



October 25, 2019

Hon. Michelle Mungall

Minister of Energy, Mines and Petroleum Resources
Room 301 Parliament Buildings
Victoria, BC V8V 1X4
EMPR.Minister@gov.bc.ca

Attn: Citizen Engagement

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Re. Public input on BC's Mines Act amendments - enforcement & compliance¹

Dear Minister,

The BC Mining Law Reform network was launched² to promote changes to mineral development laws and mining practices to ensure they are environmentally sound, do not pollute waters, respect community decisions, and account for the costs to clean up toxic mine waste sites.

The network grew out of a shared concern of weak mining laws and a lack of enforcement and oversight in a context of increased demand for minerals mined in BC. It today represents nearly 30 local, provincial and national organizations from a wide range of sectors, including citizen and community groups, First Nations, academics, and social justice and environmental organizations. The network is a not-for-profit, public interest initiative promoting efforts to manage and develop mineral resources in ways that protect and sustain the environment while enhancing the social, cultural, and economic well-being of affected communities and of all British Columbians.

The undersigned are partners of the network that wish to make comments on the proposed Mines Act amendments as described in the "*Intentions Paper - Regulatory Excellence and Continuous Improvement in the Mining Sector - Mines Act Proposal for Legislative Changes*."³ The EMPR's September 21, 2019 news release⁴ describes the objectives of the proposed amendments to:

- Formally separate specific authorities and decision-making powers under the Mines Act to ensure authorizations and permitting are separate from enforcement and auditing powers.
- Formally establish an independent oversight unit with an auditing function.
- Enhance compliance and enforcement provisions.

¹ <https://news.gov.bc.ca/releases/2019EMPR0106-001827>

² <https://reformbcmining.ca/news/2019/05/time-to-clean-up-mining-in-bc-citizens-indigenous-groups-demand-financial-legal-reforms/>

³ <https://engage.gov.bc.ca/app/uploads/sites/121/2019/09/Mines-Act-Intentions-Paper.pdf>

⁴ <https://news.gov.bc.ca/releases/2019EMPR0106-001827>

While those objectives and the proposed amendments do represent a step forward from decades of negligence in compliance and enforcement of the BC mining sector, they still fall short of what is truly required to protect BC's environment and communities from ongoing mining risks and impacts.

Drawing on the BC Mining Law Reform [regulatory roadmaps](#)⁵ developed by the UVIC's Environmental Law Center and multiple organizations across the province over the last year or so, we urge your Ministry to also consider the following key recommendations as it proceeds with much needed reforms:

- 1. Establish an independent mining compliance and enforcement unit outside the jurisdiction of the Ministry of Energy, Mines and Petroleum Resources with a mandate to protect the environment.** This was also the lead recommendation of BC's Auditor General audit in 2016 ([page 5](#)). The proposed amendments, while an improvement over the *statu quo*, fall short of meeting this important objective by keeping all new enforcement and compliance structures within the Ministry of EMPR. In addition, the new Mines Competitiveness and Authorizations Division will be handling both the authorizations and promotion, which continues the conflict of interest identified by the Auditor General. Authorizations must be independent of promoting mines. As such, the authorization division must be able to freely withhold future permits if current environmental, health and safety permit conditions are not met, until such time the permit holder complies.
- 2. Ensure sufficient resources, staff and expertise to effectively enforce the law at BC mines** ([page 7](#)). The 20-million commitment over three years (2019-2022) to hire more EMPR inspectors is laudable, but remains insufficient to recover the 50% loss in inspectors' number (80 to 40) in since the early-2000s, while the industry grew over 100% over the same period ([NRCAN 2019](#), [ISQ 2019](#)). As of Sept. 2018, EMPR had hired only 23 new inspectors ([note 25](#)). New inspectors in MOE are also required.
- 3. Implement a funding mechanism that ensures mining companies contribute their fair share towards a robust monitoring and enforcement regime.** California, Quebec and other states implement such mechanisms ([page 7](#)).
- 4. Mandate clear risk-based inspection policies for all mines (including closed and abandoned mines)** – and legislate mandatory minimum inspection schedules and standards that meet or exceed international best practices ([page 9](#)), including at least annual inspection of all closed mines for geotechnical issues, ground and surface water contamination and revegetation ([page 7](#)). As revealed by BC's Auditor General in 2016, as well as in multiple media and other reports in recent years, many active and closed mines in BC have gone without proper inspection, or any inspection at all, often for years (e.g. Myra Falls, Gibraltar, etc.), which put the environment and the public at risk, and in some cases, lead to real and severe damages (e.g. Mount Polley, Jordan River, Elk Valley Watershed, etc.).
- 5. Establish and enforce a modern, progressive regime of fines and penalties to deter illegal and environmentally damaging mining practices**, including stricter fines for repeat noncompliance, a prohibition on future authorizations for serial offenders, and daily fines for continuing offences ([page 10](#)). While BC introduced in 2017 administrative monetary penalties (AMP) in the Mines Act and successfully prosecuted in 2019 against a faulty mining company for the first time in over two decades, its overall track record is poor. For example, of the only six (6) enforcement actions taken by MOE on mine sites from 2006 to 2010, five (5) of those amounted to less than \$600 penalties ([page 9](#)). Sanctions enforced federally under the Fisheries Act, while arguably better than provincial actions, have not been much better: despite 76% of metal mines in Canada (many of which in BC) showing effects to fish habitat ([Environment Canada 2017, on page 3](#)), only a fraction resulted in fines. But perhaps more troubling, over five years after the Mount Polley disaster—the largest mine waste spill in Canada—there has been no sanctions brought forward by any level of government. This sends the wrong signal to the industry and seriously undermines public confidence in the enforcement and compliance regime for mines in BC.
- 6. Enable private prosecutions and/or enact citizen suit provisions for environmental violations, and enact robust whistleblower protections** to protect private sector whistleblowers, including mineworkers, contractors and others who report unlawful or unethical actions that endanger public health, safety, and

⁵ <https://reformbcmining.ca/reports/>

the environment. Saskatchewan and New Brunswick have whistleblower protections for both public and private sector workers ([page 12](#)). As for “Citizen Suits,” they are commonly done in the US, including under the US Clean Water Act, where “private citizens are empowered to sue companies civilly for breaking statutes and regulations.” ([page 13](#)) They have been one of the most effective enforcement provisions in the US, giving teeth to the law when government fails to act.

7. **Enable and fund Indigenous-led monitoring and enforcement programs for mining activities, as well as other form of independent monitoring** ([page 13](#)). Examples include Australia’s Indigenous Rangers program, the Coastal First Nations’ [Guardian Watchmen](#) in BC, the Peace-Athabasca Delta Ecological Monitoring Program ([PADEMP](#)), the [Independent Environmental Monitoring Agency](#) in NWT, and nearly 40 others [Indigenous Guardian Programs](#) in other areas in Canada. Those efforts should also help “develop data collection protocols and train community-based monitoring staff so that data generated locally can be used for management, governance, and statutory decision making.” ([page 12](#))
8. **Polluter Pays – Require mining companies to provide security for 100% of independently verified cleanup and reclamation cost estimates before operations begin, as well as a “pooled industry fund” to cover the costs of disasters that private insurers won’t cover** ([pages 6-8](#)). Quebec requires 100% securities payable up-front and updated every 5 years if mine plans change. Ongoing reclamation must also be required under the Act, as to not leave mined areas disturbed for years or decades; this must be a condition of permits and authorizations for continued disturbance. BCMLR also recommends an independent claims process to adjudicate disputes over third-party compensation for pollution impacts.
9. **Transparency – Require regular public posting of all mine environmental monitoring data and compliance and enforcement information in easily understandable formats** ([page 6](#)).

Thank you for the opportunity to comment on the proposed Mines Act amendments.

Please feel free to contact us for any further information,

Sincerely,

Douglas Watt

Concerned Citizens of Quesnel Lake

Kai Nagata

Dogwood

Douglas Gook

Forest Protection Allies

Ugo Lapointe

MiningWatch Canada

Paula Pick

Kamloops Area Preservation Association

Nikki Skuce

Northern Confluence

Chris Zimmer

Rivers Without Borders

Jill Weitz

Salmon Beyond Border

Tis Peterman

Southeast Alaska Indigenous Transboundary
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United for Mining Justice Network

Jessica Clogg

West Coast Environmental Law Assn

Joe Foy

Wilderness Committee

Lars Sander-Green

Wildsight



BC Mining Law Reform launch, in front of the BC Legislature, Victoria, 15 May 2019 (@HollyPattison)
www.reformbcmining.ca



BC Mining Law Reform launch, Hotel Grand Pacific, Victoria, 15 May 2019 (@HollyPattison)
www.reformbcmining.ca