

**Mining Association of Canada
Towards Sustainable Mining**

Draft Summary Report

**8th Meeting of the
Community of Interest Advisory Panel**

**September 25-26, 2007
Vancouver, BC**

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TABLE OF CONTENTS

1	INTRODUCTION	2
2	SUMMARY OF ITEMS FOR FOLLOW-UP	2
3	WELCOME AND APPROVAL OF MARCH PANEL MEETING REPORT	3
	3.1 <i>Welcome</i>	3
	3.2 <i>Approval of March Panel Meeting Report</i>	3
4	TSM IMPLEMENTATION	3
	4.1 <i>TSM Update</i>	3
5	REVIEW OF THE 2006 TSM PERFORMANCE REPORT	5
6	COI PANEL 2007 TSM POST-VERIFICATION REVIEW	6
7	PANEL RENEWAL.....	6
8	MVEIRB DECISION REGARDING UR ENERGY	8
	8.1 <i>Background</i>	8
	8.2 <i>Concerns Raised by Ginger Gibson</i>	9
	8.3 <i>MAC's Response to Ginger Gibson's Concerns</i>	10
	8.4 <i>Panel Discussion</i>	14
9	IMPACTS OF TSM ON BUSINESS OPERATIONS AND IMPLICATIONS FOR THE BOTTOM LINE.....	17
10	INFORMATION ITEMS.....	18
	10.1 <i>Mining Sector Sustainability Table Update</i>	18
	10.2 <i>Federal Government CSR Roundtables Update</i>	18
	10.3 <i>Other</i>	18
11	FUTURE AGENDA ITEMS	18
12	NEXT PANEL MEETING	19
	APPENDIX 1: LIST OF PARTICIPANTS	20
	APPENDIX 2: PROPOSED ELEMENTS OF A PANEL RENEWAL PROCESS.....	21

1 Introduction

This report presents a summary of discussions from the September 25-26th, 2007 meeting of the TSM Community of Interest (COI) Advisory Panel ("the Panel"), including decisions on the work of the Panel and recommendations to the Mining Association of Canada (MAC). Any dissenting views have been identified and recorded.

2 Summary of Items for Follow-up

The following is a summary of items for follow-up as identified during the meeting:

	ITEMS	RESPONSIBILITY
DECISIONS AND RECOMMENDATIONS	<p>The Panel agreed to put a subgroup in place to make recommendations to the Panel on Panel renewal. Larry Haber will chair the process, with Ginger Gibson and Doug Horswill. Pierre Gratton will also participate and Stratos will support the process as requested. This subgroup will:</p> <ol style="list-style-type: none"> 1. Create a matrix for analysis of existing individual and organizational representation and expertise, and gaps. 2. Propose which existing Panel members would be asked to step down (4-5). 3. Put in place a process to identify new candidates, including: <ol style="list-style-type: none"> a. Determine the commitment of current members/organizations that have not had good levels of participation; b. Identify candidates to replace members stepping down; and c. Identify candidates to fill existing gaps 4. Make recommendations to the Panel for its consideration and decision. <p>The MAC Board will make the final decision once the Panel has agreed on a list of potential new candidates. It was recommended that this process be completed before the next meeting so that the March 2008 meeting could be an opportunity for orientation of new Panel members and handoff by outgoing members.</p> <p>Follow-up: Stratos will set up a conference call with the Panel renewal subgroup to occur in early November.</p>	Stratos and the Panel renewal subgroup
OTHER FOLLOW-UP	Send the summary report of the verification lessons-learned workshop to Panel members in October.	Pierre Gratton - DONE
	Send a copy to the Panel of the 4th annual Aboriginal Mining Workshop to be held in Winnipeg on November 16th, 2007 as part of the Manitoba Mining and Minerals Convention	Stratos - DONE
	Provide the feedback received to date on the <i>Mining and Aboriginal Relations Framework</i> to the participants of the Yellowknife workshop. Invite Ginger Gibson to the workshop	Pierre Gratton - DONE

ITEMS	RESPONSIBILITY
Send the draft mine closure framework to Panel members when it is available (late October).	Pierre Gratton
Add energy and GHG reporting as an agenda item for the next Panel meeting in March 2008.	Stratos
Add the <i>Mining and Aboriginal Peoples Framework</i> to the agenda for the next Panel meeting in March 2008, and discuss the full range of inputs received on the framework will be shared with the Panel.	Stratos
Invite an appropriate federal government representative to a future Panel meeting to participate in a discussion on implementing the Aboriginal framework and on consultation.	Pierre Gratton

3 Welcome and Approval of March Panel Meeting Report

3.1 Welcome

The facilitator welcomed Panel members to the 8th Panel meeting. Jim Gowans, President and CEO of De Beers Canada, joined the Panel for the first time, replacing Peter C. Jones (Inco).

A list of participants, as well as those Panel members who sent their regrets, is provided in Appendix 1.

3.2 Approval of March Panel Meeting Report

Panel members approved the March 2007 report without any amendments.

4 TSM Implementation

4.1 TSM Update

Pierre Gratton provided a TSM update, including on activities since the last COI Panel meeting, the TSM work plan going forward, and an update on the *Mining and Aboriginal Peoples Framework* and the *Mining and Biodiversity Conservation Framework*. These items are discussed below.

4.1.1 Activities since the last COI Panel meeting

A number of activities have been undertaken since the last Panel meeting, including:

- Publication of the 2006 TSM Progress Report;
- Adoption of the draft *Mining and Biodiversity Conservation Framework*;
- TSM verification lessons-learned workshop; and
- Development of an initial draft TSM mine closure framework.

2006 TSM Progress Report: The 2006 TSM Progress Report was released on August 30th, 2007. A news release was also distributed that highlighted as a global first the report's third-party verification of sustainability performance for key environmental and social issues of concern to the industry and its stakeholders.

Pierre noted that the main audiences of the TSM Progress Report to whom copies are sent include federal and provincial government representatives, NGOs, and some media. A few Panel members questioned whether the TSM Progress Report is distributed widely enough and to the right audiences (e.g. mining communities, mine staff, mining colleges, general public). One Panel member suggested that the report be distributed to the Mining Sector Sustainability Table.

A Panel member questioned whether MAC receives comments from the public on the TSM Progress Reports, and whether MAC is able to determine whether public perception of the mining industry has been affected by TSM. Pierre noted that few comments are received on the TSM Progress Report, and that existing information on public perceptions of the mining industry is largely anecdotal. Panel members suggested that MAC conduct a survey to gauge public perception of the mining industry in Canada and to facilitate increased awareness of TSM at the community level. Pierre noted that a recent survey conducted by GlobeScan on behalf of the International Council on Mining and Metals (ICMM) shows a substantial improvement of global public perception of the mining industry. One Panel member cautioned that part of the reason for the improved public perception of the mining industry over the past few years is the dramatic increase in the value of mineral resources.

Adoption of the Draft *Mining and Biodiversity Conservation Framework*: The draft *Mining and Biodiversity Conservation Framework* was adopted by the MAC Board in June 2007. A press release was distributed on July 11th, 2007. MAC members and representatives from IUCN Canada (World Conservation Union) met in April 2007 and generated options for biodiversity indicators. The new MAC Science Committee is working on biodiversity indicators.

Verification Lessons-Learned Workshop: A verification lessons-learned workshop was held on September 5th, 2007. Brenda Kelley attended the workshop as a representative of the COI Panel. Overall, the workshop concluded that the external verification process went smoothly, although several areas for continual improvement were identified, including to the TSM verification protocols and how verifications are conducted. The summary report of the workshop will be sent to Panel members in October.

Development of a Closure Framework: An Initiative Leaders (IL) subgroup has prepared a draft closure framework that addresses planning, consultation, financial assurance and environmental management in mine closure. Next steps for the framework include review by the MAC Tailings Working Group, ILs, COI Panel, and the MAC Governance Team. The framework will likely go to the Board for approval in March-June 2008. At the request of the Panel, a draft of the framework will be sent to Panel members in October.

4.1.2 TSM work plan going forward

The TSM work plan going forward includes the COI Panel post-verification review (happening at this meeting), an Aboriginal relations workshop in Yellowknife (discussed further below), work by the MAC Science Committee on developing biodiversity indicators, and a VSP training workshop on November 13, 2007.

4.1.3 Update on the frameworks

Mining and Aboriginal Peoples Framework: A workshop on the *Mining and Aboriginal Peoples Framework* is being held on October 15-16th in Yellowknife to obtain input from Aboriginal communities on the framework and to discuss the actions the mining industry should undertake to implement it. A similar workshop proposed at North American Palladium's Lac des Iles facility has been delayed due to the departure of a key employee involved in planning the workshop. A workshop at Inmet's Troilus facility has also been delayed. Alan Penn agreed to follow up with staff at Troilus.

Some Panel members expressed concern and disappointment that the Panel was not involved in designing the Yellowknife workshop and/or providing guidance on the agenda. One Panel member noted that the agenda does not go far enough in educating people about mining activities in their regions/communities. Another Panel member noted that the agenda and the discussion at the workshop must clearly indicate that the framework only applies to MAC members. It was also noted that the respective national Aboriginal organizations should also be invited to attend the workshop and present the views of their organizations, including the Native Women's Association.

Pierre noted that the invitation list was originally longer but had to be scaled back due to financial constraints, and it made sense to focus on those communities with participation agreements in place. Pierre also noted that the design of the workshop is consistent with what was recommended by the Assembly of First Nations (AFN).

One Panel member asked how MAC has responded to the letters it has received regarding the framework. It was noted that MAC has not responded yet, but will consider all inputs once they have been received over the next year, including the results of the community workshops. It was recommended that the feedback received on the framework to date be provided to the participants of the Yellowknife workshop.

The *Mining and Aboriginal Peoples Framework* will be added to the agenda for the next Panel meeting in March 2008, and the full range of inputs on the framework will be shared with the Panel. One Panel member recommended that a representative from Indian and Northern Affairs Canada (INAC) or Natural Resources Canada (NRCan) be invited to this meeting to participate in and/or observe the discussion on the framework.

5 Review of the 2006 TSM Performance Report

Pierre provided an overview of the 2006 TSM performance results, presenting performance across all four indicator areas for 2006 as well as a comparison of 2005 and 2006 performance results for those companies/facilities that reported in both years.

Panel members commented on the format and structure of the TSM report. There were mixed feelings about presenting the facility-level TSM performance data on a CD instead of in the body of the report or on the "inserts" that have been used in the past. Most Panel members preferred MAC to continue to use the inserts (which are particularly useful for government and NGO audiences) or provide the additional information via the MAC website instead of using a CD. One Panel member commented that the print of the information on the CD is too small and difficult to follow.

A few Panel members commented that a one-page executive summary that highlights key performance results and success stories would be useful, especially given that most people may not read the full report.

The Panel had a substantive discussion around the TSM energy and GHG emissions management results. These indicators are the most complicated and technical of all the indicators, with many criteria to address. For this reason, weaker performance levels are being seen in this area than in others. A Panel member noted that performance on energy and GHG emissions management is largely dependent on the situation of the particular facility (e.g. geographic location, nature of operations, regulatory setting, etc.), and the results need to be considered and communicated within this broader context. This makes it difficult to compare facilities to one another based on energy use and GHG intensities. It was suggested that context-specific information should be available to help the reader to more accurately interpret energy and GHG emissions performance. It may also be better to benchmark a facility's performance against its performance in previous years.

MAC's Energy Task Force will be holding a workshop for companies on the energy and GHG management protocol and how to improve performance against the indicators. Gordon Peeling recommended that the Energy Task Force give a presentation to the Panel to provide a better understanding of the principles involved in energy and GHG emissions measurement, management and reporting. Energy and GHG reporting will be added as an agenda item for the next Panel meeting in March 2008.

6 COI Panel 2007 TSM Post-Verification Review

The Panel's post-verification review process was developed by a Panel subgroup between the March and September 2007 meetings. Details of the process, including scope, approach, company selection criteria, and information expectations and questioned for response by selected companies were provided in the Panel briefing binder. The companies chosen for this year's review were Albian Sands Energy Inc. and HudBay Minerals Inc. For the purposes of the Panel review, the review questions were grouped into three categories: context, conduct of the verification process, and results and lessons learned. The results of the post-verification review are provided in a separate report that will be posted on the MAC TSM website.

7 Panel Renewal

At the March 2007 Panel meeting, the Panel agreed to establish a small working group to draw up a Panel renewal process for consideration at the September 2007 meeting. With other inter-meeting activities occupying the Panel members, no working group was put in place. To help initiate discussion, the Panel facilitator, following a brief conference call with some Panel members, put forth a proposed approach for Panel renewal. The elements of this proposed approach are provided in Appendix 2.

The Panel was asked to comment on the proposed approach, as well as to provide specific comments on the need for additional COI categories to be represented on the Panel, the need to

maintain a balance in the interests and regions represented, and the need to maintain some level of continuity so that the growing body of institutional knowledge is not lost.

The Panel discussed current and potential future gaps in expertise on the Panel. It was noted that continuing work on the biodiversity framework might require additional expertise (e.g. representative from the conservation or scientific community – CPAWS, Nature Canada, Nature Conservancy, etc.) but that the existing expertise with regard to the Aboriginal framework remains strong. Work on the new closure framework may require an enhanced level of municipal participation.

The Panel raised a number of new issues that it may wish to consider in the future that would require additional expertise on the Panel. These include:

- Mining legacy and how a mine can have a positive impact on the sustainability of a community once the mine is gone.
- Closure and reclamation.
- Human rights, in part depending on the outcomes of the federal government's CSR Roundtable process.
- Environmental issues specific to exploration.
- Supplier and customer issues.
- Environmental policy/regulatory issues.
- Specific socio-economic considerations and concerns regarding "fly-in/fly-out" mining operations.
- Consultation with Aboriginal peoples (e.g. duty to consult), and more broadly the lack of leadership from the government on issues that affect both First Nations and mining companies.
- Retention and recruitment, and how to mobilize Aboriginal, immigrant and women employees.

Categories of participants that may not be considered within the issue areas outlined above but that should be considered for participation on the Panel include youth groups, mine managers, and educational institutions.

Some Panel members volunteered to step down. It was also suggested that other Panel members may be asked to step down due to lack of attendance at Panel meetings. Allan Morin informed the Panel that he will be stepping down as he was recently elected as an executive member of the Métis nation, a position that requires a considerable amount of time and energy. Allan will provide a few names from the Métis National Council as possible replacements.

A Panel member suggested that the Panel and MAC may have to take a "headhunting" approach if it wants to get good new people on the Panel. The Panel may need to involve new members without committing them to a 3+ year term, since many people already have significant demands on their time.

The Panel discussed the option of increasing the size of the Panel to allow for additional representation and expertise. While the terms of reference currently indicate that the Panel will be composed of 12-14 individuals, some felt that it may be necessary to increase the size of the Panel to allow for sufficient representation and expertise. Others felt that increasing the size of the Panel would not only have cost implications for MAC, but could also impact on the Panel's ability to manage diverse points of view. One Panel member commented that the Panel members

have become much better at focusing on key issues rather than bringing up issues of personal concern and interest, and could effectively manage a few additional seats at the table to provide other sectors of society with the opportunity to be involved.

The Panel agreed to put a subgroup in place to make recommendations to the Panel on Panel renewal. Larry Haber will chair the process, with Ginger Gibson and Doug Horswill also providing input. Pierre Gratton will also be involved and Stratos will support the process as requested. This subgroup will:

1. Create a matrix that illustrates existing individual and organizational representation and expertise, as well as gaps going forward.
2. Determine which existing Panel members will be asked to step down (4-5).
3. Put in place a process to identify new candidates, including:
 - a. Determine the commitment of current members/organizations that have not had good levels of participation;
 - b. Identify candidates to replace members stepping down; and
 - c. Identify candidates to fill existing gaps
4. Make recommendations to the Panel for its consideration and decision.

The MAC Board will make the final decision once the Panel has agreed on a list of potential new candidates. It was recommended that this process be completed before the next meeting so that the March 2008 meeting could be an opportunity for orientation of new Panel members and handoff by outgoing members.

8 MVEIRB Decision Regarding Ur Energy

8.1 Background

The Mackenzie Valley Environmental Impact Review Board (MVEIRB) undertook an Environmental Assessment of a uranium exploration program proposed by Ur Energy Inc. near Screech Lake in the Upper Thelon River basin in the NWT. In May 2007, the MVEIRB recommended that the project be rejected without an Environmental Impact Review. The MVEIRB noted that "it is the Review Board's opinion that this development, in combination with the cumulative effects of other present and reasonably foreseeable future developments in the Upper Thelon basin, will cause adverse cultural impacts of a cumulative nature to areas of very high spiritual importance to aboriginal peoples. These impacts are so significant that the development cannot be justified".

Upon reviewing the MVEIRB decision, MAC (with PDAC and the NWT and Nunavut Chamber of Mines) sent a letter to the Minister of Indian Affairs and Northern Development asking that the Minister refer the recommendation back to the MVEIRB for further consideration, noting that the MVEIRB "strayed from its mandate and appears to have exceeded its lawful jurisdiction." The First Nation involved (Akaitcho Dene) and several other organizations sent a response to the Minister. These letters are available on the MVEIRB registry website.¹

¹ www.mveirb.nt.ca/registry/index.php?btn=Search&active_flag=&company_id=23&project_id=26

8.2 Concerns Raised by Ginger Gibson

Prior to the Panel meeting, Ginger Gibson (a Panel member) expressed concern that the letter by MAC was in direct conflict with the *Mining and Aboriginal Peoples Framework*, specifically the principles regarding respecting Aboriginal rights, and acknowledging and respecting the social, economic, environmental and cultural interests of Aboriginal peoples. Ginger's comments are summarized below:

- The MAC letter suggests “the Board appears to have assessed some larger, undefined project capable of having significant adverse impacts that the Board has enumerated instead of focusing on the likely impacts of the specific application”. However, cultural impacts are not based solely on the scale of the development (or even intrinsically linked to scale), so the fact that it is a relatively small exploration project holds no bearing whatsoever on this decision. People of the region testified that this project, in combination with the reasonably foreseeable future development, would have a significant cultural impact. The valid legal process set up by the Government of Canada and the people of the north used the legal tests at their disposal, and found that there would be a significant cultural impact. By suggesting the Board is assessing some other project is obliquely suggesting that cultural values are not sufficient reason to reject a proposal.
- The MAC letter questions whether “the Review Board has the authority to delve into “spiritual” concerns and questions the emphasis that the Board has placed on such concerns in reaching its conclusions.” What underlies this claim is the suggestion that cultural impact is not relevant or acceptable to reject an application. Where spiritual reasons are cited, the reader can simply interpret “cultural”, given that spiritual impacts are cultural impacts. Clear-cut cultural impact is shown on the record, and to disregard this is to only place emphasis on biophysical impacts. The COI Panel and MAC (in the framework) have agreed to respect “social, economic, environmental and cultural interests”; to suggest that spiritual concerns are not within the Board's mandate is again to ignore cultural impacts. In MAC's letter, the suggestion is made that the industry well understands Aboriginal interests, but refers specifically and only to the significance of caribou, again treating the environment as though it can be broken into isolated components, and disregarding the nature of the impact. The Review Board did consider mitigation of the impacts, but determined that no mitigation was possible.
- Thirdly, MAC suggests that the Board is putting land “off limits” and withdrawing lands where it has no right to do so. On the land withdrawals, this is not the case, as the Board analyzes decisions on a case-by-case basis. In this case, the letter contradicts the first principle, of respecting aboriginal rights, which admittedly are not settled in this case.

8.3 MAC's Response to Ginger Gibson's Concerns

MAC responded to Ginger's concerns as follows:

The May 25 letter was written to draw the attention of the federal minister to a number of important issues raised by the Review Board's decision that concerned the mining industry. The MVRMA legislation and its evolving mechanisms, while now over a decade old, can still be described as a "work in progress" and MAC has a strong interest that it evolves in a manner that provides industry with clear, predictable and timely decision-making processes. MAC and others, including the Auditor General of Canada, have voiced concerns in the past regarding the regulatory system in the North, particularly in instances when decisions have been made that appear to go beyond the intended mandate of the Boards as established by legislation or where decisions introduce uncertainty through unclear and inconsistent use of language and standards. The MVRMA's decision on Ur-Energy was one in which issues were sufficiently serious that MAC felt it was important to request a referral of the recommendation on the Ur-Energy application back to the Review Board for further consideration.

The principal issues for industry were as follows:

Scope and Impact of the Review Board's Determination

Issue for MAC: The decision places all industrial activity in the Upper Thelon Basin off limits. The "Upper Thelon Basin" is undefined.

On page 4 of its report, the Review Board finds that:

"...it is reasonable to believe that other industrial developments will take place in the Upper Thelon. The Review Board agrees that the potential for industrial development of the area is incompatible with the aboriginal values of this spiritually significant cultural landscape. This would harm the "heart and soul" of the people of Lutsel'ke. The Review Board concludes that there will be an impact from the development as proposed in combination with the combined impacts of all other past, present and reasonably foreseeable human activities in the area. This is likely to be a significant cultural impact on the aboriginal peoples who value the Upper Thelon."

Noting that the term "impact on the environment" as defined under the MVRMA includes "...any effect on the social and cultural environment...", the Review Board concludes that the cultural impacts of the proposed development are so significant that the proposed development cannot be justified. However, as clearly indicated by the text quoted above, the Review Board's determination addressed not only the Ur-Energy project, but all other potential forms of "industrial development". The conclusion the Review Board evidently reached is that no activities of this kind should be allowed within the "Upper Thelon Basin."

The report contains additional information confirming the Review Board's intention that its decision should apply to the entire "Upper Thelon Basin". At page 38, the report states

"The Review Board notes that the people who presented at the hearing in Lutsel'ke spoke of their concerns about the cumulative impacts to the Upper Thelon as a whole. They did not specify particular points of potential disturbance within it. These concerns are directed at the entire landscape in the Upper Thelon Basin, and are not limited to a collection of individual points on a map. In the Review Board's view, the potential cultural impacts it heard about are cumulative because they relate to the combined effect of the proposed development in combination with all other human activities, including reasonably foreseeable future developments, that act in combination to change the cultural value of the landscape throughout the Upper Thelon."

The report does not, however, clearly define the geographic limits or the total surface area of the "Upper Thelon Basin". Footnote number 1 on page 1 of the report defines the term "Upper Thelon" as the "...Upper Thelon River Basin meaning the hydrological basin or watershed, and not the geological basin, unless otherwise specified." The only additional guidance as to what constitutes the "Upper Thelon Basin" is provided by the map that appears on page 9 of the report where the "Upper Thelon basin" is shown as a shaded area.

Nonetheless, the area outlined on the map together with the scale shown suggest that, estimated conservatively, the "Upper Thelon Basin" encompasses an area of approximately 30,000 square kilometres.

The implications of this decision is to render the entire "Upper Thelon Basin", an area approximately the same size as the surface area of Great Slave Lake, the second largest lake in Canada, or half the size of New Brunswick, entirely off limits to any form of "industrial development". While technically true that another mineral exploration project could be brought forward for review, the Board has signalled in the quotations set out above that it would also be rejected.

From the industry's perspective, this result is at odds with a number of well-established federal and territorial resource management policies, notably those that pertain to the establishment of new National Parks² and the designation of new protected areas under the NWT Protected Areas. The determination of the Review Board, if given effect, would effectively establish a protected area through a mechanism entirely independent of the existing processes that the responsible government authorities have agreed upon for precisely that purpose.

From a broader public policy perspective, endorsing the Review Board's determination in the Ur-Energy case would effectively confer to it the discretion to withdraw large areas of Crown lands from mineral exploration or other forms of economic development – in this or any other region of the NWT. MAC does not believe that the MVRMA was intended to grant the Review Board these kinds of powers especially given, as noted above, that a number of other processes for land withdrawals, including those related to aboriginal land claims, have already been established.

Clarification of the Role of Spiritual Concerns

Issue for MAC: The Board appears to have strayed from the intent of the legislation in its reliance on and interpretation of "spiritual concerns." This creates uncertainty for industry and a need for clarification.

The May 25 letter questioned the weight that the Review Board gave to spiritual concerns in reaching its determination. The question raised by the industry letter reflected the following:

- a) The obligation to identify specific sites that have cultural, archaeological, spiritual or religious significance to aboriginal peoples, and to properly conserve and respect such sites, is well accepted within the exploration and mining community. While sometimes challenging, this is an obligation that can usually be met through archaeological surveys and by engaging local communities and knowledgeable individuals, notably community elders.

² The MERA or the "Mineral and Energy Resource Assessment of Proposed National Parks in Northern Canada" process draws upon the resources of Indian and Northern Affairs Canada, Parks Canada, Natural Resources Canada, the Government of Yukon and the Government of the NWT to ensure that an inventory of the non-renewable resource potential of areas of Yukon and the Northwest Territories is compiled before such areas are formally established as National Parks.

However, the implications of the Ur-Energy determination are much broader. As indicated above, the Review Board itself noted that it was not necessary to identify "particular points" of potential disturbance within the Upper Thelon Basin. Consequently, concerns could be directed to the "entire landscape" as a whole in determining whether or not a specific development would be approved or rejected.

Accordingly, if this determination were implemented, the approach previously applied to specific sites would be given effect, on a broad-brush basis, to an entire watershed encompassing hundreds of thousands of square kilometres.

Moreover, aboriginal peoples are known to have used and occupied many other areas of the Northwest Territories, whether on a nomadic or more permanent basis. As a result, if the Review Board were to take a similar approach elsewhere in response to spiritual concerns, other large tracts of land could conceivably be rendered off limits to mineral exploration on the same basis.

The Review Board's decision thus has major policy implications that ought to be more fully considered.

- b) At page 36 of its report, the Review Board states that "...the importance of the Upper Thelon basin cannot be defined solely by its practical utility, because it is a spiritual area with an intrinsic and intangible cultural value to aboriginal peoples." At page 4 of the report, the Review Board states that it "...understands at the heart of this issue is the belief that the Upper Thelon is a spiritual place must be protected from any type of desecration."

The word "spiritual" or derivatives thereof appear in 33 places in the report, often in conjunction with the statement that the Upper Thelon Basin is "...the place where God began...". Unfortunately, the environmental assessment report does not adequately define the "spiritual values" that would have been adversely affected had the Ur-Energy project been allowed to proceed.

Given the nature of the Review Board's determination as well as the broader implications for mineral exploration generally, MAC believes that the Review Board should have provided a much more clear and comprehensive explanation of the spiritual values in question and the adverse impact that the proposed project would potentially have had on those values.

- c) In s. 111 of the MVRMA, "impact on the environment" is defined as "...any effect on land, water, air or other component of the environment, as well as harvesting, and includes any effect on the social or cultural environment or on heritage resources."

In its determination, the Review Board appears to adopt the view that the term "cultural" necessarily includes the term "spiritual". It therefore concluded that any adverse impact on spiritual values inevitably constitutes an adverse impact on cultural values. It should be noted that this view is shared by the Dene First Nation, as evidenced in the NWT #8 Tribal Corporation's June 6 letter to the Minister of INAC.

While it is understandable that "cultural" and "spiritual" may be seen to be intimately related if not synonymous, the legal interpretation of the term "cultural" is more correctly determined by reference to the principles of statutory interpretation. In that regard, it is important to note that the word "spiritual" appears elsewhere in the MVRMA, namely in section 73, where certain allowances are made for the use of water and the deposit of waste for

"...traditional heritage, cultural and spiritual purposes." Indirect evidence for distinguishing "cultural" from "spiritual" is also found in the definition of "heritage resources" ("...archaeological or historic sites, burial sites, artefacts and other objects of historical, cultural or religious significance, and historical or cultural records.")

As the term "spiritual" is often used synonymously with the term "religious", the legislation once again suggests that the "cultural" and "religious" realms (and hence the "spiritual" realm) are considered to be separate and distinct.

A survey of the case law indicates that both terms have been frequently used in a number of decisions pertaining to aboriginal law matters. Once again, this suggests that, in a legal context, it is proper to make a distinction between the cultural and the spiritual realms.

In reviewing the Review Board's decision, industry concluded that it was critical to seek further clarification as to the proper meaning to be given to the term "spiritual" in the context of the phrase "cultural and social environment" that forms part of the key definition of "impact on the environment" in the MVRMA. As a result, this became another reason to ask that the Review Board's recommendation be referred back for further consideration.

1. Does the May 25 Letter "Contradict" the TSM Draft Framework on Mining and Aboriginal Peoples?

As outlined above, the Minister of DIAND and the "responsible ministers" have four options in the circumstances of this case, one of which is to request that the minister reject the recommendation of the Review Board. MAC did not choose to request this option. Rather, the May 25 letter asked the ministers to refer the recommendation set out in the environmental assessment report back to the Review Board for further consideration.

The distinction is an important one. While the May 25 letter stated that the Review Board's determination was profoundly concerning to the industry, the letter nonetheless invited the ministers to direct the Review Board to give fuller effect to its mandate by reconsidering the significant issues raised. In effect, the industry was simply suggesting that the ministers invoke a mechanism clearly provided for in the legislation.

Four different assertions have been made in the note by Ginger Gibson with respect to the industry letter:

- a) by jointly signing the May 25 letter, MAC is suggesting that that adverse impacts on "cultural values" would never be a sufficient reason for the regulators to reject a proposal;
- b) by questioning the emphasis that the Review Board placed on "spiritual" values, MAC has reneged on the commitment in the draft framework to "[a]cknowledge and respect the social, economic, environmental and cultural interests of Aboriginal Peoples" and is therefore reducing its commitment to respect only individual elements of the bio-physical sphere on an isolated basis;
- c) the May 25 letter is incorrect in asserting that the effect of the Review Board's determination in its Ur-Energy decision is to put a large area of land off limits to mineral exploration; and
- d) the May 25 letter contradicts the commitment in the draft framework to "[r]espect Aboriginal rights."

While much of what is asserted has already been addressed above, MAC would like to make the following additional points.

(a) Respect for Cultural Values

MAC is in no way challenging or questioning the validity of rejecting a development proposal due to adverse cultural impacts. A couple of years ago another exploration project (Dry Bones Bay) was rejected by the MVEIRB on the basis that its activities would take place on or in the vicinity of culturally significant lands. MAC did not question this decision, since the area in question was clearly identified and the decision was clearly based upon a review of the impacts of the project itself. As also noted above, it is good industry practice to identify culturally significant lands or sites at early stages of a project in order to avoid or mitigate impacts upon them.

(b) Respect for Spiritual Concerns

As outlined above, the approach taken by the Review Board in response to concerns rooted in spirituality raises major legal and policy issues. In MAC's view, these issues warrant further examination and clarification. The letter did not intend to convey any lack of respect for cultural values generally or spiritual values more specifically. The issue was raised primarily in order to clarify the proper meaning of the legislation with due regard for the consequences of the various interpretations that can potentially be made.

MAC also appreciates the need to consider the impacts of industrial activities on the environment on an integrated and comprehensive basis. MAC does not believe that the letter states otherwise.

(c) Land Access

The principal consequences of the Review Board's decision for future access to the Upper Thelon Basin for mineral exploration purposes is outlined above. While the note from Ginger is technically correct that nothing prevents another mineral exploration project from coming forward for review, the Board has signalled very strongly that it would not be approved. In fact, regardless of whether the Review Board is asked to reconsider its opinion, its decision has already imposed a chill on future activity in this region that will be difficult to change. It remains in the industry's interest to seek clarification on this matter.

(d) Respect for Aboriginal Rights

MAC and its members fully understand and appreciate that s. 35(1) of the *Constitution Act* recognizes and affirms the aboriginal and treaty rights of the aboriginal peoples of Canada. There is nothing in the May 25 letter that indicates otherwise or suggests a lack of respect for those rights. It is true that members of the Dene First Nation are asserting certain land rights that have not yet been recognized or settled. It is unfortunate that, by raising questions with regard to the Board's decision, MAC may be perceived to be in opposition to the claims of the Dene. Indeed, this circumstance illustrates precisely why MAC has for years urged the government to settle land claims expeditiously.

8.4 Panel Discussion

Ginger Gibson brought this issue to the attention of other Panel members, and suggested that it be raised for discussion at the September 2007 Panel meeting in order to get other Panel members' views on the issue. MAC proposed that the Panel be asked to address the following three questions:

- The *Mining and Aboriginal Relations Framework* was largely drafted with the activities of MAC member companies in mind. What steps should MAC undertake to ensure that its actions, notably interventions on matters of public policy, respect the content of TSM policy frameworks?

- How can MAC apply the draft framework to help address/resolve different Aboriginal and mining interests?
- What advice does the Panel have for MAC when industry and Aboriginal interests appear to be or are in conflict?

The purpose of the Panel discussion on this issue was not to reach consensus but rather to gain a better understanding of the different perspectives and to potentially highlight a way forward. The Panel agreed that its role is not to formally and publicly respond to the issue, but to help inform MAC and other actors on how this issue is being perceived, provide advice for moving forward, and discuss how issues such as these can be better handled in the future.

With this in mind, MAC and the Panel engaged in an open and constructive discussion that resulted in a better understanding of both perspectives. MAC's willingness to have a frank discussion on this issue was commended.

MAC noted that this is the first time that it has weighed in on a specific decision made by the MVEIRB, and one that was made regarding a non-member. Some Panel members questioned why MAC went to bat for a mining company that is not a MAC member. MAC and several industry representatives indicated that MAC's response was not on behalf of Ur Energy, but that MAC was looking out for the best interest of its own members given the broad implications that could ensue from the MVEIRB's decision, and the need for consistent interpretation of the legislation.

MAC has had concerns in the past about the MVEIRB and the system in place. Other decisions have been made by the MVEIRB that have "pushed the envelope" and tested the federal government to see how far they can go in terms of political influence in the territories. MAC feels that the MVEIRB weighed in to "fill a vacuum" that exists due to the lack of federal action on the resolution of land claims and action on land-use planning, but that in doing so the MVEIRB went beyond its mandate.

A Panel member suggested that MAC should have circulated the letter to the Ministers and the MVEIRB decision to Panel members, since it addresses a MAC policy with which the Panel has been involved. One Panel member suggested that it might have been useful for MAC to meet with the Akaitcho before its letter was written to help understand their perspective.

MAC stressed the point that it is not asking for a change in outcome of the decision, nor is MAC questioning what is important to the Akaitcho, but rather is seeking clarification in the use of the term "spiritual" in order to facilitate consistent interpretation of the Mackenzie Valley Resource Management Act. While MAC felt that its approach was in keeping with its Aboriginal framework, MAC recognizes that this is not the perception of all Panel members. One Panel member noted that it is important to consider that the MVEIRB had only once before said no to a proposal, and that MAC must recognize that there are limits to what people are willing to sacrifice for development, especially when there are already significant real or perceived pressures on the land.

A number of industry members remarked on the "chill" in exploration activity in the Northwest Territories that has already been seen in the mining industry as a result of this decision, and expressed concern of further long-term impacts on mining activities if decisions such as this are repeated, including diminished opportunities for economic development in Aboriginal communities.

A Panel member noted that perhaps there should be a “chill” in some cases where local communities do not welcome further development.

There was some discussion around MAC calling the MVEIRB decision “political”. One Panel member noted that MAC calling the MVEIRB decision political is the equivalent of saying that the Aboriginal people manipulated the system and suggests that the MVEIRB had the wool pulled over its eyes. MAC clarified that it did not mean the term in a pejorative sense, but rather that the MVEIRB process was used to try to put pressure on the federal government to take action on land claims and land use planning, the lack of which is currently a source of considerable frustration in many Aboriginal communities. Another Panel member commented that decisions based on values are by their own nature political.

The discussion highlighted a number of issues that require further consideration:

1. **Consultation issues need to be dealt with:** One Panel member recommended that a bullet be added to the Aboriginal framework that states “promote and facilitate early consultation between Aboriginal peoples, governments and industry regarding potential mining sites”. It is crucial that these players work together to understand how a proposed project might affect Aboriginal culture, rights, way of life, and economy, and to ensure that a project proceeds with respect for these elements.

While it is important for MAC members to consult with affected stakeholders, the Aboriginal framework does not supersede or replace the government’s duty to consult. Consultation should be a requirement for all mining companies at all stages of their activities. It was noted that AFN, MNC and ITK are beginning to design their own policies regarding the duty to consult.

2. **The federal government must take responsibility:** The decision by the MVEIRB and the response by MAC draw attention to the lack of federal government action in this area. One Panel member felt that the frequency of such local decisions is going to increase as the federal government transfers more responsibilities to local boards. It was suggested that an appropriate federal government representative be invited to a future Panel meeting to participate in a discussion on implementing the Aboriginal framework.

One Panel member commented on personal experience living in an area where a land claim is already settled, and noted that local and regional Aboriginal organizations are in place to deal with mining companies directly to ensure that Aboriginal peoples’ needs are taken into consideration. However, in other cases Aboriginal communities do not expect exploration to meet their needs.

3. **More discussion is required on go/no-go areas:** Go/no-go is an issue in both the Aboriginal and biodiversity frameworks, and will require more discussion going forward. One Panel member noted that while the industry would like certainty around go/no-go areas, this is an issue that is greatly affected by local context and therefore needs to be dealt with on a case-by-case basis. It was also noted that no-go areas may not necessarily be protected areas, and MAC will have to respect no-go decisions made in this context.

4. **Find a way forward:** The discussion led to a greater understanding of MAC's intent when it wrote the letter, and of the concerns of MVEIRB and the communities it had heard from. Since the letter appears to have raised concerns among some communities about the issues it presented, it would be useful to find avenues for dialogue between MAC and these communities. Suggestions included MAC meeting with the MVEIRB and involved First Nations to better understand their perspectives, and engaging in a dialogue to find appropriate solutions.

9 Impacts of TSM on Business Operations and Implications for the Bottom Line

At a previous Panel meeting, a Panel member had requested that industry representatives provide examples where a company had modified its processes or operations in a way that not only helped the environment, but also improved the economic bottom line, or provide examples of sustainability initiatives that are not having a positive effect on profits today, but are expected to do so in the future. Gordon Ball (Syncrude) and Eira Thomas (Stornoway Diamonds) agreed to speak to the issue at the next (September 2007) Panel meeting, but neither Gordon nor Eira were able to attend. Barbara Shumsky (Syncrude) attended on behalf of Gordon, and presented examples where Syncrude has invested in environmental or social initiatives that have also had an impact on the company's bottom line:

- Flaring is a common source of complaints from stakeholders living around the oil sands facilities. Over the past six months, a "flaring team" has been able to nearly eliminate the flares, which not only pleases local stakeholders but is projected to save the company \$40 million/year in off-gassing.
- The recovery rate of bitumen has increased four percent over the last four years, largely as a result of more streamlined processes that require lower temperatures, and result in reduced energy use and GHG emissions, while saving the company several millions.
- One of Syncrude's processing facilities has saved \$2-3 million annually by using thermal energy from its units to run the facility instead of using additional gas. This has also helped the processing facility reduce its GHG emissions.

Other initiatives (environmental or otherwise) undertaken by Syncrude include:

- A recently completed upgrader expansion. For this expansion, about \$1 billion was dedicated to capital expenditures in technology and innovation to improve environmental performance. This upgrader expansion includes a sulphur dioxide reduction unit. Another project is underway at a cost of \$800 million - \$1 billion that will further reduce overall sulphur emissions by 60% and particulate emissions by 40%. This project will come online in 2009.
- Traditional land use consultations with local Aboriginal communities as part of land reclamation, part of which has resulted in reintroducing medicinal plants as well as introducing a bison herd that has grown from 30 to 300 healthy animals. The bison facility costs \$25 million/year to run, and Aboriginal communities carry out traditional bison harvests.

A Panel member asked whether Syncrude has seen a change in investor attitudes with regard to investments in sustainability. Syncrude noted that public opinion surveys indicate that the environment is a high priority for most Canadians, which has resulted in an increase in investment in ethical funds. It has also increased the importance of being positioned on sustainability or

ethical fund indices for some companies. Syncrude also noted that it is difficult to attract investors if an operation poses a significant environmental risk.

10 Information Items

10.1 Mining Sector Sustainability Table Update

Gordon Peeling noted that at the last meeting the MSST discussed Panel representation on the MSST, but the idea was turned down. Instead, the MSST suggested that the two groups share reports. A Panel member suggested inviting someone from the MSST to sit on the Panel. Gordon will bring that question back to the MSST.

The discussion of Panel involvement led to a broader discussion of membership on the MSST, and the group agreed to approach FCM to appoint a mining community representative to sit on the table. Gordon noted that although AFN was approached regarding membership, the MSST has not yet received an appointment from AFN. Gordon also noted that the MNC is active and well represented on the table.

Gordon noted that Environment Canada is working on an environmental code of practice for metal mines. Panel members expressed an interest in providing input to these processes.

Gordon Peeling agreed to forward the minutes of the Mining Sector Sustainability Table (MSST) to the Panel.

10.2 Federal Government CSR Roundtables Update

Copies of the letters that MAC and PDAC sent to the federal government regarding the recommendations in the CSR Roundtables' Advisory Group report were included in the Panel briefing binder. MAC is waiting for a response to its letter.

10.3 Other

Allan Morin notified the Panel that the 4th annual Aboriginal Mining Workshop will be held in Winnipeg on November 16th, 2007 as part of the Manitoba Mining and Minerals Convention. A copy of the invitation will be emailed to Panel members.

11 Future Agenda Items

Possible future agenda items identified during the meeting for consideration by the Panel included:

1. The duty to consult;
2. The First Nations Commercial and Industrial Development Act;
3. Closure framework;
4. Clarity regarding energy and GHG reporting; and

12 Next Panel Meeting

The next meeting is scheduled for March 5th, 2008 in Toronto. Details will follow closer to the meeting date.

Appendix 1: List of Participants

COI Panel Members

Richard Briggs, Canadian Auto Workers
Ginger Gibson
Jim Gowans, De Beers Canada Inc.
Larry Haber
George Hakongak, Nunavut Tunngavik Incorporated
Doug Horswill, Teck Cominco Limited
Peter R. Jones, HudBay Minerals Inc.
Brenda Kelley, Canadian Environmental Network (Bathurst Sustainable Development)
Christy Marinig, Timmins Economic Development Corporation
Elizabeth May, Green Party of Canada (participated by phone for HBMS post-verification review)
Allan Morin, Métis National Council
Gordon Peeling, Mining Association of Canada
Alan Penn, Cree Regional Authority

Other Attendees

Celina Doyle, Albion Sands Energy Inc.
Darrell Martindale, Albion Sands Energy Inc.
Sol Cifuentes, Albion Sands Energy Inc.
Shirley Neault, HudBay Minerals Inc.
Stephen West, HudBay Minerals Inc.
Robert Duda, verifier for HudBay Minerals Inc.
Barbara Shumsky, Syncrude Canada Ltd. (in lieu of Gordon Ball)
Pierre Gratton, Mining Association of Canada
George Greene, Stratos Inc. (Facilitator)
Karla Heath, Stratos Inc. (Rapporteur)

Regrets

Gordon Ball, Syncrude Canada Ltd.
Chief Jim Boucher, Fort McKay First Nation
Charles Campbell, United Steelworkers of America
Soha Kneen, Inuit Tapiriit Kanatami
David Scott, CIBC World Markets
Chief Darren Taylor, Tr'ondek Hwech'in First Nation
Eira Thomas, Stornoway Diamond Corporation

Appendix 2: Proposed Elements of a Panel Renewal Process

Rationale for renewal:

- In Panel terms of reference
- Need for fresh perspectives while maintaining sufficient continuity
- Ensure Panel does not become “too comfortable”
- Ensure MAC obtains advice to address key challenges as they emerge and change

Basis for renewal:

- 1/3 of members replaced in 2008 – distributed between March and September meetings
- National / regional organization representatives –organizations “nominate” candidate(s)
- Individual representatives are invited directly by the Panel
- Criteria for renewal:
 - Individuals who are committed to improving the performance of the mining industry in line with the TSM Guiding Principles and to providing input into and building understanding and support for the goals of TSM
 - Balance across five major categories of interest
 - Consideration of need for additional categories to be covered
 - Balance across regions – improved regional representation
 - Attendance record
 - Representation of a key COI
 - Individual expertise

Process for renewal:

- Working group of three external and one industry Panel members to:
 - Review current membership against criteria and needs of MAC for TSM and issue-based advice
 - Review current organizations with representation to determine need for new organizations to be represented
 - Recommend to Panel for discussion (conference call in fall 2007) and approval:
 - Number and timing of positions to be replaced
 - Request to current members to volunteer to step down
 - List of candidates to fill vacancies

A summary of this proposed approach was shared with the Panel via email, and a few Panel members participated in a conference call to discuss this approach and a possible way forward. The participating Panel members raised a number of key considerations in their discussion:

- MAC sees the Panel continuing into the longer term, with the Panel’s emphasis continuing to be on advising on TSM implementation, but also increasingly serving to address a range of issues that the Panel brings to MAC.
- Ask for current Panel members to volunteer but ensure that this does not result in all of the most engaged members leaving at one time.
- Maintain the mix of “representatives” of interests who are identified through their networks, and individual members of the Panel who are identified by MAC or other Panel members.
- Maintain and fill gaps in the current range of interests actively participating in the Panel.
- Consider new categories of interests that are not currently represented on the Panel (e.g. suppliers, youth, faith-based organizations + perhaps a mine manager from a MAC member company).