MANS
Mining Association of Nova Scotia

January 19, 2015

Hon. Zach Churchill
Minister of Natural Resources
1701 Hollis Street
Founders Square, 3rd Floor
Halifax NS
B3J 3M8
Sent via email: min_dnr@gov.ns.ca

Dear Minister:

On behalf of the Mining Association of Nova Scotia, I am writing to make our submission to the Mineral Resources Act (MRA) review consultation process. The attached document - *Mine? Ours. Achieving the full benefits of Nova Scotia's mineral resources* - was first submitted to the Department of Natural Resources (DNR) in November 2013 and it remains our formal position paper on the MRA.[1]

The document offers a comprehensive approach to improving the MRA in ways that would help the industry grow and create more jobs for Nova Scotians, especially in rural areas. It is consistent with the Ivany report's call for "a modern and responsive legislative framework to support and promote sustainable mineral resource management." We hope the Government will adopt all its recommendations in order to achieve the full benefits of our shared mineral resources.

Additionally, this letter addresses various issues raised by DNR in its consultation survey and others which have arisen in the past year. The issues discussed in this letter are not necessarily more important or higher priorities for us than those discussed in our position paper. We simply feel that the matters discussed in this letter require some additional comment.

For example, there are a number of issues discussed in our paper about which the general public would know little, and probably not have an opinion on, such as grouping and regrouping claims, reducing staking fees, DNR processing of paperwork such as work reports, and expanding the list of allowable assessment work credits. These are very important issues to our industry and we respectfully request that DNR adopt our proposed policies in order to encourage exploration and help the industry grow and create jobs for Nova Scotians. The fact that these issues are not discussed in detail in this letter in no way diminishes their importance to helping foster a thriving mining industry in the province.

[1] The paper is also available at http://tmans.ca/images/MANS-MRA-Submission.pdf

Background

While the mining and quarrying industry is a large and important industry in this province – we employ 5500 people and generate $420 million per year in economic activity – we also face significant challenges:

- The Ivany Commission said traditional industries like mining and quarrying "will provide the essential foundations for Nova Scotia's rural economy."[2] At the same time, Ivany also highlighted the challenges our industry faces, including the need for government to "provide a modern and responsive legislative framework to support and promote sustainable mineral resource management."
- According to 2013 research commissioned by the Department of Natural Resources, Nova Scotia's mining and quarrying industry lost approximately 800 jobs in the past five years, and its economic output shrank by $80 million per year.[3]
- According to PricewaterhouseCoopers, we are the highest cost jurisdiction in Canada in terms of tax/royalty payments to the provincial government.[4]
- According to the Fraser Institute's global survey of mining executives, Nova Scotia is seen as the least attractive province for mining companies to invest in, and government policies are a major reason.[5] 2013 was the fifth year in a row that Nova Scotia ranked last in Canada.

Our industry faces tremendous challenges, both because of the global downturn in the industry and because of Nova Scotia-specific policies that are preventing the industry from growing and creating jobs for Nova Scotians. The review of the Mineral Resources Act is an opportunity to start correcting this situation – to implement policy changes that will help the industry create more jobs and economic opportunity, especially in rural areas.

Land Access - Mineral Exploration

Survey Questions 12-18

Our position paper contains several recommendations that address the main questions asked in this section of DNR's survey. We particularly flag the following:

Landowner Permission for Prospecting

Landowner permission is generally not required in other jurisdictions at early stages of exploration and Nova Scotia should facilitate land access for non-disturbance activities by

[2] http://onens.ca/ , page 54
[3] http://novascotia.ca/natr/meb/data/pubs/13ofr03/ofr_me_2013-003.pdf
[4] www.pwc.com/ca/canminingtax, see exhibit 6, page 21 of the 2013 edition
[5] https://www.fraserinstitute.org/research-news/display.aspx?id=20902

simply allowing it as most other jurisdictions do. We recommend that the MRA allow prospectors/explorationists to walk over private land, for non-disturbance activities, without landowner permission.

Please see page 7 of our position paper for more details.

Crown Land Permission for Exploration

Requiring a permit to explore on Crown land is also unnecessarily cumbersome and discourages prospecting and exploration at the early stages. Holders of exploration licenses should automatically be given access to Crown lands for non-disturbance activities as they are in many other provinces.

We recommend that the Government:

- Allow non-disturbance exploration on Crown lands without a permit.
- Establish a deadline of fifteen days for approving initial permit applications and five days for approving revised permit applications for disturbance activities on Crown lands.

Please see page 8 of our position paper for more details.

Inability to Negotiate Land Access (Section 100)

While it is always the industry's preference to negotiate private, mutually-beneficial agreements with landowners to gain access to land and permission to explore, there are infrequent cases where this is simply not possible. In these unusual cases, it is necessary that the industry have a mechanism for obtaining land access in order to ensure that we continue adding to our knowledge base about the province's geology and identify commercially-viable deposits.

Currently, the Mineral Resources Act's Section 100 is the mechanism for addressing this issue. Under Section 100, prospectors and explorationists can seek the Minister's approval for a surface rights permit which grants access to land and permission to conduct exploration activities. However, Section 100 applications can take years to resolve and grind exploration to a halt in the meantime. They are also very burdensome for all parties involved – the industry, the landowner and the Government – and can make exploration impractical in many cases.

A better solution than Nova Scotia's Section 100 is New Brunswick's policy of allowing automatic land access after 60 days of legitimate but unsuccessful efforts to negotiate permission with a landowner. If adopted by the Government of Nova Scotia, this policy would ensure we can continue adding to our knowledge base about the province's mineral resources, and it would help expedite the mining cycle and ultimately the creation of new mines and jobs.

If the Government does not adopt the 60 day policy, it would be essential that the Government, at the very least, maintain the Act's Section 100 as a "last resort" that helps the industry gain access to land when all other efforts to do so are unsuccessful.

If the Government chooses to maintain Section 100, we propose that the Government improve it by establishing a timeline for the Minister to render his/her decision on Section 100 applications. Section 100 applications can take years to resolve, which is not fair to either the landowner or prospectors. Establishing a reasonable time limit of 60 days is therefore advisable.

Please see page 9 of our position paper for more details.

Land Access - Mining Activities

Survey Questions 19-23

Application for Right in Land (Section 70)

To our knowledge there have only been three applications for vesting orders under Section 70 since the current Mineral Resources Act was enacted in 1990. Section 70 is, and it should be, a last resort. However, it is a necessary last resort that must be maintained in the Act for those exceptional cases where there is no other way for a mining company to purchase all the land necessary to establish a new mine and create the associated jobs and other benefits for Nova Scotians.

While it is always the industry's preference to negotiate private, mutually-beneficial arrangements with landowners, and to avoid vesting order applications under the Act's Section 70, there are rare cases in which such applications are necessary.

We recommend that the Government:

- Maintain the Minister's authority to grant vesting orders under Section 70.
- Add a deadline of 90 days to Section 70 to ensure vesting order decisions are made within a reasonable time frame.
- Amend the Act to ensure that the value of the mineral is not a consideration in determining the price paid to the landowner.
- Clarify that the Minister has the authority to grant vesting orders in cases where ownership is unclear.

Please see page 18 of our position paper for more details.

Surface Rights Board

We understand that the possibility has been raised of establishing a surface rights board to consider Section 70 and/or Section 100 applications.

Surface rights boards are used in some other provinces to review land access disputes and help advise the cabinet ministers who generally settle such issues. After speaking to industry representatives in several provinces that have surface rights boards, we oppose the establishment of a surface rights board in Nova Scotia for the following reasons:

- There are very few Section 70 and Section 100 applications in Nova Scotia. (According to DNR's consultation paper, since 2000, there have been about 12 applications for surface rights permits under Section 100, but none has been heard. DNR's paper also states that Section 70 applications are "very rare."[6]) This means surface rights board members could potentially serve entire terms on the board without having an application to consider. The time and resources required to appoint board members, train them and maintain the body is not justified by the small number of times the board will actually be needed. Nova Scotia's relatively small scale, compared to the larger Western provinces that use surface rights boards to review larger numbers of applications, makes the board concept impractical here.
- The small number of applications also means the board will not build up expertise in the Act and its regulations by regularly reviewing files. DNR would be outsourcing consideration of applications to a group of people with less expertise in the regulatory regime than DNR staff.
- We understand that surface rights board in other provinces generally make recommendations to their ministers about applications – the boards are not decision-making bodies themselves. This means final decisions on Section 70 and Section 100 applications would still ultimately be the responsibility of Nova Scotia's Minister of Natural Resources. The only difference is that the advice the Minister receives would come from an external board of mainly non-experts instead of from the knowledgeable DNR officials who currently advise the Minister on applications.

For these reasons, we oppose establishing a surface rights board and urge the Government to maintain the current system for handling Section 70 and Section 100 applications – the Minister or his/her designate making the decision with advice being provided by DNR staff.

[6] http://novascotia.ca/natr/meb/legislation-review/pdf/minerals-act-review.pdf, page 6

Royalties

Survey Questions 24-29

Lower Royalties - According to PricewaterhouseCoopers, Nova Scotia is the highest cost jurisdiction in Canada in terms of tax/royalty payments to the provincial government. This discourages exploration and investment and costs the province jobs.

The fundamental goal of a review of the royalty regime should be to lower royalties and thereby encourage prospecting and exploration, investment and the opening of new mines – in other words, to help the industry grow and create jobs.

The bottom line is that Nova Scotia is an expensive jurisdiction in which to operate and all government-imposed costs, including royalties and taxes, need to be looked at holistically to make Nova Scotia a more attractive jurisdiction for investment and job creation.

Please see page 26 of our position paper for more details.

Unintended Consequences - While we appreciate that the Government's goal of simplifying the royalty regime sounds good in theory, we are concerned about the practicality of making significant changes to royalties beyond simply lowering them. While some may see "mining" as one, homogenous industry, the reality is that different minerals and companies generally have very different business models and changes to royalty structures could have serious and unintended consequences for Nova Scotia's mines due to the complexities involved.

For example, the current royalty for silica is $0.12 per ton, a simple and relatively easy-to-calculate royalty. Switching, for example, to a royalty based on a percentage of sales value would create a number of significant challenges for a company like Shaw Resources, the biggest producer of silica in Nova Scotia:

- Within Shaw Resources' costing structure are 138 product codes which contain silica. These range from bulk, wet, silica sands of diverse particle size distributions, to highly processed, dried, valued added, packaged products which include a percentage of some type of silica sand in their mix design. Calculating the value of the silica for processed, value-added, packaged products would be very difficult.
- Shaw's silica sand as extracted from the deposit has a very significant clay content and as such, has no real market value except as low grade fill material. As this raw silica is further processed, costs associated with the product logically escalate. Most of the silica is washed (twice), dried, sized and packaged or blended into other packaged products. Yields on some of these products are a very small percentage of the original raw silica. At a time when governments should be advocating the maximum possible value added

processing to all raw materials sourced in the province, a royalty rate based on net value received works counter to that goal.

- While many silica products are sold in a bulk format, the vast majority of Shaw's product codes containing silica are packaged goods. This could be various size bags (i.e. 20, 25 or 40-Kg) or bulk bags (bag size and weight varies with the product and customer). Is the "net value" to reflect the packaged goods with packaging, stretch wrap, shrouds, pallets, labour and other overheads included? If so, it acts as a disincentive for value adding. If not, the calculation becomes somewhat cumbersome and subjective.
- Shaw's pricing structure would not allow a single calculation for each of the above 138 silica SKUs. In addition to 4 - 6 volume-based pricing levels for each product, there are an unlimited number of sale order prices in effect for many of these silica based products.
- Shaw Resources has in excess of 1,000 customers, generating many thousands of transactions during any given year. Given the above variables, calculating an auditable "net value" for all sales would have to be done on a transaction-by-transaction basis, which would be an extremely difficult exercise. The cost of tracking and analysing all of the above in order to calculate a royalty would also create a new financial burden for companies.

Silica is just one example of how complicated it would be to overhaul the royalty regime. There could be similar potential complications and unintended consequences for most if not all minerals mined in Nova Scotia.

We also note that an overhauled royalty regime would almost certainly have to be structured mineral-by-mineral because a "one-size-fits-all" structure would inevitably have a wide range of impacts on different minerals. For example, applying the royalty for gold – 1% of net sales value – to all minerals could reduce royalties by 50% for a mineral like tin while doubling the royalty for salt.

If a new regime has to have mineral-specific royalties for most minerals, similar to how much of the current royalty regime is designed, we do not see the benefit in the proposed overhaul. It would create a lot of work and uncertainty, and potential unintended consequences, without actually simplifying the regime or otherwise generating much benefit.

Royalty Rebates – the current royalty regime provides rebates for certain minerals that are used or processed in Nova Scotia, and DNR's discussion paper asks whether this should continue.

We believe these royalty rebates should be allowed for any mineral that is used or processed in-province. It would be consistent with the Ivany Commission's call for more entrepreneurship and value-added processing for the royalty regime to encourage using and processing minerals in Nova Scotia, and the Government should not limit which minerals or potential business models it supports in this fashion. We do not know what economic opportunities might exist in future, or what novel ideas entrepreneurs might come up with for adding value to our raw minerals, so we should make this modest, inexpensive incentive available to all potential in-province mineral users.

Other Financial Supports - In addition to lowering royalties in general, the Government should also consider giving Nova Scotia's industry the sorts of incentives that other provinces give their mining industries, such as:

- Royalty holidays for new mines and allowing companies to recover full capital costs before paying taxes;
- Establishing a provincial flow-through share tax credit similar to Quebec's; and
- Including mining in the recently-established Capital Investment Tax Credit.

DNR's Survey - We note that DNR's survey mentions the total amount of royalties paid by the industry in recent years but does not include other statistics or additional context about our full contribution to government revenues. (We acknowledge that DNR's MRA consultation paper does provide additional statistics about the industry's economic contribution but that is a separate document and it is likely that most survey respondents will not read both. We also disagree with the consultation paper's suggestion that "the industry contributes approximately $2.5 million of annual revenue to the province in the form of royalties and taxes" since that figure does not include the full range of taxes our industry pays).

For example, the industry's tax payments to governments, particularly in the form of personal income taxes but also including corporate tax, HST and property taxes, amount to many millions of dollars per year and far exceed royalty payments. We are concerned that this lack of context in the survey could lead to respondents calling for royalties to be increased without having an understanding of how much the industry already contributes to government revenues; how expensive a jurisdiction Nova Scotia already is to operate in; and how royalty increases would harm the industry.

We also flag the following:

- The mining and quarrying industry employs 5500 people and generates $420 million per year in economic activity in Nova Scotia;
- Our industry has a total annual payroll of $88 million;

- We are Nova Scotia's highest-paying natural resource industry and one of the highest-paying of all industries in the province.
    - The industry's average wage is over $50,000 per year, 40% higher than the average wages paid in all economic sectors.

When making decisions about royalties, we urge the government to keep these statistics in mind, and to also remember that Nova Scotia is already the highest cost jurisdiction in Canada in terms of tax/royalty payments to the provincial government. Put simply, raising royalties would discourage exploration and investment, and potentially cost the province jobs.

Reclamation and Bonding
Survey Questions 30-33

Mining is an environmentally-responsible industry that makes temporary use of land, and then reclaims it for other purposes, such as natural space, recreational areas and commercial and residential development. Reclamation, or preparing a mine or quarry site for its next use, is key to ensuring future generations will continue to enjoy an area after we have taken from the ground the materials that we need to support our modern society.

We support the Government's goal of ensuring former mine sites are fully reclaimed at no cost to taxpayers.

We believe the Act's Section 75 and the regulations' section 77 give the Government the authority it requires to secure bonds for the full cost of reclamation, and to adjust the bond amount every two years to reflect progressive reclamation. While we are open to discussing additional improvements to these sections, we believe they already allow the Government's and industry's shared goal of ensuring full reclamation to be achieved.

We believe the amount of the bond should be based on the amount of disturbed land at any given time, not the full cost of reclaiming the site, a figure which would include areas that have not actually been disturbed and areas that have already been reclaimed. For example, if the full cost of reclaiming a site is $10 million, but there is only ever $7 million worth of reclamation work to be done because parts of the site have not yet been disturbed and/or parts of the site have already been reclaimed, the bond should be for $7 million, not $10 million. There are significant costs and cash flow implications in maintaining the bond at the higher level and since the additional funds, $3 million in this example, are not necessary to reclaim the site, it would not make sense to force a company to maintain a bond for the full cost.

We recommend that the Government:

- Maintain the Act's Section 75 and the regulations' section 77 largely as they are.
- Ensure reclamation bonds are adjusted regularly so bond amounts are limited to actual disturbed acres, not the cost of reclaiming the entire site.

Please see page 22 of our position paper for more details.

Bond Transparency - DNR's discussion paper asks "Should the Department of Natural Resources and Nova Scotia Environment make public the amount of reclamation bond held for each mining operation in the province? Currently these securities are treated as confidential business information."

We support making reclamation bond amounts public. As above, we support the Government's goal of ensuring former mine sites are fully reclaimed at no cost to taxpayers, and we agree that there is a legitimate public interest in ensuring that mines are properly bonded to ensure reclamation costs are covered.

We request that a policy of making reclamation bond amounts public only apply on a "go forward" basis to bonds negotiated in future. As a matter of principle, financial arrangements negotiated with an expectation of privacy should remain private unless a company waives their right to confidentiality, or until a new bond is negotiated. Since reclamation bonds can be renegotiated/adjusted every two years under the current Act, publicly releasing bond information on a "go forward" basis only would not result in significant delays in making all reclamation bond amounts public.

Form of Bonds – DNR's discussion paper asks "What forms of security should the province accept to protect the public's interest while mines are operating? Examples include: cash, guaranteed letter-of-credit, surety bonds, self-bonding."

As above, we support the Government's goal of ensuring former mine sites are fully reclaimed at no cost to taxpayers - that reclamation bonds are in place and that sufficient funds are available for reclamation.

However, the form of the bond should be left to a company's discretion, subject to DNR's approval as part of the regular process of negotiating reclamation bonds. Companies should have the flexibility to choose the least expensive form of security available at the time, and the form of security that best fits their business model and circumstances. As long as the amount of the bond is sufficient to properly reclaim a site, we see no benefit in limiting in legislation what forms of bond are acceptable.

Community Engagement
Survey Questions 34-38

The mining industry believes very strongly in the concept of a "social license to operate" – that the acceptance and approval of the local community and stakeholders is vital to the success of a mining/quarrying operation. Indeed, the term "social license" originated in the mining industry in the 1990s.

The Government takes into account the quality of a company's public consultation when considering whether to approve project proposals. Working in partnership with the Government and environmental groups, the exploration side of the industry also recently launched "Community Consultation – A Guide for Prospectors and Mineral Exploration Companies Working in Nova Scotia."[7] This initiative is further evidence of the importance the industry places on consulting and working with communities and stakeholders.

Responsibility for regulating consultation rests primarily with Nova Scotia Environment, and the Office of Aboriginal Affairs for Aboriginal consultation, and we see no reason for DNR or the MRA to potentially cause confusion or regulatory overlap by becoming more involved with regulating consultation. We therefore encourage the Government to leave the regulatory regime around consultation unchanged.

DNR's Survey - We flag that the survey's description of consultation requirements is potentially misleading. The survey says that "Within the current Act and regulations there is no requirement or process outlined for engaging communities, including the Mi'kmaq, at any stage of the mineral development or mining process." Respondents could take this to mean that there is no government regulation of consultation when the truth is that consultation is stringently regulated by departments other than DNR, and by acts and regulations other than the MRA. For example, the "Made in Nova Scotia Process" for consulting Mi'kmaq is widely considered the best and clearest process in the country, and the survey could potentially cause respondents to think there is no process or consultation requirements at all.

We are concerned that the wording of this question could lead to calls for DNR and the MRA to regulate consultation, which could cause regulatory duplication and confusion. Again, we encourage the Government to leave the regulatory regime around consultation unchanged.

Please see page 30 of our position paper for more details.

[7] http://novascotia.ca/natr/meb/data/pubs/ic/ic68.pdf

Conclusion

Nova Scotians collectively own the riches beneath their feet. Minerals are a shared resource and all Nova Scotians benefit when they are removed from the ground and used to create jobs, generate tax and royalty revenues, and provide the raw materials we need to support our modern society.

This principle – that all Nova Scotians own and benefit from our minerals – must be a central consideration in the review of the MRA. What is good for the industry is also good for Nova Scotians.

The review of the Mineral Resources Act is an opportunity to implement policy changes that will help the industry grow and create more jobs and economic opportunity, especially in rural areas. It is an opportunity to achieve the full benefits of our shared mineral resources.

Thank you for your kind consideration.

Yours truly,

Sean Kirby, Executive Director
Mining Association of Nova Scotia