



MiningWatch Canada

Mines Alerte

Newsletter

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End Mining's Privileged Access to Land! Communities Across Canada Outraged by Free Entry System

Across Canada, communities and Aboriginal governments are saying they have had enough when it comes to the privileged access mining has to land under the existing system, which grants "free entry" to prospectors and mining companies under the assumption the mining is the "highest and best" use of land.

In Ontario, British Columbia, Quebec and the Northwest Territories, communities are organizing to end the free entry system.

ONTARIO

In December, in the Ontario Superior Court in Thunder Bay, Kitchenuhmaykoosib Inninuwig (KI) leadership stated that they would rather be jailed for contempt of court than allow Platinex Inc., a junior mining company, to drill on their customary homelands.

Neal Smitheman, of law firm Fasken Martineau, representing Platinex, threatened to bring in armed guards to protect the drillers. Back in February 2006, Platinex already had brought in a British mercenary to protect its mining activities.

The company has sued the First Nation for \$10 billion for protecting their customary homelands. The First Nation then filed a counter suit challenging the constitutional right of Ontario to grant mineral rights on their lands without meaningful consultation. Defending their rights against the company



Flanked by daughter Rhoda Quock, Klabona Keepers' spokesperson, and other daughter Ramona Quock, Iskut Band Council, Jenny Quock prays for 'strength from the ancestors' as they set up a blockade to prevent destruction of the Sacred Headwaters, near Iskut, Tahltan territory, British Columbia in June of 2006. Photo courtesy Jim Bourquin.

has brought the First Nation to the brink of bankruptcy, but they continue to fight.

KI enjoys the support of the Independent First Nations Alliance and the Nishnawbe Aski Nation, which represents 47 First Nations in northern Ontario. At least ten of these First Nations have moratoriums on mineral development in their territories.

In southern Ontario, the Ardoch and Shabot Obaadjiwan Algonquin First Nations have been trying to stop Frontenac Ventures, a tiny private company, from exploring for uranium on their traditional territories. Non-native families are also concerned about staking and exploration in the area, and have organized the Community Coalition Against Mining Uranium. All are demanding changes to the Ontario Mining Act.

On December 4, 2007, Gord Miller, the Environmental Commissioner of Ontario (ECO), added his voice to the cries for change to the Mining Act, saying, "[t]his century-old system continues to rely on principles that do not reflect modern land use planning nor does it adequately safeguard environmental values." He continued, "[t]he ECO believes that this system is reactionary and fails to determine upfront where mineral development may be inappropriate... The ECO believes that Ontario's Mining Act and its assumption of free entry for mineral development impedes comprehensive land use planning."

BRITISH COLUMBIA

The Iskut First Nation have been fighting incursions on their traditional territory by mining companies and coal bed methane development for over four years. In December, they won an interim injunction from the BC courts which upheld their right to keep Shell off their lands. Elder Lillian Moyer is still awaiting a court hearing on a contempt of court charge stemming from a blockade of bcMetals in September 2006.



Sacred Headwaters gathering, Iskut, Tahltan territory, British Columbia, June, 2006. Photo courtesy Jim Bourquin.

The Takla Lake First Nation ordered prospectors off their traditional territory in September 2007. In a news release dated September 9, 2007, they stated, "Takla states it has been left with no other options to address the gold-rush that is taking place throughout the Territory and to protect Takla's rights and Territory."

Chief Dolly Abraham stated, "This is out of control. B.C. allows on-line staking and hands out permits to anyone who asks. Mining companies are given permits to build roads and drill in sensitive areas of our Territory. Until there is joint planning and meaningful consultation and accommodation, we will be forced to take action to protect ourselves."

Non-native communities are also in an uproar.

Near Vernon, Rob Westie and his neighbours organized the B.C. Landowner Rights Organization in 2006 to protest free entry and the internet staking system in place in B.C., after their lands were staked by a local prospector. Examples of B.C. properties recently affected by the Mineral Tenure Act's free entry policy:

In 2003, a company that mines clay for kitty litter entered Kamloops property belonging to the Bepples family to begin mining. The story was front page news locally for weeks.

In 2005, large areas of the Sechelt Peninsula were staked by aggregate miners who wanted to build an enormous gravel pit. Local home owners organized to try to stop the pit.

Also in 2005, a coal mining company staked the Yorston ranch, which had been in the family outside of Quesnel since 1903. The Tyee reported: "The Yorstons have 300 beef cattle, a corn maze for the summer and a picture-perfect garden. The house was built in the 1920s and Lenore's daughter put a chicken coop out back. The land has been farmed since the 1870s."

QUEBEC

Families living in the Outaouais area of Quebec have organized the West Quebec Coalition Against Uranium Mining (WQCAMU) after their farm, homes and cottages were staked in a uranium rush. A call for submissions on a proposed

Quebec Mineral Development Strategy in fall 2007 resulted in stinging commentary about free entry and demands for change from many groups across the province, including CREAT (Conseil Régional en Environnement en Abitibi-Témiscamingue) in Rouyn Noranda, WQ-CAMU and EcoJustice.

The EcoJustice submission stated: "The Mining Act is articulated in an opaque and confusing manner, making it difficult for Québec residents, property owners and municipalities to stay informed of how the law governs their land. Based on our analysis, it is unclear how this statute interacts with other Québec laws. This lack of clarity has resulted in a legitimate concern that the Mining Act prioritizes mining rights over individual and community rights by: 1) superceding the right to privacy afforded by the Civil Code of Québec; 2) contradicting the inviolability of an individual's home and the right to peaceful enjoyment and free disposition of property as provided for by the Quebec Charter of Human Rights and Freedoms; and 3) circumscribing the power of municipalities to protect the health and welfare of residents in accordance with the Municipal Code of Quebec and the Cities and Towns Act."

NORTHWEST TERRITORIES

In December, 2007, the Mackenzie Valley Environmental Impact Review Board (MVEIRB) asked the Minister of Indian and Northern Affairs to end free entry on some lands in the NWT.

According to a Canadian Press story of December 17:

"It's a system that doesn't fully acknowledge that there are other rights of equal or perhaps greater importance," said David Livingstone, Indian and Northern Affairs director of renewable resources and environment for the N.W.T., who spoke in favour of such a recommendation at hearings on the project.

It's almost impossible to establish a protected area or create a land claim on land with pre-existing mineral dispositions on it, Livingstone said. "Once mineral rights are acquired, they tend to set the foundation for the discussion (for the land).

"We've reached a point now in the context of aboriginal rights that aboriginal people are in some cases saying 'Hold it now, we're not sure we want mining in this area. If you're acquiring mineral rights, you're setting off on that path before we've had a chance to really discuss the long-term consequences of that.'"

Historically, mineral rights have trumped all other uses, unless surface land is specifically withdrawn from staking, for a park, and urban development or some other special use.

The mineral rights belong to the provincial government in most parts of Canada south of the 60th parallel. In some older parts of Canada, the mineral rights are still attached to the surface lands. However, because mining taxes have to be paid on these rights, over time many of them have reverted to the Crown.

North of 60, most of the mineral rights belong to the federal government. The exceptions occur where the mineral rights were specifically awarded to a territorial or Aboriginal government through a land claims process.

The process for allocating mineral rights is usually enshrined in the provincial Mining Acts, and in the North, the Territorial Lands Act (Canadian Mining Regulations).

A Free Entry Primer

In 2004, West Coast Environmental Law published an excellent primer on the free entry system, available online at http://www.miningwatch.ca/updir/WCEL_Free_Entry_paper.pdf. Here is a summary:

What is free entry?

The free entry system is the dominant means of granting mineral tenures in Canada today. It gives mining companies the exclusive right to Crown-owned mineral substances from the surface of their claim to an unlimited extension downwards. There are three primary rights associated with the law of free entry:

- the right of entry and access on virtually all lands;
- the right to locate and register a claim without consulting the Crown; and
- the right to acquire a mineral lease with no discretion on the part of the Crown.

How does free entry work?

While each jurisdiction has individual legislated provisions, the basic operation of free entry is as follows:

1. A free miner obtains a licence to prospect; there are minimal requirements, such as being 18 years of age and paying a nominal sum (ie. \$25).
2. The free miner has access to any and all private and public lands, subject to minor exceptions (where land has been withdrawn, or statutory provision that prohibit exploration on buildings, dwelling houses, cemeteries, agricultural lands).
3. The free miner stakes claims on the land (provincial laws contain detailed requirements as to how staking occurs).
4. The free miner registers any claims and then maintains this priority by doing minimal assessment work annually (in some jurisdictions the miner can pay cash in lieu of doing work to maintain claims).
5. Basic exploration activity can occur; it is not always regulated. Minimal environmental laws may apply, but they often leave transient operations untouched.
6. If the miner finds a significant mineral deposit, a mineral lease is applied for. Under free entry, the government has no discretion to refuse a lease application, provided the basic information requirements are met.
7. Mineral leases are significant, it provides security of title and means mining company can invest in mine development. Whereas claims are usually valid from year to year, a lease is often valid for 20+ years.
8. More significant mine operations can begin. Depending on the jurisdiction, these operations may be subject to environmental assessment or permit requirements.
9. At the mine development phase, the miner will usually require surface rights. This may require compensation to be paid to a private landowner.
10. Conversely, if land is subsequently withdrawn (ie. for park creation) when mineral claims have been staked, the free miner may be entitled to compensation.

What are some of the assumptions and implications of free entry?

- Mining is the first and best use of lands. While this may have been the policy view at one time, this is no longer the case. As experience with land use planning processes in BC have proven, there are numerous, legitimate competing interests for Crown and private lands.
- All Crown lands are open for staking and mineral exploration unless they are expressly excluded or withdrawn by statute. This limits the ability of government to undertake multi-use land resource planning, which often includes the designation of protected areas, and the balancing of other potential resource users, such as timber, oil and gas, and wilderness tourism operators.
- Mining prevails over private property interests. A free miner can enter onto private land and make a claim without giving notice to the surface landowner. Surface owners are only entitled to compensation and security for any loss or damage to the property. The free miner is also not legally obligated to consult and inform a surface owner of their plans even after written notice has been given. Often tensions arise between surface landowners and mineral claim holder, leading to expensive dispute resolution processes.
- Mining prevails over aboriginal land claims. The current system does not recognize or take into account aboriginal land claims. Current federal free entry laws do not require consultation with, or protection for First Nations. Nor does it provide them with a role in land resource decisions as required by Delgamuukw. In general, exploration activities and the nature of free entry have a disruptive effect on native land claims.
- Mineral tenures are appropriately granted on a first come first served basis. Time priority is the basis upon which tenures are obtained, which can result in staked claims overlapping, and conflicts between different exploration interests.
- Mineral potential is so valuable that it warrants leaving the staked area essentially unregulated and unusable for other resource interests. Once a claim is recorded or a lease obtained, the free miner can hold the claim for extended periods of time, and in some cases indefinitely, by performing and recording a minimal required amount of work on the land every year. Resource management and land use planning initiatives must work around mining claims, where the opposite is true for other natural resource industries.

Conversations with the Earth: A Community Arts Project in Sudbury

Over the past year, the Canary Institute and MiningWatch Canada have been honoured to work with Myths and Mirrors Community Arts in Sudbury on a project for youth called “Conversations with the Earth”.

Myths and Mirrors hosted the Ontario Mining Action Network meeting in November 2007 and participants were treated to a tour of the project and the community art installations they have carried out over the years.

The project involves youth and young parents in participatory research and public dialogue events on how mining has affected Sudbury’s environment. The research and discussions have led to youth’s collective creation of public artworks, videos, zines and other artforms, as well as other strategies for awareness and action.

The project began in December 2006 with a move to a new site at a neighbourhood park, with a large building with lots of workshop and storage space, a full kitchen, and bathroom. Use of the park was donated by the City of Sudbury.

Project coordinator Tanya Ball says: “This site is perfect for our Conversations with the Earth project: it is across from a successful greening project, but just a bit further down the road are the devastated remains of land scarred by mining, and a bit further down is the Froid mine, one of the oldest mines in Sudbury. Being so close to a functioning mine keeps the issues front and centre.”

Tanya involved all of the volunteers in the painting, decorating and moving. The ‘grand opening’ featured a smudging and blessing by Elder, Winnie Pitawanakwat, a drum honour song, lots of food, music and performances. It attracted over 100 people from the community and good media coverage.

The project hosts two weekly groups: Thursdays were for teens and youth and Fridays were for parents and children, with potlucks, then conversations and activities about environment issues. In the parents’ group, the children, age two to ten, took the lead, designing and creating a puppet stage and writing and directing their own shows and performances about *The Fate of the Earth*. Many of their activities have been documented on video.

To attract new youth, as well as those who did not know the new site, which is about a ten minute walk from downtown, the project helped them to organize a series of shows, featuring local punk and hip-hop groups. Tanya offered screenprinting workshops, with recycled sewn cloth bags, t-shirts, posters, etc. which drew in even more kids. They soon had a core group of about sixteen youth.

At the opening, MiningWatch Canada’s Joan Kuyek presented on her experiences working on Canadian and mining

issues, as well as the major pollution problems from this industry. Other presenters included two representatives from local mineworkers’ unions, a local business owner, and residents of the neighbourhood. People shared their stories of the land in and around Sudbury, how mining has touched their lives and their environment.

The project decided to take advantage of the new bare walls on the outside of the building, and the conversation was deepened through the collective design and creation of an outdoor mural that covers all four walls. Neighbours of all ages



Tanya Ball shows off the mural decorating the new Myths and Mirrors building. (Tanya Ball photo)

worked on the mural, which was unveiled in June. This project was “dedicated to all the children who live in mining communities, and to the adults who work for safe, clean mining practices.”

The project hired four students for the summer, all of whom were volunteers in the previous months. This was a dynamic team, who led a diverse group of youth through many projects, including photography, zines, storytelling and music making.

The cob (sifted earth, clay and straw) project was an intensive three weeks of hard labour, interwoven with teachings and conversations about sustainability, natural building practices, contaminated soil solutions and food production. They designed and created an ‘Earth Castle’.

The construction attracted the attention of many of the neighbours, many of whom come from the ‘old country’. They remember creating homes of earth in Croatia, Ukraine and Russia, and they were delighted by this project, and eager to share their stories of building with earth.

The project has just received confirmation that it will be funded for another year of creative work.

Uranium Still A Hot Topic Across Canada

In December, MiningWatch Canada issued its long-awaited position statement on uranium mining; it’s on our web site at:

www.miningwatch.ca/index.php?/uranium/uranium_policy.

Requests for help in addressing uranium issues from all across Canada meant that we had to figure out exactly where we stood on uranium mining and exploration.

Our situation was not unique. The uranium exploration rush generated by high uranium prices is forcing communities and governments everywhere to decide where they stand on uranium exploration and mine development.

Since many of these communities are desperate for jobs and income, the decision to protect future generations from radiation exposure can be a very difficult one. In Nunavut,

Nunavut Tunngavik Inc. and the Nunavut Planning Commission have decided to lift the moratorium on uranium exploration and mining, though any new projects in the Kivallik region will still have to be approved by the residents under the Keewatin Regional Land Use Plan. Areva Resources and its partners are working on a feasibility study for the Kiggavik uranium project near Baker Lake.

Recent news of the mismanagement of AECL's Chalk River reactor, the radiation exposure of residents in Port Hope, and the flooded mine shafts at Cameco's McArthur River, Cigar Lake, and Rabbit Lake mines do little to increase confidence in Canada's nuclear safety.

Across the country, citizens are working together to protect themselves from new uranium mines and exploration:

On December 13, Chief Grace Conrad of the Native Council of Nova Scotia called on the provincial government of Nova Scotia to impose a permanent ban on uranium mining. A moratorium has been in place since the 1980s.

The same day, the Community Coalition Against Mining Uranium (CCAMU) based in the province of Ontario announced that they would hold public hearings throughout the eastern part of the province in the New Year on the environmental and health impacts of uranium mining. Other non-native opponents to the Frontenac uranium mine put the province of Ontario on legal notice, demanding public consultation and an eventual moratorium on uranium mining in the province. The opponents argue that the Ontario Mining Act, which was passed in 1868 and has changed little since, did not contemplate uranium and so infringes on the Charter's guarantee to life, liberty and security of person.

In New Brunswick, citizens have mobilized to stop exploration by Vale Inco in the area between Sussex and Moncton. The New Brunswick government had granted the company a five year exploration licence.

In Quebec, Ecojustice (formerly Sierra Legal) and the West Quebec Coalition Against Mining Uranium (WQ-

CAMU) are demanding answers from the Minister of Natural Resources and Wildlife concerning possible connections between the province's recent decision to reject a moratorium on uranium exploration in western Quebec and mining claims held in the region by a government-owned corporation.

Concerns with uranium waste and radon gas are also a rallying point for citizens at Oka who are opposed to the proposed Niocan niobium mine. In November, Channel D television carried an hour long special on the issue.

In the Northwest Territories, on October 24, the federal cabinet upheld a recommendation by the Mackenzie Valley Environmental Impact Review Board to block Ur-Energy's uranium exploration program on the Upper Thelon area east of Great Slave Lake. Last May, the board shocked the mining industry when it denied Ur-Energy's plan to drill up to 20 holes near the Thelon River because it threatens the spiritual and cultural well-being of the Akaitcho Dene.

In Saskatchewan, late in 2006, Ecojustice filed an application to the Competition Bureau of Canada to conduct an inquiry into the Canadian Nuclear Association's high-profile advertising campaign touting the benefits of nuclear power. The applicants, including public health, renewable energy, environmental, and religious groups across Canada, allege that claims made in television, radio and print ads promoting nuclear energy are misleading. A report on nuclear power in Canada was filed by the Pembina Institute in support of the application.

In Labrador, the Nunatsiavut (Inuit Government) Legislative Assembly is debating a motion from its Executive Board calling for a moratorium on uranium exploration on Inuit-owned lands. Public consultations have been held across the territory all fall.

And in British Columbia, the Uranium Free BC Coalition has been successfully fighting off proposed *in situ* leach uranium mining in the Kootenay/boundary area.

Xstrata Faces Growing Criticism Over Koniambo Nickel Project in Kanaky-New Caledonia

Xstrata's Koniambo project in the South Pacific French territory of Kanaky-New Caledonia, formerly owned by Falconbridge, is coming under increasing scrutiny and criticism. The proposed nickel mine, in the northern province of Kanaky-New Caledonia, will be one of the largest mines in the world when it is built. The territory, called New Caledonia (Nouvelle-Caledonie) by the French, is called Kanaky by its native Kanak inhabitants. It is world renowned for its very high level of endemic species (species found nowhere else on earth) and a huge barrier coral reef – the largest in the world containing many of these unique species.

The Koniambo project has long enjoyed support from the Kanak population as Falconbridge offered the Kanak-led provincial government of the Northern Province a 51% stake in the project. However, the Kanaks have also maintained that they do not want the mine at any cost and that environmental protection and transparency are of central concern to them. Both of these principles are now being seriously breached by Xstrata.

The mine cannot go ahead without a massive port facility. To build this port the company has to punch through the barrier reef, destroying corals that have taken decades to grow and potentially endangering unique species. The huge dredging operation will displace 9 million cubic metres of sediment in the lagoon. By any international best-practice standards, a project of this size and environmental impact must establish careful baselines of the environment to be affected in order to be able to monitor impacts and minimize risk to the environment.

The first mistake made by Xstrata's subsidiary Koniambo Nickel SAS (KNS) was to allow KBR, the international engineering and construction company that will dig the channel, to also be responsible for the environmental monitoring of the reef – a clear conflict of interest that will have potentially devastating consequences for the coral reef.

According to independent experts who have examined the monitoring stations set up by KBR on the seabed, only one of the 14 monitoring stations was set up in such a way that it is

compliant with Koniambo Nickel's scope of work. Additionally, experts noted that the way KBR set up the stations was itself causing unnecessary and unacceptable damage to the marine environment. All but one station was having a negative impact on corals and seabed organisms. In fact, many monitoring devices are actually anchored into living coral colonies when they should have been placed in non-living substrate. In addition to the damage already done by the unprofessional placement of the monitoring stations, the non-compliant locations of the stations mean that there appears to be no accurate baseline data for this major dredging operation. A report published by 17 environmental organizations based in New Caledonia supports this conclusion.

The second mistake being made by KNS is the company's lack of transparency around the dredging project. KNS has made a commitment that all environmental reports, including raw data, will be made available to the public via environmental associations, guaranteeing transparency via the North Province-KNS Environmental Charter. In spite of the fact that local environmental organizations have been requesting access to international and national expert reports on the reef monitoring program since September 2007, the reports – documenting non-compliant station construction that renders model data useless – remain unreleased. Meanwhile KNS may be starting its dredging operation within weeks to remain on schedule.

The third mistake made by Xstrata was not reporting the damage done to the marine environment by KBR's monitoring stations in its 2006 Sustainability Report that reports on "significant" (category 3 or higher) environmental incidents.

Finally, the fourth mistake made by Xstrata has been to fire Koniambo's Director of Environment who raised concern about this issue. By trying to bury the problem, rather than address the need to take corrective action to remedy the damage done and to assure that proper marine baseline data is secured for the port project, Xstrata is putting a critical ecosystem at unnecessary risk. The company is also risking losing the trust and support of the Kanak people.

Sources:

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- Melanopus, Sept. 2006, "État des Stations Inscrites au Cahier des Charges Suivi environmental marin de Koniambo Nickel SAS";
- Les Infos, November 9, 2007, "Koniambo: Un Environnement déjà Bafoue?"



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