparency & Confidentiality
2. Mine Project Definition (Ring Fencing)
3. Current Profit Regime Royalty Rate Structure
4. Royalty Calculation Point / Saleable Product Point
5. Commencement of Production
6. Allowable Costs (Life of Mine)
 - Pre-production
 - Production
 - Post-production
7. Current Royalty Reporting Requirements
 - Volumetric
 - Financial
8. Audit

Engagement

While COVID-19 restrictions prevented in-person meetings, virtual meetings provided the opportunity for interactive engagements with primary stakeholders.

Submissions were also solicited and accepted through the GNWT's online engagement portal and by e-mail. Media releases and interviews and social media solicitations provided broad notification of the engagement process.

In total, eight virtual meetings were held and 13 submissions received (11 online and two written) from a variety of NWT residents, industry,

non-governmental organizations (NGOs), and stakeholders.

All of the information provided was compiled and summarized in this *What We Heard* report.

This input will be combined with what is learned from financial modelling and other research and analysis to form policy options for future regulations.

A combination of concepts and elements may ultimately be employed to establish the NWT's royalty system moving forward.

What We Heard – Public Engagement

All recommendations in this section were submitted through the online engagement process.

The content received in submissions was considered and categorized under the three discussion questions provided. A summary was derived for each topic area to help define a directive for policy development.

ITI also compiled recommendations falling outside of the scope of this legislative initiative in order that these perspectives be recorded. This input will be kept for future reviews of the NWT's mineral regulations.

The following excerpts from submissions are presented verbatim with minor editing for spelling only.

1. Are NWT royalty regulations providing a fair share of the profit? What is a fair share? Should the overall revenue and benefit of resource development to the NWT be a consideration?

- I would like to support the GNWT in their goal to be transparent and accountable. I am a fan of seeing all submissions on engagement topics always made public.
- We recommend: that in these regulations or elsewhere, the disclosure of royalties information to Indigenous Governments and all members of the Legislative Assembly be enabled for use in the development and evaluation of GNWT policy with appropriate provisions for confidentiality.
- Provide the territorial government with the necessary tools/ability to calculate and verify royalties in a manner that is transparent and accountable to NWT without compromising the confidentiality companies and mines should reasonably expect.

- Companies should be able to rely on a reasonable degree of confidentiality in their tax and royalty reporting but there is no reason the government should not have all the information and tools it needs to accurately determine and audit royalties (or taxes) or any revenue stream that is legislated.
- We recommend: that some form of centralized information system, done on a mine-by-mine basis providing a good overview of each mine and information on net public benefits derived from them, should be made available to the public.
- Part of the problem is a focus on “profit” as the thing that should be shared, since there is very little transparency on how companies arrive at their calculations of “profit” - in this I would support both greater transparency and a move towards royalties based on the gross value of production (ad valorem).

SUMMARY:

There is a strong desire to see a greater degree of transparency in the administration and collection of royalties. There is a general desire to see more of the information collected by the GNWT made public in a consistent and accessible fashion.

- If we consider the overall revenue and benefits of resource extraction, we should also be considering the full costs of resource extraction:
 - total value of public subsidies, from the mineral exploration stage to the remediation stage, including subsidies to infrastructure, waste management, training for mining-specific jobs, etc.
 - total environmental costs, including damage to wildlife including caribou (and associated harvest levels), public

costs of remediation when mine sites are abandoned, and carbon costs of such a resource-intensive and energy-intensive industry.

- the cost of losing an irreplaceable (non-renewable) resource that we won't get a second chance to make the best use of.
- I am not saying that the jobs and contracts associated with mines are insignificant, I am just saying that they must be weighed fairly against the full range of real costs being incurred, and we need to look at opportunity costs (what else that public money could be used for; what other kinds of jobs we could be training NWT residents for).
- If the ultimate goal is to create jobs for NWT residents, and spin-off economic benefits to other industries such as construction, transportation, etc. - we could do more detailed economic analysis of what we are actually getting, and losing, by investing the current levels of public resources in an extraction economy.
- If mines are currently too expensive to develop, or the resource is only marginally profitable, it is likely NOT in the public interest to publicly subsidize the mine - very low levels of royalties, and high risk of mines going bankrupt and governments being left with abandoned sites and environmental and other liabilities. Why wouldn't we want to hold onto our non-renewable resource until a time when it can generate more profits and benefits for the NWT?
- Maybe the NWT should likewise ignore the fair share argument and focus on finding the best balance between capturing revenues and benefits from development while not deterring investment. Part of the 'fair share' discussion has to go beyond just royalty

revenues but also look at government expenses and the public service. The GNWT has many challenges to meet but for NWT residents to share in their 'fair share' of any royalty revenues, efficient actions and wise spending of any and all revenues by government is paramount.

- Be cognizant of how any changes will affect federal funding. The NWT should not skirt responsibilities to contribute back to Canada (as that is part of what was signed on to under Devolution) but it is clear many decisions (raising rates, changing royalty methods and incentives/deductions) all will factor into the net fiscal benefit and revenue offset.
- Hopefully any financial modelling of royalty options done by the GNWT will include our net fiscal benefit and revenue offset in the various scenarios.

SUMMARY:

Ensure that the royalty evaluation and review are being conducted in the context of the total costs of mining in the NWT. The economic analysis should be complete enough to account for all subsidies, costs, impacts, and benefits in the northern context to ensure that decisions and choices are made with full information.

- Long term capital assets from resource development, like roads and other infrastructure, could contribute to the future of the NWT. Old airstrips, docks, buildings and roads at mines may still provide some practical use in emergency situations and can contribute to future exploration projects, as well as future recreational/tourism opportunities in some regions (for example, the Canol Trail). It is true that there could be maintenance and even potential liabilities that fall to the government and tax payers in

the cases where mining infrastructure is left behind.

- Some jurisdictions have regulations about building mining roads (BC) that potentially allow for government to absorb them as part of the provincial road system and Yukon even has funding to help build or upgrade mining access roads to develop infrastructure and help support commercial activity.
- Although skills and capabilities in any line of work that remain in the north are valuable overall, it is not clear if training could ever be considered a long-term asset.
- Yukon (?) allows for royalty deductions if companies contribute to infrastructure (roads, recreation facilities) in some communities, although this might fall more under socio-economic commitments in the NWT.
- If a higher royalty rate is desired, the GNWT needs to take on more of the burden of resource development including infrastructure and environmental risk, such as setting security lower.
- As a final comment, it might be worthwhile to consider pooling the royalty distribution to Indigenous governments in the NWT to generate a fund large enough to address NWT-wide gaps in infrastructure and services, such as addictions treatment.
- We should not be focussing on changing how we collect royalties because our system is among standard/best practice.. what we should be focussing on.. is what can be done to build more mining skills in the NWT so residents get the most benefit from this development. Encouraging high school students to pursue mining studies, encouraging more people into Aurora College's trades programs, encouraging women in

trades, etc. Also encouraging geology and geological studies.. getting kids excited about rocks in elementary school.

- Long term capital assets and training are important, so is the ability to maintain infrastructure and to use the skills that come from training here in the north.
- If the GNWT were to increase the Royalties up to the level that other jurisdictions have established, the Government would be able

to afford to establish the Environmental, Exploration and Engineering Programs at Colleges right here in the NWT to correct all these problems.

SUMMARY:

The use of royalties in terms of creating long-term infrastructure, support institutions, and structures needed for the North and employment skills development are viewed as important priorities.

2. Are NWT royalty regulations contributing to a stable and competitive investment environment in the NWT? Investors and proponents of major projects require clarity and certainty. Is the NWT regulatory system attractive to investors when compared to other Canadian and international jurisdictions?

- We recommend: that in the profit-based royalty system the progressive range of royalties is stepped up more steeply, the highest rate be in the range of 50%, and the cap should be in the range of \$200M. Furthermore, ITI should not promote the highest rate of royalties to the public as if it were the only amount; the progressive range should be shown, with the amount received at the various levels to provide a more accurate picture of government take.
- Please raise the minerals royalty cap, in steps, up to 50% with the top category \$200M in profits.
- I am in favour of the proposed royalty regime found in the information handout. Although I think there should be no cap at \$200,000,000. Above this point royalties are to still be paid but at a lower percentage.
- If we do not truly believe we have viable economic alternatives (and until we actually focus on building these alternatives), we will essentially be subject to blackmail by resource extraction corporations.
- NRCan (Natural Resources Canada) data generally confirms that in the last decade, the NWT has seen significant decrease in actual exploration expenditures (although that may have picked up recently since the pandemic and other crises in the world). But given the survey results and the spending data, it is hard to argue that the NWT is attractive to investors.
- Looking at the NRCan 2011 study, coupled with federal and territorial taxes, current NWT royalty rates represent an estimated revenue capture of nearly 40%, which is very close to what various international organizations (World Bank, International Monetary Fund) feel is appropriate. It is easy to suggest changing royalty systems or simply raising royalty rates is the answer to increase revenues but doing so may only increase chances any company will find ways to avoid paying taxes/royalties.
- The proposed new regulations need to defend any revised royalty regime in relation to international royalty standards. What rationale

is there for the current situation whereby GNWT royalties are lower than those in South Africa, Peru, and Western Australia?

- Not adapt anything that puts mining in the NWT completely out of sync with the rest of Canada, our closest competition for investment.
- We need to increase competitiveness, not decrease it or all benefits including revenues will decrease.
- If we were to force companies to pay royalties before they are making profits it would discourage new companies from investing or existing companies to expand operations.
- At best, Western Australia provides the NWT with a vision to strive for in the long term. But if anything, such a simple comparison illustrates that infrastructure and access and efficient regulatory processes with timely

approvals and certainty of moving forward in exploration, development and production stages, are all key to attracting investment (and hopefully royalty returns). Despite all their apparent success, Western Australia does not rest on their laurels but still looks to incentives to develop future mining investment and business and stay ahead competitively.

SUMMARY:

This topic displays divided recommendations. On the one hand the royalty rates and tiers should be updated to increase the royalty collected, but on the other hand, the NWT should be positioned to be an attractive place for investment and competitive with other mining jurisdictions. There is a desire to raise royalty rates to ensure greater revenues, while maintaining the competitive position of the NWT on at least a Canadian basis if not a global basis.

3. Is the utility of NWT royalty regulations being maximized?

- NWT currently doesn't seem to do much to ensure the utility of our resources are maximized. It's unclear if mine plans are approved and high grading prevented, leaving valuable resources in the ground. Extract while mine infrastructure still exists, because when the infrastructure is gone, that resource will be more expensive to develop.
- The GNWT should certainly identify and find ways to seal any holes in the current regulations for collecting information and verifying royalties through audits. It might be challenging for the government to verify exploration expenditures for any deductions related to royalties or taxes.
- The GNWT should be proactively following this technology should it help simplify auditing

or even information gathering (statistical returns) in relation to royalties and perhaps be considered in legislation at some point.

- Hopefully ITI has looked at other jurisdictions to see if or how they specifically try to deal with ring fencing or transfer pricing issues (?) in their royalty legislation, at least for some inspiration in how to potentially deal with it.
- None-the-less, whatever our jurisdiction can do to tighten legal loopholes and limit tax erosion zone needs to be closely evaluated.
- We recommend: that the regulations be more specific on the number of inspections required to ensure the adequacy of information and to maintain public confidence that the information collected and given by the companies is appropriately verified.

- While traditional gold or base metal mines encapsulated a smaller lease area, some diamond mines include large areas of leases where exploration is almost regional or grassroots in nature. Yet none of that exploration information has been captured into the geoscience database because no reporting is required on leases under current regulations. The NWT is potentially letting companies get tax/royalty deductions on exploration expenses all while allowing them to keep geological information in their own private hands!

SUMMARY:

The governance and administration of the mineral resources are viewed as critical components to the overall governance of the NWT. The GNWT should ensure that there are no opportunities for companies to avoid paying their royalties and that the extraction of the resources is managed appropriately. Where geoscience information can be collected to benefit future generations, those opportunities should not be lost. The development of regulations is not sufficient to ensure effective management of the resources. The public should be able to see that the governance of their resources is actively undertaken.

- We recommend: that the GNWT research how abandoned mine and perpetual care costs can be borne by the mining industry, rather than by public governments.
- I would support the idea of a Progressive Reclamation Deduction. It is also worth investigating a Reclamation Trust Revision, more details on this need to be fleshed out.
- Although it might seem reasonable to allow royalty deductions or incentives related to reclamation or rehabilitation, it might be best to avoid anything if elements remain under

the authority of the federal government (the GNWT and ITI should only incentivize what it has control over and administratively manages). Additionally, as incentives and deductions factor into royalty revenues, they must ultimately play a part in how a jurisdiction is valued in any equalization scheme or claw back of money to the federal government.

SUMMARY:

Remediation of mine sites after mine closure is viewed as an important part of the mining cycle. The balance of costs should not be borne by the public government. Ensuring that the Remediation trust fund is functional in the Federal/Territorial context is a desired goal.

- I don't think that incentivizing companies with a Northern Head Office incentive or secondary processing incentives will achieve real benefits for northerners (weighed against the cost of such incentives).
- We recommend: that companies have a head office presence (with employees) in the NWT.
- With locally trained and qualified grass-roots Northerners running the Mines, the Fly-in rotations from the South would be minimized, the incomes and taxes would stay in the North and there would be a less adversarial approach by the Industry to Environmental issues. All of these would ensure long-term benefits to the Rightful 'Owners' of the Resources.

SUMMARY:

While ensuring that the mine employees live in the north is viewed as important, differences in opinion on whether this goal should not be incentivised through royalties.

- I do not support exploration incentives - if a corporation decides that additional exploration is so marginal not to be worth it without public subsidies, then it is likely not in the public interest.
- We recommend: that royalties should not be used as a way to incentivize or increase exploration and development.
- Do not change the way royalties are administered, but focus on incentives to encourage the mining companies that are investing in the north to stay and continue investing in the north. We need to maximize the life of each mine, find ways to encourage companies to extend the life of mines as much as possible. And also encourage those companies to continue exploration in and around their mine sites.
- Avoid giving incentives or tax/royalty deductions for exploration expenses when there is no capture of geoscience information in return. The loss of revenue (through tax or royalty deductions) and data (through non-reporting on leases) is definitely generous of the NWT.
- No matter what the royalty regulations might ultimately say after all this engagement on royalties, without any new mines on the horizon, there will be zero royalties and taxes, as well as less supporting businesses and even a reduction in necessary government jobs as well as those related to land and water boards. It is well known that it takes years to explore and potentially discover new deposits worth mining. **Grassroots exploration and attracting industry investment still need to be of paramount concern.** (*sic Bold applied by submission author*).

SUMMARY:

Exploration is viewed as an important activity; differences in opinion on whether it should be incentivized using the royalty regime. While deductions for mine site exploration costs are acceptable to ensure extended mine life, geoscience information should also be collected to extend the mine life.

4. Are there other ways to realize benefits for the NWT using royalties? For example, could we leverage their value to increase employment, procurement or investments in infrastructure and environmental sustainability?

- The NWT certainly needs to remain competitive, and it may be worth looking at what some other jurisdictions offer as incentives and deductions and if they may work in the NWT. It might be nice to see royalty provisions favour or encourage NWT ownership of mines, particularly smaller operations and/or any owned by Indigenous owned mining companies.
- Ensure regulations are as simple as possible for the GNWT to manage and administer. While ad valorem royalties might look more attractive on paper, they appear more administratively burdensome to implement and maintain. As such rates are often dependent on commodity prices, it sounds like recurring decisions are necessary on behalf of Ministers or others. In the NWT, such decisions have the potential to require time for consultation and/or be viewed as giving discretionary power to government officials.

- A company mining in the NT should follow a strict removal guideline. Example: exploration finds a gold mine with 20 years expected reserves. The company may only extract “x” per year to ensure a 20-year mine life and employment for those involved. No increase extraction unless it follows the company has higher reserves than originally found and then adjusted accordingly.
- Companies working in the north must use northern companies before contracting to outside territory companies for transportation, logistics, etc.

SUMMARY:

Royalty provisions regarding northern and indigenous ownership of mines in the NWT should be investigated. The administrative burden of the royalty system must not exceed the capability of the NWT or be so expensive as to eliminate the public benefit. Governance of the minerals industry should ensure maximization of the resource utilization and not allow that to be abandoned for short-term political gains or excessively rapid/wasteful resource extraction.

5. Other topics:

- We recommend: that research be done into how corporate taxes could be stabilized to better benefit the GNWT, with an action plan from the research.
- We recommend: that a royalties review that re-imagines GNWT’s fiscal framework to a benefit retention approach be undertaken by an independent third party and overseen by an independent panel.
- We recommend: that the regulations include a mandatory public review, set at a maximum of 10 years. The public review is to be overseen by an independent panel, with appropriate plain language materials available.
- We recommend: that the NWT *Heritage Fund Act* undergo an immediate public review to ensure a dedicated revenue stream and equitable sharing of revenues from resource development with future generations, and that this be led by an independent committee.
- We recommend: that the GNWT offer exploration incentives that are not grant-based (i.e., systems other than MIP).

SUMMARY:

These topics were viewed as important feedback but outside of the scope of the royalty review.

What We Heard – Targeted Engagement

In addition to the feedback and commentary received from the public, ITI officials met with owners of active mines, exploration companies and interested stakeholders to gather their input and perspectives on the state of the royalty system and how it works for them.

As these discussions took place during the time of the COVID-19 pandemic, meetings were conducted virtually.

These discussions examined the royalty system through eight topic areas. (They have also been used to categorize the feedback provide):

1. Transparency & Confidentiality
2. Mine Project Definition (Ring Fencing)
3. Current Profit Regime Royalty Rate Structure
4. Royalty Calculation Point / Saleable Product Point
5. Commencement of Production
6. Allowable Costs (Life of Mine)
 - Pre-production
 - Production
 - Post-Production
7. Current Royalty Reporting Requirements
 - Volumetric
 - Financial
8. Audit

Notes were taken during the meetings and the discussion is summarized for each topic area. These are not verbatim notes but serve to capture the general content of the conversations. A selection of the feedback received is presented with a summary for each theme.

What was discussed?

1. Transparency & Confidentiality

What info are you comfortable with being released by GNWT? Are there issues with royalties being reported at a mine or company level?

- We have no problem with royalty numbers being released.
- Total royalties paid in NWT would work. We have to report our royalties through Extractive Sector Transparency Measures Act (ESTMA) anyway.
- As far as production data for the mine, its data that is already being shared but when it comes to revenue and value-linked data, that becomes an issue, especially forecasts and future-looking information. Production values or commercial information such as any information linked to pricing would be problematic as it is still a competitive market. Prefer to not disclose information unless there is a reason. Concerns were raised regarding

the sharing of revenue and pricing information from both a competitive and legal (collusion) perspective.

- Need a lot more transparent disclosure if we are to gain and retain trust of Indigenous partners. Transparency goes both ways, if we're going to be transparent that needs to be reciprocated by the IGOs.
- It does need to be stated that royalties are one element of what the company is paying (property taxes, etc.). Need to look at the debate holistically to gain the trust of the public and IGOs. Disclosure of amounts paid for each type of tax or royalty (gas tax, property tax, etc.). GNWT owns the resources; and should own the information and the disclosure process. If these costs could be estimated, it would improve information for analytical and policy decision purposes.
- Lack of transparency is hurting the industry, and there should be a focus on one published number. When there are five other numbers

not being distributed it increases distrust. When you can't explain it, that is where the suspicion comes from. What you see is the excessive attention on royalties with individuals and IGOs saying the public is not receiving sufficient royalties – which isn't the case.

- The Premier should be proud of the numbers. We would all like to see all our payments tabulated and counted in one spot. Not only what flows in to GNWT but what our stakeholders get out of it as well. As the regulations change, look at fairness and equity as it is a tough message to deliver about how unattractive NWT is seen and the arguments we have with our shareholders.

SUMMARY:

The public release of total royalties and production information is not seen as an issue going forward. There is a desire to see more information collected by the GNWT and made public in a single consistent fashion.

2. Mine Project Definition (Ring Fencing)

Currently the limits for a Mining project are defined by the Mine Property which consists of a single block of contiguous claims and leases. Are there issues with the current definition which controls what can and cannot be deducted from royalties?

- A concern is for satellite deposits and the definition is "single block of contiguous..." and if there is a deposit 20 kilometres away that would be more affordable to bring it to an existing plant.
- We spend a lot of money on lands adjacent to leases. To get credit for the work that is done should be encouraged. Considering that this work done to contribute to the mine life of the project is essential.

- If we built a new mine instead of using existing mine, it would increase the costs and decrease the royalties instead of benefiting all?
- If you want long-term spending, you want to be bringing in as low royalties as you can because they are bringing money into the territories; you need to take that into consideration.

SUMMARY:

The definition of mine property which is used for the "ring-fencing" of a mine will need to address the processing of ore from satellite deposits.

3. Current Profit Regime Royalty Rate Structure

Public pressure is always pronounced on the government to collect more revenues. Industry is also always stating that royalties are killing their business. What are the implications of changes in the royalty rate structure?

- The more you claw back – the less activity you will get. If you start tinkering with the royalty regime and making it less competitive, it wouldn't necessarily stop a company from coming to NWT, but it might be a contributing factor as to why they don't arrive or don't stay. Royalties are part of all the associated costs and regulatory challenges that affect the viability of the project. Infrastructure (Power, Water,) and People are the biggest concerns and there has to be consideration that the government does not necessarily need to fund all of it.
- Including Indigenous governments and organizations in the discussions is a good idea.
- When all of the large number of considerations are sorted out, the viability of the project will ultimately depend on the commodity price itself and if that is high enough.
- There isn't a problem with a minimum royalty. Royalties are supposed to compensate the jurisdiction for the resources being removed. But one CEO commented that with a Hybrid, minimum ad valorem regime (1% on top of their existing 3% NSR could jeopardize the economic viability of the project).
- While it was viewed that profit-based regimes made sense there was also the opinion that: companies shouldn't get a better deal if they are not as profitable. Having a sliding scale seemed to be a fair compromise to the assessment. The fact that the Net-profits regime recognizes the costs associated with building a mine was important. The shareholders have put a lot of money to get each mine into production. Every dollar amount the mine paid out on costs or taxes pushes back on the amounts available to shareholders. Changes would need to be careful to not de-incentivize investment.
- From a royalty perspective the NWT was viewed as competitive but, it was much more to the middle of the pack when other taxes came into play. In particular, the Property tax regime is considered by many companies to be problematic.
- Payments to governments could be shifted in favour of royalties and away from property taxes.
- The mines each pay large property taxes and receive no services (approximately \$7-9M each). Their view is that the way the property tax formula works is that it's intended to reflect the fair market value of the assets but because the depreciation laws are locked in and there is no recognition of closure liability, the mines end up in a situation at the end of the mine life where there is zero value in the business – yet property taxes don't reflect these economic realities.
- New taxes like Carbon taxes will not help this situation. Perhaps you should work with the Federal government to either offset these costs or incentivise green energy.
- Consistency over time is critical to maintaining competitiveness with other jurisdictions, especially those within Canada. Other jurisdictions provide good examples of what can happen. Nevada wanted to put in a 5% NSR and it killed projects and they lost a lot of exploration activity. When Quebec increased their rate to 50% there was a general loss

of exploration in the province. They quickly changed their royalty structure by reducing royalty rates in an effort to attract investment back to the province. Quebec as a whole is really different from the small population, small infrastructure NWT. To encourage exploration, the different levels of investment including the Caisse Populaire have helped to increase exploration. But these solutions are restricted to Quebec and cannot help an Ontario project even. For remote parts of both Ontario and Quebec, there are reduced taxes and royalties, to set up our project in northern Ontario we would only have to pay a 5% royalty in comparison to your 13%. And it is just as remote there as the NWT.

- In general, royalties get so much press in the NWT. In contrast, all of the other benefits and other good things that happen because the companies are here aren't as widely known.

SUMMARY:

Changing to a hybrid tax system with a minimum tax is not generally considered to be problematic but may have impacts on specific projects. Changes to the royalty rates could have long-term impacts especially if the rates impact the comparative investment indices used by investors (i.e. IRR and NPV). Even at current rates, the NWT does not compete with the incentives Ontario and Quebec have put into place for northern projects.

Property tax was consistently mentioned as an unfair tax as the mines receive no services for their payments and the tax does not consider the maturity of the mine and adjust appropriately. The addition of other indirect taxes further degrades the NWT's competitive position in comparison to other jurisdictions.

4. Royalty Calculation Point / Saleable Product Point

With each mineral commodity, a point in the transportation and value chain needs to be determined when the value of minerals leaving the NWT can be calculated. Determining the value can be quite different for each commodity and regulations offer the Saleable Production Point as an alternative method. What issues are there for the approaches used?

(The responses were grouped based on the mined commodity of the company.)

DIAMOND FEEDBACK:

- As third-party sales used for royalty calculation purposes, the point-of-sale makes sense to most of the companies. For rough diamonds it isn't possible to collect in any other way and you can't pay on any other basis. Industry raised question as to whether the GNWT

would consider other royalty valuation alternatives to allow for the faster movement of rough diamonds to market. For example, some companies are working to develop new technologies to assist in the evaluation. If the technology can be proven out, would the GNWT be willing to evaluate it? The development of the technology is quite far advanced and would the GNWT be able to evaluate and implement it?

- Is the Government Valuator only required for non-arm's length transactions? Government Diamond Valuation process slows the mine-to-market sales process as it is dependent on the schedule of the GDV. It would be easier and flexible if valuers were in Yellowknife.

- All of the diamonds are for export; all are leaving on a Kimberly certificate. Could we refine the process to use that instead? The royalties are paid on third-party sales. I don't see how we would sell at a discount to pay less royalties.
- What is the process if there is a discrepancy between government valuation and return numbers you see? The valuation and the sale are never the same. In most cases the companies pay on third-party financial sales and there has never been an issue on paying royalties.
- If we could either speed up or reduce in-person checks to get diamonds to market faster, it would help. An analysis could be assembled to say what the impact was in terms of cash and what sits on the balance sheet.
- While some of the issues have been alleviated by holdback process and ability to request additional valuations, if we could transfer the diamond inventory to cash quicker it would be preferable.

BASE METAL FEEDBACK:

- Base metal mines concentrates are typically not directly saleable or of low value without processing and separation into components for manufacturing end-products. As the producer we want a level playing field with the operations and producers that are simply able to sell their products. The need for additional processing of concentrate requires spending 40 percent additional in capital costs and adds an additional level of risk to develop the project.
- There is a lot more that goes into producing a saleable commodity that goes above capital and operating costs. Nobody will buy the concentrate from the NWT as it is. Complex

hydrometallurgical processing is required and that is a whole new ballgame. In the end, the challenge is about finding a market for that product, and you almost have to tailor critical minerals for your market.

- Not all concentrates are equal but there are models to look to at, including affiliates buying concentrate. Hud Bay built a smelter between AB and SK, using existing transfer pricing on nickel/cobalt going to Sherritt in Alberta, all of which were affiliated transactions. What happens to the pricing when nickel and copper and PGEs are transferred between Newfoundland and Sudbury?
- The government should reflect on the statement that they do not accept valuations (transfer pricing). Historically that may have been a sound position but is still that a sound approach. What is the basis for charging an additional tax in another jurisdiction? Look at NWT Egg Marketing case as an example and see if they would give you the same advice.
- Since we aren't capturing the full cost of capital, which can be 30%, then in fact it is being taxed. We lose deductibles for processing because we have been asked to leave here. The processing plant can't be built in the north as hydrometallurgy is not a business the NWT wants to have here. Both Fortune/NICO tried, and Avalon tried.
- The GNWT plans to value mineral production from the point of sale to a third-party purchaser wherever that occurs in the value chain, whether this is in the NWT or another jurisdiction. This scheme would essentially inflate the amount of royalties that would be assessed at the mine gate with the additional value of processing outside the NWT and penalize companies already encumbered by higher capital costs for downstream process plants. Not only is this unfair, but it is also

arguably unconstitutional because the GNWT would be attempting to capture the value of that processing conducted in a different jurisdiction. The jurisdiction of the GNWT to tax minerals stops at the point these minerals cross the border. Any attempt to tax the value of processing in other provinces is an incursion into those jurisdictions' own taxation powers, and the federal government's exclusive jurisdiction to regulate interprovincial commerce.

- We understand that under the proposed MRA regulations, the GNWT would allow for certain deductions for the costs of activities incurred outside of the NWT, including depreciated capital and operating costs at the refinery. However, there are additional deductions that would need to be included to level the field with point-of-sale transactions to third-party processors. They would need to include sunk costs, depreciated capital and sustaining capital, operating costs, transportation and handling, insurance, marketing costs, disposal of waste products, legacy liabilities and the profit margins for the activities conducted outside of the NWT. The separation and role of these value-added activities needs to be considered in the mechanisms the GNWT uses to assess royalty payments. To do otherwise would have the analogy of a mining company being required to pay a royalty on the value of a diamond engagement ring as opposed to the value of a rough diamond - contrary to the way royalties have been treated in all Canadian jurisdictions for decades.
- Lastly, the proposed MRA regulations as currently proposed, create a disincentive to creating vertical value chains within Canada. Imposition of higher royalty payments to affiliated processors incentivizes the sale of unfinished products to the third-party processors typically situated in nonallied

countries. This effectively strengthens the stranglehold on mineral production in these countries and perpetuates our national predicament of primarily being an exporter of raw goods with very little value-added processing in Canada.

- A fair answer would have to be consistent and to say there is no other way to doing valuation would not be. There needs to be dialogue on this.

GOLD FEEDBACK:

- The point of sales of a product to an arm's length company or "third party" is the main trigger that is used for the calculation of royalties. The alternate approach is to have an independent valuator determine a market price that is used for the royalty calculation. Are other approaches possible?
- While most gold is shipped as gold Dore bars and those are easy to value, what is the case of concentrate of refractory gold which could be a sulphide concentrate? Examples of these are common in Canada and most go to Asia on ships to Japan, China, Korea. How will those be valued?

SUMMARY:

The diamond mines expressed no major issues with the current process of calculating royalty on rough diamonds. Concerns were focused on streamlining the current Government Diamond Valuation (GDV) process to reduce delays and get rough diamonds to market quicker. The diamond producers did comment that the current holdback process which allowed for early shipment of up to 95% of the smaller rough diamonds (up to 70% of the total value) and the ability to request additional valuations (they pay the costs) were improvements over the original system. Suggestions were made that new technologies may allow for a more rapid

or timely valuation without compromising the integrity and security of the NWT resource holders. The new regulations should incorporate the ability to assess new approaches as they can be verified.

For potential base metal mines or gold mines, the definitions of market value and saleable product are not the issue but establishing the royalty calculation point and determining the sales value

for components contained for each concentrate will require more analysis. With no established trading hubs for unusual concentrates, rare earths and other critical minerals, there may need to be an evaluation of transfer pricing option proposals, or the establishment of a Government Valuator for purposes of determining market value for non-arm's length sales.

5. Commencement of Production

Royalty payment initiation occurs after the mine reaches Production. The commencement of production is determined by the operation meeting a rating level of the mill equipment for an extended period or the production of reasonable commercial quantities. Neither of these milestones is well defined or easily measurable. Are there alternative solutions to determining the initiation point of paying royalties for a mine?

- Everyone has a different definition of when production starts and royalties need to be paid. The different definitions are confusing and frustrating. Depending on the stage of construction and development, the differences can become problematic. If you are just dealing with definitions on paper, it looks simple, but in reality, the company is deeply in debt. You are bleeding money and if you are smaller company, it's a stressful time.
- You receive fixed costs on your production, but you have to pay for three teams of people. (Exploration, Construction and Production staff). It isn't until you are well into start up that you have only one team. Each mine is different and so each mill is something built for that purpose and never runs perfectly right off the bat. Ideally, one would start royalties when product goes out the door but practically it should not for at least one year.

- In a perfect world, you'd start at six months/ one year for stability and then start paying brought-forward royalty. (Fan of royalty holiday/NSR).
- As there is no way on earth anyone is profitable in start-up but right now there is no concern using the profit-based system. Usually, mines have a three to five-year payback period so you won't be receiving royalties until they have paid back their debts and investors.
- A standard definition makes sense but there needs to be an adaptable standard. In Mongolia it is based on when the ore pile reaches a radius which could be different volumes for different materials. One recommendation was that the mine typically relied on a Natural Resources Canada (NRCan) definition for the start of production (The first day of a period of 90 consecutive days during which the mill that serves the mine should have produced at 60% or above its design capacity).

SUMMARY:

The profit-based royalty offers the company the opportunity to get its mill and mining operation functioning properly before requiring royalties. A consistent definition of commercial production was wanted by numerous parties. The NRCan definition of Commencement of Production is a potential solution to accomplish this.

6. Allowable Costs over the Life of Mine

- i. Pre-production
- ii. Production
- iii. Post-production

Currently producers are constrained to the current regulations' allowable cost structure where costs are categorized as either Pre-production, Production, and Post-production with the ability to create cost pools (e.g. development cost pool) where pre-production capital and operating costs are available for carry-forward to be offset against future period revenues when the mine commences production and sales of the production. Are there concerns regarding costs that are required to operate a mine but are not deductible for royalty purposes under the current regulations?

- In general, producers were supportive of the current regulations' allowable costs/ deductions structure. The directly attributable costs for producing minerals are deductible.
- Currently some costs that are needed to open and operate a mine are not deductible.
 - BA, IBA, SEA commitments currently not deductible.
 - Corporate expenditures, community contributions, job fairs not deductible.
 - Property taxes are significant and the company receives no services.
 - Global marketing and out-of-country sorting costs are not deductible when royalties are calculated based on government diamond valuation.
 - Surface rights payments are not deductible.

- Insurance premiums related to the transport of diamonds are deductible but other insurance costs are not.
- Director's costs are not treated as directly related to the mineral production.
- Offices that support the operation but are outside the NWT aren't allowable.
- Sales and marketing outside of Canada and not allowable.
- These should be allowable deductions.
- Another issue was the use of the existing Reclamation Security Trust (RST) provision in the Mining Regulations. The current reclamation security process requires money up front the day construction starts, making it costly to industry. Mine operators must place security up front with these funds not returned until mine development has been fully reclaimed to satisfaction of regulatory authorities (e.g., Mackenzie Valley Land & Water Board or Department of Lands). The preferred forms of security: cash, irrevocable letters of credit (ILOC), and surety bonds. But this means that a "double funding" situation exists where companies must spend money a second time on reclamation to get the first reclamation security returned. Company has to pay twice, first into the security, second to pay for remediation activities.
- Some jurisdictions look for the company to pay remediation upfront (first three years) and this can kill a project; instead if they waited until the payback period is over, the project could go ahead.

- Progressive remediation costs are treated deductible when mine is producing, however, voluntary. But after the operation closes remediation costs cannot be deducted as there is no production and associated revenues to deduct against. Consequently, the RST is not used by producing mines. While the monies paid into the RST are deductible while the mine is operating, the monies paid into RST become attached to a mining lease and may not be available to the company who put them there.

SUMMARY:

A number of areas were identified where direct and indirect costs to operate a mine are not being allowed as deductions from royalties. More analysis is needed to determine if changes are required.

A separate issue has been identified regarding existing regulations for the Mining Reclamation Trust. This is an under-used element of the current regulations as the requirements for security deposits are uncertain as different government agencies have not harmonized the security requirements.

7. Royalty Reporting Requirements

Royalty payments are accompanied by information reporting after the mine opens. Are there issues with the reporting of information that falls into one of two forms?

- i. Volumetric
 - ii. Financial
- In other jurisdictions it is not common to file end of April; most are due by end of June. It would be good to be aligned with other reporting practices.
 - In Quebec it's six months after the company fiscal year-end and Labrador as well.
 - In the past audited financial statements aren't finished until March which doesn't leave a lot of time with the numbers. The timeliness is an administrative issue that needs to be addressed.
 - If you go into hybrid regime, it's a more complex system that takes more time and the April 30 deadline would be even more difficult.

- Is the plan to continue to keep an annual submission? (Yes). At year-end waiting for the inventory reports can be delayed as it becomes difficult (busy month).
- In a lot of other reporting there is also a requirement for the GNWT information to complete the process. This cannot be delayed.
- The annual filing approach using PDF and email reporting is working.
- The new system to update documents works well.

SUMMARY:

Although the current reporting system (email submission of PDF files) is manageable, the current submission process should be reviewed to improve administrative efficiency. Also, current filing deadlines be reviewed.

8. Audit Process

Royalty payments are accompanied by filed documents supporting the calculations. 100% of the files are checked through a financial audit. Are there problems with the current rules and approach?

- Only challenges have been delays from filing to getting the questions which make responding difficult.
- Audit sooner rather than later.
- We rely greatly on prior adjustments going forward.
- As the costs that are allowed don't change over time, we know which ones aren't allowed. This makes filing quicker, but it is still complex.
- The filing process is time consuming, but we are working it out.
- It is important to keep the audit current so not doing multiple years at once. It is our objective to pay a fair value what we're doing but we would like consideration for everything else we do in the NWT.
- For the audits, anything we can do to accelerate process would be positive.

SUMMARY:

The audit process is not producing an extraordinary administrative burden. Timeliness of the audits after the filing is viewed as important.

9. Other Comments

- It is great that we're having the discussions at the formative stage.
- Guidelines would clarify certain things in a simpler format than the regulations.
- These would be easier to understand without having to look through the regulations to figure it out.

SUMMARY:

Upon completion of the new regulations, Guidelines to filing royalties are seen as an important next step.

Appendices

Appendix 1: Alternatives North Mineral Resource Royalty Review

Appendix 2: NWT & Nunavut Chamber of Mines Open Letter



Alternatives North

Box 474 Yellowknife NT X1A 2N3
www.alternativesnorth.ca

July 1, 2022

To: GNWT royalty_administration@gov.nt.ca

Re: **Mineral Resource Royalty Review** by email

Alternatives North has been actively engaged in the development of the *Mineral Resources Act* (MRA), and now the regulations that would bring that Act into force.

We will have comments on other MRA regulations in a separate submission. Even so, our comments on the royalty regime are not fully restricted to royalties, as some matters give context to the royalties discussion, and your discussion questions are not limited to royalties

We are very disappointed in the format of the discussion paper and other material presented. Important questions such as what the cap on royalties should be, or the amount the GNWT contributes to the Heritage Fund, are not addressed. Instead, we are asked questions about *Reclamation Trust Revision – a reclamation trust is currently part of the regulations but does not function in the current federal/territorial regulatory setting*. Why ask questions about administrative items that must be changed, yet fail to give information on substantive issues? In that regard, we have included several recommendations on research required to more appropriately address some of the substantive issues.

Our overall conclusion is that we, the public, are not getting a fair share of mineral development profits. We have recommendations for improvements.

Summary of Recommendations

We recommend:

1. that in the profit-based royalty system the progressive range of royalties is stepped up more steeply, the highest rate be in the range of 50%, and the cap should be in the range of \$200M. Furthermore, ITI should not promote the highest rate of royalties to the public as if it were the only amount; the progressive range should be shown, with the amount received at the various levels to provide a more accurate picture of government take.

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Appendix 1: Alternatives North Mineral Resource Royalty Review

2. that a royalties review that re-imagines GNWT's fiscal framework to a benefit retention approach be undertaken by an independent third party and overseen by an independent panel.
3. that in these regulations or elsewhere, the disclosure of royalties information to Indigenous Governments and all members of the Legislative Assembly be enabled for use in the development and evaluation of GNWT policy with appropriate provisions for confidentiality.
4. that some form of centralized information system, done on a mine-by-mine basis providing a good overview of each mine and information on net public benefits derived from them, should be made available to the public.
5. that the *NWT Heritage Fund Act* undergo an immediate public review to ensure a dedicated revenue stream and equitable sharing of revenues from resource development with future generations, and that this be led by an independent committee.
6. that royalties should not be used as a way to incentivize or increase exploration and development.
7. that the GNWT research how abandoned mine and perpetual care costs can be borne by the mining industry, rather than by public governments.
8. that the property tax system be maintained.
9. that research be done into how corporate taxes could be stabilized to better benefit the GNWT, with an action plan from the research.
10. that the regulations be more specific on the number of inspections required to ensure the adequacy of information and to maintain public confidence that the information collected and given by the companies is appropriately verified.
11. that the regulations include a mandatory public review, set at a maximum of 10 years. The public review is to be overseen by an independent panel, with appropriate plain language materials available.
12. that companies have a head office presence (with employees) in the NWT.
13. that the GNWT offer exploration incentives that are not grant-based (i.e., systems other than MIP).

Following are more details on these recommendations, and replies to the questions in the Discussion Paper.

Appendix 1: Alternatives North Mineral Resource Royalty Review

Amount of Royalties

Given low employment to cost ratios, we need to focus on benefits in terms of government revenue, especially to ensure some measure of intergenerational equity. Bauer states that “[m]ineral development may provide employment and other returns, but *its principal benefit is government revenue* [emphasis added] to support development and the wellbeing of residents.”

To address this, we first ask: why is the cap 14% on percentage *profits*? This appears only to encourage quick profits. If profit were to be spread out over many years, there would be more stability in the workforce, and indeed better possibility of having more NWT residents employed. When the mining industry is encouraged to take as much out as quickly as possible, the NWT can’t provide enough workforce. If resources were taken out more gradually, the workforce would be smaller, but be kept on longer. **We recommend** that that the progressive range of royalties is stepped up more steeply, and the highest rate be in the range of 50%. That would reflect a more balanced approach to sharing of risks and benefits, and help avoid huge windfall profits.

Furthermore, the current royalty regime caps the increase of percentage of *profits* taken at \$45M. There is no reason given for this. Given the royalty regime hasn’t been reviewed in decades, \$45M was worth a lot more historically. **We recommend** that the cap be raised. We suggest \$200M, and that amount be increased annually. We have seen no research by GNWT on this, but suggest the \$200M given general inflation rates.

We did ask during the May 4, 2022 presentation by ITI on royalties, how mining could be encouraged to be done more gradually, to better encourage long-term workforce and revenue stability. This issue was not addressed in any of the research done by ITI. This method of encouraging revenue and workforce stability through the royalty regime should be the subject of further study. *If ITI has research on this or other methods, we certainly welcome seeing this material.*

Furthermore, ITI should not promote the highest rate of royalties to the public as if it were the only amount; the progressive range should be shown, with the amount received at the various levels to provide a more accurate picture of government take.

Independent review

We appreciate the GNWT wishes to “adopt a benefit retention approach to economic development” as part of the original priorities for the 19th Legislative Assembly. This includes the Industry, Tourism and Investment (ITI)-stated goal of “maximizing benefits from development while maintaining competitiveness.” The Minister of ITI has stated that the “re-imagining of our government’s fiscal framework around royalties is one that deserves a comprehensive, collaborative, multi-phased approach.”

This generally positive position is then directly contradicted by statements in the discussion paper. For instance, the discussion paper states “because natural resources are *commonly understood* [emphasis added] to be public property”. They *are* a public resource, and as such, the public, not just the private sector, should benefit from them as one-time natural capital. Furthermore, the statement “[r]ecognizing the *extraordinary*¹ *benefits* [emphasis added] that mining can bring to a jurisdiction, governments can choose to entice or attract

¹ In GNWT’s own research paper, the term used is ‘sizeable’, not extraordinary. Given the public is more likely to review the discussion paper than the research paper, this is further evidence of bias.

Appendix 1: Alternatives North Mineral Resource Royalty Review

companies to mine in their jurisdiction by making allowances to tax or royalty regimes that will improve the feasibility of a proposed project” reveals the bias toward more mining, rather than truly examining the shortcomings or weaknesses of the system. While other metrics are available, most GNWT information primarily uses GDP to show the powerful hold on and benefits that mining has in the NWT. GDP is a very poor and crude indicator of benefits. There is no guarantee that the GDP generated by mining actually stays in the NWT (e.g., about half of the workers at the diamond mines don’t actually live in the NWT). As well, GDP does not properly measure dis-benefits. Acts of vandalism and getting cancer have positive effects on GDP: more money spent on insurance claims, fixing windows, legal bills; more money on medication, transportation, and recovery do too. If social disruption and environmental remediation costs are greater than benefits, mines can still show an elevated GDP effect, yet not make an overall positive net contribution (see Recommendation 4 above).

The GNWT further obfuscates with more red herrings such as comparing the royalty rate for diamonds with that of gravel mines. Gravel extraction is not under the MRA; it’s a throw away comparison. Furthermore, quarrying royalties are fully disclosed whereas mining royalties are only available as an annual aggregate figure with other resource revenues.

Pushing for more mining without truly looking at cost versus benefits does not serve the public nor do this public review process justice. Given the bias in the GNWT’s discussion paper and research papers, **we recommend** that a royalties review that re-imagines GNWT’s fiscal framework to a benefit retention approach be undertaken by an independent third party, overseen by an independent panel. We note that the PWC contract was not an independent third party; the terms of reference were done by ITI, and ITI held the purse strings. An independent review is one that is fully removed from being overseen and contracted by ITI.

Transparency

The MRA Section 59. (1) gives various places where the confidentiality of information is excepted, such as “(g) *as provided for in the regulations.*” We do not see in this review how royalty information will become more publicly accessible through these regulations. The issue of transparency is noticeably absent from the research and discussion papers, with no options presented or discussed. As an example of information that would be worthwhile, the research paper shows a chart with the amount of royalties received (pg 12). However, no information is given on whether this is from the lowest part of the progressive range (5%), at the mid levels, or at the highest range when outputs are above \$45M. Disclosure of royalty information is essential to a full understanding and analysis of the costs and benefits of this industry. Given the current international push towards greater transparency, and the Government of the NWT’s priority “to adopt a benefit retention approach to economic development”, detailed royalty information should be broadly available. We understand there are confidentiality issues; however some jurisdictions (Quebec, Yukon, and partially Alberta) allow more transparency. GNWT should use the *most transparent* forms of disclosure, not the least, as a starting point. Royalty information is necessary as one factor in evaluating the basis for mineral development decisions and regulation, and performance of benefit retention efforts.

Therefore, **we recommend** that in these regulations or elsewhere, the disclosure of royalties information to Indigenous Governments and all members of the Legislative Assembly be enabled for use in the development and evaluation of GNWT policy with appropriate provisions for confidentiality. This will require also expanding disclosure requirements by the companies themselves. In addition, residents of the NWT need to have

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Appendix 1: Alternatives North Mineral Resource Royalty Review

a better understanding of the terms under which our mineral resources are being sold. Greater public clarity on and transparency on costs and benefits is needed. **We recommend** some form of centralized information system, done on a mine-by-mine basis providing a good overview of each mine and information on net public benefits derived from them, should be made available to the public. This would certainly help public understanding of mining and royalties.

Serving future generations

We do not put ‘all our benefit eggs’ into the royalties basket to ensure retention of benefits from mining. The MRA is clear in this regard with the inclusion of benefit agreements for Indigenous governments and the public as potential requirements for commercial mineral production. However, we must also keep funds for future generations to ensure some measure of intergenerational equity and sustainability. Mining royalties kept by GNWT go into the general revenues or into the Heritage Fund (25%). Though not in regulations or policy, the GNWT has said they are committed to using the other 75% of their royalty returns on debt reduction or on capital investments. The theory is that capital projects provide a benefit now and in the future. This does not consider the infrastructure not only has capital costs, but maintenance costs. We cannot say that putting money into infrastructure now is a benefit to future generations without also admitting it is a *cost* to future generations. Every road, every school, every bridge, comes with substantial operating and maintenance costs. The amount in the Heritage Fund won’t cover operating and maintenance costs over time.

Our world-class diamond mines have not provided the Heritage Fund with meaningful funds for future generations. Even if we agreed that all current benefits outweigh current costs, this is concerning for our future. “Mineral royalties have *traditionally* [emphasis added] been considered a form of compensation to the community for the depletion of non-renewable resources.” (Research paper pg 33). We don’t think there is another way of thinking about them. Minerals represent one-time, natural capital that must be managed carefully to not just benefit the current generation but all those that come after us to ensure fairness, equity and sustainability. This kind of thinking is not reflected anywhere in either the discussion or research papers.

The NWT Heritage Fund is appropriately meant to “save a portion of resource revenues for the benefit of future generations of NWT residents.” However, there is no revenue stream that is defined or required. To truly save for future generations, we need to commit legally to depositing funds annually, and to increase the percentage that GNWT dedicates to the fund. What the percentage should be needs careful consideration of true operations and maintenance costs, and belief that benefits to future generations are well beyond taking care of our infrastructure. **We recommend** that the NWT Heritage Fund Act undergo an immediate public review to ensure a dedicated revenue stream and equitable sharing of revenues from resource development with future generations. The Act does have a 10-year review, but this interval needs to be shortened. The review committee must be independent of ITI.

Incentives

The research paper constantly pushes for incentives for mining. Table 8 – Mining sector characteristics and potential implications for mineral fiscal regime (pg 12) propose tax relief and similar subsidies. It is true that in our current economic system, high risk is typically rewarded with high returns. We agree that companies want tax stability and low costs. However, saying “Remote areas” equates to “Tax relief for infrastructure investments and

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employee incentives” doesn’t follow. Just prior to the table, the text reads that for mining world-wide, “The majority of the work takes place in remote areas far from the markets that will utilize their products.” Hence the NWT is not an exception to remote mining. The ‘ring of fire’ in Ontario is remote. Virtually every mining project in Africa is remote. So why in particular should the NWT be giving tax or royalty reductions because of being ‘remote’? Furthermore, although the NWT may have higher operating costs than some other jurisdictions, those costs are deductible from any royalties paid and may also result in tax write-offs, effectively compensating an operator.

Table 8 also states “Environmental and social impact” leads to “Tax incentives for environmental and social investments”. Absolutely not. Environmental impacts must be reduced, and any remaining impacts mitigated. This is not a case of giving incentives for remediating a company’s messes. Social investments are clearly deemed part of the cost of doing mining in the NWT, given the MRA sections on NWT-wide benefits and agreements for Indigenous governments. Having this table muddies any sense of what royalty and tax rates should be, a direct share in the value of the one-time natural capital that is being extracted from public lands.

Furthermore, the political stability, safety, and health and social services of the NWT are huge pluses to any mining operation. There haven’t been any executives needing to be whisked out under body guard protection from NWT mines...unlike other Canadian mines elsewhere in the world. Clearly, bias towards the mining industry rather than public benefit undermines the analyses and any attempt at critical thinking in this research reporting.

We recommend that royalties should not be used as a way to incentivize or increase exploration and development.

Remediation Fund

The research paper Mining Life Cycle chart (Figure 6, Pg 31) shows a stylised profile of government revenue contributions vs. company costs. “Contributions” is an interesting term, with the implication that these are nice things that the company is contributing to the government...rather than depletion of a public resource. The chart does not show company costs. There isn’t anything about company revenues. The chart also shows post-closure as a “decade to perpetuity”. So, no ongoing revenue, yet company costs ‘to perpetuity’. This is hardly a sustainable business practice...nor it is in the public interest if perpetual care costs are shifted from operators to taxpayers. It does clearly show why we have so many mines that go bankrupt when it comes to closure. In view of ITI’s stated desire for a comprehensive assessment of our mineral resource industry and its financial impacts, how financing and burden of mine reclamation and perpetual care are accounted for needs examination.

We realize that securities for remediation are mostly generated through the Land and Water Boards. However, securities are for *closures*, and don’t take these ongoing or perpetual costs into account (or for failures in structures due to climate change or other natural events). Royalties that go into the Heritage Fund are not supposed to be to fund remediation. The Heritage Fund is compensation to future generations for depleting one-time natural capital.

We recommend that the GNWT research how abandoned mine and perpetual care costs can be borne by the mining industry, rather than by public governments.

Appendix 1: Alternatives North Mineral Resource Royalty Review

Tax vs. Royalties

Direct taxes are vital to the overall system of payments to GNWT, allowing GNWT to pay for ongoing costs (not capital). In particular, property taxes give a stability to our system that is not available with the profit-based royalty system. Profit or no profit, mining takes up land use and generates costs to government operations; mining should have a property tax associated. This gives some measure of stability for the current generation and current government. We note that the PWC study says that to promote more mining, “lowering taxes is unlikely to be effective for the Northwest Territories” because the government take (the share of after-cost revenues flowing to the government as compared to the company) is already very low. **We recommend** that the property tax system be maintained.

Furthermore, very little corporate taxes are actually paid to the GNWT (2016, \$25M, all sectors), thus we get very little corporate tax benefits. **We recommend** research into how corporate taxes could be stabilized to better benefit the GNWT, with an action plan from the research.

Avoiding Royalties

Section 57. (1) of the *Mineral Resources Act* says “The owner or operator of a mine shall submit annually to the Supervising Royalties Director a royalty return in accordance with the regulations.” These regulations and the structure in place need to make sure

- a) that any tax credits and loopholes that allow for tax avoidance, transfer pricing, and other fiscal schemes that allow for reducing the overall taxable income are eliminated
- b) that suitable industry and commodity specific auditing is undertaken often enough to ensure full company compliance.

We understand that base erosion and profit shifting (BEPS) is mainly under Federal regulation, since we in the NWT are dealing with multi-national corporations. None-the-less, whatever our jurisdiction can do to tighten legal loopholes and limit tax erosion zone needs to be closely evaluated. This was one of the major points of the Standing Committee on Economic Development and Environment commissioned report “[An Economic Analysis of the GNWT’s Approach to the Mining Regime Fiscal Review](https://www.ntassembly.ca/sites/assembly/files/td_509-192.pdf)”
https://www.ntassembly.ca/sites/assembly/files/td_509-192.pdf

“Effective tax administration requires cooperation among different departments, and adequate and industry-specific skills and knowledge among tax officials (Otto, 2017)”. 58 (1) states in part that the GNWT will “conduct an inspection of the mine or mining property to verify information reported by the owner or operator with respect to the assets of the mine.”

Bauer notes “independent verification of information can be quite lax in the NWT....GNWT inspectors usually rely on self-reporting by companies; there is often no independent data verification, for example of water quality, biological impacts or chemical composition of the soil....Independent production monitoring is also extremely weak. ITI makes one on-site inspection per year on average to verify depreciable assets for royalty calculation purposes. While a system does exist within the Mining Regulations to value diamonds, there are currently no requirements for the GNWT to independently verify mineral production volumes or ore quality in the case of metallic minerals. Most production figures are reliant on third party sales data or self-reported, with the exception of Gahcho Kué. Spot audits on production volumes, while legal under the Mining Regulations, have not been performed. Underreporting of production could cost the GNWT significant amounts of money in lost fiscal revenue.”

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We recommend that the regulations be more specific on the number of inspections required to ensure the adequacy of information and to maintain public confidence that the information collected and given by the companies is appropriately verified.

Ongoing Review of Royalty Regime

The current review has serious flaws. ITI has stated that past reviews were not comprehensive; just done to deal with some immediate issues. The last review (1995) rejected "Narrowing the asset base for the processing allowance to those assets used directly in processing and that were purchased prior to commercial production or as part of a major expansion while excluding replacement costs and those assets used only indirectly in processing" (pg 8, Research paper). We don't understand this, or what rejection of it means. It is unclear whether this is examined in this review or not. Comparable jurisdictions seemed to have been cherry-picked in this review. For example, the research paper states "The timing of the draw-down or use of the value in the pools is at the discretion of the mine owners, a feature that is common in many other Canadian jurisdictions." (pg 11) The timing of draw-downs at the company's discretion surely benefits the company, not the public. Saying this is common in other Canadian jurisdictions does not give much comfort. The Bauer paper states "The end result is that the NWT has one of the world's most charitable fiscal regimes for the mining sector, one that captures between 20-30% of economic rents from mining projects, net of costs. This is compared to between 30-35% in South Africa, 45-60% in Peru, and 50-80% in Western Australia" (page 27) as more comparable jurisdictions. To ensure we have timely and adequate royalty regime reviews, a comprehensive independent public review of the royalty regime should be imbedded in the regulations.

We recommend the regulations include a mandatory public review, set at a maximum of 10 years. The public review is to be overseen by an independent panel, with appropriate plain language materials available. We would suggest that the NWT Literacy Council be considered for the production of plain language materials, so that materials are suitable to NWT audiences.

SPECIFIC REVIEW QUESTIONS FROM DISCUSSION PAPER

- A. *Are NWT royalty regulations providing a **fair share** of the profit?
What is a fair share? Should the overall revenue and benefit of resource development to the NWT be a consideration? This could include long term capital assets like infrastructure and training that will outlast the mining project itself*

Fair share should be assessed in terms of both current and future generations. We don't understand what "capital assets like infrastructure" are being referred to; mines are required to be remediated, not leave infrastructure. Infrastructure such as roads have to date been paid for by government, therefore are a cost and can't be taken as a 'benefit' from mining companies. Training is important: this is also why we need tax dollars to support our education programs now and into the future. We must always remember that mineral resource depletion is a one-time use of natural wealth, whose benefits need to be shared with future generations. Bauer states "Appropriate fiscal regime reform could generate significantly more revenue for the territory without instigating a drop in mineral

Appendix 1: Alternatives North Mineral Resource Royalty Review

sector investment.” GNWT states “The NWT regime is competitive. There may be potential to make amendments to better reflect policy objectives.” Royalties are capped at 14% of profits; yet there is no cap on profits.

Bauer also notes: “Mining represents nearly 25 percent of the NWT’s GDP and approximately 50 percent of its international and inter-provincial exports. Yet the industry directly employs less than 7 percent of the NWT workforce—about the same as the transportation, tourism or construction sectors and less than the education, health or retail sectors—and generates approximately 7 percent of fiscal revenues for the territory. What’s more, due to its capital-intensive nature and need for niche skills, mining has the lowest labour income multiplier of any industry in the NWT. This means that among all industries, the mining sector provides the smallest return per dollar of revenue for NWT residents.... Mineral development may provide employment and other returns, but *its principal benefit is government revenue* [emphasis added] to support development and the wellbeing of residents.” Given low employment to cost ratios, we need to emphasize benefits in terms of government revenue.

Thus, it appears we are not getting a fair share of profits.

MRA Section 52. states “The Commissioner on the recommendation of the Minister may prescribe requirements in respect of measures that provide benefits to the people of the Northwest Territories.” What benefits can be provided for in the regulations above Indigenous agreements and royalties?

B. Are NWT royalty regulations contributing to a stable and competitive investment environment in the NWT?

Investors and proponents of major projects require clarity and certainty Is the NWT regulatory system attractive to investors when compared to other Canadian and international jurisdictions?

The GNWT paper states “the quality of the business environment (the stability and predictability of the political, legal and fiscal context, availability of technical expertise and a trained workforce, staff safety, geoscience database) must also be factored into the anticipated internal rate of return (IRR) by the investors.” Compared to most political regimes, Canada as a whole, including the NWT, is extraordinarily stable vis a vis predictability of political, legal and fiscal context and concerns such as staff safety (no NWT executives need bodyguards and midnight extraction due to terrorism, for example). We have Indigenous governments willing and able to work with companies, rather than trying to block them. And while our NWT workforce is not currently trained in technical expertise, this is readily available within Canada.

It is quite clear from the materials provided that, while the NWT provides stability and competitive investment for companies, the royalties and overall government revenues received are far from stable or fair.

C. Is the utility of NWT royalty regulations being maximized?

Are there other ways to realize benefits for the NWT using royalties? For example, could we leverage their value to increase employment, procurement or investments in infrastructure and environmental sustainability?

The meaning of these questions is unclear.

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DISCUSSION PAPER "TEST NOTIONS":

- *A Minimum Tax – a production-based or ad valorem tax to ensure every mine pays some amount of royalty every year*

We believe a stable property tax along with suitable income and corporate taxes should be the minimum tax. However, if there are other ways to stabilize government revenues from mining through new taxes (e.g., a capital or resource tax) or other methods, these receive virtually no analysis or discussion in the research and discussion papers.

- *A Progressive Reclamation Deduction – that would reduce the risks to the NWT by encouraging the progressive reclamation of a mine site*

Progressive reclamation should simply be required, and should be set by the Land and Water Boards, not incentivized through the royalty or tax system. We see no reason that this should reduce the royalties paid to public governments. It is already advantageous to companies to do progressive reclamation, as that reduces the financial security held through the L&WB agreements. There should be an additional charge placed on companies that are not progressively reclaiming their properties, as this indicates bad faith regarding long term reclamation. The whole topic of mandatory and adequate financial security, forms of security and how financial security is regularly updated are mostly subjects of the *Public Land Act* regulations, and nothing in these regulations should inhibit proper securities discussions through the development of those regulations.

- *Reclamation Trust Revision – a reclamation trust is currently part of the regulations but does not function in the current federal/territorial regulatory setting*

We do not see any information in the research paper or discussion paper on this subject. We believe this relates to our comment on the need for a remediation fund. The fact that that is not functioning does not mean it needs to be further incentivized through reductions or deductions from royalties. A diagram with a table of how the various regulations relate to the overall implementation of the *Mineral Resources Act* would also be helpful.

- *Northern Head Office Incentive – would encourage mines to maintain a head office presence with associated employment in the north*

This should not be an incentive, but a given. Why have benefit agreements if items like this are not included as legal requirements for commercial production? MRA Section 57 (2) "The operator of a mine shall retain in an office in the Northwest Territories the prescribed documents required to substantiate a royalty return submitted under subsection (1)." **We recommend a head office presence with associated employment in the NWT.** At this point, we have no opinion on whether this is best addressed in this regulation, built into requirements for a production licence or in enforceable socio-economic agreements.

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Appendix 1: Alternatives North Mineral Resource Royalty Review

- *Property Tax Deduction – the NWT is the one of only two Canadian jurisdictions that charge property taxes for remote mine operations*

The property tax allows for some stability in government revenues vs. the changing amount from royalties. Whether profitable or not, the land continues to be used by the company being taxed. We consider it a given that the property tax must remain. We don't see information on why it should be deducted.

- *Restructured Processing Allowance – to encourage investment in NWT value-added mineral processing infrastructure and associated employment and business activity*

Where is information, analysis or policy options presented in the research paper or discussion paper that allows us to comment on this issue? We encourage ITI to more openly and transparently present this sort of information as part of this review of the mining fiscal regime.

- *Enhanced Mine Property Exploration Incentive – mine property exploration would be encouraged to maximize the life of an existing mine*

No description is given in the background material that we found as to types of incentives the government is considering. Also, very unclear why this should be an incentive. Surely it is already in the best interest of the company to remain mining in the same area as an existing operation. In any case, we do not see that this would in any way be incorporated into the royalty regime.

- *Off-Property Exploration Incentive – while a company may be focused on running a mine, exploration would be encouraged to discover new resources off of the mine property*

The GNWT already has a Mining Incentive Program (MIP) to provide grants to prospectors and for companies for exploration projects. Rather than extend this, **we recommend** that the GNWT offer exploration incentives that are not grant based (i.e., systems other than MIP). For example (from Bauer):

- Exploration loans: government access to credit for exploration companies operating in the NWT at market or even concessional rates. This would require establishing a special fund or development bank.
- Government equity: The government can reduce the cost of exploration by becoming an investor itself in exploration activity, for example by taking a 1 to 49 percent equity share in an exploration company operating in the territory. The GNWT already holds equity in mining at least one mining project (Mactung) and government equity in mining activities is fairly common globally, for instance in Quebec and East Asia.¹⁰ The cost of such a program could be similar to existing programs however the government would share in the upside potential rather than just provide a subsidy.

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- *Royalty confidentiality levels – there is a desire to see increased transparency as part of global efforts to deter corruption in the extractive sector A revision of the regulations could ensure that the NWT is aligned with these goals*

Yes. See our fuller discussion of transparency above.

Alternatives North



Karen Hamre, volunteer

Appendix 2: NWT & Nunavut Chamber of Mines Open Letter



AN OPEN LETTER TO MINISTER WAWZONEK RE NWT ROYALTIES

July 27, 2022

Honourable Caroline Wawzonek
Minister of Industry, Tourism & Investment
P.O. Box 1320
Yellowknife, NT X1A 2L9

Dear Madame Minister,

Re: **Alternatives North public solicitation and the NWT Royalty Regime**

Northerners might wonder why Alternatives North delivered a flyer on mineral royalties to their mailboxes this past week.

We wondered too.

This social justice group has no history of advancing ideas that could help strengthen mineral investment in the NWT.

We know this, because that is what our Chamber does virtually every day of the year, and Alternatives North has never joined in to help. Rather, they pop up occasionally to take pot shots at our vital northern resource industry, as they have done with this document with no fact-based information to support their assertions for higher mineral resource royalties. That's not an organization supportive of resource development for northerners or the industry's contribution to the NWT's private sector economy.

But in fairness, bear with us as we take a closer look at benefits and royalties, from which we hope northerners would be able to draw their own conclusions.

First, some basics.

- Mining companies do not own the minerals in the ground, rather they are owned and managed by governments on behalf of the people.
- But governments aren't miners and really can't be. They don't have the expertise, or the risk tolerance, or the money for the difficult, high-risk task of finding and developing mines. (And let us observe that northern Canada is not an easy, inexpensive, low risk jurisdiction within which to do this.)
- So, governments invite companies to do the heavy lifting for them: to take on the big financial risks, to bring in large sums of money and technical expertise, and (hopefully) discover valuable minerals to convert into jobs, business, and tax benefits. And, of course, do all this very responsibly.
- By inviting companies to come and help them do what they cannot do themselves, governments have essentially created a partnership with industry.
- In return, governments promise a safe, secure, and supportive investment climate. That includes a regulatory framework and legal system, a local work force, a fair tax system, and hopefully some support for infrastructure like roads and power that also serve the public.

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Appendix 2: NWT & Nunavut Chamber of Mines Open Letter

Governments need industry to do this profitably, because our economies are based in the principles of profit, and without profit, there would be no industry. Profit is essential.

Government also wants to share in industry's profits. So they create what's essentially a profit tax, or royalty. What's a reasonable share of profit for each? It should be one that matches each party's risk.

That is the case here, and across Canada.

Since they have the lowest risk, governments respect that they should collect a lower share of the profits. Governments are already profiting significantly with virtually zero risk through the many taxes they collect every time a mine spends a dollar, and whether the mine is profitable or not. (Note too that the NWT and Nunavut are the only jurisdictions in Canada where mines pay a property tax, for example.) The royalties become a sweetener on top of the many fixed taxes mines pay, along with their workers and service providers.

Studies have been done by others to assess the adequacy of the NWT's royalty rates. We believe you have been appropriately diligent in hiring PwC to do a major (publicly available) study "[Tax and royalty benchmark: Mining in the Northwest Territories](#)," which reveals that the NWT is in the middle of the pack against other jurisdictions in Canada, and should stay there.

PwC makes some important conclusions including that:

- the NWT already collects a share of pre-tax returns that is comparable to other comparison jurisdictions;
- it needs to focus on the underlying drivers of its high costs, rather than tax and royalty policy; and
- it should consider developing energy and transportation infrastructure that would lower costs for mining companies.

We congratulate you too on going the extra mile and hiring another respected mineral economist, Dr. Michael Doggett to conduct an *Independent Review* of the PwC report. He confirmed their findings and made several astute comments including: *Increased capital and operating costs associated with remote conditions in the NWT result in lower returns for both government and companies and/or the necessity for higher quality deposits. The authors [PwC] rightly conclude that these underlying locational and infrastructure challenges cannot be overcome solely by altering mining tax policy.* We would observe that even Alternatives North's expert, Andrew Bauer reached the same infrastructure cost conclusion.

We have reached out to some of our members, as I know your staff have too. Feedback from our mines, and those projects advancing to become mines that hopefully one day pay royalties, is that they are either satisfied with the existing regime or would like to see it decreased.

From our assessment and from those in the key reports cited, the biggest conclusion on royalties is that if you want more, then attract more mining; and provide strong infrastructure and other support to make it more profitable.

The big winners all the way around will be governments – public and Indigenous – who will benefit from a strong flow of jobs, business, and many many tax revenues, including royalties. Right now, we need more mines to help us face the closure of our large Diavik mine in 2025. Perhaps Alternatives North can help with ideas for that, although we have seen none to date.

We hope our feedback and participation is helpful Minister, in advancing the NWT's royalty structure.

Yours truly,



Kenny Ruptash
President

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