



Serpent River First Nation Mining Report

Special Segment to
"Below the Surface The Anishinabek Mining Strategy"

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Dear Anishinabek Chiefs, Council, and Citizens:

Re: Uranium Mining

I am please to submit to you, the Special Segment to the final report "Below the Surface: The Anishinabek Mining Strategy". Serpent River First Nation is one of many communities that have experienced a wide range of impacts of uranium mining within their traditional territory.

The issues of mining and development in our traditional territory are especially important to our community members of Serpent River First Nation as many concerns are being raised with regards to Uranium mining and exploration.

Serpent River First Nation community members were grateful for the opportunity that allowed them to express, dialogue, and provide insight on the modernization of the Ontario *Mining Act*. This topic of interest is extremely important to us, due to the fact that our community members, still see and experience the negative accumulative effects of a degraded environment that we have traditionally have used for generations. The *Mining Act* should include direct provisions that consider the impacts on land, air, and water; failure to do so would be problematic and short-sighted.

Some major discussion points that community members brought to the table concerning the Ontario *Mining Act* include, but not limited to:

1. Replace the system of free entry with a system of permitting that includes environmental assessments, public input, and financial assurance in order to balance needs and minimize conflict;
2. Ensure there is a process to identify and protect "no-go" or "moratorium" zones;
3. Take into account that with respect to Uranium, the Federal Crown holds jurisdiction on both existing licensed tailings management areas and proposed production; and
4. Harmonize the linkages from Federal and Provincial jurisdiction regarding uranium.

An overarching point of reference in our discussion was specific to the reality that First Nations hold Aboriginal and Treaty Rights. All of our communities in the Anishinabek Nation have a legitimate stake in the outcome of this process due to the extensive traditional territories that we are connected to and thus, we must take an active role in voicing our issues and concerns in this process; especially when it relates to the Nation-to-Nation relationship with Crown governments on issues related to lands, waters and mining activities.

Community feedback from our members is intended to provide guidance to the Union of Ontario Indians (UOI) negotiating team and to help direct the future UOI engagement legislative process. SRFN is adamant that, due to the extraordinary jurisdiction properties, special consideration needs to be given to the *Mining Act* regarding Uranium. The multi-jurisdictional matters of Uranium is prompting this special segment to these works in the "Below the Surface: The Anishinabek Mining Strategy".

I would like to send a special thank you for all the community participants, Elders, and staff for sharing their wisdom, and knowledge during the Serpent River First Nation community engagement session. Further, I want to thank the staff and consultants at the Union of Ontario Indians for their consideration and hard work in making this segment available for this report.

Miigwetch and Kindest Regards,

Chief Isadore Day, Wiindawtegowinini
Serpent River First Nation

INTRODUCTION

This report is a special segment to the final report “Below the Surface: Anishinabek Mining Strategy”. The purpose of this segment is to include Serpent River First Nation’s community responses into the “Modernization of Ontario’s *Mining Act*.” It is particularly important that this segment be shared with the Anishinabek Leadership, Communities, and the Ontario Government, as there are many concerns and issues that Serpent River First Nation had to disclose and bring forward, particularly uranium mining and exploration. Serpent River First Nation had an evening engagement session that was held in the community on the evening December 3, 2008.

GOAL

The goal for the Serpent River First Nation evening engagement session was to educate, inform, and support the citizens to the modernization to the Ontario’s *Mining Act*, and to document important issues and concerns that Serpent River First Nation identified, as they have experienced a wide range of impacts from Uranium mining within their traditional territory.

BACKGROUND

First Peoples hold a special relationship with the lands and waters within their traditional territory and anything that causes negative impacts to the land, it is ultimately seen and affects the people who live off the land. The citizens of Serpent River First Nation have seen and experienced first hand what mining activities can do to their traditional territory. Serpent River First Nation is a small community located on the Northshore of Lake Huron that is west of Sudbury and east of Sault Ste. Marie. This small community is well aware of the implications that the mining sector can have on First Nations.





Uranium Mining began in Elliot Lake in 1955, upstream from Serpent River First Nation and the mining continued until the early 1990's. During this time, large uranium mining and milling was not originally designed with the current acceptable standards like today. From mismanaged planning, practices and lack of monitoring, Serpent River First Nation has and still experiences severe detriment and unmitigated environmental, health, social, cultural, and economic impacts from uranium mining, milling and tailing disposal.

Serpent River Watershed still holds several million tons of radioactive uranium tailings, and neither the federal nor the provincial governments can confirm the locations and quantities of these uranium tailings. This has raised an enormous concern within our leadership because these radioactive tailings are still affecting the traditional livelihoods of our community members and the ecosystems that rely on the waterways to survive.

Due to these experiences, Serpent River First Nation Leadership sent in a special request to the Grand Council Chief to have a special engagement session to accommodate and address the First Nation citizen's concerns.

ENGAGEMENT SESSION CONTENT

This evening engagement session with Serpent River First Nation was similar to the regular scheduled community sessions. Please see the final report "Below the Surface: Anishinabek Mining Strategy" for further details.

WHAT WE HEARD

Environment

Uranium mining that has occurred in Serpent River First Nation's traditional territory has left many impacts to the environment, which has affected the health of their citizens. The *Mining Act* should include provisions for an environmental monitoring system, which must also consider the impacts of current and future projects on the land and water.

What is glaringly evident is that Uranium as a mineral is considered under a multi-jurisdictional framework that belongs both to Provincial and Federal Government, and in some cases international governments.

It does not make sense for the Ontario Government to permit exploration in an area that has historically been mined and has a social stigma and legacy of environmental disaster. The Ontario *Mining Act* needs to take into account that with respect to Uranium, the Federal Crown holds jurisdiction on both existing licensed tailings management areas and proposed production, there is a more conclusive need for triggers to allow or assess proposed exploration.

Radioactive waste may be present in ore bodies in Ontario, any permits being issued should include an environmental assessment of any potential radioactive waste that may come about as a result of exploration and / or other activities conducted by a mining company.

Aboriginal and Treaty Rights

First Nations have Inherent Aboriginal and Treaty Rights, and the spirit and intent of the treaties need to be upheld within government agencies at both the federal and provincial level.

The adverse environmental impacts from the mining industry, including uranium mining, will have an impact on Aboriginal and Treaty rights and in some cases cause diminished land use into the future. For example, the repository of tailings into fresh water bodies will infringe on a variety of Aboriginal and Treaty rights.

The Ontario *Mining Act*, like most provincial legislation does not deal with Aboriginal and Treaty rights. The Acts in Ontario contain a standard non-derogation clause. This does not go far enough as the legal and constitutional protection given to Aboriginal, and Treaty rights calls for a higher level of attention.

Both the province and crown have a shared duty to ensure there is a parallel inter-jurisdictional dialogue to ensure that the amendments to the *Mining Act* are consistent with current court decisions and policy changes at the provincial and federal levels. Policy changes must ensure and guarantee that Aboriginal and Treaty rights will not be infringed, minimize infringement where possible and ensure compensation is afforded when rights are infringed.

Consultation and Accommodation

Serpent River First Nation is concerned on how and the way consultation processes are taking place within governments. Regional models or Public Hearings in the Environmental Bill Registry (EBR) process should be seen as an opportunity as well as a limitation or “watering down” of First Nation rights if this registry process is seen as exclusive to having input from First Nations.

The duty of consultation creates a burden on First Nation communities to respond to requests for consultation. First Nations are pressured to build expertise within their communities to respond effectively. It is essential that governments work with First Nations to build and maintain the appropriate expertise within the community in order that they may effectively respond to requests for consultation. In many cases communities rely on ad hoc and short term consultant services to respond to projects as they arise. When the project is completed the consultants leave and the community is left with no expertise from within. There is a need to build, maintain and sustain in-house expertise in order for consultation to be carried out effectively.

Ontario and Canada both have a broader duty to the First Nation communities that is more encompassing than those things addressed under the *Mining Act*. Dialogue or consultation on amendments to the Ontario *Mining Act* should not be considered to the entirety of First Nation consultation.

Capacity

Issues with capacity at the First Nation level were identified, and the citizens of Serpent River First Nation would like to see First Nation experts within the mining sector.

Improved Notification

Environmental Bill Registry (EBR) postings are not meaningful consultation and accommodation as timeframes are unrealistic.

Other

Do not let mining companies come into Serpent River First Nation or our traditional territories. Serpent River First Nation citizens do not want anything to do with mining.

RECOMMENDATIONS

There were many recommendations suggested by the community members from Serpent River First Nation, which include but not limited to:

Consultation

- Dialogue or consultation on amendments to the Ontario *Mining Act* should not be considered to be the entirety of Aboriginal consultation.
- The Act should make the companies consult with First Nations; and
- First Nations should have the right to turn down or veto projects

Environmental Protection

- Decommissioned mine locations should be a deciding element to trigger a second level of assessment before exploration occurs;
- The Act should include a guiding principle that protects the environment;
- Provisions for heavy fines and compensation for “unnatural” disasters ;
- Companies should be responsible for the cost for cleanup;
- The Ontario Government should consider the health and safety issues in uranium exploration and ensure that there are stringent rules set in place;
- Mandatory environmental assessments for any potential radioactive waste that may come about because of exploration.
- Extreme Environmental considerations are a prerequisite in all jurisdictions
- In Ontario, extensive assessments must be done to establish relevant baseline information with respect to all parts of the mining sequence.

Aboriginal and Treaty Rights

- Define appropriate authorities regarding mineral and their properties through legislation (some how work towards Treaty recognition)
- Ensure that the amendments to the *Mining Act* are consistent with current court decisions and policy changes at the provincial and federal levels that provide guarantee that Aboriginal and Treaty rights will not be infringed

Partnerships / Co-management

- Serpent River First Nation is adamant that, due to the extraordinary jurisdiction properties, special consideration needs to be given to the *Mining Act* regarding Uranium mining and exploration.
- Desire need for the “harmonization” of authorities, linkages from Federal and Provincial jurisdictions regarding uranium mining;
- Develop a watchdog committee, where Companies and governments pay for First Nation experts;
- The *Mining Act* needs to reference regional decision making bodies (e.g. Northern Regional Initiative);
- Develop resource agreements with First Nations

Improved Notification

- Current, notification and timeframes are too short, need to define a meaningful consultation and accommodation process

Land Use Planning

- Expand land use planning initiatives and strategies, which support First Nations and their territories.

SESSION NOTES

EVENING DECEMBER 3, 2008 - SERPENT RIVER FIRST NATION

This was an abbreviated session, in which specific local issues were predominant.

CHIEF DAY – Welcomed guests and participants.

WAYNE LORD – Provides a general purposes introduction.

Chief Day – Offers his opinions on a variety of matters, including what he views as the two major reasons for the government's willingness to re-write the *Mining Act*, namely the Klimbroglia and the Charbot Lake/Ardoch actions. He describes the importance of Treaties, and Serpent River's position as part of the Huron Region. He relates the story of how a month ago he received a phone call from the Premier's office, essentially pushing the government's agenda, and how he stood up for the UOI position that the time frame for consultations be extended. He praised Grand Chief Beaucage "for achieving a workable solution."

Leadership also outlined Serpent River's concerns with the industry, explaining their default position of opposition to uranium mining and exploration. It was acknowledged that Federal legislation applies to uranium mining, thus making harmonization of authorities a top of mind concern for Serpent River.

SONIA PITAWANAKWAT – Offers a brief legal perspective.

DAVID LARONDE – Gives brief Mining Sequence presentation.

RON ROSS – Tries to engage participants by asking the question, "What do you want from the mining industry?" A community member responds, "Tell them not to come here." After a number of sentiments are expressed, Wayne Lord shares his thought that for some communities the effects of mining on them are so difficult they have no interest in improving the *Mining Act* at all... they don't want anything to do with mining.

Leadership states – "We're against dealing with disrespectful government departments."

After a break in proceedings

David Laronde goes over the mining sequence, answering questions concerning basic terms. Issues specific to Serpent River drive the following discussion of accountability and the major problem of radioactive waste. The question is posed "Can the government have two Acts regarding Ontario mines?"

A community member declares "We want an Act that causes companies to consult with First Nations" and "First Nations have the right to turn down or veto projects"

The notion of a watchdog committee is discussed.

The question of penalties for bad acts dominates, with suggestions that there be provisions for heavy fines and compensation for "unnatural" disasters written into the Act. Fines might be processed through the Ministry of the Environment, including costs of cleanup.

Chief Day says that one of the guiding principles of the Act should be the protection of the environment. He reiterates other concerns over the paramountcy of Treaty Rights.

A community member suggests that companies and government pay for First Nation experts.

Wayne Lord discusses the notion of true partnership.

Chief Day asserts that he wants “to define appropriate authorities regarding minerals and their properties through legislation” (somehow working toward Treaty recognition).

There was agreement that land use plans and removal of land from exploration are important and necessary.

More discussion noted participants concern regarding the acknowledgement of rights, perhaps through regulations. The *Mining Act* needs to reference regional decision making bodies (for example the Northern Region Initiative). Tribal Councils could be the bridge to more effective capacity-need fulfillment. Participants make a case for realistic expectations of and by First Nations. Pre-consultation discussions should include current resource agreements.

CONCLUSION

It was found, that Serpent River First Nation opposes uranium mining and exploration within their community and traditional territory. The Leadership and First Nation citizens are very concerned on how mining affects Mother Earth negatively, which severely affects and hampers the livelihoods of their community members.

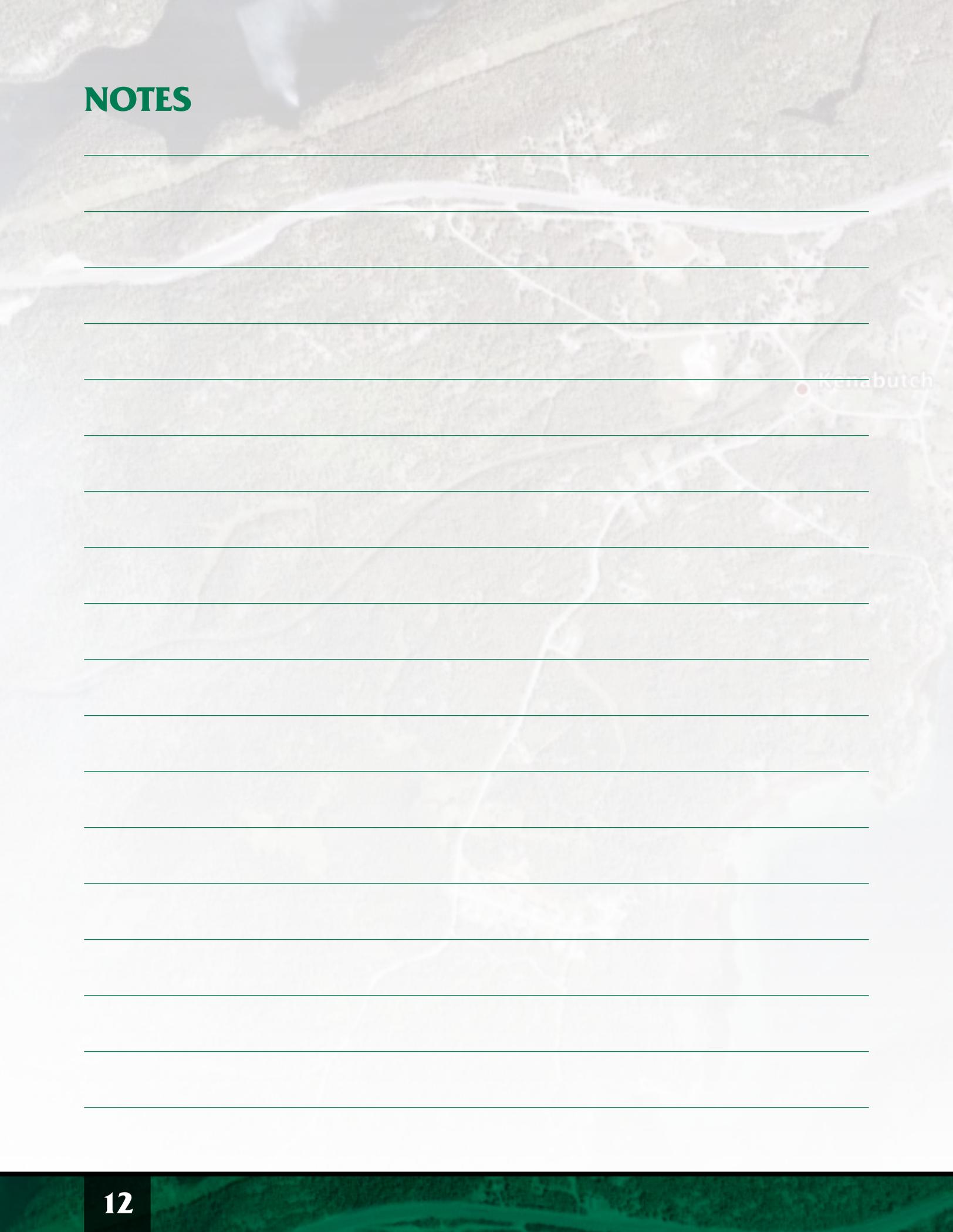
The water and sediments located within Serpent River’s watershed are still contaminated with radioactive material that will be problematic for future generations. The accumulative affects to human and ecosystem health is still of great concern.

In conclusion, “the modernization of the *Mining Act*” provided First Nations the opportunity in some respects to provide input and recommendations; however, there is a imperative need for “harmonization” from both the federal and provincial jurisdictions regarding uranium mining.

In addition, preconsultation must be regulated, giving First Nations opportunities to ensure that all information is brought forth to implement effective consultation. This is an accommodation that must be a formal consideration for meaningful consultation.



NOTES



Aerial map background showing a river and a town labeled 'Kenabutch'. The map is overlaid with horizontal green lines for writing.

Kenabutch



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