Mineral Tenure in the Peel Watershed

Report for the Yukon Conservation Society

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By Ramsey Hart, MiningWatch Canada

1. Introduction

The following report has been written by MiningWatch Canada in response to a request from Yukon Conservation Society. It addresses a series of questions provided to MiningWatch that were related to YCS' interest in better understanding the status and potential market value of mineral properties staked within the Peel watershed, and the potential arguments to support YCS's position that the Yukon Government does not need to pay compensation for the claims. MiningWatch's Canada Program Coordinator, Ramsey Hart was the author of the report. Text in what are now Sections 3 through 5 were reviewed by a specialist in mining law who is a practising lawyer and university instructor, as well as one of his students.

2. Background on Mineral Exploration

Most of the mineral exploration activity within the Peel Watershed, as elsewhere, is done by small "junior" companies that focus on exploration and do not have any operating mines. While some juniors may some day develop an actual mine – this is exceedingly rare. More common is for a junior to sell a property to another company with the financial and technical resources and the track record necessary to finance and develop a mine. Mineral exploration is typically financed through the selling of shares to investors willing to take a risk that the exploration activities will be successful in showing a potentially viable mineral deposit and attracting other investors, driving up the stock price and ending with the property being sold at a profit.

Mineral exploration is an inherently high-risk investment and corporate filings of all exploration companies include numerous qualifiers and statements that identify these risks. For example:

> Regulatory standards continue to change, making the review process longer, more complex and therefore more expensive. Even if an ore body is discovered, there is no assurance that it will ever reach production.[1]

> Although the Company has taken steps to verify title to the properties on which it is conducting exploration and in which it has an interest, in accordance with industry standards for the current stage of exploration of such properties, these procedures do not guarantee the Company's title. Property title may be subject to government licensing requirements or regulations, First Nations claims, unregistered prior agreements, unregistered claims, and non-compliance with regulatory requirements.[2]

[1] Zinccorp Resources. Management Discussion and Analysis for Year Ending Nover 30, 2008. March 2009
[2] Cash Minerals. Management Discussion and Analysis for Year Ending December 31, 2007. April 2008.

Despite the acknowledgement of the inherent risks of exploration, companies and their industry associations try to insist on certainty from governments and demand compensation when government decisions do not allow them to proceed with exploration activities or project development. In some cases governments have conceded and offered up a range of compensation for cancelling mineral claims for conservation purposes (see Section 8). From a public interest perspective this is a problematic practice that can see government revenues transferred to corporations or individuals that may have had little prospect of actually developing a speculative exploration project and would have otherwise had to accept the loss of the investment in the project.

Compensating exploration companies for their speculative expenditures on early stage mineral projects also runs the risk of encouraging claim staking and exploration in areas that are known to be of interest for potential conservation areas or of particular interest to First Nations. This may be the case with one of the Peel Watershed companies – Zinccorp, which was formed in 2008 and took over claims on the Michelle Property in the Peel. This is 4 years after the watershed planning initiative was started and the company should have been well aware of status of the area. Despite this the company never disclosed this risk to share holders through their public filings. (See Section 6)

Regardless of government intervention it is common for exploration companies to lose the money they have invested in exploration activities as the properties they are working on do not reveal viable deposits. Despite millions of dollars in losses directors, officers and employees of the companies continue to earn income while investors may recoup much of the initial cost of purchasing shares through the flow-through share mechanism (see Section 5). Why then should the public be on the hook for compensation?

Exploration can be expensive so junior companies can burn through millions of dollars of investments in a single season at a single property. When the funds run out the company must return to the stock markets (but at the risk of diluting the value of existing shares), seek a buyer, option a property to another company with more cash, or seek alternative financing.

In their financial statements most exploration companies list their property acquisition and exploration expenses as assets – this is referred to as capitalizing the expenses. It is done on the assumption that the mineral rights and information gained for a property are of equal value to the cost of obtaining them. On paper this creates assets for the company, though the value is largely speculative and will only be realised if the property is sold or developed. Another more conservative choice is to show the expenses as just that without putting them into capital assets. Whether a company puts their exploration costs down as expenses as they occur or capitalizes them is an accounting policy choice made by the company and its accountants as current rules are not clear on which method should be used.[3] All of the companies operating in the Peel are capitalizing their exploration expenses.

[3] J. Hughes.. MSCM IFRS Blog, Extractive industries, what to expect. 2012: http://www.mscm.ca/ifrs-blog/2012/extractive-industries-what-to-expect and Mining Maven. How to Read Financial Accounts of Natural Resource Exploration Companies – an explanation. 2012: http://www.miningmaven.com/index.php/maven-investor-educational

3. Write Offs and Write Downs

A write off occurs when the value of an asset is reduced to zero and the former asset is listed as a loss in the balance sheet. In the case of mineral exploration companies, this would mean the assets created by capitalizing the costs of acquisition, exploration, rock assays etc. are reduced to a value of zero on the company's books. This is done when the company recognizes the "assets" associated with a property are actually worthless because they have determined that there is no viable deposit and / or they do not intend on proceeding with additional work on the property. Exploration assets are subject to periodic "impairment reviews" to determine the bookable value of the asset which can lead to the asset being written off.[4]

A write-down is a partial write-off, a reduction in the value of an asset rather than reducing it to zero and may be done when the perceived value of a claim is reduced but not to the point of it having no bookable value. Typically, the companies carry a property as an asset until it is clear it has little potential at which point it is written off, though upon review a write-down may also be administered where properties are deemed to have less potential but still deemed to hold some value. (Note that a write-off of the capital assets associated with a property is independent of any tax credits the company may acquire and use.)

Writing off capitalized mineral exploration assets is by-in-large an accounting measure and contributes to the companies losses in a financial statement. Unlike other businesses, losses are expected for exploration companies, with or without write-offs, as a lot of money is spent on operating and exploration costs before anything of real value is produced – if there is ever anything of value produced.

A write-off is an indication that the holder of a mineral property sees little or no value under present conditions. Sale of a written-off property is likely to be difficult or at an extremely discounted price unless a potential purchaser sees an opportunity in the property that the previous holder did not see and / or conditions (in particular commodity prices) have changed such that the property shows renewed potential. Because they are no longer considered assets on their books and because they are likely to be of little or no value to a potential purchaser the loss of rights to a property that has been written off will have little impact on the near-term value of a company. The above points could be used as justification for not giving compensation for the expropriation of the mineral rights for properties that are written-off.

In the case of the Peel, a likely response from the companies will be that the projects were written off in whole or in part because of the land-use planning process. Pitchblack Resources has submitted to the Commission that the planning process compromised their ability to raise capital. But if this is the case then this should be explained in the companies' financial reports and accompanying Management Discussion and Analyses (MDAs) (See section 6). The companies may also claim that despite being written-off the properties may hold some future value should conditions change – for which they should be compensated. Establishing a future value is however a wildly speculative undertaking that should be forcefully opposed.

[4] Mining Maven. 2012.

In addition to the explanations the companies provide for write-offs, YCS could document additional reasons why the projects in the Peel are unlikely to go into production and thus have no value to compensate for. An important restriction on these projects ever moving forward that the companies do not disclose, is the First Nations support for the Peel Planning Commission's recommendations and the First Nations' desire to severely restrict, if not prohibit mining in the watershed. There are increasing expectations within Canada and internationally for mining projects to obtain and maintain the Free Prior and Informed Consent of affected indigenous peoples. Increasingly, the likelihood of efficient project financing, development and permitting is restricted without FPIC.

Other elements that would have challenged the projects to ever go forward include the remoteness and lack of existing infrastructure and the poor market conditions for uranium (see Section 7).

4. Exploration Companies and Taxes

Due to the highly capital intensive nature of mining, especially in its early stages of exploration and pre-production, the Canadian taxation system allows for a special treatment of mining expenditures.[5] Most significant expenditures on mining exploration, development and production in Canada (other than financing expenses and day to day operating expenses) fall into one of three categories for Canadian income tax purposes.

- the cost of capital property
- Canadian exploration expense (CEE); or
- Canadian development expense (CDE) [6]

Unlike many business expenses, CEE and CDE can be credited 100% against any taxes owed and held indefinitely and used when needed.

Most junior exploration companies never produce a product or sell anything tangible so they seldom have profits on which they would pay corporate income taxes. Juniors typically run multi-million dollar losses on an annual basis. Some juniors may have income from the sale of assets, royalties on projects they helped develop, or services provided to other companies, but by and large this income pales in comparison to the expenditures on exploration. The accumulation of exploration expenses as tax credits are thus of little value unless transferred to either another company that is making a profit or, more commonly, on to purchasers of shares using the flow-through shares mechanism (see next section).

Because an exploration company has written-off exploration assets does not mean that they have received any tax benefit from doing so. The write off is independent of the accumulated capital, exploration and development tax credits the company may have accrued. Accounting for tax purposes occurs separately from the accounting in the financial statements.

[5] E. Heakes et al. Taxation, Ch. 217 in Mining Law
[6] Suarez Steve, "Canadian Taxation of Mining" (2010)

In order to get a benefit from their exploration expenses credits the company must have income against which to apply the expenses. In the case of the claim holders in the Peel Watershed – only the two U.S.-based majors Newmont and Freeport McMoran would have adequate income against which to claim a tax benefit. As these are US companies explaining their tax situation is outside the scope of this report. The Canadian based juniors do not have any significant taxable income as they do not have operating mines, nor options, royalties etc. on operating mines.

The accumulated tax credits may represent a value to another company interested in acquiring it but there is such an abundance of un-used exploration credits it is unlikely there is much of a market value for them and at best may only a be side benefit of a company acquiring a junior with a pool of unused tax credits.

The exception to the above are "refundable" tax credits such as the Yukon Mining and Exploration Tax Credit. A "refundable" credit is one where the government will actually pay-out a refund to the claimant for the credit, rather than just reduce taxes owed to the government. The YMETC was only available to Yukon-based companies with eligible expenses from 1999 to 2007. In its 2007 financial statement Cash Minerals indicated that it received a $75,000 credit from the program.

5. Flow-through Shares

Canadian mineral or oil and gas exploration companies can put otherwise unusable exploration tax credits to use through the sale of flow-through shares. The concept of a flow-through share is that an investor enters into an agreement with a corporation to purchase shares of the corporation, and the corporation uses the funds from the sale to incur qualifying CEE or CDE which it then renounces to the investor. In most situations, the investor will want only the CEE, because of the rapid write-off available for these expenses in contrast to the comparatively slow write off for CDE. Therefore, the corporation will warrant in the agreement that it will incur CEE and renounce those expenses to the investor.[7]

The purchaser of a flow-through share can use their allotted portion of the company's expenses (a value equal to the sale price less a premium and fees) to reduce their own taxable income and thus pay less taxes. There is also an additional 15% federal tax credit on flow through shares. This means the net cost of purchasing the shares is much lower than that with a standard share. For a Yukon resident the actual cost to the investor may be only half of the actual value of the shares while in other jurisdictions with additional provincial benefits the net cost is less than 1/3 of the share value at the time of purchase.[8] The reduced costs substantially lower the risk for investors and encourages them to put their money on speculative junior stocks.

The transfer of the tax credit through the flow-through share is a one-time benefit at the time the shares are purchased. The companies accumulated exploration expenses are reduced by the

[7] Osler, Hoskin & Harcourt LLP.. Flow-Through Shares – An Important Financing Tool for Canadian Resource Companies. 2012: http://www.osler.com/NewsResources/Default.aspx?id=2900

[8] PDAC. Super Flow Through Shares, Mineral Exploration Tax Credit. 2011: www.**pdac**.ca/**pdac**/advocacy/financial/**flow-through**-brochure.pdf

amount of the flow-through shares sold. The flow through share is arguably a form of government subsidy and so the amount of flow-through shares sold should be reduced from the overall expenses that a company could seek to be compensated for should their claims be cancelled through government decisions.

The 2008 Financial Report from Cash Minerals indicates that they had over $17-million in exploration expenditures renounced to flowthrough share holders. Mega's 2011 Financial Report indicates flow-through financing of $2.6-million in 2010 and $5.8-million in 2011. Zinccorp's 2009 Management Discussion and Analysis (MDA) indicates flow-through share commitment of $1.55-million. Determining the exact amounts passed on to shareholders and the amounts allocated to projects in the Peel are outside the scope of this report.

It should be noted that there are strict time limits governing when the corporation must incur the qualifying expenditure. Beyond these limits, the deduction will not be available to the shareholder. In recent years both Zincorp and Pitchblack have both had to pay penalties for not spending the full amounts they committed to under the sale of flow through shares.

6. Review of Company Filings

Year-end filings (MDAs and financials) of the three publicly traded juniors with substantial claims in the Peel (Cash / Pitchblack Resources, Mega Uranium and Zinccorp) were reviewed in order to provide insight into the status of their projects, reasons for the write offs described in earlier research, and any other insights that might be gained. Filings from 2007 to most recent were downloaded from the SEDAR website.

Scanning the documents and conducting a search of the files using Acrobat Reader for reference to the Peel Watershed planning process yielded not a single mention of the land use planning process. It was in no way cited as having a bearing on the companies' activities or decisions to write off exploration assets.

Mining companies listed on the TSX and TSX-V are required by law to disclose materially important information to their shareholders through public filings such as the MDA and financial statements. Materiality is loosely defined as something that could affect up to 10% of the value of the company. Given that a considerable part of the 3 juniors' holdings are in the Peel, one could make a case that these companies were not compliant with requirements to disclose information about the risks posed to their projects by various stages of the planning process and in particular the Commission's final report. Alternatively, assuming the companies are complying with disclosure requirements, one could argue that the lack of disclosure is a clear indication that the planning process has not significantly affected the companies.

The lack of disclosure in the public filings stands in contrast to submissions made by Pitchblack and Mega to the Peel Planning Commission.[9] In their letters they point to the potential for serious economic harm caused by potential restrictions on their access to the claims.

If the companies do not provide information about the Peel process to their shareholders, how do Mega and Pitchblack explain the write-offs of their properties? (Zinccorp still has the Michelle Property as an asset)

Cash's 2008 MDA provides a foreboding warning of challenging times ahead for the company…

> Volatile markets may make it difficult or impossible for the Company to obtain debt financing or equity financing on favorable terms, if at all. Failure to obtain additional financing on a timely basis may cause the Company to postpone or slow down its development plans, forfeit rights in some or all of its properties or reduce or terminate some or all of its activities.[10]

The write offs started the following year and are explained as follows…

> As at December 31, 2009, the Company wrote off the carrying value of all properties other than the Igor property under YUP as **a result of the difficult financing environment for junior resource companies**. The Company wrote down the value of its properties for which it did not intend on doing any exploration work in 2009[11] (emphasis added)

> As at December 31, 2010 and December 31, 2011 the Company holds a 50% interest in the Igor Property. The Company has terminated the option with Mega to earn an additional 25% in the Igor Property. The Company will maintain its 50% interest and will continue to be the operator on the property. The Company has written down the property to $1 as it has not done any exploration work on the property in the last two years and does not intend on doing additional work on the property for the foreseeable future.[12]

In the first set of write-offs the explanation is clear-a difficult financing situation independent of what was happening with the Peel. The reason(s) for the write off of the Igor property is less specific but it is clear they do not anticipate any future work at the site. For a junior company these are surprisingly frank admissions that the project is pretty much dead in the water.

Mega also points to global financial situation as playing a role in their ability to raise funds and pursue exploration opportunities in their 2009 MDA and again in the 2011 MDA. In the 2011 MDA they also note the poor market conditions for uranium. A section of the 2011 filing is provided below...

> **During fiscal 2011, given the ongoing volatility of the global financial and commodity markets, the Company has continued to explore its properties at a much**

[9] Peel Watershed Landuse Planning Commission, Discussion/Other Responses and Documents: http://www.peelconsultation.ca/Discussions/General.aspx, see Mega Uranium letter to Commission from September 23, 20110 and Pitchblack Resources letter from September 30, 2010.
[10] Cash Minerals. Management Discussion and Analysis for Year Ending December 31, 2008. Filed March 23, 2009.
[11] Cash Minerals. Management Discussion and Analysis for Year Ending December 31, 2009. Filed April 27, 2010.
[12] Pitchblack Resources. Annual Financial Statement for Year Ending December 31, 2011. Filed April 2012.

> **reduced rate** and in a very focused manner, in order to preserve its cash resources. The Company's current focus continues to be on its key properties, with a view to advancing its most prospective projects and maintaining its ownership interests (which require minimum expenditures). Development activities for the fiscal 2012 will remain focused on the Lake Maitland project in Western Australia…..
>
> Subject to completion and positive results from feasibility studies currently underway (including diamond drilling programs), the receipt of all required permits and approvals, and the securing of necessary capital, and barring any unforeseeable adverse events, construction of a uranium mine and processing facility can commence. **There is currently no target commencement date given the ongoing instability of the uranium market**.
>
> …..
>
> The write-downs of mineral properties of $138,174[13] were the result of a thorough review by the Company of all of its properties in light of current market conditions. The review took into account exploration results to date, the Company's reduced exploration plans that will focus on those properties which management believes are most likely to provide positive results in a shorter timeframe and **general market conditions which have become increasingly unfavorable**.[14] (emphasis added)

Financial statements also contain information about the amounts paid in salaries and benefits to company directors, officers and consultants. When the company representatives claim hardships caused to them by the Peel planning process, it may be helpful to recall for the public and government that officers, directors, employees and contractors to the companies have continued to make money despite restricted activities on the ground in the Peel Watershed. In many cases contract work provided to the company was by the directors or companies they own. For example, Zinccorp's 2010 MDA indicates that it paid administrative costs of 596,000 in 2009 and $668,000 in 2010 to a company owned by one of it's directors.

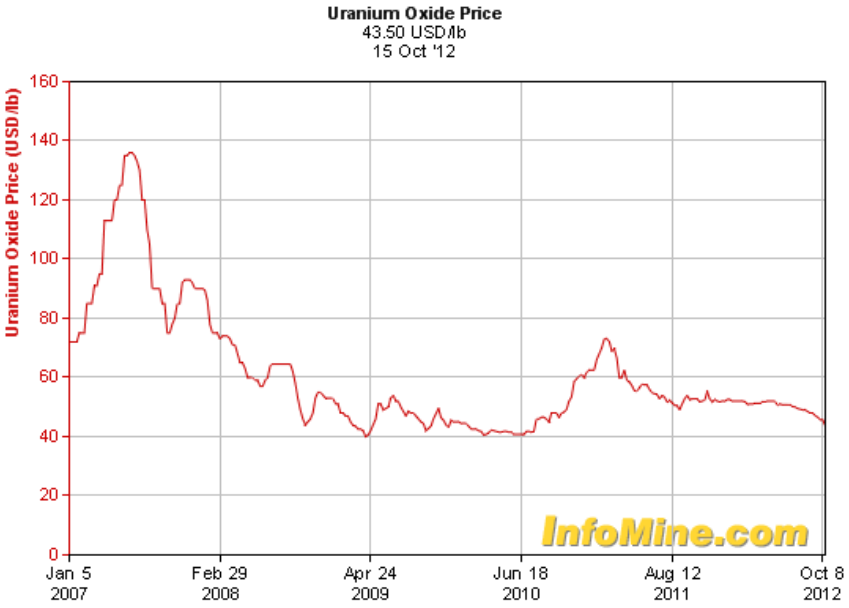
The MDAs and Financials all point to little potential for the three companies' Yukon properties, and in the case of Zinccorp very little potential for the company to remain viable. In its 2011 Financial Report, Zinccorp only had $30,000 in cash – certainly not enough to do anything of significance without new financing and the company's stock performance has never recovered following the crash in 2008 and has been in a near steady decline. The stock prices of the other two companies show similar trends.

[13] Figures in the MDA are $1,000s of Canadian dollars so this is a write down of $138,174,000 which was applied across many of the company's holdings. Yukon properties were written down $17,189,000 from $20,244,000.
[14] Mega Uranium. Management Discussion and Analysis for Year Ended September 30, 2011. Report dated December 15, 2011.

7. Barriers to Uranium Developments: Poor Market Conditions and Public Opposition

Regardless of the possibility that the Peel planning process has constrained the activities of the companies with claims in the region, those with uranium prospects are highly unlikely to have been able to finance continued exploration and certainly no development would have been likely to occur given the continued "poor" market conditions for uranium.

Much of the interest and current junior uranium sector was developed through a substantial price bubble that began in 2006 continued through early 2007 but which burst mid-2007 (See chart below). Since that crash the price increased modestly through to 2010 based on assumed new-builds of nuclear reactors, the Obama administration's support of nuclear power and continued hype of nuclear as a "climate-friendly" form of energy. This increase in price was however based more on hype then real demand and the fall out from the Fukushima disaster burst this smaller bubble. While industry boosters repeatedly claimed that this drop in price in early 2011 was a short-term result of the fear created by the disaster, the price has only continued to slip as several nations indicate they are pulling out of nuclear and new builds are not keeping pace with what was anticipated.



The poorer-than anticipated market conditions for uranium have forced established majors to scale back or cancel new projects that are much more advanced than the early stage projects in the Peel. BHP Billiton cancelled a major uranium project in Australia[15] and Areva has, for the first time, hinted to the Nunavut Impact Review Board that current market conditions are not favourable for development of its Kiggavik Project.[16] Even Cameco – one of the world's major

[15] M. Pistilli, http://uraniuminvestingnews.com/12393/bhp-billiton-uranium-projects-olympic-dam-cameco-australia-underwater.html. Uranium Investing News, August 29, 2012.
[16] Areva Letter to Ryan Berry, Nunavut Impact Review Board. September 28, 2012.

uranium producers and the company that has a lock on much of the world's richest and already developed uranium deposits in Saskatchewan has seen its stock price slip in recent months.[17]

Given the persistence of poor market conditions Pitchblack and Mega's ability to advance their projects would be extremely limited in the short to medium term. Had they not been able to maintain their remote, early stage uranium prospects for free it is unlikely they would be able to raise the funds to conduct work on them to advance them in any significant way, or to keep them in good standing.

Market conditions are only one of the challenges faced by new uranium projects. Across Canada and internationally, local communities and indigenous peoples have rejected industry claims that there are few risks associated with uranium mining and that nuclear power is a green source of energy. In reaction to a proposed advanced exploration project, the Mistissini Cree have stated their opposition to uranium mining and pushed the Grand Council of the Cree to take a stand against uranium mining across the entire Eeyou Istchee (James Bay) Territory.[18] This strong statement with broad regional implications was preceded by more local opposition to uranium mining in south-western Quebec, the North Shore and Gaspé Regions.[19] Together with allies in the urban centres the anti-uranium and anti-nuclear movement in Quebec has resulted in the new PQ government committing to a broad strategic review of uranium mining. Similar public review processes resulted in eventual uranium mining and exploration bans in Nova Scotia and British Columbia. In Ontario a coalition of Algonquin and non-native activists blockaded a proposed uranium exploration project west of Ottawa. The ensuing stand-off resulted in the arrest of several Algonquin leaders and the jailing of former Ardoch Algonquin Chief Bob Lovelace. Though the blockade was eventually shutdown by the courts, the private company that held the claims was unable to finance the project and is no longer active in the area.[20]

The report of the Peel Planning Commission specifically recommended that uranium extraction not be permitted within the Peel. This recommendation could provide focal point around which anti-uranium activists could rally and develop a campaign that – if other regions of Canada are any indication – would have significant potential for success in stopping further exploration or development.

[17] D. Keith. 2012. Cameco downgrade as rebound fades. Globe and Mail. Thursday, September 27, 2012: https://secure.globeadvisor.com/servlet/ArticleNews/story/gam/20120927/RBCAMECO0926ATL

[18] Grand Council of the Cree, James Bay Cree Nation Responds to Licensing Decision of the Canadian Nuclear Safety Commission: Cree Nation's Commitment to Permanent Moratorium Affirmed. October 17, 2012: http://www.gcc.ca/newsarticle.php?id=285

[19] U. Lapointe and R. Hart. Uranium Mining Struggles in Québec:A Moratorium in Sight? Canadian Dimension, 45(6) Nov/Dec 2011.

[20] Frontenac News, Uranium Archive: http://www.frontenacnews.ca/2010/_uranium_10.html

8. Resolving Mineral Rights Conflicts in Other Jurisdictions

Certainly, the Peel is not the first region in Canada where conflicts over mineral rights and land use planning have occurred thanks to the free entry system. The following are two examples of approaches that other governments have implemented to resolve such conflicts.

Ontario's Living Legacy

In Ontario a broad land use planning and protected area planning process occurred under the "Lands for Life" and "Living Legacy" initiatives. Because many of the proposed protected areas overlapped with mineral claims an extensive "disentanglement" process was needed to address the overlap. In a first instance, no areas with mineral claims were put into protected areas but areas where the planning process saw the need/potential for protected areas that overlapped with mineral claims were flagged and the areas put into a forest reserve status that prohibited logging but not mineral exploration or even mining.

Despite the protections given to the claim-holders, the industry saw the designation of the reserves as preventing them from exercising their "rights" to raise financing and undertake exploration activities. According to the industry, many prospectors simply dropped their claims in these areas.[21] As soon as claims lapsed they were no longer available to be re-staked.

Not surprisingly, the complete annihilation of exploration sector in Ontario that was predicted by the industry[22] never materialised. Though there was a slight dip in expenditures from 2000 to 2001, expenditures increased again in 2002 and continued increasing through to 2007. The share of Ontario in Canada's overall exploration expenditures has remained between 20% and 25%.[23]

Despite the perception of widespread conflicts the only direct financial compensation given to a claim holder was done so through a court case filed by a prospector. While he was successful in his suit, he was only awarded $500 in compensation. A prediction by PDAC[24] that the decision would provide a precedent for other cases, where losses might be shown to be much greater, was never borne out.

After the initial attrition of claims, there remained 100 sites with overlap issues.[25] NGO's played an active role in helping to resolve issues at these remaining sites by developing a collaborative relationship with government and industry to examine and resolve outstanding conflicts. Resolutions included minor reconfigurations of boundaries and swapping some areas within the protected area for other areas without claims, providing key ecological criteria were met.

In 2005, The Ministry of Northern Development and Mines responded to a report by the Auditor General raising the issue of unresolved overlaps. The Ministry stated that all the conflicts had

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[21] PDAC. Compensation for displaced miners. Northern Miner 88(8), April 15 - 21, 2002.
[22] PDAC 2002.
[23] Natural Resources Canada. Overview of Trends in Canadian Mineral Exploration 2008: http://www.nrcan.gc.ca/minerals-metals/business-market/canadian-mineral-exploration/2008/2908
[24] PDAC, News and Activities: http://www.pdac.ca/pdac/publications/na/020802-willoughby.htm
[25] Ontario Nature, Ontario's Living Legacy Report Card. 2003: http://www.ontarionature.org/discover/resources/PDFs/reports/report_crd.pdf

been resolved[26]. MiningWatch is, however, aware of one conflict that remains where existing mining lease and claims are within the largest remaining old-growth red pine stand. No significant mineralization has been discovered and activists have identified a number of inconsistencies in how the claims and lease have been renewed but the Ministry continues to maintain them.[27] In this case offers to swap another area for inclusion in adjacent protected areas have been rejected by the conservation community due to the uniqueness and irreplaceable nature of the old-growth stand.

BC Flathead Valley

The BC Mineral Tenure Act (Sec 17) and the Mining Rights Compensation Regulation require the province to compensate mineral claim holders if their claims are expropriated for the creation of a park.[28] Compensation is not required if the Minister determines the claims were staked for purposes other then mining or in order to gain compensation.

According to a ministry official, the amounts negotiated remain confidential and are generally associated with expenditures not potential future value of the property.[29] The Act itself stipulates that compensation should be based on an estimate of a claim's value if sold.

The provisions in the Act and regulation were invoked when the government announced an MOU with state of Montana for protection of the Flathead Valley in February 2010[30]. The MOU and subsequent government order prevents new mining and energy developments throughout the valley. The valley is a transboundary watershed with high ecological values and was of significant interest and concern to conservationists on both sides of the BC/Montana border and even garnered the attention of President Obama.

According to the Association of Mineral Exploration British Columbia, there were 8 claim holders with a total of 53 mineral claims and 13 coal licenses held by 3 companies when the announcement was made.[31] The Northern Miner reported earlier this year that BC had reached settlement agreements with six of the mineral tenure holders (coal and metals) for a total of $4.9-million and that compensation to Max Resources of $655,000 was less than their exploration expenditures of $733,000.[32] Ed Collazi from the BC Mineral Titles office would not confirm these amounts.

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[26] Auditor General of Ontario. 2005 Annual Report of the Office of the Auditor General of Ontario, 3.09 Mines and Minerals Program. December 2005: http://www.auditor.on.ca/en/reports_2005_en.htm
[27] Wolf Lake Coalition. 10 Reasons to Protect Wolf Lake Forever. 2012: http://savewolflake.org/images/stories/ReportMay13LowRes.pdf
[28] BC Laws, Mineral Tenure Act, Updated Sept 2012: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/13_19_99#section5
[29] E. Collazi, Chief Gold Comissioner and Director of Mineral Titles, personal correspondence August 14, 2012.
[30] BC Government. Mineral Titles/British Columbia's Flathead Valley 2010: http://www.empr.gov.bc.ca/Titles/MineralTitles/Notices/Pages/Flathead.aspx
[31] AME BC. Land Use Plans. http://www.amebc.ca/policy/land-access-and-use/land-use-plans.aspx#flathead
[32] Northern Miner. Cline Mining sues B.C. government for $500 million, May 31, 2012. Rreposted to the Canadian Mining Journal website: http://www.canadianminingjournal.com/news/cline-mining-sues-b-c-government-for-500-million/1001425476/

A settlement has not been reached with Cline resources which holds coal tenures and had spent considerably more on exploration and development than the other companies with tenures in the Flathead. The company is suing BC for $500-million which includes their estimate of the net present value of the identified coal deposits, were they to go into production. BC argued the case should be thrown out as the company should have known about the environmental sensitivities in the area from a previous attempt to develop the property that was rejected (the claims were then voluntarily dropped and subsequently picked up by Cline). The government further argued that any eventual mine approval was highly unlikely as it would have been opposed by environmentalists and First Nations.[33]

In September the Nature Conservancy (TNC) and the Nature Conservancy of Canada (NCC) announced that they would provide $10-million in funding to BC to implement the MOU and compensate any of the remaining mineral tenure holders.[34] The funds came in part from a federal grant to NCC and private donations facilitated by the TNC. A CBC story on the subject suggests that Cline Mining is not going to be part of these settlements, but no updates from the company are available on its website and there are no specifics in the TNC and NCC statements.[35]

9. The Majors

In contrast to the junior companies, there are two large global mining companies with substantial claims in the Peel – Freeport McMoRan and Newmont. The relationship of these companies to their Peel Claims is distinct from those of the juniors that have only a few prospects and no operating mines. The Peel claims of Freeport McMoRan and Newmont are a miniscule part of their over all holdings.

Freeport McMoRan is the world's largest copper mining company with a market capitalization of $38.5-billion and annual revenues in 2011 of $20.88-billion.[36] Current major operations of the company are in the southwest USA, Peru, Chile, Democratic Republic of Congo and the remote western Indonesian state of Papua. The company was a founding member of the international mining association ICMM and states that it adheres to its Sustainable Development Framework. The company has an extensive website on sustainability issues and sustainability is featured prominently in its annual report with additional supporting reports available.

Despite the repeated assurances of exemplary corporate behaviour in its informational and promotional materials, Freeport McMoRan has had major social and environmental issues at its mines, in particular at its Grasberg Mine in Papua. This fall the New Zealand Superannuation

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[33] M. Caswell. Cline's proposed mines had slim chance, says gov't. Stockwatch, July 25 2012. http://www.stockwatch.com/News/Item.aspx?bid=Z-C:CMK-1979394&symbol=CMK&news_region=C

[34] M. Hume. BC gets $10-million windfall to protect Flathead River valley. Globe and Mail September 14, 2102: http://www.theglobeandmail.com/news/british-columbia/bc-gets-10-million-windfall-to-protect-flathead-river-valley/article4544081/

[35] CBC News. Environmentalists' buyout of Flathead Valley mining. September 15, 2012 http://www.cbc.ca/news/canada/british-columbia/story/2012/09/14/bc-flathead-valley.html and Cline Mining: http://www.clinemining.com/news/index.html

[36] www.stockwatch.com and FMI 2011 Annual Report: http://www.fcx.com/ir/AR/2011/FCX_AR_2011.pdf

(public pension) Fund divested from the company due to ongoing human rights abuses at Grasberg. This follows a similar decision by the Norwegian Pension Board.[37] Other major issues with the mine include the uncontained dumping of tailings into a river system, corruption, support for an abusive military regime, and worker safety in the mine. In 2005, the New York Times published an extensive review of these problems.[38]

Because of the problems with the Gassberg Mine, Freeport McMoRan has been the target of significant lobbying and pressure from activists. Its well developed communications on sustainable development are likely a result of the pressure the company is under.

Newmont is another major global miner and one of the world's largest gold producers. The company also produces copper at is operations in the US, Australia, New Zealand, Indonesia, Ghana and Peru. It has a market capitalization of $27.259-billion and annual 2011 sales of $10.358-billion. Like Freeport McMoRan, Newmont is a member of ICMM and has extensive sustainability PR on it's website. Also like Freeport McMoRan, Newmont is mired in a considerable amount of conflict in its global operations.

The analyst group RepRisk recently compiled a list of the 10 most controversial mining companies of 2011.[39] Newmont was number two on the list! (Freeport McMoRan was fifth,) Newmont was singled out for a number of issues but especially its efforts to push ahead the Conga project in Peru against widespread, stiff and persistent public opposition. It has also had serious issues in Ghana with relocation of local communities and Indonesia with ongoing sub-marine tailings disposal.

Despite its controversies, Newmont has been given kudos from Oxfam America for making a public commitment to implementing a policy of Free Prior Informed Consent of affected communities[40]. If the company takes it at all seriously, this policy could pose an important lever in the Peel given the broad public and in particular the First Nations support for the Planning Commission recommendations.

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[37] Indonesian Human Rights Committee. Indonesia Human Rights Committee applauds NZ Superannuation Fund decision on Freeport McMoran

[38] J. Perlez and R. Bonner. Below a Mountain of Wealth, a River of Waste. New York Times, December 27, 2005: http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=all

[39] RepRisk. 10 Most Controversial Mining Companies of 2011. March 2012: http://www.reprisk.com/downloads/mccreports/23/150312%20Top%2010%20Most%20Controversial%20Mining%20Companies_RepRisk.pdf

[40] Mining People and the Environment. Growth in human rights policies encouraging – Oxfam. September 27, 2012: http://www.mpe-magazine.com/enviromine/growth-in-human-rights-policies-encouraging-oxfam

10. Conclusions

The research conducted for this report provides compelling evidence that there is no need to compensate claim holders in the Peel. The write-offs of the exploration assets in the Peel show that most of the properties have little current market value that would warrant compensation. While Pitchblack and Mega might try to argue the loss in value is due to the Peel land use planning process, this is completely inconsistent with their public filings. The fact that Zinccorp acquired its claims after the planning process began is indication of a willingness to take a considerable risk with the property – on a such a risky venture the shareholders should be prepared to take a loss. Losses of properties are common place in the exploration sector and past claims of the industry that expropriating mining rights without compensation will have wide spread impacts on investment in exploration have not been borne out. Despite having compensated some companies, BC makes a compelling case against compensation in its defence against a lawsuit. The two majors make big claims about sustainable practices but their longer-operating mines have many serious problems. It is quite possible they would recognise an opportunity for demonstrating their stated commitments by relinquishing their claims in the Peel.