
Assembly of First Nations

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Assemblée des Premières Nations

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**ANNUAL GENERAL ASSEMBLY
JULY 11, 12, & 13, 2023; HALIFAX, NS**

Resolution no. 50/2023

TITLE: Addressing Impacts from Mining Activities

SUBJECT: Water & Environment

MOVED BY: Chief Byron Louis, Okanagan Indian Band, BC

SECONDED BY: Judy Wilson, proxy, Osoyoos Indian Band, BC

DECISION Carried by Consensus

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

- i. Article 28 (1): Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
- ii. Article 29 (1): Indigenous peoples have the right to the conservation and protection of their environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
- iii. Article 32 (1): Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
- iv. Article 32 (2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to

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JOANNA BERNARD, INTERIM NATIONAL CHIEF

50- 2023
Page 1 of 4

the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

- v. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
- B. The Assembly of First Nations (AFN) First Nations-in-Assembly passed Resolution 43/2021, *Support for First Nations Inherent Rights, Title and Jurisdiction related to Water Stewardship, including the Traditional Roles of First Nations Women*, directing the AFN to support First Nations in water stewardship.
- C. Section 35(1) of the Constitution Act, 1982, gives constitutional recognition and affirmation to the Aboriginal and Treaty rights of the Aboriginal Peoples of Canada. Decisions made by provincial and federal levels of government that have the effect of contributing to the environmental degradation, including the degradation and destruction of fish and/or wildlife habitat, render the exercise of section 35 rights impossible, thereby amounting to an extinguishment of those rights.
- D. The impacts of mining activities that occur on First Nations lands extend beyond water stewardship considerations, including adverse effects to land, air, human health, fish and wildlife habitat degradation and destruction, and protection from gender-based violence.
- E. Currently, mining and mineral claim staking and prospecting permits are being accepted and processed by provincial and territorial governments without the free, prior, and informed consent of First Nations.
- F. In a bid to transition to a net-zero economy, the Government of Canada recently launched the Critical Minerals Infrastructure Fund that allocated \$1.5 billion towards energy and transportation to support “unlocking” priority minerals and includes exploration, extraction and processing, all of which could result in an increase in mining activities and pose additional threats to First Nations’ lands, waters, and communities.
- G. Toxic spillage that occurs from mine tailings spills, such as at Imperial Oil’s Kearl mine in Northern Alberta, often go unreported and result in long-term adverse environmental impacts to critical source surface and ground water, biodiversity, ecosystems, and human health.
- H. Scientific research has shown that mining smelter stacks discharge toxic chemicals that affect water, sediment, and air, and have been known to become legacy environmental issues, such as at the Giant and Con mines in Yellowknife.
- I. There is a direct correlation between these environmental impacts and the ability of First Nations to exercise their constitutionally protected section 35 rights. The pollution of water, air, and sediment negatively impacts the health of the environment and, more particularly, the health of various fish and wildlife species. This can result

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in unjustified infringement, to the point of extinguishment, of hunting and fishing rights recognized and affirmed in section 35 of the Constitution Act, 1982.

- J. The 2019 Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls reveals that resource development projects and the remote worker camps that make them possible, are linked to high rates of violence towards First Nations women, girls and 2SLGBTQIA+ peoples in Canada.
- K. According to a 2017 report from the United Nations Environment Programme (UNEP), Canada had more mine tailings spills than most other countries in the world. The UNEP reported the need to improve safety, accountability, and oversight.
- L. Additionally, UNEP recommended establishing a database of mine sites, identifying best practices, and developing technical solutions since there exists a lack of crucial data required to correct problems related to mining, as well as to develop prevention and mitigation strategies for emergency events.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Call on federal, provincial, and territorial governments to ensure that all mining and mineral extraction projects taking place on First Nations lands and waters – including but not limited to, mining and minerals permitting processes, regulatory process development, mitigation and remediation reporting mechanisms, and emergency response processes to water, land, and environmental contamination – adhere to the minimum standards of the United Nations Declaration on the Rights of Indigenous Peoples, including the principles of free, prior, and informed consent, and protections under the Constitution Act, 1982.
2. Direct the Assembly of First Nations (AFN) to call upon the Ministers of Environment and Climate Change Canada (ECCC), Indigenous Services Canada (ISC) and Natural Resources Canada (NRCan) to dedicate funding and resources to work with First Nations to review and renew existing policies, legislation, and regulations to:
 - a. develop protocols that improve all aspects of operations, including but not limited to, sewage treatment, fuel storage, tailings pond security, monitoring, safety, accountability, enforcement, and oversight of mine tailings management, seepages, leaks, and breaches; and
 - b. to protect First Nations downstream and/or occupying lands across provincial or territorial borders of such operations;
 - c. prevent and mitigate any deleterious or negative effects on First Nations due to emergency events and industrial activities.

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3. Direct the AFN to work with relevant Chiefs' Committees and technical bodies, to holistically identify First Nations priorities related to mine activities, including the impacts on terrestrial, ecosystems, hydrological systems, human health, and safety, and ultimately any adverse effects to First Nations rights due to emergency events and industrial activities.
4. Direct the AFN to call on the Government of Canada, provincial and territorial governments, to work with First Nations to create and co-develop a database of mine tailings spills, gaps and failures in managing, monitoring, enforcement and reporting mechanisms, and to establish appropriate recommendations to prevent or respond to these events.

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JOANNA BERNARD, INTERIM NATIONAL CHIEF

50 – 2023
Page 4 of 4