



News Release

Federal and Territorial governments subvert the rule of law

(Yellowknife, NT – August 21, 2019) The Government of Canada and the Government of the Northwest Territories (NWT) have, in effect, subverted the rule of Federal law in their move to expedite two significant conservation areas in the NWT.

In advancing the Thaidene Nene National Park Reserve and the Thaidene Nene Territorial Protected Area, the Federal and Territorial governments have subverted the intended purpose of the Mackenzie Valley Resource Management Act (MVRMA), the NWT's foundational and much lauded environmental legislation that is rooted in Indigenous land claims. Under this law, governments are required to conduct preliminary screenings of park developments to assess any environmental or public concerns before final decisions are made.

The Chamber of Mines and other intervenors participated in the preliminary screening processes and raised their "public concern" over shortcomings that include the lack of transparency and diligence in creating the boundaries, a poorly funded resource assessment, lack of socio-economic analysis, and Parks Canada's refusal to negotiate a transportation corridor to provide access to development opportunities beyond the park boundaries. Both governments chose to ignore these valid public concerns. The legal authority that oversees the adequacy of preliminary screenings, the Mackenzie Valley Review Board (Review Board) reviewed public concerns, and found both governments usurped the MVRMA environmental review process. Critical observations and conclusions reached by the Review Board are found in two decision papers they issued for the [Federal Thaidene National Park Reserve](#) and for the [NWT Thaidene Nene Protected Area](#). In both decisions, the Board found Government actions wanting or failing in preliminary screenings they conducted to assess the environmental and socio-economic effects of the conservation areas. In essence, both governments confounded the Review Board's ability to do their work:

- "Action was taken to establish the national park before the screening was complete. Parks Canada's approach ... is not consistent with the MVRMA to complete a preliminary screening after irrevocable decisions to proceed with a development have already been made." In legislating the national park reserve before the preliminary screening was completed, Parks Canada in effect circumvented the requirements of the law.
- Similarly, in regards to the NWT government's preliminary screening, the Review Board "is deeply concerned with how the GNWT appears to have modified the might test found in s.125 of the MVRMA." Further, the Board reminds government that this test of public concern "stems from the land claim agreements and is written in law" and "... it is incumbent on screeners to duly consider it and apply it consistent with the intent and letter of the MRMA."

Unfortunately, while the Board is critical of the governments for not following the MVRMA legislation, it has concluded in both cases that it now cannot exercise its discretion to refer the screenings to further study by an environmental assessment, as they might have done had government not effectively neutralized their ability to do so.

According to Chamber of Mines President, Gary Vivian: “Our industry members have emphatically told us that they are not against the creation of National Parks and conservation areas. However, they are deeply concerned, as should the public and Indigenous governments be, when governments can ignore, misinterpret or twist the law to suit their own purposes. It is poor governance when a double standard is at play. A development of a park or a mine are to be treated the same under the law, but governments have found a way to shortcut the law to suit their purposes.”

“We issue the challenge to all governments – Federal, Territorial and Indigenous – to provide the public with clear information and guidance on how these issues will now be addressed, and ensure open, transparent and informed decision making, and prevention of government agencies and departments from thwarting the law,” says Vivian. Some suggestions for governments include:

- Have Parks Canada make allowance for a future corridor through the park, which currently challenges access to a huge undeveloped region in the southeastern NWT. The Park will hamper future benefits to northerners from resource development in this region, much larger than the park. This is the same region that the GNWT invested several million dollars in geoscience to help attract industry investment. Corridors exist or are allowed in other parks, including Banff, Jasper, Nahanni, Ukkusiksalik, and most recently under discussion for Wood Buffalo National Park.
- Resource development creates much-needed revenues for government that benefits everyone in the NWT, and there needs to be a fulsome economic analysis of the socio-economic effects of big land withdrawals versus the undefined concept of “conservation economy” as proposed for Thaidene Nene.
- To remove the perception of bias or conflict of interest, improvements must be made so that preliminary screenings of parks be delegated to the MVRMA boards rather than the government agencies and departments responsible for conservation areas. The proponent should never be allowed to be the screener. It certainly does not happen for industry.
- Correct the situation created by the newly passed NWT Protected Areas Act which requires no resource assessments be required to inform decision making prior to contemplating the removal of lands for conservation purposes.
- Have NWT leadership force any conservation area proposal to be aligned with their own [Land Use and Sustainability Framework](#) which commits them to ensuring that *“Land-management decisions consider ecological, social, cultural and economic values to ensure maximum benefits to current and future generations.”*
- Advance a new Akaitcho land use plan. Land use planning is the appropriate umbrella under which discussions take place on all land uses, including park creation and resource development. Since there is no land use plan for the Thaidene Nene area, park creation was the “cart before the horse” and has now trumped other land uses. Governments need to advance this land use plan to remove other potential conflicts and increase land use certainty.
- And as per the Review Board’s suggestion, “Going forward, the Review Board suggests that a regional strategic environmental assessment, as a type of regional study under Part 5.2 of the MVRMA, should be considered before establishment of specific protected areas, as a way to inform planning and explore the implications for broader well-being.”

"In advancing conservation or development areas, governments have a duty to their citizens to ensure fair due process and abidance to the rule of law," says Vivian. “Ultimately, the Thaidene Nene park processes reflect poorly on governance in Canada and will do little to instill public faith in our democratic offices and institutions let alone encourage critical investor confidence in Northern Canada.

The NWT economy is already projected to face significant challenges from a maturing mining industry and weak exploration investment. These government actions do not help increase investor confidence.”

Additional points:

- The combined size of the Thaidene Nene National Park Reserve and the adjoining, contiguous Thaidene Nene Protected Area is proposed to be 26,376 square kilometres, approximately the size of Great Slave Lake or the country of Belgium.
- The mineral industry is the largest private sector employer and contributor to the economy of the NWT, and contributes over 40% of government revenues.
- However, the minerals industry is in the midst of a 12-year decline in exploration investment needed to sustain the sector, despite having one of the most attractive mineral endowments in the country. One of the primary causes for the lower investment in exploration in the NWT relative to other Canadian jurisdictions is the erosion of access to prospective lands.
- A typical diamond mine is approximately 15 square kilometres and can generate billions of dollars in employment, business and government benefits before being safely reclaimed upon closure.
- These considerations were not found in any socio-economic analysis provided on either the park or the protected area.

For more information on the NWT and Nunavut mining industries, please visit the website at www.miningnorth.com or contact Tom Hoefer, Executive Director at Tel: 867-873-5281 or email: executivedirector@miningnorth.com.

c.c.: Hon. Catherine McKenna, Minister of Environment and Climate Change Canada
Hon. Bob McLeod, Premier of the Northwest Territories
Hon. R.C. McLeod, NWT Minister of Environment & Natural Resources
Hon. Lou Sebert, NWT Minister of Lands
Hon. Wally Schumann, NWT Minister Industry, Tourism & Investment
Ms. Joanne Deneron, Chair, Mackenzie Valley Environmental Review Board
Pierre Gratton, President, The Mining Association of Canada
Lisa McDonald, Executive Director, the Prospectors & Developers Association of Canada