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# Tussle over proposed Yukon environmental review bill could spell grief for miners

By Jax Jacobsen

Mining companies interested in exploring and producing metals in the Canadian territory of Yukon will likely have to wade through months of legal fights over a bill amending the environmental assessment process to be passed by the federal parliament.

Though Bill S-6 has not yet been made into law, it successfully passed a second reading in Ottawa at the end of April and is now onto its third reading. Parliament must pass the bill before June 20, when the government breaks for the summer.

Even without the passage of the bill, mining firms are encountering difficulty moving projects through the assessment stage, as evidenced by the difficulties facing [Western Copper & Gold Corp.](#)'s C\$2.5 billion [Casino](#) gold-copper-molybdenum project.

Western Copper and Gold submitted its proposal to the Yukon Environment and Socio-economic Assessment Board, or YESAB, in June 2014. On May 20, YESAB responded with more than 200 questions, bringing the total number of questions by the board to 449, all focused on the long-term plans of the mine. YESAB wants Western Copper to look as far ahead as 200 years in the future in its mining proposal.

The board is particularly concerned by the stability of the proposed tailings dam; Canadian jurisdictions' awareness of potential tailing dam problems has been heightened following the [disaster](#) at [Imperial Metals Corp.](#)'s [Mount Polley](#) copper-gold-silver mine in 2014.

However, according to top-level Yukon mining proponent Samson Hartland, this squabble over Casino is a "flashpoint" in the ongoing discussion over Bill S-6, and warns against the dangers of regulatory uncertainty.

Bill S-6 goes a long way in updating codes in both Yukon and Nunavut to bring them more in line with regulations in southern Canadian provinces, Hartland, who serves as executive director at the Yukon Chamber of Mines, told SNL Metals & Mining on May 21.

"We need to have consistency from coast to coast on environmental impact assessments," he said.

The bill — formally entitled "An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act" — aims to introduce time limits for assessments and reduce regulatory burdens for mining and extractive firms by no longer requiring that projects that are renewed or amended submit new environmental impact assessments.

While the bill makes its way through the legislative process, disputes over the controversial bill are causing significant uncertainty for companies looking to extract natural resources from the Yukon Territory, several sources said.

The deep unpopularity of the bill with Yukon First Nation groups essentially guarantees a protracted legal battle for years following the passing of the legislation. In particular, one aspect of the bill that grants ministers more of a role in "policy direction" rankles First Nation groups, which say that this violates the earlier Umbrella Final Agreement in 1990.

These contentions with the bill have little to do with changes to the regulatory process proposed. Meanwhile, mining companies would probably not take issue with the changes that are included in the legislation, one lawyer said.

"The substantive changes [in the Yukon mining regime] probably wouldn't affect mining investment a great deal," Robin Junger, a lawyer for McMillan LLP, told SNL on May 25.

"The greater impact will be the uncertainty and the twists and turns that will come from litigation."

As former head of British Columbia's Environmental Assessment Office, he witnessed firsthand the legal challenges to the 2010 decision by the Supreme Court on Imperial Metals' [Red Chris](#) copper mine. The court decision ruled that authorities must determine how the project is going to be assessed as proposed by the mining project's proponent. Government bodies assessing the project do not have the right to scope a project that impacts the level of how the project is assessed.

"It created a lot of uncertainty and twists and turns for proponents going through the system, as various decisions were rendered at the trial court, appellate court and ultimately the Supreme Court of Canada," Junger said.

Meanwhile, University of Saskatchewan law professor and Macdonald-Laurier Institute Senior Fellow Dwight Newman told SNL that disputes over the legislation are all but guaranteed.

"First Nations groups are already raising concerns and expressing that they are going to take it to the courts," he said.

Yukon was ranked to be ninth-best overall for mining investment in the world by Canada's Fraser Institute in February, with mineral exploration expenditures hitting C\$87.9 million in 2014.

However, ongoing legal squabbles over resource legislation and continued pressure from local indigenous groups might bring this ranking down a bit in the future.