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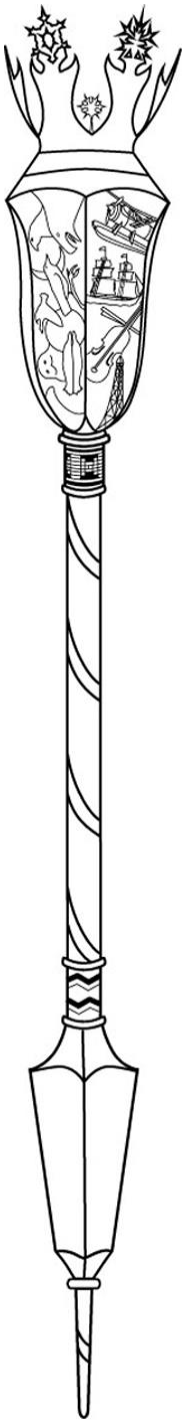

18th Legislative Assembly of the Northwest Territories

Standing Committee on Economic Development and Environment

Report on Bill 36: *An Act to Amend the Petroleum Resources Act* and Bill 37: *An Act to Amend the Oil and Gas Operations Act*

Chair: Mr. Cory Vanthuyne

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Northwest Territories
Territoires du Nord-Ouest

Legislative Assembly
Assemblée législative

AUG 1 2 2019

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Economic Development and Environment is pleased to provide its Report on Bill 36: *An Act to Amend the Petroleum Resources Act* and Bill 37: *An Act to Amend the Oil and Gas Operations Act*

Cory Vanthuyne
Chair, Standing Committee on
Economic Development and Environment

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STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT

REPORT ON BILL 36: *AN ACT TO AMEND THE PRETROLEUM RESOURCES ACT* AND BILL 37: *AN ACT TO AMEND THE OIL AND GAS OPERATIONS ACT*

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INTRODUCTION

Bill 36: *An Act to Amend the Petroleum Resources Act* and Bill 37: *An Act to Amend the Oil and Gas Operations Act* provides the framework for the administration and management of the exploration and production of onshore petroleum resources in the Northwest Territories. The *Petroleum Act* governs how the Government of the Northwest Territories will act as the owner and manager of petroleum resources and sets the rules for companies to acquire the rights to explore for and produce oil and gas in public lands in the Northwest Territories. The *Oil and Gas Operations Act* regulates oil and gas activities and promotes safety, the protection of the environment, and the efficient extraction of oil and gas resources.

The amendment of oil and gas legislation is part of the Mandate of the Government of the Northwest Territories 2016-2019. Under mandate point 1.3.2, the Department of Industry, Tourism and Investment committed to develop and propose amendments to both acts. The department expressed that the proposed bills are a first step towards a larger review aimed at modernizing legislation and improving transparency of petroleum production in the Northwest Territories.

The Standing Committee on Economic Development and Environment (Committee) commends the Minister for the development of these bills. Bill 36 and Bill 37 make amendments to existing legislation and propose to increase transparency and public accountability in the *Petroleum Resources Act* and the *Oil and Gas Operations Act.*

Both bills received second reading and were referred to the Committee on February 22, 2019. Public hearings were conducted during May and June 2019, and the clause-by-clause review was held on August 2, 2019. During the review, the Committee passed seven amendments to address concerns identified by the stakeholders and Committee.

Overall, stakeholders indicated support of the Bills. Many stakeholders were concerned for each bill to achieve the most appropriate balance between information to be made public and confidentiality to be provided. Stakeholders also raised concerns about the term for Significant Discovery Licences (SDL) and suggested additions to the proposed reporting requirements on hydraulic fracturing fluid recovered from a well.

The work of the Standing Committee to amend Bill 36 and Bill 37 is set out in this report. The remainder of this report addresses concerns from stakeholders and Committee, provides rationale for the motions brought forward by Committee and recommends several courses of action. Motions are listed in order of their appearance in the bills in the chapter of clause-by-clause review of the bills, and are referred to in this report by the number assigned.

REQUIREMENT FOR FEDERAL CONSENT

Bill 36 and Bill 37 are among the legislation for which federal consent in certain instances is required. For the purposes of the *Oil and Gas Operations Act*, the National Energy Board continues to be the Regulator for onshore development in the Inuvialuit Settlement Region. The Office of the Regulator of Oil and Gas Operations generally performs this function in the onshore in other part of the Northwest Territories.

According to section 22(2) of the *Northwest Territories Act,* the Northwest Territories' legislature is required to seek federal consent for amendments that would change the regulatory functions of the National Energy Board, if these functions apply to the onshore portion of the Inuvialuit Settlement Region. This requirement is in effect for 20 years, from the day on which the act came into force in 2014.

Committee learned in a later stage of the legislative review process that federal consent had already been sought by the Department and been granted for several amendments proposed in Bills 36 and 37. Committee would have preferred that Committee's efforts to improve the Bill through making amendments based on public consultation would have been considered, and Committee's oversight and accountability role been taken into account. Committee therefore makes the following recommendation:

Recommendation 1

The Standing Committee on Economic Development and Environment recommends that should any portion of a bill require federal concurrence, a statement to this effect be included in the legislative proposal and that the relevant clauses be identified at the time of introduction to the appropriate Standing Committee. Committee further recommends that a bill should not be submitted to the federal government for their concurrence until after it has been reported back to the House following Committee's review.

PUBLIC CONSULTATION

The Committee held public meetings in Inuvik, Norman Wells and Yellowknife. A scheduled hearing for Fort Simpson was cancelled on request of the community. Numerous representatives of Indigenous governments, non-governmental organizations and individuals made public presentations to the Committee, either in person or via written submission. Written submissions are attached as Appendix 1.

Comments were received from seven stakeholders, including:

- Alternatives North, Ecology North, CPAWS-NWT, and the Canadian Arctic Resources Committee (CARC) joint submission,
- The Information and Privacy Commissioner of the Northwest Territories,
- Non-Profit Governance Solutions (Dr. Cody Sharpe) on behalf of Ecology North,
- NWT Métis Nation,
- NWT Chamber of Commerce,
- Sahtu Secretariat Incorporated, and
- Todd Slack (as individual).

The Standing Committee heard general support for the bills from presenters, and received recommendations for improvements. Committee thanks every individual and organization who attended these meetings to share their views on Bill 36 and Bill 37.

The Committee appreciates the plain language materials supplied by the Minister's office for the public hearings.

After having sought clarification from the sponsoring Department, the Committee considered the comments received during public hearings, and discussed these matters among its members. Committee submitted eight Motions in total to amend Bill 36 and Bill 37.

WHAT WE HEARD

This part of the report is organized around the key themes or subject areas raised during the Committee's public hearings and in the written submissions received.

Confidentiality in Bill 36

Committee appreciates the steps taken by the Department of Industry, Tourism and Investment to improve and modernize Bill 36 and Bill 37 by amending the confidentiality provisions in both bills. Improving accountability and transparency is a fundamental component of the Government of the Northwest Territories' Mandate. Ensuring in legislation that all information is made available while determining certain criteria for confidentiality is contributing to achieving a better balance between increasing transparency and the need to protect confidential information.

Stakeholders commented on the importance of transparency in all aspects of regulating oil and gas related activities in the Northwest Territories. One stakeholder remained unconvinced that the bills strike the appropriate balance between confidentiality of propriety information and public transparency. Currently, all information provided for the purposes of the *Petroleum Resources Act* and the *Oil and Gas Operations Act*, and the regulations under those Acts, is deemed privileged and kept confidential, with few exceptions.

Bills 36 and Bill 37 change this and reverse the process in that all information required to be provided will be made available to the public, unless the recipient of the information, which would be either the Minister or the Regulator, determines the information meets the test for confidentiality. Committee recognizes and supports this important step in the modernization of the legislation.

Role of Minister and Regulator

The Regulator is designated by the Commissioner in Executive Council under the Oil and Gas Operations Act (OGOA). The Minister has designated the Regulator, however, delegated those powers to the Executive Director of the Office of the Regulator of Oil and Gas Operations (OROGO). Generally speaking, the Minister of Industry, Tourism and Investment has stronger responsibilities under the *Petroleum Resources Act*, and the Regulator has a more robust role under the *Oil and Gas Operations Act*.

Committee received several comments on the importance that the roles of Minister and Regulator do not overlap or interfere with either mandate. For example, where the Minister has the authority to classify information as confidential, this discretion must not overlap or infringe on the authority of the Regulator. It was pointed out clearly that the Regulator must be an independent decision maker, if its rulings are to be viewed by the public as being free from political interference. However, there also was a clear desire expressed for more clarity around what information the Minister and the Regulator should make publicly available. Committee considered carefully these concerns when discussing publication and annual report requirements.

Publication Requirement in Bill 36

Committee heard a number of comments on what is required to be published in the *Petroleum Resources Act*. Currently, the Minister is required to post notices in the Government of the Northwest Territories *Gazette* and 'in any other publication the Minister deems appropriate'; this was seen as too vague. Stakeholders asked to improve the transparency of government decisions by setting out where the notices should be published.

Committee heard that the *Gazette* is an antiquated system of public notification and that it cannot be considered widely used. It was suggested that information be made available on websites or electronically to broaden the reach and accessibility of the information. Committee agreed that specifying where information needs to be made available is consistent with the Government of the Northwest Territories' Open Government Policy and the commitment to make information accessible in a way that is responsive to the needs and expectations of Northwest Territories residents.

Committee also wanted to ensure that information is being made accessible consistently and is user-friendly. Committee therefore moved motion 1, which requires the administering department to publish information in the *Gazette,* make information public more widely and publish it in a timely manner on a website.

Content of Annual Report

A commitment to improving accountability and transparency is one of the key priorities of the 18th Legislative Assembly. Public information is expected to be clear, concise, and easily understood. Committee agreed with submitters of comments that making information available will increase public confidence in the regulatory process.

Having the information, year over year, compiled in one place, proves of interest and value in the context of accountable and transparent governance. The value of an annual report is the ability to have flexibility around how information is presented so as to allow the reader to put it clearly in context. The Regulator already voluntarily prepares and publishes annual reports on activities, which is not required by legislation. The Minister is required to prepare a report with respect to the administration of the *Petroleum Resources Act*. The Committee is of the view that contents of the report should be set out in legislation.

To provide greater clarity for the annual report that is required under the existing legislation, the licences and information issued, for example, can be provided by the Minister. Committee developed two motions that would link several sections and result in collaboration between the Regulator and the Minister, and annual reporting. This is reflected in motion 2. The Committee also proposed amendments that would set forth a list of information that should be included in the annual report of the Minister, which is reflected in motion 6 amending Bill 36.

Well Abandonment and Financial Responsibility in Bill 37

Committee heard concerns and sought clarification on the commencement of the one year period, during which an operator must maintain proof of financial responsibility. Committee also had questions on the environmental remediation triggers within the respective reporting year.

During Committee's deliberations on how the timing of the one year period is determined, it was confirmed that abandoning a well is included in the definition of

well operation, and that all operations require approval from the Regulator. The holder of an authorization must maintain proof of financial responsibility for one year after the Office of the Regulator of Oil and Gas Operations has given notice to the proponent that all authorized works in respect of the abandonment of a well are completed. The extent of reclamation to be carried out before the notice would be issued, depends on the approved work plans rather than statutory definitions respecting reclamation.

While Committee is confident that concerns regarding the one year period are addressed in regulations, the general question of assessing financial liability in resource management was raised. Committee is of the view that there needs to be further considerations, of how to best ensure that end-of-life obligations are addressed in order to protect the government and residents of the Northwest Territories from potential liabilities.

Due to recent court cases, such as the *Redwater* case, Committee is of the view that decisions which relate to terms of financial responsibility need to be reviewed on their consistency with recent court decisions. Therefore, the Committee makes the following recommendation:

Recommendation 2

The Standing Committee on Economic Development and Environment recommends that in the second phase of the review of oil and gas legislation, consideration should be given to recent court decisions and best practices to ensure that the Government of the Northwest Territories and the public are protected from potential liabilities arising from oil and gas operations.

Committee is of the view that the cap for financial liability, which is currently set out in regulations, needs to be reviewed and aligned with Canadian practices. The *Oil and Gas Spills Debris Liability Regulations* were inherited from the federal government with Devolution and have not been updated. Since 2014, however, the federal legislation governing offshore oil and gas exploration was updated to increase the absolute liability cap to $1 billion, following a review by the Auditor General of Canada. Committee therefore makes the following recommendation:

Recommendation 3

The Standing Committee on Economic Development and Environment recommends that the Government of the Northwest Territories undertake a comprehensive review of oil and gas related regulation with the expressed purpose to increase the cap for absolute liability.

Significant Discovery Licences in Bill 36

Bill 36 establishes a term of 15 years for Significant Discovery Licences (SDL) where previously exclusive rights to petroleum lands were granted for an indefinite time. Committee received submissions that questioned the 15-year term and were seeking answers on why this number was chosen. Considering term limits in other jurisdictions while taking into account the unique conditions of the Northwest Territories, Committee believes that 15 years is a time limit that would allow industry to do work and still insert a time-bound requirement.

Several submissions accepted the 15-year term of SDLs, however, expressed a preference for a set time limit on the renewal term for a SDLs. Bill 36 provides the Minister with the discretion to make a decision that would have an SDL being considered for an extension. This discretion was seen by several stakeholders to be concerning for two reasons: first, placing the authority with the Minister allows the possibility of political interference in what should be a regulatory function, and secondly, the ability to indefinitely renew a SDL would allow companies to potentially hold territorial lands indefinitely.

Committee shares these concerns and believes that a licence renewal should be time-bound. Consequently, Committee proposed in Motion 3 to amend the current wording and require that an extension of the term of a SDL licence is for one or more terms of 15 years.

Committee had intensive discussions on the mechanism of SDLs and whether it is the best approach to ensure that the Northwest Territories will benefit oil and gas exploration. Making SDLs time-bound by setting a time limit on the term of licence and licence renewal was considered a positive step toward a more transparent and accountable system. However, to maximize benefits to the Northwest Territories, Committee is suggesting a more comprehensive review of

the SDL system including consideration of models for oil and gas exploration in other jurisdictions.

Therefore, Committee is making the following recommendation:

Recommendation 4

The Standing Committee on Economic Development and Environment recommends that in phase two of the review of Northwest Territories' oil and gas legislation, a comprehensive evaluation of options related to Significant Discovery Licences (SDLs) be conducted, providing alternatives for consideration, and table its findings during the 19th Legislative Assembly. Committee further recommends that this report identify how the findings will inform any future changes to be made by the Government of the Northwest Territories with respect to its oil and gas resources.

Environmental Studies Management Board in Bill 36

Several submissions commented on the new provisions on the Environmental Studies Management Board (ESMB). Committee heard that the ESMB's public legitimacy would be improved by setting terms for the appointment of the members. Currently, members are appointed by the Minister and hold office during pleasure. Committee gave this suggestion consideration, however, is not able to propose term requirements. The term of Board members is determined under subsection 70(2) of the *Petroleum Resources Act*, and this subsection is not included for amendment, therefore, a motion to set terms would be out of scope and not applicable.

Committee heard that for the appointment of members to the ESMB, a clear definition of number of appointments by interest group should be provided in legislation. Stakeholders asked that public representation should be ensured. The definition of membership representation was seen as an improvement to the public legitimacy of the ESMB.

Committee agreed with the need for clarity on Board membership and proposed an amendment that would ensure that at least one member from the public will be serving on the ESMB. To further ensure that the appointment of members from the public would allow for a balanced representation, Committee moved motion 4

which requires the Minister to appoint one member from the public for a Board with the size of five or less members; and two members from the public for a Board with six or more members.

Definition of Hydraulic Fracturing Fluid in Bill 36 and Bill 37

Committee received several submissions from Indigenous Governments and organizations, as well as non-government organizations, asking for an addition to the definition of hydraulic fracturing fluid. Bills 36 and Bill 37 propose a comprehensive definition for hydraulic fracturing, including the requirement that the cubic meter volume of water injected into a well be measured. In their submissions, some stakeholders proposed to include the requirement to collect data on volume of fluids recovered from wells.

Committee agreed that knowledge of the volume of fluids recovered is important to better understand how much fluid may be left underground. Committee therefore moved motion 5 to Bill 36 and motion 2 to Bill 37, to amend the definition of hydraulic fracturing fluid information to be collected and to include information on the fluid recovered from wells.

In the context of hydraulic fracturing in the Northwest Territories, Committee members discussed initiatives of past Legislative Assemblies. It was noted that during the 17th Assembly, the Government of the Northwest Territories proposed to improve the regulatory framework by drafting new regulations. In its current Mandate, the Government of the Northwest Territories committed to “ensure that residents have meaningful opportunities to participate in the assessment of potential benefits and risks associated with resource development, including hydraulic fracturing.”

Committee is making the observation that the Government of the Northwest Territories has chosen to address Mandate commitment 1.1.10 through the amendment of its oil and gas legislation and presentation of Bill 36 and Bill 37.

Public Hearings by the Regulator in Bill 37

Bill 37 proposes that the Regulator be authorized to hold public hearings, however, leaves it to the discretion of the Regulator to determine when a public hearing would be in the public interest. Committee members discussed regulatory practices in the Northwest Territories, where public hearings are obligatory. In

resource development, thresholds are set, for example, for various types of water use and waste disposal which determine when public hearings must be advertised and conducted.

Committee is of the view that the Regulator should establish a threshold to identify when public hearings should be conducted. This would create consistency and certainty for applicants and other stakeholders as to when public hearings must take place. It also would allow consistency with other regulators and their approach.

Committee prepared a motion proposing that a subclause be added to require that the Regulator issue and publish guidelines setting out the circumstances in which a public hearing must be held. The Minister did not concur on this Motion.

CLAUSE-BY-CLAUSE REVIEW OF BILLS 36 AND 37

The clause-by-clause review of the bill was held on August 2, 2019. The Committee thanks the Honourable Wally Schumann, Minister of Industry, Tourism and Investment, and members of his staff, for their appearance before the Committee.

At this meeting, the Committee moved six separate motions to amend Bill 36 which were all concurred with by the Minister. Committee moved two separate motions to amend Bill 37 and one found concurrence by the Minister.

Committee moved the following motions to amend Bill 36:

Motion 1: **That clause 4 of Bill 36 be amended**

(a) in proposed clause 18 by striking out

"must be published in the Northwest Territories Gazette and in any other publication the Minister considers appropriate" and substituting "must be published in a timely manner in the Northwest Territories Gazette and on a website maintained by the department responsible for the administration of this Act"; **and**

(b) in that portion of proposed clause 18.1 preceding paragraph (a), by striking out

"shall make publicly available" **and substituting** "shall publish, in a timely manner, on a website maintained by the department responsible for the administration of this Act,".

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 2: **That clause 4 of Bill 36 be amended by adding the following after proposed clause 18.1:**

8.2. A report prepared by the Minister under section 98 shall include a list of

(a) the notices published under section 18; and

(b) the information made available to the public under section 18.1.

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 3: **That clause 9 of Bill 36 be amended in that portion of proposed subclause 32(4) preceding paragraph (a), by striking out** "extend the term of a significant discovery licence if" **and substituting** "extend the term of a significant discovery licence, for one or more terms of 15 years, if".

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 4: **That clause 14 of Bill 36 be amended by striking out subclause (5) and substituting the following:**

5) Notwithstanding subsections (2) to (4), if the number of members of the Board is fixed

(a) at five or less, the Minister shall appoint one member of the public to the Board; or

(b) at six or more, the Minister shall appoint two members of the public to the Board.

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 5: **That clause 16 of Bill 36 be amended in proposed subclause 91(1) in the proposed definition "hydraulic fracturing fluid information" by adding the following after paragraph (k):**

(k.1) the total volume of fluid, in m3, recovered from the well,

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 6: **That clause 16 of Bill 36 be amended by adding the following after proposed subclause 91(9):**

(9.1) A report prepared by the Minister under section 98 shall include a list of the information made available to the public by the Minister under this section.

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Committee moved the following motions to amend Bill 37:

Motion 1: **That clause 5 of Bill 37 be amended by renumbering proposed clause 19.1 as subclause 19.1(1) and adding the following after that renumbered subclause:**

(2) The Regulator shall issue and publish guidelines setting out the circumstances in which a public hearing must be held.

The motion was carried by Committee, the Minister did not concur.

NOT CARRIED

Motion 2: **That clause 7 of Bill 37 be amended in proposed subclause 22(1) in the proposed definition "hydraulic fracturing fluid information" by adding the following after paragraph (k):**

(k.1) the total volume of fluid, in m3, recovered from the well,

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

CONCLUSION

The Committee commends the Minister for his willingness to work with Committee to further amend Bill 36 and Bill 37 in response to public interest and to work collaboratively with Committee on the amendments.

The Committee thanks all those who took the time to appear before Committee to share their thoughts on this legislation.

Following the clause-by-clause review, motions were carried to report Bill 36: *An Act to Amend the Petroleum Resources Act*, and Bill 37: *An Act to Amend the Oil and Gas Operations Act*, as amended and reprinted, as ready for consideration in Committee of the Whole.

Rule 100(5) of the *Rules of the Legislative Assembly of the Northwest Territories* requires Cabinet, in response to a motion by Committee, to table a comprehensive response that addresses the Committee report and any related motions adopted by the House. As required by this rule, Committee usually includes a recommendation in each report, which is moved as a motion in the House, requesting a response from government within 120 days. Given that the 18th Legislative Assembly will dissolve prior to the conclusion of the 120 day time period allowed by the rules, Committee has opted to forego this recommendation. Committee nonetheless requests, to the extent it is possible before the dissolution of the 18th Assembly and for the public record, that government provide a response to this recommendation, even of a preliminary nature, that Committee may publicly disclose.

This concludes the Standing Committee's review of Bills 36 and 37.

APPENDIX A

SUBMISSIONS

The Standing Committee received written submissions from:

- Alternatives North, Ecology North, CPAWS-NWT, and the Canadian Arctic Resources Committee (CARC) - joint submission
- The Information and Privacy Commissioner of the Northwest Territories
- Non-Profit Governance Solutions (Dr. Cody Sharpe) on behalf of Ecology North
- NWT Métis Nation
- NWT Chamber of Commerce
- Sahtu Secretariat Incorporated
- Todd Slack

May 15, 2019

Mr. Cory Vanthuyne, Chair
Standing Committee on Economic Development and Environment
Northwest Territories Legislative Assembly
Yellowknife, NWT

Attn: Mr. Michael Ball, Committee Clerk

RE: Comments on Bill 36 (An Act to Amend the Petroleum Resources Act) and Bill 37 (An Act to Amend the Oil and Gas Operations Act)

Alternatives North, Ecology North, CPAWS-NWT, and the Canadian Arctic Resources Committee (CARC) offer the following joint submission regarding Bills 36 and 37, currently under consideration by the Legislative Assembly of the Northwest Territories.

For more information about our organizations, please see:
www.alternativesnorth.ca
www.ecologynorth.ca
www.cpawsnwt.org
www.carc.org

Our primary interest in this legislation is to ensure that publicly-owned resources on publicly-owned lands are managed first and foremost for the benefit of the public (the citizens of the NWT and Canada). This includes ensuring equity between current and future generations, and fully respecting Indigenous rights as defined in Canadian and international law.

This submission has been informed by a review of the equivalent regulatory regimes of Yukon and Alberta, as well as a broader consideration of the characteristics of effective regulatory regimes.

We commend the GNWT for introducing some positive changes to the petroleum legislation, including greater public transparency and enhancing companies' financial responsibility for non-operating wells. However, we believe the changes can and must go further in order to build public trust in the oil and gas rights disposition and regulatory regimes.

Our specific recommendations below refer to aspects of the Bills related to:

- transparency and confidentiality;

- roles of the Minister vs. the Independent Regulator (conflict of interest);
- public hearings and public notice;
- financial responsibility; and
- Environmental Studies Management Board.

These recommendations are followed by bigger picture recommendations related to the territory's governance of oil and gas.

Transparency and Confidentiality

Given the stated commitment of the 18th Legislative Assembly to prioritize transparency, and the need to establish public confidence in the regulatory process, we believe the default requirement should be full disclosure of relevant information, and the onus should be on the proponent to establish a pressing need to withhold information on grounds of confidentiality.

Furthermore, the public should be able to challenge the claims for confidentiality and in order to make that public right realistic, at least some information about the basis for the claim should be made public.

Bill 36- Section 16 [referring to Section 91(2) of the *Act*] and
Bill 37- Section 7 [referring to Section 22(2) of the *Act*]:
These sections outline what information the Minister and Regulator shall make publicly available, while also establishing why information ought to be with withheld on grounds of confidentiality. Information that is financial, commercial, scientific, or technical in nature will be withheld if the person providing the information has treated it as confidential, if their interest in maintaining its confidentiality outweighs the public interest in its release, and if the information is not publicly available. These tests allow for the exercise of a considerable degree of discretion on the part of the Minister and Regulator and may create a situation where information is kept confidential by default (the only way to contest a Regulator or Minister's decision to withhold information would be through the courts, a costly option for members of the public). Setting such a low bar is not likely to create public trust in the regulatory process.

Recommendations:

1. *The test for maintaining confidentiality should be clarified and the onus put on the proponent to prove the need for confidentiality.*
2. *The basis for the confidentiality claim should be made public.*
3. *The clause in Section 91(3)(a) of the existing Petroleum Resources Act, which serves to clarify the test of balancing private interest versus public good, should be incorporated into Section 91(2).*

4. *Similar to #3, the clause in Section 22(3)(a) of the existing Oil and Gas Operations Act should be incorporated into Section 22(2).*

Bill 36 -Section 16 [referring to Section 91(9) of the *Act*] and
Bill 37 – Section 7 [referring to Section 22(9) of the *Act*]:
These sections are a step in the right direction, as they require the publication of information in respect of accidents, incidents or petroleum spills. However, they should go further and include publication of information around enforcement actions.

Recommendation:

5. *The Minister and Regulator should make information available to the public around any enforcement actions, including suspensions of activities.*

Bill 36 -Section 16 [referring to Section 91(1) of the *Act*] and
Bill 37 – Section 7 [referring to Section 22(1) of the *Act*]:
The definition of "hydraulic fracturing fluid information" is identical in both Bills; it includes "the total volume of water, in m3, injected with the ingredients" (section (k)).

Recommendation:

6. *The definition of "hydraulic fracturing fluid information" in both Bills should be expanded to include the amount of hydraulic fracturing fluid actually recovered (as well as the volume of fluid injected), so that it might be possible to determine how much injected fluid has been left in the environment.*

Role of Minister vs. Independent Regulator / Conflict of Interest

It is an inherent conflict of interest for the Department of Industry, Tourism and Investment to promote oil and gas development and for its Minister to attempt to impartially regulate it at the same time. This obvious conflict of interest undermines public trust in the regulatory system.

Some aspects of the Bills allow for discretionary powers by the Minister that infringe upon the authority of the independent Regulator; this should be avoided.

Bill 36 -Section 16 [referring to Section 91(2) and (4) through (7) of the *Act*] and
Bill 37 – Section 7 [referring to Section 22(2) and (5) through (7) of the *Act*]:
These sections grant the Minister the authority to classify information as confidential, which overlaps and infringes upon the authority of the Regulator. The Regulator must be an independent decision making body if its rulings are to be viewed by the public as being free from political interference. Furthermore, the Regulator is also the appropriate source of the technical expertise required to pass judgement on whether or not

disclosure of information “could reasonably be expected” to cause material harm to a proponent (Section 91(3)(a)) or if disclosure presents “real and substantial” risk to the security of energy infrastructure (Section 91(4)(a)).

Recommendations:

7. *Sections 91(2) and (4) through (7), referred to in Bill 36, should remove references to the Minister having power to designate information as confidential.*
8. *Sections 22(2) and (5) through (7), referred to in Bill 37, should remove references to the Minister having power to designate information as confidential.*

Bill 36 -Section 16 [referring to Section 91(9) of the *Act*] and
Bill 37 – Section 7 [referring to Section 22(9) of the *Act*]:
These sections refer to the Minister and the Regulator together making information available to the public. We are concerned that this will cause the release of information to become bottle-necked by unnecessarily requiring approval by two separate agencies. It also presents an opportunity for political interference in the execution of the Regulator’s responsibilities. Furthermore, the Regulator already operates an online public registry and is best placed to complete this task.

Recommendations:

9. *Remove reference to the Minister having a role in the release of information under Bill 36, section 16 as it refers to Section 91(9).*
10. *Remove reference to the Minister having a role in the release of information under Bill 37, section 7 as it refers to Section 22(9).*

Bill 36 -Section 7 [referring to Section 30(1) of the *Act*];
Bill 36 – Section 9 [referring to Section 32(4) of the *Act*] and
Bill 36 – Section 13 [referring to Section 42(4) of the *Act*]:
These sections give the Minister the sole authority to issue and renew significant discovery licenses (which are valid for fifteen years from date of issue) and to extend production licenses at the end of the 25-year term. The Minister can extend the terms of either of these licenses as long as the Minister has “reasonable grounds”. This could effectively allow license holders to squat indefinitely on territorial lands as the “reasonable grounds” test is not clearly defined. It also opens the door for political interference in what ought to be regulatory functions. Proponents should be provided with clear rules regarding the thresholds of activity they must meet in order to maintain their licenses, and transparent implementation.

The implicit philosophy behind the current grounds for renewing licenses is ‘use it or lose it’, which is based squarely in a frontier mentality which is quite frankly morally

unacceptable to northerners, from the perspectives of indigenous rights and environmental stewardship. Any grant of land tenure, or renewal of rights, should be based primarily on whether the company meets standards which reflect core aspects of public interest – e.g. indigenous rights, preservation of environmental and natural resources, public safety, and demonstrated contributions to local economies.

Recommendations:

11. *Develop a clear definition of the "reasonable grounds" test for both the extension of significant discovery licenses (section 32(4)) and the extension of production licenses (section 42(4)), which reflects core aspects of the public interest rather than an antiquated and immoral frontier mentality.*
12. *Replace references to the Minister in the above sections with the Regulator, relocating the power of license extension to the office of the Regulator.*

Public Hearings and Public Notice

Bill 37 – Section 5 [referring to Section 19.1 of the *Act*]:
This section allows, but does not require, the Regulator to hold public hearings "in respect of the exercise of any of its powers or the performance of any of its duties and functions". The Regulator appears to have full discretion as to whether and when it holds hearings. This does not provide the basis for a fair, efficient or transparent regulatory system.

Recommendation:

13. *The Regulator should create classes or categories of projects with defined thresholds for when public hearings are required, similar to the system of Class A and Class B water licenses administered by the Land and Water Boards.*

Bill 36 – Section 3 [referring to Section 6(1) of the *Act*] and
Bill 37 – Section 3 [referring to Section 8(3) of the *Act*]:
These sections provide the Minister with the ability to delegate any of the Minister's powers, duties or functions under the Act. The corresponding section in Bill 37 (section 3, 8(1) and (2)) allows the Regulator to delegate any of its powers, duties or functions; however public notice is required. Public notice should also be required for delegation by the Minister.

Recommendation:

14. *Delegation by the Minister should require public notice, by adding a clause similar to 8(2)—referenced in section 3 of Bill 37—after section 6(1) in Bill 36, and after 8(3) in Bill 37.*

Bill 36 – Section 4 [referring to Section 18 of the *Act*]:
This section specifies that the Minister must publish notices in the *Northwest Territories Gazette* and any other publications deemed appropriate. The *Gazette* is an antiquated system of public notification that cannot be considered widely used.

Recommendation:

15. *Given rapid changes in popular forms of public communication, the Act should specify the goal of wide dissemination without being too prescriptive, and potentially reference the Regulator's online registry. In accordance with the duty to consult and the internationally accepted principle of free, prior, and informed consent, the Act should also direct the Minister to provide notice to any affected Indigenous governments.*

Financial Responsibility

We believe it is very important that the Acts clearly endorse the "polluter pays" principle. The project operator must be held financially responsible until they have fulfilled all of their statutory and regulatory obligations to prevent, mitigate and remediate any impacts caused by their operation, as well as to complete the agreed-upon reclamation activities.

Bill 37 – Section 9 [referring to Section 18 of the *Act*]:
Encouragingly, this section attempts to ensure that the holder of any license or authorization is held financially responsible not only throughout the duration of the operation, but for a period of one year after the Regulator notifies the operator that the site/activities have been successfully abandoned or decommissioned. It is unclear whether a period of one year is an adequate and appropriate end point, and whether the definitions of "abandoned" or "decommissioned" could be problematic.

Recommendation:

16. *The definitions of "abandoned" and "decommissioned" need to be reviewed and carefully considered in light of the recent decision by the Supreme Court of Canada in the Redwater case.*

There is a serious omission in the bill when it comes to proof of financial responsibility. There is an arbitrarily low cap of a maximum of $40 million of absolute liability for spills set out in the Oil and Gas Spills and Debris Liability Regulations under the current Act. The federal government has amended its mirror Oil and Gas Legislation to put in a $1-billion cap to help prevent public liabilities. Members are surely aware that the Deep Water Horizon blow-out in the Gulf of Mexico resulted in clean-up and compensation

costs of over $80 billion. The $40-million amount in the current regulations is clearly insignificant and inadequate.

Recommendation:

17. *Set the maximum absolute liability cap of $1 billion for spills under the current Act, in light of actual financial liability risks related to modern technologies and operations and the very high risks of operating in remote subartic and arctic environments.*

Environmental Studies Management Board

Bill 36 – Section 14 [referring to Section 70(3), (4) and (5) of the *Act*]:
These new subsections specify that members of the Environmental Studies Research Board are to be appointed from the public service, nominees by interest owners, nominees by Indigenous governments and/or organizations, and members of the public (at the Minister's discretion). This section could be strengthened, and the Board's public legitimacy improved, by setting clearer parameters and minimizing discretion of the Minister. Given the increasingly sensitive environment in which similar organizations operate, it is advisable to remove as many opportunities for political interference in the functioning of the Board as possible.

Recommendations:

18. *The Act should clearly define the number of appointments to come from each pool and ensure that the Minister "shall" (rather than "may") appoint a certain number of members to represent the public interest at large.*
19. *The Act should set clear term limits for Board members. At present, Board members "hold office during pleasure" (Section 70(2)), a clear impediment to the independent functioning of the Board.*
20. *To ensure proper governance, the Environmental Studies Research Fund must be guided by a clear mandate, strategic priorities, and strong partnerships with indigenous governments, Renewable Resource Boards and Councils, and scientists (both academic and government).*

Bigger Picture Recommendations

21. Earlier in this engagement process, the GNWT indicated that this legislative update involving policy, administrative and technical issues could be considered "phase 1", and it would be followed by a more thorough modernization of the regulatory framework to reflect "best practices and standards." The incorporation of best practices and standards must be completed before any oil and gas

extraction is permitted to proceed. It must be done in a transparent fashion with full public input and full consultation with all Indigenous governments and organizations.

- We would like to remind Members that from 2011-2015, a wide range of individuals and groups across the NWT demanded that the GNWT conduct a comprehensive review of 'fracking' and whether/how its risks could be managed in the NWT. These groups included: Dene Nation, Gwich'in Tribal Council, Sahtu Secretariat, Akaitcho Government, and the NWT Elders' Parliament, as well as a petition from over 1100 individuals.

22. The development of regulations under these Acts should be done in full collaboration with Indigenous governments and non-government organizations.

23. A review of the oil and gas royalty regime and best practices needs to be completed as soon as possible, with assistance from independent expertise and in a transparent public fashion.

- We would like to remind the GNWT that responsible and sustainable management of non-renewable resources does not involve offering a 'clearance sale' to private corporations to encourage them to essentially clear out our stock of resources as quickly as possible. Once the resources are gone, they cannot be replaced. The citizens of the NWT own these resources, and it is not in our long-term interest to 'compete' with other jurisdictions by offering bargain-basement prices and essentially paying companies to take away our resources.
- Subsidies to the oil and gas industry, including major transportation infrastructure projects, are absolutely not in the public interest, given the long-term environmental costs that the public must bear as a result of this industry. Moreover, subsidies are a very poor investment of public funds and an inefficient way to boost our economy, given the relatively small number of jobs (especially long-term stable jobs) associated with oil and gas extraction. The economic multipliers report from the NWT Stats Bureau shows that oil and gas extraction creates by far the lowest number of jobs per output of any economic sector in the NWT (0.5 jobs per million dollars of output), even lower than mining.
- The more quickly we rush to have our oil and gas extracted, the less likely that industrial activity will benefit local economies or hire local workers, given the longstanding pattern of large-scale operations overwhelming local and territorial labour capacity, resulting in a dependence on southern workers and contractors to fill the shortfall.

24. The issuance of oil and gas rights should be managed by the GNWT Department of Lands rather than the Department of Industry, Tourism and Investment, which has the conflicting mandate of promoting oil and gas development. The Department of Lands already has systems and expertise in place for surface lands management. This would remove the apprehension of bias.

25. Both the GNWT's land tenure regime for the oil and gas industry, as well as its system for regulating operations, must incorporate clear limits on how much oil and gas activity will be allowed, in order to meet our climate change obligations.
    - The GNWT has set a target of reducing territorial GHG emissions by 30% below 2005 levels by 2030. This target simply cannot be met if there is unrestrained oil and gas development, particularly of unconventional shale oil resources or offshore resources, where the energy returned for the energy invested is so low, and methane emissions can be very high. The GNWT must also be mindful of Canada's commitment to the Paris Agreement, and the accelerating financial, social and environmental impacts of a changing climate.
    - The focus should switch to more responsibly managing existing production facilities and abandoned infrastructure, while shifting resources towards the new clean economy that is so desperately required if we are to avoid catastrophic climate change impacts.

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Yours sincerely,

Shauna Morgan
On behalf of Alternatives North, Ecology North, CPAWS-NWT, and CARC

OFFICE OF THE
INFORMATION
AND PRIVACY
COMMISSIONER
NORTHWEST TERRITORIES

P.O. Box 382
Yellowknife, NT
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May 17, 2019

Legislative Assembly of the Northwest Territories
P.O. Box 1320
Yellowknife, NT
X1A 2L9

Attention: Mr. Cory Vanthuyne, MLA
Chair, Standing Committee on Economic Development and Environment

Dear Sir:

Re: Bill 34- Mineral Resource Act
Bill 36- An Act to Amend the Petroleum Resources Act
Bill 37- An Act to Amend the Oil and Gas Operations Act
My file: NT ATIPP 19-142-04 to 19-144-04

Thank you for your letter of April 15, 2019 asking for input from stakeholders with respect to the above noted Bills. My office commends the government's commitment to create and change these pieces of legislation so as to better achieve the stated objective of "open and transparent government". Defaulting to appropriate disclosure of information supports the critical participatory nature of our democracy.

That said, the proposed changes do not, in my opinion, go far enough and the provisions will continue to restrict rightful public access to information, either preventing access in whole or in part, or delaying the release of the information that might otherwise be accessible in a timely manner under the Access to Information and Protection of Privacy Act (ATIPPA). I trust my comments below will help to assess this legislation insofar as it relates to access to information. Please note that there are a number of areas in which all three pieces of legislation contain similar provisions. Rather than repeat my comments for each of the Bills, I intend my comments to be read-in to all three pieces of legislation where applicable.

1. "Notwithstanding" clause

We are troubled by the frequency in which "notwithstanding" clauses in relation to the application of the *Access to Information and Protection of Privacy Act (ATIPPA)* are being used by this Legislative Assembly to remove both the protections and the oversight provided by the Office of the Information and Privacy. These provisions remove oversight with respect to both the public's right to know and privacy protections for individuals. Access to information legislation has been held by the Supreme Court of Canada to be quasi-constitutional in nature given that it represents the inherent values identified in the Canadian Constitution, specifically freedom from search and seizure and the right of life, liberty and security of the person. In the case of these Bills, we were unable to understand why ATIPPA did not afford sufficient protection to these industries and businesses when they are entirely sufficient for all other businesses in the Northwest Territories in terms of protecting proprietary information. There does not seem to be any apparent reason to treat industry in these sectors differently than other businesses and, therefore, no reason to exclude the application of the protections afforded by the *Access to Information and Protection of Privacy Act*.

In my opinion, the ATIPPA adequately covers the sectors' business interests through the application of discretionary and mandatory exceptions that, when applied appropriately, are sufficiently robust and restrictive for the purposes given the government's desire to remove undue privilege that results from withholding of information from the public. Aside from provisions reasonably required to assign legislated privileges and exceptions to disclosure of information necessary to avoid significant harm that is unique to the sector, such as to allow a reasonable delay in release of information about infrastructure and investments in the critical phases of development and discovery, I find the approach unnecessarily restrictive to the paramount public right of access, and in a timely manner, to information held by public bodies.

The primary purpose of access to information legislation is to ensure government is accountable to the public, and to provide the public with an independent review mechanism. Government belongs to the people and therefore the people are entitled to request any information held by government. That information must be disclosed in full, except in narrow circumstances when there is a clear a well- defined purpose to justify withholding the information. The spirit of such exceptions is to protect and ensure public interest is paramount to political interests and corporate ambition - the ATIPP Act meets this purpose.

Our office may be lacking some background understanding of the reasons for the inclusion of "notwithstanding" clauses in Bills 36 and 37. We assume there must be some reason the legislation was drafted in this way but that reason is not apparent to us. I would suggest that any concerns intended to be addressed by these clauses would be adequately protected under the existing exception provisions in the ATIPP Act as currently enacted, in particular section 24. How do these amendments reflect the overriding responsibility of government ensure the

public's right of access to information? What affect will withholding or delaying release of the information have on citizens' rights to participate fully in our democracy? The justification for overriding the applicability of an Act considered to be quasi-constitutional and which ultimately protects both the government's and the public's interests must be demonstrated before amendments that limit that scope and applicability are considered. The desire for industry development, commerce and interests of politics and private industry cannot be unduly weighted to the detriment of the public interest.

There may well be reason to protect from public disclosure information about the location of sensitive equipment used to support natural resource exploration, or the location of a significant discovery to allow a person to complete the process of obtaining the legal right to explore that resource without undue interference. This can, however, be accomplished in ways other than the use of an expansive "notwithstanding ATIPP" clause. Section 24 of the ATIPP Act effectively protects third party business and proprietary information from disclosure. As an alternative, the Bills could provide for a time limited restriction on the disclosure of such information, within reason and in the public interest.

Any delay a providing information must not unduly impede the public's right to access that information in a timely manner, and the delay must, in the end, fulfil the duty to assist the applicant. Respecting the nuanced provisions in sector specific legislation is important, but does not, I would argue, necessarily have to come at the expense of the public's right of access to information under ATIPP.

2. Defining Terms

I would also suggest that some work needs to be done to clarify some of the terms used in the Bills. Undefined terms in legislation cause much confusion and might lead to either over-disclosure or under-disclosure of information, and this may cause harm. The term "person", in context of these three Bills clearly applies equally to an individual, an organization, or to a corporation, or perhaps to a consortium and so includes resource operators and private sector businesses, but the definitions for these are lacking. By way of comparison, under the ATIPP Act, a "person" includes a "public body", and may include a "third party". In reading the Bills, with respect to narrowing the interpretation of ATIPP, it should be clear that the narrowing will result in the withholding of information from public disclosure to protect the best interest of a corporate entity or private operator against the public interest.

To further muddy our understanding of the legislation, the term "body" appears in the Bills, but not in the rest of the existing Acts, and is not a term used under ATIPP, except in the context of a "public body" which refers generally to government. The word "body", however, could apply to anything other than in individual. Clarification is important. No definitions or conflicting definitions will lead to confusion and misinterpretation and application of the Acts

when decision are made about what information can be made public, and by which position, about who or what person, and who or what person it can be released to. More work appears necessary to identify and define all key terms, ensure these terms are consistently use, to make these key pieces of legislation clearer.

3. Access to Information Generally

These Bills seemingly still allow the government to withhold significant amounts of information, some of which may be in the public interest. The location of an active well, an abandoned well, drilling location, spill or accident location -- these are all examples of information that is reasonably considered to be in public interest and, barring any case-specific exception for specific purposes, should not be withheld from public scrutiny or be delayed. These Bills all seem to create barriers to public disclosure and significant delays in release of information whether in relation to a general request or through an access to information request under the ATIPP Act. The Bills do not recognize any nuances in circumstances or provide for much in the way of discretion, nor to the rules apply on a case by case basis. The legislation provides "blanket" rules and this is not conducive to access to information.

All these Bills place authority for decisions with respect to the disclosure of information on the Regulator or the Minister, or both concurrently. This does not meet the litmus tests of "open" and "good government". Roles and responsibilities for such decisions must be better defined and logically assigned respecting the concepts of both conflict of interest and separation of duties and the impact on access to information and privacy. Decision making power must be free from real or perceived influence and conflict, to avoid real or legitimate perception of political or government overreaching, or to hide information from the public purview.

The right of access to information serves as a catalyst to investment in industry and can strengthen opportunities for growing natural resource industries. Naysayers of open and transparent government base their arguments on the perception that government information pertaining to industry, when made public, weakens the autonomy of the private sector, harms the integrity of the industry, and minimizes opportunities for growth. To the contrary, giving the public access to information when this relates to public investment or support of industry actually bolsters the bottom line for shrewd industries that are paying attention to the bent of public interest and sentiment regarding their activities, and acknowledge this attention can be both beneficial and an opportunity. The optics in not being transparent or being blatantly secretive about industry activities causes the public, and the investing public amongst us, to wonder why more information is not shared, causes distrust, and results in blindly applied red flags. It motivates investment to go elsewhere and the public to question the integrity of its government.

Additionally, it is not only private industry and capital investors that the NWT government needs to attract and gain the favour of in order to advance our languishing natural resource industry. It is also those persons who object to, tolerate, accept, or support the plans that government and industry makes and would like to implement. Industry does not occur in a void. It is part of our political, social, economic and environmental soup. Yes, information may be collected by opponents of the industry, but, if the rationale and benefits are reasonable and sound, the industry should not fear this voice. It serves to ensure all parties are accountable and answer for their actions, and is an opportunity for supportive government and industry to demonstrate real benefits and dispel myths - again, this is clearly in the private sector's, government's and public's interest.

Information is essential to discovery of new opportunities for resource development and by those with capital to invest. As some key business and competitive environment insights can be gleaned from information the government holds, it is reasonable to make it public for this and other purposes. It is contrary to the role of government to shield itself and corporations from such scrutiny. The same holds true for citizens who are leery of certain industries and want to ensure they are well educated before deciding to supporting, be neutral to, or object to development. Throwing unwavering support, blindly investing in resources, or making unsubstantiated detractions and uninformed objections are all self-defeating and are threats to achieving healthy growth to this primary sector. An informed public is a supportive public if the government is making an honest and reasonable investment. Poor or no data where data should exist is bad data. Bad data equates to uninformed decisions and results in inadequate outcomes.

Today's economy is heavily reliant on information. Transparency about information is a vital part of both attracting investments and managing misinformation that negatively impacts development opportunities. Investors, including the public and other stakeholder governments, are leery of corporations that public government is overly protective of. Proving the worth of government investment in industry requires transparency to allow for objective analysis by stakeholders. Access to government information supports such analysis.

These Bills are moot without private investment in the non-renewable resource industry, but industry and government are not the only investors in this activity. We are all invested in corporations when they are active in our jurisdiction. We trade use of public and indigenous lands in return for some benefit and we all need to understand that the sum of that equation should be a positive one in order to support that investment. It is obviously detrimental to play a zero sum game with finite resources at risk. Investors, the public and governments deserve an appropriate level of transparency to allow for verification that GNWT government decisions are not unduly weighted in favour of government departments, politicians, industry or other outside interests. We need to recognize that public knowledge and government accountability attracts quality business opportunities.

4. Privacy and Access Consultation

Our office is aware that much effort has gone into development of these three Bills through a co-development approach and we commend that approach. However, the responsibilities of government for protection of privacy and access to information do not appear to have been given much thought within that model and process. We suggest that appropriate offices focussed on access to information and privacy be given earlier access to drafts so that their concerns for this fundamental right can be heard and addressed prior to our review, and so this important aspect of public interest can be made more integral to the process of developing legislation. Respecting privacy and access to information is important for all private, public and corporate citizens.

5. Specific Provisions

The following sections elaborate on the points made above. We have provided a general review of the three Bills given time and legislated priorities, and not an exhaustive list of detailed changes. The issues highlighted should serve to identify the same or similar issues across the Bills.

a) Privacy, Access, Third Party Rights, Review and Reporting by OIPC

When entities that are not subject to the ATIPP Act influence decision making, and there is added emphasis on either disclosure or on exempting release of information, both privacy and access rights may be impacted. The use of "notwithstanding clauses" to curb the application of ATIPP impacts both access to information and privacy. Perhaps most significantly, it restricts the public's right to an independent review of decisions made in relation to both access and privacy matters by the Information and Privacy Commissioner.

The proposed changes to these Bills will remove the option of having an independent third party review certain decisions made by public bodies in relation to non-disclosure of information requested or disclosure of personal information. Further, taking the role of the Information and Privacy Commissioner out of the equation serves to override the ability of a third party (such as a company exploring for oil and gas) to object to decisions by public bodies to disclose information. ATIPP both protects information that should remain out of the public purview and ensures the public can access information it needs and wants and has a reasonable right to.

b) Inspection, Investigation and Seizure without Warrant

Bill 34 allows the regulator to demand financial and "any other data" from industry outside of normal reporting expectations to settle disputes and to inform a review under the Bills. Such

records can be compelled by an appointee of the Minister, but records and "things" can also be seized by inspectors without a warrant. This poses risks to the privacy of employees and others whose personal information is retained by a company. The risk to privacy without due consideration in these circumstances is apparent **(ref. Bill 34. S. 76(a))**. Respecting the role and powers of the Regulator, the rational for an independent and judicial process in terms of issuing warrants prior to search and seizure of records or things reflects the Canadian Constitution that entrenches freedom from undue search and surveillance.

Bill 34 allows for remote application and granting of warrants **(section 77(1) (tele-warrants))** and this should suffice in all but the rarest of cases. The need for legislation that uniquely encumbers the reasonable expectation of privacy that is a fundamental value of democracy seems to put the oil, gas and mineral industry in a "less protected" class of business. While there may, in some instances, be good reason for this, more emphasis is needed in the Bill to ensure the acquisition of records without warrant and any application of section 76 is clearly only applicable in unique circumstances and is used as a last resort or in emergent circumstances.

c) Terms ("may" or "must", "person", "potential harm", "body", "publically available", etc.) - **Bill 37, Section 7 amending Section 22**
Bill 36, Section 16 amending Section 91

In subsection (9) of both of these Sections, the side note tells us the section is about "Information that *may* be disclosed". The section, in each case, however, is written as a mandatory obligation - "The Minister and the Regulator *shall*.....". Because of the wording of the subsection, I assume that the intent is that disclosure is mandatory. Given the weight of these two terms, "may" and "shall", when interpreting the legislation, and the use of one or the other being rather impactful on access to information rights, the side note should also use the word "shall" to be clear that there is no option under the legislation to not release the information subject to other sections as stated.

The approach used under ATIPPA is that all records are subject to release subject only to a series of narrowly defined exceptions, some of which are mandatory. It contemplates that all records will be considered on a case by case basis and each case requires a separate determination of whether disclosure is allowed.

We would also draw attention to the wording regarding hearings that may subject participants to harm. An "open court" principal is an important element that supports the democratic process. Only under prescribed and reasonable circumstances should hearings and inquiries be conducted in-camera. This is in keeping with national standards for all government supported activities. Hearings conducted in private must respect the spirit of the mandatory and discretionary exceptions identified under ATIPP legislation. Careful consideration as to what

should be in the public purview needs to be considered on a case by case basis with ATIPP as a guide.

Another point of concern is the use of the term "potential harm"; this term is recognized as a consideration in the withholding of information from public scrutiny. "Potential for harm" is a far lower standard that "reasonable likelihood" or "probability". A mere "potential for harm" regardless of how remote or likely should not result in a matter being determined 'in camera'. The test should require a reasonable probability of harm and we recommend this approach be used in these Bills.

For the purpose of this and related natural resource development legislation, clearly identifying the difference between responsibilities assigned to an individual, the executive branch of government, the legislative branch of government, specific officers and committees of public bodies, and a private sector individual or entity should be given serious consideration to facilitate clear application of the Act, and to better recognize the related impacts on both disclosure of information and refusal to release information in the public interest.

As a practical example of the confusion that terms cause, the amendments allow for the "confidential interests" of "a person" to outweigh the public interest in disclosure subject to certain subjective conditions, including treatment of information by "a person", "the person's interest", and if the information is "publicly available". This appears to give corporations greater privacy rights than an individual would have under the *Access to Information and Protection of Privacy Act*. The notion that any corporate interest should have more weight than the overriding public interest as a premise is concerning.

Further we are not clear on what meets the test for what "is not publicly available" as opposed to "cannot be made publicly available". Subsection (2)(c) and (3)(b)(iii) in each Bill should qualify the term "publicly available". The possible interpretations of this term has a range that includes: "not yet published but will be published", "can be made public", or "might be made public at some undefined time" through to the possible interpretations as "may be made public upon request" and "at the discretion of the head of a public body". The term requires more definition, perhaps in the definition section of each Bill.

d) Purpose and Application

When reviewing legislation, it is essential and necessary to appropriately place the sections of the Act into context in order to understand the intended purpose and application of the Act. The purpose of these Acts/Bills are different in terms of the subject matter being different sectors but similar in that they all aim to guide the exploration and development of non-renewable resources in the NWT. Given this, one would expect these Acts to be scripted quite similarly with regards to their stated purposes and applications.

However, the approach to the stated purpose of each Bill varies considerably and this leads me to believe that this part of the Bills also needs revising. This part of an act is critical to be clear of the scope of the application of the legislation, and to ensure that it is clear insofar as the circumstances in which it may narrow or restrict the rights granted under the ATIPP Act or other legislation. For reference, the purpose of the *Oil and Gas Act* is "exploration and exploitation of resources", whereas purpose of the *Mineral Resources Act* is "responsible and balanced... development... recognizing" numerous stated goals. Unexpectedly, the Petroleum Resources Act is left wanting a purpose as there is no purpose expressly stated. The purpose as stated in legislation is an important component of a statute, and has bearing on the applicability of an Act to not only the industry but also the information about that industry and the expected handling of that information, so it is advisable that not only should sections of the legislation be amended as already identified, but the purposes of these Acts might also be amended, to make this clear and to ensure a consistent purpose and interpretation of them for all intended applications, as appropriate.

The "Application" of an Act is similarly important to ensure the provisions of the legislation are accurately applied and there is not undue overreach in circumstances that the legislation should not rightly apply to. As example, the "Application" of the *Oil and Gas Operations Act* is "in respect of the exploration and drilling for and the production, conservation, processing and transportation of oil and gas within the onshore." Based on this description this Act does not apply to off-shore activities and information related to that realm. The application of the *Petroleum Act* is similar but not as granular and simply sates "This Act applies to all petroleum lands." Unfortunately, the new *Mineral Resources Act* incorporates the Application of the act with the "Interpretation" of the Act and never actually provides a clearly stated "application". It relies instead on numerous definitions of terms and clarifications about conflicts of interest to give some sense of its applicability. In terms of making clear the application of the Act this approach is not helpful to the reader who must interpret the Act and apply it to the real-world context. To correctly respect access to information and privacy rights which may be negatively affected by an enactment, the legislation must be necessarily clear about its intended purpose and the parameters of its applicability to the real world context.

e) Privacy and Confidentiality
- **Section 7 of Bill 37 amending sections 22 and 23**
- **Section 16 of Bill 36 amending section 91**
- **Part 8 of Bill 34, S.111 and S. 58.**

In Bills 36 and 37, these sections address "confidentiality" and the release or withholding of records from the public.

Part 8 and s. 58 of Bill 34 deal specifically with confidentiality within the *Mineral Resources Act*, however, Section 111(1)(c)(ii) leaves to regulation the making of regulations concerning information to be collected and the management of that information:

> The Commissioner on the recommendation of the Minister may make regulations for carrying out the purposes and provisions of this Act, and without restricting the generality of the forgoing, may make regulations ...
>
> (c) respecting maintenance of the office of the Mining Recorder and information and documents that are filed with or recorded in the office of the Mining Recorder, including ...
> (ii) the filing, delivery, receipt, inspection, use and accessibility of documents and records.

Section 58 restricts information that is deemed confidential about royalties, relates to Part XI, and is not clear about the application of Part 8 in this regard.

In all three pieces of legislation, the term "confidential" as it relates to information needs to be defined in a more robust way. Simply labelling something as "confidential" should not be sufficient in itself for special status in terms of whether or not it is accessible to the public. The test of confidentiality when subject to request for information to the public cannot be absolute and must be determined on a case by case basis with consideration of an array of evidence and circumstance. While privacy of personal information is generally heavily weighted, this must always be measured in terms of the public right to know. A penchant to protect of ALL information without consideration of context is not an appropriate approach to the protection of any information.

To ensure the openness and transparency that these legislative changes strive to achieve, and remove doubt that there is bias in excluding from public purview information brought forth in hearings (or inquiries), the Bills need to include a robust definition of what qualifies information as "confidential" to be laid out in the definitions sections.

Confidentiality in terms of preserving security of physical or technical assets needs to ensure that such a disqualification of information from the public sphere is clearly substantiated. Bill 37, Section 7, amending Section 22 (4), for example, refers to physical and technical assets and the protection of those assets. The litmus test for withholding this information should be that the disclosure would result in a severe impairment to the "methods employed to protect any of those things or systems". There needs to be, as an integral part of development of those assets, appropriately applied security by those responsible so that non-disclosure does not supplant the need for reasonable investment in the proactive security of those assets.

Dealing with the matter of confidentiality as a specific and unique part of the legislation, as has been done with Bill 34, is necessary to give this foundational consideration due attention and to ensure that all other parts are clearly set in context to this part, and that the test and conditions for confidentiality is consistently applied to the entire Act. This necessary emphasis

is lost in Bill 36 and 37, where confidentiality is dealt with within individual sub-sections and its importance is spotlighted only in an immediate context.

f) Confidentiality - Financial, Commercial, Scientific, or Technical Information
- **Bill 37, Section 7 amending Sections 22 and 23**
- **Bill 36, Section 16 amending Section 91**

Sub-section (2) of these sections states "Subject to subsection (9) the Ministry and the Regulator shall make available to the public any information disclosed to the Minister or the Regulator as the case may be, pursuant to a requirement of this Act or the regulations, unless that information contains financial, commercial, scientific, or technical information and...",. The use of "shall" and "unless" significantly restricts the information that can be disclosed and restricts the disclosure that might otherwise be available through an access to information request. As noted above, the ATIPP Act provides protection to information that relates to the economic interests of the GNWT as well as the economic interests of businesses in appropriate circumstances and on a case by case basis. These amendments remove the case by case consideration of the context for disclosure or refusal to disclose and instead default to restrictions which appear to be all encompassing. These restrictions go beyond simply protecting the economic interests of the GNWT or businesses and, in fact, perhaps beyond the disclosure in the public interest. Bills 36 and 37 revoke all nuance by providing a blanket exception to disclosure. Withdrawing information based simply on the type of information involved without demonstrating an overarching privilege or reason for withholding such information is not a prescriptive enough criteria to warrant exclusion from disclosure to the interested public. It is not reasonable that any and all financial, commercial, scientific, or technical information warrants broad restriction from public disclosure, and is certainly an approach contrary to the stated desire of this government for improved public transparency. The ATIPP Act affords these same types of information additional scrutiny and protection when warranted. The "notwithstanding" clause which prevents the application of ATIPP should be deleted.

g) Hearings and Inquiries - Confidentiality
- **Bill 37, Section 7 amending Sections 22 and 23**
- **Bill 36, Section 16 amending Section 91**

Subsection (3) of Sections 22 and 91 respectively refers to withholding of information from public scrutiny due to a concern of "harm" to persons, etc., during hearings or inquiries. (Bill 34 does not have any similar provision). In my opinion a mere "potential for harm" should not equate to withdrawal of information from the public purview. This allows much too broad of an application of the section. The potential for harm exists everywhere except within a vacuum. For information to be withheld from public scrutiny context must be considered and

the mere "possibility" of harm should not be enough to prevent disclosure of information to the public. The test under the ATIPP Act is a 'reasonable expectation of harm'. If legislation is to be used to restrict constitutional rights, the measure to do so needs to be measurable, refutable and sound. How likely is it that the harm will occur? What is the kind of harm contemplated (i.e. harm to a company's public reputation should not likely be a reason to withhold information)? I would encourage wording that places greater emphasis on the spirit of openness and accountability and only in rare circumstances should hearings (and inquiries) be conducted "in-camera" and only where the person who claims that they may be harmed must reasonably justify the withholding of information on the basis of a"reasonable expectation of harm" as opposed to a mere "possibility" of harm.

h) Disclosure - General Application of ATIPP

There is nothing particularly special about the non-renewable resource industry that cannot also be attributed to, and demonstrated as significant challenges to, managing the information about development, operation and administration of other types of businesses and industries. Justification for the unique treatment by lawmakers of this interest is not apparent. Risk of significant harm and protection of sensitive matters are well addressed under the ATIPP Act, as well as under federal access and privacy legislation. Lawmakers must narrow provisions that restrict access to information to that which is not sufficiently protected by the overarching provisions of ATIPP, and such narrowing must be demonstrated to be reasonable and ultimately in the public interest.

i) Disclosure to Other Governments and Agencies

Section 7 of Bill 37, and Section 16 of Bill 36, provide at subsection (10) that information may be disclosed in to entities outside of Canada. These provisions should be considered in terms of what the laws in other countries might require. For example, laws like the Patriot Act in the United States may not allow the government or government agency to "undertake to keep the information confidential" because over-riding federal legislation governs the disclosure of information. This kind of legislation would take precedence over any such "undertaking". And while the kind of information contemplated in this subsection appears to relate to business or non-personal information, there may be some circumstances in which personal information is involved. To the extent that information to be disclosed under this section is personal information, it should not be subject to disclosure at the discretion of the Regulator when it comes to crossing an international boarder without the consent from the person the information is about.

j) Disclosure in Respect to Accidents, Incident or Petroleum Spills

The new section 22(9) of the *Oil and Gas Operations Act* (Bill 37, section 7), requires the Minister and the Regulator to make certain information available to the public. However, in defining what kind of information is to be made available subsection (h) appears to defy the spirit of the subsection as a requirement to disclose information (ie - "The Minister and the Regulator **shall** make the following information available to the public...") by subsequently restricting the disclosure of information in respect of accidents, incidents or petroleum spills to that information "necessary to permit a person or body to produce and to distribute or publish a report for the administration of this act". The intent of disclosure seems to be only in support of generating an administrative report, but does not appear to support disclosure to the public. It is reasonable to believe this information would be of interest to the public and may be necessary to protect the safety and security of not only lands, but individuals, communities, private property and other investments.

k) Delays in Disclosure of Information to the Public

Significant delays in the release of information to the public have been identified in the new subsection 22(9) of the *Oil and Gas Operations Act* (Bill 37, Section 7) and subsection 91(9) of the *Petroleum Resources Act* (Bill 36, Section 16) ranging from 60 days to 5 years or more. The time periods effectively prevent the public from becoming aware of natural resource development activities and termination of those activities until long after they have been not only commenced but also stopped or completed, and specifically targets some activities that have already raised public interest (for example Section 22(9)(j).) These significant delays certainly would prevent any individual or group from addressing internally or in public concerns they may have about those activities especially when these restrictions pertain to activities that have been flagged in the public realm.

l) Miscellaneous Issues

- If there is to be a "notwithstanding" clause in any of these Bills (and I strongly recommend the reconsideration of these clauses as unnecessary to meet the goals of the legislation) they should be at the beginning of the affected section, not buried in the end of the it. Putting it in the middle of the 13 subsections is not helpful to the reader nor effective in ensuring appropriate real world application of the Act.

- As has been demonstrated in practice, if natural resource activities or the details of those activities are conducted on NWT lands without stakeholder knowledge, they might encroach on other claims to those lands or future realization of other benefits. Without public and other governments' knowledge of oil, gas and mineral development activities, there is no opportunity for stakeholders to bring specific concerns to the Regulator and Committee to be addressed.

- Sections 22 (9)(i) and 91(9)(i) respectively refer to environmental studies. The subjects of such a studies do not only involve flora and fauna, landscapes, natural processes, etc, they also include "human activity and habitation and any related matters". The delay associated with this section is 90 days or two years depending on circumstances. In the Northwest Territories, any research conducted on humans where personal information may be collected requires a license from the Aurora Institute. The Institute's ethical principles and policy on research in the NWT encourages broad sharing of that information even before the study is conducted as part of public consultation on the license, from inception to completion. The spirit of this approach to human subject research is contrary to this legislation. Not only that, it is disconcerting that the public might be subject to research by oil and gas or mineral interests and government resources used for this end, but that the information associated with such studies may be delayed or not release at all (90 days in respect to a well drilled, or two years after completion of the study). We do not have to look far to see examples where non-renewable resource developers, with information about impacts on humans, and information was withheld to the detriment and substantial harm to local human populations.

6. Conclusions

The government's pursuit of "open" government through this legislation is evident. The current drafts are a step towards this and away from the deep layer of secrecy that has more than dampened the right of access to information by those that would like to know and those, including other governments, that have a right and need to know. However, these Bills would not give independent and due consideration on a case by case basis to either the right to privacy or the right of access outside of the court system, and would put companies in the non-renewable resource sector on a different footing than those in other sectors for no apparent or beneficial reason.

In my opinion the changes and proposed new legislation would fail to eliminate the barriers to information that stifle economic opportunity, and tend to bring into question government integrity, by quelling the right of access to information, and with it the rightful participation of the public in our democratic process.

I understand the government is aiming to have these bills ready to be passed in the next legislative sitting. With respect to the potential harm enacting legislation that is not ready can do and has done, I recommend the committee ensure the provisions truly reflect the values of a democratic society, put weight on privacy and access to information that is in the public's interest over outside interests and lesser priorities, and do so before enacting this legislation. Privacy protections and access to information by the public has to be the default of public government. It is not optional.

I hope this will be of assistance to you and the Committee in reviewing this legislation. If I can be of further assistance, please feel free to contact my office at your convenience.

Yours truly

Elaine Keenan Bengts
Information and Privacy Commissioner
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Rosalie Abbey

Ecology North

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Re: Review of GNWT's Bill 36 and Bill 37

Dear Rosalie,

As was agreed during our conversation on 25 April, I have developed some brief comments on the Government of Northwest Territories' (GNWT) Bill 36: *An Act to Amend the Petroleum Resources Act* and Bill 37: *An Act to Amend the Oil and Gas Operations Act*. As per your email of 29 April, I have organized my comments by section for each Bill. Please note that these comments follow the sections of the Acts being amended, not the sections of the Bills in which the amendments are proposed. In building these comments I have reviewed the equivalent regulatory regimes of Yukon and Alberta. I have also examined various professional reports on the state of energy regulation in Canada, plus the characteristics of effective regulatory regimes.

Bill 36: *An Act to Amend the Petroleum Resources Act*

Section 18: This section obliges the Minster to post notices in the GNWT's *Gazette* "and in any other publication the Minister deems appropriate." There is an opportunity here to improve the transparency of government decision-making by explicitly setting out where notices are to be published, even if that list only includes platforms and mediums already available to the Minister. For example, the section could be expanded to require notices be published in local newspapers, or on the homepages and social media accounts of relevant GNWT departments.

Section 32(3) & (4): These subsections establish that significant discovery licenses are valid for fifteen years from date of issue and allow the Minister to extend their terms so long as, at a minimum, the Minister has "reasonable grounds" to expect exploration, drilling, or testing activities will persist beyond the existing term. Effectively, this allows license holders to squat indefinitely on territorial lands as the "reasonable grounds" test is not clearly defined in the proposed amendments. Shortening the fifteen year term is not an adequate fix in this case as the power to extend licenses indefinitely remains with the Minister. One possible remedy is to relocate the power of extension to the office of the Regulator and, in collaboration with that office, develop a clear definition of the "reasonable grounds" test. These changes would remove the possibility of political interference in what ought to be regulatory functions

and provide clarity to proponents on the thresholds of activity they must meet in order to maintain their licenses.

Section 42(1) and (4): Production licenses are issued for twenty-five years and are subject to the same terms of renewal as significant discovery licenses. As above, the Ministerial role in extending license terms ought to be relocated to the Regulator.

Section 70(3) and (5): These new subsections set out that members of the Environmental Studies Research Board are to be appointed from the public service, nominees by interest owners, nominees by Indigenous governments and/or organizations, and members of the public (at the Minister's discretion). This section could be strengthened, and the Board's public legitimacy improved, by clearly defining the number of appointments to come from each pool and, most critically, by setting clear term limits for Board members. At present, Board members "hold office during pleasure" (Section 70(2)), a clear impediment to the independent functioning of the Board. Given the increasingly sensitive environment in which similar organizations operate, it is advisable to remove as many opportunities for political interference in the functioning of the Board as possible.

Section 91(2): This section outlines what information the Minister and Regulator "shall" make publicly available, while also establishing why information ought to be with withheld on grounds of confidentiality. In short, information that is financial, commercial, scientific, or technical in nature will be withheld if the person providing the information has treated it as confidential, if their interest in maintaining its confidentiality outweighs the public interest in its release, and if the information is not publicly available. These tests allow for the exercise of a considerable degree of discretion on the part of the Minister and Regulator and may create a situation where information is kept confidential by default (the only way to contest a Regulator or Minister's decision to withhold information would be through the courts, a costly option for members of the public). Setting such a low bar is not likely to create trust between the Regulator and the public, particularly given the context of contemporary debates over the legitimacy of regulatory decisions and their independence from political interference. Given the Regulator already operates an online public registry, amending this section to make more information available by default would not require the Regulator build a new platform for sharing it with the public. Clarifying that the test is applied by the Regulator and not the Minister by adding an additional clause would also buttress the independence of the Regulator's decision-making powers.

Section 91(3)(a): This amendment is worth noting because the clause cited serves to clarify the test of balancing private interest versus public good. It ought to be incorporated into Section 91(2) above.

Section 91(6): The amendment grants the Minister authority to classify information as confidential, a power that infringes on the authority of the Regulator. The Regulator must to be an independent decision making forum if its rulings are to be viewed as free from political interference by the public. Furthermore, it is also the home of the technical expertise required to pass judgement on whether or not disclosure of information "could reasonably be expected" to cause material harm to a proponent (Section 91(3)(a)) or if disclosure presents "real and substantial" risk to the security of energy infrastructure (Section 91(4)(a)). The Minister's power to designate information as confidential should be removed and related sections in the proposed Bill revised to follow suit.

Section 91(9): The ten clauses in this section establish timelines on when various types of information ought to be released, such as information related to exploratory, delineation, and development wells. Responsibility for release of information is unclear, as the section states "Minister and the Regulator"

rather than identifying one or the other. As above, the recommendation here is to clarify and entrench the independence of the Regulator by identifying them as the body responsible for releasing information. As written, it is plausible that information release will become bottle-necked between the Regulator and Minister. Also, the section as it stands presents an opportunity for political interference in the execution of the Regulator's responsibilities.

Bill 37: *An Act to Amend the Oil and Gas Operations Act*

Section 19(4): These "powers, rights and privileges" conferred by the amendment equip the Regulator with the authority required to exercise independence in the area of information gathering. Subsection (e) is particularly important as it allows the Regulator to respond to shifting policy guidelines issued by government in respect of what regulatory ends it is expected to serve, specifically in the context of territorial energy strategy. An overarching energy strategy would prepare the Regulator to make decisions that are guided by an unambiguous definition of the public good, and subsection (e) allows for the Regulator to incorporate such (shifting) guidelines into their process of decision-making.Developing such an energy strategy is beyond the scope of this Act, but making it a near-term priority of the GNWT would be worthwhile.

Section 19.1: Allowing that the Regulator "may" conduct public hearings regarding how it exercises its powers and fulfills its obligations is possibly insufficient to ensuring public acceptance of regulatory decisions. Nationally and provincially, energy regulators are increasingly becoming a site of conflict and forced debate over issues that are, prima facie, beyond the scope of the decision-making powers of regulatory bodies. These includes arguments over climate change, emissions reduction, Aboriginal rights, and the unevenly shared burden of environmental risk, to name a few. This situation will likely persist for as long as regulatory bodies are the only venue available to host these debates. Given that neither Bill creates a new forum for such discussions, replacing "may" with "shall" is advisable. Hosting such public hearings will serve two purposes. First, it will allow the Regulator an opportunity to educate the public about the Regulator's role, processes, and authority. This will prepare the public to participate effectively in consultation processes and with an awareness of what the Regulator is equipped to do with the information shared by the public. Second, public hearings on the how the Regulator performs its duties presents that body with an opportunity to collect information useful to improving its own operations. Regulatory processes are not cut once from whole cloth and thereafter inviolable; they need to change as the context in which they operate changes, and one important element of context is public expectations regarding how regulatory bodies function.

Section 22(1): This new section includes clear technical definitions related to hydraulic fracturing, an increasingly common and highly controversial method of unconventional oil production. This addition suggests GNWT is preparing for the possible emergence of a new industry in the territory by beginning to set out the terms under which it will be allowed to operate. The definition of "hydraulic fracturing fluid information" is notably thorough and includes thirteen subsections that highlight the information points likely to be collected by the Regulator. For Ecology North's purposes, this definition is worth noting as it identifies what information the Regulator is likely to possess if and when such projects begin operating, and therefore what information members of the public may be able to request regarding projects operating in or near their communities. However, the real availability of this information is an

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open question, given the ease with which the Minister or Regulator can withhold information under the present amendments.

Section 22(2): This section define the conditions under which information must be kept confidential. The language in these subsections mirrors that used in Section 91(2) above. Similarly, my comments are also the same; the Minister's role in judging which information ought to be kept confidential should be removed, and the tests for maintaining confidentiality clarified.

Section 22(3)(a): This amendment is worth noting because the clause cited serves to clarify the test of balancing private interest versus public good. It ought to be incorporated into Section 22(2) above.

Section 22(6): My comments on this section are the same as those made under Section 91(6) above. The Minister's power to designate information as confidential should be removed.

Section 22(9): Again, the language in this amendment mirrors that used in Section 91(9) above. My same comments apply again; remove the Minister's role in deciding which information to release.

The characteristics of an effective regulatory body include independence, transparency, and capacity. The recommendations offered here on revising the proposed amendments primarily speak to the first and second factor, though their implementation hinges on the availability of the third. My suggestions imply enhanced responsibilities for the Regulator, particularly in the area of public engagement. It is plausible that fulfilling these responsibilities will required additional capacity be made available to the regulator. Ecology North ought to monitor the Regulator to ensure these resources are being provided, should any of my suggested revisions be made to the proposed Bills.

I hope this brief note serves to aid Ecology North in developing their submission to the Standing Committee on Economic Development and Environment. I am happy to discuss this topic further at your convenience. I can be reached at 306-380-8275.

Sincerely,

Cody Sharpe, PhD

NORTHWEST TERRITORY MÉTIS NATION

May 15, 2019

Mr. Corey Vanthuyne, MLA
Chair, Standing Committee on Economic Development and Environment
Legislative Assembly of the Northwest Territories
Box 1320
4570-48th Street
Yellowknife, NT X1A 2L9

Dear Chair Vanthuyne:

Re: Northwest Territory Métis Nation – Further Written Submissions on Bill 34, 36 and 37 – *Mineral Resources Act, An Act to Amend the Petroleum Resources Act* and *An Act to Amend the Oil and Gas Operations Act*

Further to our appearance at the SCEDE meeting in Yellowknife on May 8th, we wish to thank the Committee for hearing our concerns with Bills 34, 36 and 37 – the *Mineral Resources Act*, *An Act to Amend the Petroleum Resources Act* and *An Act to Amend the Oil and Gas Operations Act,* respectively. We are providing the following written submissions in addition to the speaking notes filed with Committee on May 8th.

***Mineral Resources Act* – ("*MRA*")**

The NWT Métis Nation has the following concerns in respect to the proposed *Mineral Resources Act*:

No Staking of Graveyards

1. Section 20 must be broadened to include a "graveyard" in addition to a cemetery as there are many graveyards.

Designation of an Area Off Limits to Staking

2. The meaning of "applicable" under section 22(1) include reference to an area subject of aboriginal rights and title of an Indigenous government, and remove the word "asserted" as the word is offside of the recognition of aboriginal rights and the *United Nations Declaration on the Rights of Indigenous Peoples* (all other references to "asserted" must be removed). The Government of Canada has recently dropped reference to the word "asserted" in reference to aboriginal rights.

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Expand the Scope of Restricted Areas

3. The designation of a restricted area under section 22(2)(b)(i) should also include areas that are critical wildlife areas (e.g. calving grounds) and unique harvest areas for Indigenous people.

Proposed Zones – No Presumption of *Terra nullius* (nobody's land)

4. The concept of establishing a "Zone" under section 24 in which there are no aboriginal rights or outside a traditional territory is paternalistic, in that, it presumes some land is devoid of Indigenous use. All land in the NWT is used and occupied by Indigenous people. The Latin term *Terra nullius* (nobody's land) has no basis in the NWT.

Staking Triggers Duty of Consultation

5. Government has a duty to consult affected Indigenous governments prior to authorizing any physical staking by third parties under section 28.

Impact and Benefits Agreement Requirements

6. Subsection 52(1) provides for an "agreement for benefits" instead of the term "Impact and Benefits Agreement (IBA)", which is the universal term and a common provision in existing land claim agreements. All major mining projects in the Northwest Territories have a requirement for the negotiation of IBAs as a condition of obtaining the required licences and approvals for the mine. You will note Nunavut requires a concluded IBA before a project proceeds. We suggest IBAs should be the preferred language to use, instead of the vague term "agreement for benefits" as an agreement ordinarily addresses mitigations measures to address impacts.

IBA Process and Substance

7. We are very concerned that the conditions for the requirement of an IBA are punted to the regulations. Ideally, the MRA would contain more prescriptive language for the process and substance of IBA requirements.

Too much Ministerial Discretion

8. Section 52 provides too much discretion with the Minister based upon the words, "that the Minister considers appropriate in the circumstances". The Minister has an obligation to act honourably and in good faith in respect to any accommodation of aboriginal rights through an IBA.

   Subsection 52(3) allows the Minister to determine, where "exceptional circumstances exist", to waive the requirement for a benefits agreement with an Indigenous Government. This potentially creates a situation where the Executive Council can move forward on a project with just one Indigenous Government, irrespective of outstanding or unresolved issues of other Indigenous Governments. The honour of the GNWT always requires the GNWT to take steps to accommodate the Aboriginal rights of

affected Indigenous governments to mitigate any potential adverse effects of a project. The duty of accommodation cannot be legislated out.

Dispute Resolution

9. Section 54 provides for a dispute resolution body to resolve disputes under Part 5, in accordance with regulations to be developed. Any dispute resolution body must be invigorated to address the accommodation of aboriginal rights, and whose representatives be reflective of the Indigenous population in the NWT.

Amendments Required

The NWTMN recommends the following:

- All references to “asserted “ be removed when referring to the traditional territory of an Indigenous government

- Section 20 amended as follows:

  20. No person shall be issued an interest in minerals in respect of, or may prospect, explore or stake a claim on, any of the following:

  …

  (c) lands used as a cemetery **or graveyard**; …

- Section 22. (1) be amended as follows:

  22. (1) For the purposes of this section, "applicable", **includes an area subject of aboriginal rights and title of an Indigenous government and** in respect of Indigenous governments and organizations, are those Indigenous governments and organizations with settlement lands or ~~asserted~~ traditional territory within or overlapping with a proposed restricted area.

- Section 22.(2)(b)(ii) be added as follows:

  (2) Subject to this section and the regulations, the Minister may, on the Minister’s own initiative or as requested in accordance with this section, designate in writing an area of the Northwest Territories as a restricted area within which interests in minerals may not be issued for a period of up to one year, if …

  (b) the area

(ii)has been identified as a unique harvesting area for Indigenous peoples and to potentially be an area critical to wildlife...

- Subsection 52(1) – add the words “impact and benefits agreement” in place of “agreement for benefits”

- delete the words, “that the Minister considers appropriate in the circumstances” as follows:

52. (1) Subject to this section, the holder of a mineral lease shall enter into an ~~agreement for benefits~~ **impact and benefits agreement** in accordance with the regulations with each Indigenous government or organization ~~that the Minister considers appropriate in the circumstances~~

(a) if a production project for the mineral lease meets the prescribed threshold; and

(b) when required in accordance with the regulations.

- In the Definitions section, amend the definition of “agreement for benefits” as follows:

"**impact and** benefit**s** agreement" means an agreement referred to in section 52;

- Delete subsection 52(3) in its entirety:

~~(3) If the Minister is of the opinion that exceptional circumstances exist, the Minister may, on the recommendation of the Executive Council, waive the requirement for any agreement under subsection (1).~~

(2) The dispute resolution body referred to in subsection (1)**:**

(a) must be invigorated to address the accommodation of aboriginal rights, and include representatives who are reflective of the Indigenous population in the NWT; and

(b) has jurisdiction to resolve disputes that arise under this Part, in accordance with the regulations, in order to facilitate the conclusion of an agreement required under section 52 or determine that an agreement need not be concluded.

The NWTMN is prepared to oppose the legislation if the concerns stated above are not addressed before third reading.

Comments on PRA and OGOA

- Given the limited opportunities to discuss the PRA and OGOA, our comments are very limited at this stage.
- **PRA**

Term of Significant Discovery Licence (SDL)

- The NWTMN has no concerns with the 15-year term of the SDL in the proposed amendments to subsections 32(3); however, the renewal of the SDL in subsection (4) appears to be open-ended. We do not necessarily object to that provision, but would appreciate an explanation why the open-ended extension to the SDL is the preferred option.

Hydraulic Fracturing Fluid

- There is significant public concern around hydraulic fracturing in the Northwest Territories. The NWTMN has concerns with the provision of information on hydraulic fracturing fluids. The definition, as drafted, does not appear to include a measure of the volume of fluid from the output side. The definition in the *PRA* sets out at (k) "the total volume of water injected with the ingredients", but does not include the volume of water recovered from the well. Sahtu Secretariat Incorporated (SSI) suggested a definition on that basis, and we support SSI's suggested amendment.

Financial Responsibility (Securities)

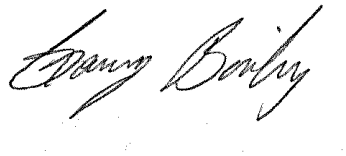
- The NWTMN has been following the issue of securities for abandoned mine sites in mineral resource legislation. We have similar concerns regarding financial security for abandoned wells. The Bill should ensure that sufficient financial security is provided by companies doing work on lands in the Northwest Territories.
- The one-year period for financial responsibility seems inadequate. The history of abandoned mines in the Northwest Territories provides a cautionary tale where companies have walked away from their projects, having provided little or no security, and the public has had to pay for the remediation and cleanup of these abandoned sites.
- We are also concerned with the effects of climate change on abandoned wells, and there could be significant downstream costs as a result of changes to the environment on which abandoned wells are located.
- Given the short time for review and complexity of the proposed PRA and OGOA, we will provide further commentary if there are further opportunities to review and discuss the legislation.

Ongoing Consultation

- We are pleased that ITI has committed to continue to work with Indigenous governments as the Bills are finalized and preparatory work on the Regulations is about to commence.

- The NWTMN is hopeful that it will be properly resourced for this work. We look forward to working in collaboration with you and your officials as these processes move forward.

Sincerely,
NORTHWEST TERRITORY MÉTIS NATION



Garry Bailey,
President

NWT CHAMBER OF Commerce

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Representing Northern Business Since 1973

May 06, 2019

Michael Ball, Committee Clerk
Standing Committee on Economic Development and Environment
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Dear Mr. Ball,

Thank you for the opportunity for the NWT Chamber of Commerce to submit their comments/recommendations to the 7 Bills currently before the Standing Committee on Economic Development and Environment:

- Bill 34: Mineral Resource Act
- Bill 36: An Act to Amend the Petroleum Resources Act
- Bill 37: An Act to Amend the Oil and Gas Operations Act
- Bill 38: Protected Areas Act
- Bill 39: Environmental Rights Act
- Bill 44: Forest Act
- Bill 46: Public Land Act

The NWT Chamber of Commerce is the largest and most broadly - based business organization North of 60, with representation from every region of the NT. Working in association with the network of community chambers in Inuvik; Norman Wells; Fort Simpson, Hay River, Thebacha and Yellowknife, the NWT Chamber represents the interests of members across the NT. For over 45 years we have been the only pan-territorial voice of businesses across all sectors of the northern economy. Attached please find our detailed submission including our recommendations:

Bill 34: Mineral Resource Act

As highlighted in our original letter dated January 3,2018, we strongly encourage the GNWT to ensure that the new *Act* and its regulations streamline the permitting process wherever possible and avoid duplication of other permitting regimes. These related areas of legislation should complement one another, not create complexity. Our only recommendation under Bill 34: MRA is the removal of Section "*52 (3) If the Minister is of the opinion that exceptional circumstances exist, the Minister may, on the recommendation of the Executive Council, waive the requirement for any agreement under subsection (1).*" As all existing mines as well as a majority of up and coming mines are located on unsettled land claims; this allows Industry and to an extent the GNWT to negotiate in bad faith. There should be no circumstances that Industry and an

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Indigenous Government(s) and Organization(s) can not come to an agreement in regards to a Benefit Agreement.

Bill 38: Protected Areas Act

The NWT Chamber recommends the following to Bill 38: PAA:

- Section 14(4) *in regards to best efforts to come to agreement with Indigenous governments and organizations* needs to be amended or removed. If the GNWT is unable to come to an agreement with ***all*** affected Indigenous Governments and Organizations the protected area is not to be established. As the section reads it allows the perception of the GNWT being able to hold the rights of one Indigenous Government/Organization over others which can and will create division and animosity between all the Indigenous Governments and Organizations.
- Section 20 (b) *establish a special purpose fund and accept donations for deposit into the fund* needs to be removed. Our land and mineral rights are not for sale to the highest bidder willing to pay for a park.
- Section 36 *(1) Notwithstanding anything in this Act and where the Minister considers it in the public interest, the Minister may identify an area within a protected area where a right to occupy land may be granted for the purposes of establishing a transportation or transmission corridor within the protected area, provided that (a) consideration is given to (i) the feasibility of alternatives outside the boundaries of the protected area, and (ii) the potential impacts on the biodiversity, ecological integrity and cultural continuity of the protected area; and (b) any additional requirements set out in the regulations or in any applicable management plan for the area are met* The NWT Chamber applauds the GNWT for understanding the need to balance conservation with economic development. We recommend that the wording of "public interest" be removed or clarified as this leaves the option open for small interest groups/boards or groups located outside of the NWT to interfere in our ability to grow our economy.

Bill 39: Environmental Rights Act

The NWT Chamber strongly recommends that Section 5 *Conflict, inconsistency with land, resources and self-government agreement* stay as worded. It is extremely important that the rights as listed under Indigenous Government and Organizations land, resource and self-government agreements prevail over all other Acts and the interest of other NGO's and interest groups.

NWT CHAMBER OF Commerce

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Representing Northern Business Since 1973

Bill 44: Forest Act

The NWT Chamber recommends the amendment of Section 11(4) to read *The Supervisor shall, in fulfilling his or her responsibilities or carrying out his or her powers, consider any traditional, scientific ~~or~~ and local or community knowledge that is made available to the Supervisor.* It is imperative that the interests of one group do not over shadow another(s) or the majority. Nunavut has time and time again shown the benefit of collaborating traditional, scientific ***and*** local/community knowledge.

Once again, the NWT Chamber applauds the GNWT in their work to streamline and improve the above listed acts. We appreciate the continued ability to provide our feed back and look forward to the finalized versions of the Acts and amendments.

Regards,

Renée Comeau
Executive Director
NWT Chamber of Commerce

Jenni Bruce
President
NWT Chamber of Commerce

CC: Hon. Bob McLeod, Premier of the Northwest Territories; Hon. Wally Schumann, Minister of Industry, Tourism and Investment; Hon. Robert C. McLeod, Minister of Environment and Natural Resources; Shaleen Woodward, Deputy Secretary, Indigenous and Intergovernmental Affairs, GNWT; Gary Bohnet, Principal Secretary, Executive and Indigenous Affairs, GNWT; Mike Aumond, Secretary to Cabinet, Executive and Indigenous Affairs, GNWT; Cory Vanthuyne, Chair of the Standing Committee on Economic Development and Environment

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May 22, 2019

Honourable Cory Vanthuyne, Chair
Standing Committee on Economic Development and Environment
Legislative Assembly of the Northwest Territories
Yellowknife, NT X1A 2L9

Dear Chair and Committee Members:

Re: Submission for Bill 34 – *Mineral Resources Act*, Bill 36 – *An Act to Amend the Petroleum Resources Act* and Bill 37 – *An Act to Amend the Oil and Gas Operations Act* (the "Bills")

The Sahtu Secretariat Incorporated made a presentation to the Standing Committee in Norman Wells on May 7, 2019, with respect to the Bills. At that time, the SSI committed to provide this written submission which provides an overview of our presentation.

1. **Background**

As we stated in our written submission dated April 7, 2019, with respect to Bills 38, 39 and 44, a partnership underlies the *Northwest Territories Lands and Resources Devolution Agreement* (the "**Devolution Agreement**") to ensure that public lands and resources are managed in accordance with "made-in-the North" legislation that incorporates the principle of co-management and integrates the co-management boards and councils established pursuant to the *Sahtu Dene and Metis Comprehensive Land Claim Agreement* (the "**Land Claim Agreement**") and the other land claim agreements in the Northwest Territories.

As part of the Devolution Agreement, the parties agreed under the *Northwest Territories Intergovernmental Agreement on Lands and Resources Management* to jointly develop new territorial legislation to replace the territorial mirror legislation that was made pursuant to the Devolution Agreement. This assured the SSI and other Indigenous governments and organizations that their role in the development of new resource management legislation would be more than consultation. It would be a collaborative process.

In our view, the working group that was established by the parties to develop the new territorial legislation to replace the mirror legislation (the "**Working Group**") worked constructively and effectively with respect to Bill 34. For the development of Bill 34, the Working Group developed a legislative framework table that identified the issues and tracked the progress of the discussions. The Working Group reviewed drafts of Bill 34 as it was prepared

in accordance with the table. Reasonable compromises were made to address the parties' respective interests.

However, Bills 36 and 37 were developed in a process that differed from the process employed for the development of Bill 34 as well as Bills 38, 39 and 44. As a result, Bills 36 and 37 address the interests of the GNWT but fail to accommodate the issues raised by the SSI. We will discuss this matter below.

2. **Bill 34 – *Mineral Resources Act***

The SSI supports the provisions of Bill 34 and, in particular, the SSI confirms its support for specific provisions of Bill 34 that address issues that it raised, including:

a. the requirement for a licenced prospector, who intends to undertake mineral activities, to provide notification to the affected Indigenous group or organization at the earliest opportunity;
b. the requirement for a mineral lease holder to enter into a benefit agreement with the affected Indigenous group or organization; and
c. the authorization of the Minister to designate an area where mineral interests cannot be issued up to one year which can be extended for an additional year.

We point out that Bill 34 provides that the MRA's regulations would set out substantive elements of the mineral resources regime. This means that the role of the SSI and other Indigenous groups and organizations with respect to the development of regulations under the MRA must be clarified and confirmed. The SSI and other Indigenous governments and organizations must have a substantive role in the development of those regulations in a manner consistent with the operation of the Working Group with respect to the development of Bill 34.

To that end, the SSI requested that Bill 34 be amended to confirm that the regulations under the MRA would be made "in consultation" with the SSI and other Indigenous groups and organizations. This issue was also raised in our earlier submission relating to Bill 38. However, the GNWT has not been prepared to make that legislative commitment.

In response, the Indigenous governments and organizations and the GNWT are working to develop a terms of reference for the establishment and operation of a body, with a membership including representatives of Indigenous groups and organizations, that would develop the regulations under Bill 34 and other resource management legislation. Ideally this body would be established in legislation rather than a terms of reference or a policy in order to provide some legal certainty.

3. **Bills 36 and 37**

As noted above, the Petroleum Resources Division used a different process to develop Bills 36 and 37 than the Working Group process that developed Bills 34, 38, 39 and 44.

Unfortunately the Working Group process was not utilized as it should have been with respect to Bills 36 and 37. There was little discussion by the Working Group with respect to the GNWT's mandate and the scope of proposed amendments to the *Petroleum Resources Act* (the "**PRA**") and *Oil and Gas Operations Act* (the "**OGOA**"). Instead the Petroleum Resources Division held public meetings last year in Norman Wells and other communities about its specific

amendments. Subsequently the SSI representatives met with its staff to review the draft amendments to the PRA and OGOA.

Without any input from the SSI and other Indigenous governments and organizations, Industry, Tourism and Investment ("**ITI**") obtained a limited mandate to make certain amendments to address its issues relating to the PRA and OGOA. ITI did not make any accommodation in its mandate to address the issues or priorities of Indigenous governments and organizations.

Therefore, the SSI is concerned about the limited scope and nature of the proposed amendments with respect to the PRA and OGOA and, in particular, the SSI believes that the commitments made as part of the devolution negotiations are not being implemented in a fulsome and collaborative manner with respect to the development of new oil and gas legislation.

We make the following specific comments about Bills 36 and 37.

3.1 Term of significant discovery licence ("SDL"). The SSI confirms its support for the proposed amendment that would establish a term of 15 years for significant discovery licences. However, subsection 9(4) of Bill 36 allows for an indeterminate extension of the SDL. The SSI would prefer that any such extension be time certain.

The GNWT responded that a limit on the extension period has not been established because there may be justification for shorter or longer extensions, depending on the unique circumstances of the SDL holder. In our view, this provides too much discretion to the Minister and too much uncertainty for the public.

If ITI continues to refuse to amend Bill 36 to provide for fixed term extensions, Bill 36 must be amended to require the Minister to consult with the affected Indigenous government or organization about any extension of a SDL, including the term of that extension.

3.2 Requirement for benefits agreements. This was a key issue for the SSI during the devolution negotiations and, during the course of those negotiations, the Premier made specific commitments to the SSI with respect to the sunsetting requirement for proponents to negotiation benefit agreements with the Sahtu Dene and Metis under section 22.2 of the Land Claim Agreement. In particular, the GNWT committed to extend and broaden the requirement under section 22.2 by way of legislation after the date that the Devolution Agreement was brought into legal effect.

The SSI submits that Bill 37 be amended to include an express requirement in the OGOA for proponents to negotiate benefit plans with the affected Indigenous group or organization. In particular, the provisions in the OGOA relating to benefit agreements should be consistent with the proposed benefit plan provisions set out in Bill 34.

At present, section 123(5) of the OGOA confirms that the "guidelines and interpretation notes that had been issued under subsection 5.3(1) or (2) of the *Canada Oil and Gas Operations Act* before the coming into force of this Act continue in effect as guidelines and interpretation notes imposed in accordance with this Act until they are replaced or revoked by, as appropriate, the Regulator or the Minister."

The federal *Benefits Plan Guidelines of the North* set out a northern preference for benefits for benefit plans relating to oil and gas development and, in particular, prioritizes local northern Aboriginal residents and local northern Aboriginal business in the vicinity of a proposed oil and gas work or activity.

This means that the Guidelines require benefit plans with local northern Aboriginal residents and local northern Aboriginal business. However, the SSI is concerned that section 123(5) of the OGOA is an interim arrangement and the federal government may retract or amend the Guidelines and, if so, this could affect the requirement of proponents to negotiate benefit plans with affected Indigenous groups or organizations. This interim arrangement fails to provide legal certainty to the Sahtu Dene and Metis.

ITI advised that the addition of an express requirement in the OGOA for benefit agreements is "outside the scope of the current legislative initiative. However, ITI may consider this suggestion in future oil and gas legislative initiatives."

This response from ITI fails to address our proposal. Bill 37 should be amended to set out a requirement in legislation for proponents to negotiate benefit plans with affected Indigenous governments and organizations. This would provide clarity and certainty.

3.3 Members and selection. The SSI notes that the definition of "Indigenous organizations" in Bill 36 is not limited to organizations within the NWT. ITI advised that it has decided not to restrict nominations to the Environmental Studies Management Board to Indigenous governments and organizations within the NWT. ITI further advised that it will consider developing guidance materials to support and clarify details regarding the Board's nomination process.

The SSI submits that such an appointment policy must be established jointly by the Minister and Indigenous governments and organizations in the NWT. In particular, such a policy must direct the Minister to consult with the Indigenous governments and organizations within the NWT if he or she is contemplating the appointment of a representative of an Indigenous governments and organizations that is not within the NWT.

We acknowledge that, as requested by the SSI in its letter of January, 18, 2019, to the Minister, the GNWT amended subsection 70(4) in Bill 36 to require person appointed to the Board to "demonstrate" rather than "appear to have" specialized technical knowledge or expertise or Indigenous knowledge and experience relevant to the purpose of the Board.

3.4 Confidentiality. The SSI suggest that subsection 91(2) of Bill 36 should read "…the Minister and the Regulator may provide copies of any information…" as opposed to the current draft language "…shall make available…." This suggestion resulted from uncertainty as to the copyright of such information as raised by recent litigation.

The SSI remains unconvinced that Bills 36 and 37 strike an appropriate balance between confidentiality of propriety information and public transparency.

3.5 OGOA definitions. The SSI suggested that the definition of "hydraulic fracturing fluid" be expanded to include information in order to identify how the recovery differed, if it did, from the total water volume injected. In response, ITI advised that Bills 36 and 37 now include a

paragraph to the definition which provides flexibility to prescribe additional components of hydraulic fracturing fluid without having to amend the definition in either statute.

The SSI maintains that ITI and Indigenous governments and organizations must work collaboratively to agree to the matters prescribed in the definition of hydraulic fracturing fluid for purposes of both statutes.

3.6 Continuing obligation. Bill 37 provides for financial responsibility to remain in place "for a period of one year after the time at which the Regulator notifies the holder that all works in respect of which the authorization was granted have been successfully abandoned or decommissioned." The SSI believes this period should be extended to a minimum of five years.

In response, ITI advised that the proposed amendment to subsection 64(2) has been modified slightly to ensure that the proof of financial responsibility remains in force for the appropriate period. The amendment also states that the one-year period only commences after the Regulator notifies the authorization holder that all works have been successfully abandoned or decommissioned.

The SSI stands by its original submission that the period that proof of financial responsibility must be longer than one year and urges the Standing Committee to propose an amendment to Bill 37 extending that period.

4. Next steps

Given the parties' commitments to collaboratively develop the resource management legislation, it may be appropriate for the SSI and other Indigenous governments and organizations to be provided an opportunity to participate in the discussions of the Committee of the Whole as witnesses and make submissions or comments about the Bills and the process employed to develop them. The SSI may ask for your support if such a request is made.

In closing, the SSI reiterates the suggestion made in our written submission dated April 7, 2019, that an independent third-party be retained to undertake an audit of the work of the Working Group. This audit should include the views and perspectives of the members of the Working Group and take into account the outcome of the legislative process with respect to the Bills, as well as Bills 38, 39 and 44, to ensure that the future work of the Working Group proceeds in an effective and efficient manner. This audit would serve to inform the ongoing work of the Working Group, including the development of amendments to the *Waters Act* and various regulations under the Bills.

If you require any clarification, please do not hesitate to contact us at your convenience.

Sincerely,

Charles McNeely
Chairperson

cc. SSI Board

Todd Slack
232 Niven Drive
Yellowknife, NT
X1A 3Z1

Michael Ball, Clerk
Standing Committee on Economic Development and Environment
Legislative Assembly of the Northwest Territories
Email: Michael_Ball@gov.nt.ca

May 13th, 2019

RE: Bill 34, 36 and 37

To Whom It May Concern:

Peggy Witte can come to our territory, apply for mineral rights or permits and there's little that anyone can do to object. Giant's cleanup is in the range of a billion dollars. Between the fire suppression costs and the cleanup, Snowfield stuck us with a bill of a million bucks. Peggy Witte was back with Tamerlane and the Snowfield people can return to the territory free and clear. I might be somewhat old fashioned, but to me, if you screw over my people and my territory, I'm not going to welcome you back the next day. Bad Actor Legislation exists in other jurisdictions. It needs to exist here.

In looking at the Fraser Institute Annual Survey of Mining Companies, which evaluates different jurisdictions for the investment attractiveness, Montana's (one such jurisdiction with Bad Actor laws) reputation doesn't seem to have been harmed over the last few years. Put your researchers to work, determine the best way forward, and amend the current bills to address this gap. Otherwise, when we get screwed again, which will happen, know that those responsible will be back, unashamed and unconcerned about doing again – because why shouldn't they?

Surely we should have a higher standard. My recommendation is simple: If the leadership – the directors and officers, the registered professionals – of these companies stick the residents of the NWT with the bill, then they shouldn't be able to obtain mineral or petroleum rights, privileges or any other discretion provided for under these bills until that liability is resolved. It's still not just, but it's better than what currently exists.

Sincerely,

Todd Slack