



Canadian
Environmental Law
Association
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Friends of the
Attawapiskat River



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VIA Email: iaac.regionalrof-cdfregionale.aeic@canada.ca

Impact Assessment Agency of Canada
160 Elgin Street, 22nd floor
Ottawa, Ontario
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Re: Planning for Regional Assessment in the Ring of Fire Area (Reference No. 80468)

The undersigned Environmental and Indigenous organizations provide the following comments regarding planning for the Regional Assessment in the Ring of Fire Area. Currently, the Impact Assessment Agency of Canada is seeking public and First Nations input on the Regional Assessment for the Ring of Fire,¹ in addition to enabling ongoing project-level assessments for two road projects.² These project reviews are proceeding in a context where Ontario has not withdrawn lands from claim staking and is actively reviewing and approving numerous requests for mineral exploration permits, including in the Ring of Fire.³ We reserve the right to provide further refined and supplemental comments, both individually and collectively, with respect to planning for the Regional Assessment as it unfolds.

Continuing with a fragmented and piecemeal approach to the review of infrastructure projects, in the absence of a plan to conserve globally significant wetlands and watersheds and an approach which brings communities together, means we are proceeding without first knowing the

¹ Impact Assessment Agency of Canada (IAAC), “Regional Assessment in the Ring of Fire Area” (12 Nov 2020), online: <https://iaac-aeic.gc.ca/050/evaluations/document/136697?culture=en-CA>

² IAAC, “Webequie Supply Road Project” Ref No. 80183, online: <https://iaac-aeic.gc.ca/050/evaluations/proj/80183>; IAAC, “Marten Falls Community Access Road Project, Ref No. 80184, online: <https://iaac-aeic.gc.ca/050/evaluations/proj/80184>; Ontario, “Marten Falls community access road project,” online: <https://www.ontario.ca/page/marten-falls-community-access-road-project>; Ontario, “Webequie supply road project,” online: <https://www.ontario.ca/page/webequie-supply-road-project>

³ See online, “Joint request to pause decision on Ring of Fire exploration” (13 Dec 2020), online: <https://cela.ca/joint-request-to-pause-decisions-on-ring-of-fire-exploration-permits/>

consequences to the environment, human health and Indigenous rights. The Ontario government is also in the midst of wide-ranging environmental deregulations, leading to the weakening of environmental assessment, endangered species protections, and far north planning. The stated intent of this exercise is to remove ‘red tape’, thereby prioritizing development over the environment, and ensure Ontario is “Open for Business”.

It is crucial that the Regional Assessment provide a framework that can effectively guide future decision-making, including as it relates to prospecting, exploration, mining, and any infrastructure necessary to facilitate bringing further development to the region. Although there is great financial interest in the Ring of Fire, its mining potential is based on flimsy and unproven statements⁴; thus, the Regional Assessment offers the opportunity to set the principles, values, and protocols that will ensure the peatlands and watersheds remain healthy for many generations to come.

Given the importance of the region, both globally and to many First Nations, it is imperative that the governments of Canada and Ontario respect the recent call for a moratorium on activities in the Ring of Fire by some Mushkegowuk Chiefs and Neskantaga First Nation of Treaty 9.⁵ An immediate moratorium must be established in the Ring of Fire that includes halting mineral exploration, resource development, and project-specific decision-making, including the Marten Falls Community Access Road, the Webequie Supply Road project assessments, and the potential Northern Road Link. Decision-making should move forward only after meaningful Indigenous engagement has been undertaken to meet the Crown’s obligations towards First Nation communities, the Regional Assessment process has been completed, and protection plans for sensitive wetlands and watersheds are in place.

Further, we oppose Canada and Ontario proceeding with Ring of Fire discussions and planning when both Matawa and Mushkegowuk First Nation communities have repeatedly communicated that meaningful consultation cannot occur when community members are unable to participate and leadership burdened with critical, pandemic response and social emergencies.⁶

⁴ N. McGee & J. Gray, “The road to nowhere: Claims Ontario’s Ring of Fire is worth \$60-billion are nonsense” (25 Oct 2019), <https://www.theglobeandmail.com/business/article-the-road-to-nowhere-why-everything-youve-heard-about-the-ring-of/>

⁵ See Mushkegowuk Chiefs Call for Moratorium no Development Activities in the Ring of Fire to Ensure Sensitive Wetlands and Watersheds are Protected First” (12 Jan 2021), https://wwf.ca/wp-content/uploads/2021/01/Moratorium_.pdf

⁶ See for instance: Amy Hadley, “Northern Ontario First Nations want pause to mining permits until COVID-19 subsides,” CBC News (30 April 2020); Osgoode Hall Law School, “Letter to the Honourable Greg Rickford Re: COVID-19 and Permitting on Indigenous Territory,” (3 June 2020); Tanya Talaga, “Canada tramples on First Nations treaty rights as it works to pay off its COVID-19 bill” The Globe and Mail (25 September 2020); D. Scott and D. Cowen, “Mining push continues despite water crisis in Neskantaga First Nation and Ontario’s Ring of Fire,” The Conversation (22 Nov 2020); K. Blaise and B. Reid, “Mining injustice: exploration, decision making, community voices in Ring of Fire,” Lawyer’s Daily (22 Dec 2020).

With respect to a Regional Assessment, we recommend that Canada and Ontario:

- 1) Ensure all decision-making and planning is driven by a commitment to advance Indigenous rights of self-determination
- 2) Complete an assessment of cumulative impacts, based on both scientific knowledge and Indigenous Knowledge, before authorizing prospecting, exploration, and development activities to safeguard watersheds (including the Attawapiskat, Albany, Ekwan and Winisk), the Hudson Bay Lowland, and critical habitat of boreal caribou ranges
- 3) Critically review the scope and objectives of the Regional Assessment to ensure the future scenarios include any proposed ferrochrome smelter and processing of other metals that may be extracted from the region
- 4) Address fundamental knowledge gaps, combined with projected scenarios, to identify outcomes which align with Indigenous values and rights, as well as federal and provincial commitments to biodiversity and climate change goals
- 5) Proactively consider mining-induced change and address legacy impacts of current mineral exploration and developments in the Ring Fire on Indigenous rights, including impacts on cultural values, traditional economies, and ecosystems
- 6) Address fundamental knowledge gaps and limitations in policy that result in a piecemeal approach to impact assessment on the environment, Indigenous rights, and the public interest
- 7) Undertake a full review of the De Beers Victor diamond mine project, including predicted and actual effects on the social-ecological system in the Attawapiskat River and Hudson Bay Lowland, to fulfill communities' right to information and to apply "lessons learned" to any proposed future developments

Further detail supporting each of these recommendations is outlined below.

1) Ensure all decision-making and planning is driven by a commitment to advance Indigenous rights of self-determination

Canada and Ontario have a duty to respect the rights of Indigenous peoples as recognized by the Royal Proclamation, Treaty No. 9, the *Constitution Act, 1982*, and international human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This duty requires that substantive rights of Indigenous peoples be upheld and respected, including: expressions of self-determination; rights to harvest, culture, religion and non-discrimination in relation to lands, territories and natural resources; rights to health and physical well-being in relation to a clean and healthy environment; and the right of Indigenous

peoples to set and pursue their own community priorities.⁷

These rights and accompanying responsibilities to the land are deeply rooted in the language, culture and practices of Indigenous people. They also reflect the natural laws that are fundamental to who they are, and what they do, including to have strength, to be kind, to share, and to be honest. In advancing these rights, the communities near and downstream of the Ring of Fire cannot be excluded from discussions and any joint agreements between Canada and Ontario. Ring of Fire decision-making must enable and embody collaborative decision-making so that Indigenous communities and their respective legal traditions equally inform governance structures, the identification of decision-makers, processes, and decision-making criteria.

2) Complete an assessment of cumulative impacts, based on both scientific knowledge and Indigenous Knowledge, before authorizing prospecting, exploration, and development activities to safeguard watersheds (including the Attawapiskat, Albany, Ekwano and Winisk), the Hudson Bay Lowland, and critical habitat of species at risk such as boreal caribou

The current piecemeal approach to development in the Ring of Fire as well as the decision-making led unilaterally by Ontario must end. Developments and ongoing mineral exploration are occurring in the middle of the world's second largest peatland complex in northern latitudes, covering over 325,000 km². The peatlands, or muskeg, of this region are a globally significant carbon store – containing nearly 26 gigatons of carbon – providing important climate regulation services (among others) for Indigenous peoples, Ontarians, and the global community.

The Far North region has been maintained for millennia by Indigenous people now living in 35 communities. Their values and futures are tied to the land through food networks, medicine, cultural, social, and sacred practices, and responsibilities, which both sustain and depend on the area's extensive ecological systems including intact river systems, abundant fish and wildlife, and globally significant wetland and forest systems.

Therefore, to assess any environmental or social change to this region, it is necessary for Canada and Ontario to recognize the need to permit, licence and evaluate *beyond* site-specific or direct project impacts. Cumulative impact assessment at a broad-scale (eg. regional) must be considered in advance of project-level assessments and sector-based approvals for permits. This is particularly important in the face of climate change which is already impacting First Nation communities and the environment in this area at a faster rate than other parts of Ontario.

A regional-scale cumulative effects assessment that considers Indigenous values, criteria,

⁷ United Nations Human Rights Council, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya – Extractive industries and indigenous peoples" (1 July 2013), A/HRC/24/41: <https://undocs.org/A/HRC/24/41>

objectives, and scenarios together with scientific components is fundamental for the Ring of Fire. Among the valued ecosystem components, there are a number of species that are cultural and ecological keystones that must also be considered at multiple scales. Some of these are designated “at risk” by Ontario and Canada such as boreal caribou, wolverine, and lake sturgeon. For example, the Missisa range of boreal caribou overlaps with the current Ring of Fire mineral tenures. And, given this overlap with areas of high caribou occupancy – and boreal woodland caribou must be protected at the range level – the interconnected impacts from habitat fragmentation, linear disturbances and new travel corridors for predators, and disturbances of noise and dust must be considered in tandem and over time. Further, lake sturgeon in many of the largest rivers represent some of the only populations of sturgeon that are unaffected by hydroelectric development.

There are also considerable concerns about the cumulative impacts of development and Ontario and Canada’s decision-making processes on the rights of Indigenous communities in the area and those living downstream. This was recognized by federal Minister of the Environment and Climate Change, Minister Wilkinson, in February 2020 when he announced a regional assessment centred on the Ring of Fire.⁸

The potential mining region dubbed the Ring of Fire is located or has infrastructure that will impact globally significant watersheds and carbon rich peatlands of the Hudson Bay Lowland. Any scenarios must include protection of these globally significant areas and we urge Ontario and Canada to work together with Indigenous Nations to put in place protection plans, ahead of any mining and infrastructure.

3) Critically review the scope and objectives of the Regional Assessment to ensure the future scenarios include any proposed ferrochrome smelter and processing of other metals that may be extracted from the region

We oppose Canada and Ontario’s piecemeal approach – that is, the intentional breaking up of Ring of Fire projects into their component parts – as it evades consideration of cumulative impacts under different paths of development on the region as a whole. It is for this reason an assessment of the proposed ferrochrome facility or facilities, which would process the ore from the Ring of Fire, is essential to the Regional Assessment if we are to understand its impacts to air, water and health.

Given the high likelihood of transboundary effects, impacts to the Great Lakes and adjacent First Nation communities, it is critical any smelter be included within the review given it would otherwise not be designated for an environmental assessment under existing provincial or federal

⁸ See Minister’s Response, online: <https://iaac-aeic.gc.ca/050/evaluations/document/133854>

law. In addition, the impacts of the processing of other metals that may be extracted from the region must also be factored into the Regional Assessment.

As has already been raised in an open letter from medical doctors, the smelter proposed for Sault Ste. Marie would increase the risk of cancer in a city with already heightened cancer rates, and a 50% above national average rate for Acute Myeloid Leukemia.⁹ We also know that low-income and Indigenous communities bear a disproportionate burden of health effects from pollution,¹⁰ and are among those most unable to access avenues for justice. Thus, to exclude the smelter from the regional EA would serve to exacerbate the vicious, inter-generational cycle of poverty, to which disproportionate exposure to toxic substances already contributes, compromising the ability of at-risk individuals and communities to participate in decision-making.¹¹ Canada and Ontario must embrace the opportunity to create a healthy and more equitable economy and demonstrate that sustainable development – and its core recognition of a healthy environment – is more than a privilege.

4) Address fundamental knowledge gaps, combined with projected scenarios, to identify outcomes which align with Indigenous values and rights, as well as federal and provincial commitments to biodiversity and climate change goals

Scenario analysis is a tool that allows us to identify the potential impacts of development, protection, and climate change on First Nation and public values, including federal and provincial commitment to biodiversity and climate targets. Working with First Nations to develop scenarios for the future at meaningful temporal and spatial scales, provides an important participatory and visioning exercise for considering impacts to the ecological, social, and economic trajectories in the Ring of Fire.

Scenarios would enable a discussion and decision-making approach to clarifying sustainability in the Ring of Fire and identify desirable futures for First Nation communities, that may be consistent with the public interest such as the protection of the Hudson Bay Lowland's ancient peatlands, and their significant role in cooling the planet and mitigating ongoing and future climate impacts.

5) Proactively consider mining-induced change and address legacy impacts of current mineral exploration and developments in the Ring of Fire on Indigenous rights, including impacts on cultural values, traditional economies, and ecosystems

⁹ Sault Online, "Open Letter from Doctors on Ferrochrome Smelter" (19 Oct 2019), online: <https://saultonline.com/2019/10/open-letter-from-doctors-on-ferrochrome-smelter/>

¹⁰ United Nations Human Rights Council, "Visit to Canada – Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes" (14 September 2020), A/HRC/45/12

¹¹ *Ibid*

It is critical that the legacies of mining and impacts on First Nations, their health and wellbeing, cultural values, and traditional economies such as hunting, fishing, trapping and the collection of medicines from the land be understood before proceeding with any development. In characterizing the severity of effects, current conditions, baselines, and the social crises facing all First Nation communities near and downstream of the Ring of Fire region - including access to clean water and housing - must be considered, alongside considerable challenges to accessing quality healthcare, including in response to COVID-19. There must also be a concerted effort to study existing differential burdens of toxics that may be exacerbated throughout the lifecycle of Ring of Fire projects, if developed.

In any decision by Canada or Ontario that may affect the health and socio-economic conditions of the communities living near and downstream of the Ring of Fire, UNDRIP requires the government first seek Indigenous community's free, prior, and informed consent. Canadian law presumptively conforms with international obligations and thus the Crown is obligated to interpret the need for consultation and accommodation in light of the principles set out in UNDRIP. Similarly, under Treaty No. 9 there is a responsibility to seek engagement with First Nations when land or rights are taken up by Ontario or Canada.

6) Address fundamental knowledge gaps and limitations in policy that result in a piecemeal approach to impact assessment on the environment, Indigenous rights, and the public interest

The framework for the Regional Assessment should require that information on existing health and environmental hazards be reportable and impacts understood before steps are taken to advance the Ring of Fire. Any assessment of baseline conditions must account for existing and past development, such as mineral exploration activities, on Indigenous, cultural, and environmental conditions. Further, the Regional Assessment must identify scenarios that include all current and potential land use activities, including for instance, a worse-case scenario that the suite of mineral claims leads to new mines, as well as a scenario of no further development at all.

While the Regional Assessment process might identify these gaps and perhaps ensure the availability of this data before proceeding, it overlooks that exploration activities have already occurred *and are occurring* despite this paucity of scientific study and inclusion of Indigenous Knowledge. Thus, so long as mineral exploration and project-specific decision-making proceeds absent any scoping of baseline studies and the identification of gaps in knowledge, Canada and Ontario will almost inevitably be damaging sensitive wetland ecosystems and precipitating harm to biodiversity and critically endangered species.

7) Undertake a full review of the De Beers Victor diamond mine project, including predicted and actual effects on the social-ecological system in the Attawapiskat River and Hudson Bay Lowland, to fulfill the communities' right to information and to apply "lessons learned" to any proposed future developments

Many of the communities downstream of the Ring of Fire have direct experience and exposure to other mine projects. As a number of youth reflected to the Friends of the Attawapiskat River in relation to the IA for the access and supply road projects, *'if the Ring of Fire happens, we won't have the same clean community as before'* and they questioned *'why can't they [the mining proponent] go where it's already been destroyed?'*¹²

Given the familiarity about existing mine sites but a lack of community-based knowledge about the federal and provincial review processes and their commencement in relation to the Ring of Fire,¹³ we recommend a review be undertaken of the De Beers Victor diamond mine, to compare predicted effects to actual. This review is critical, and any report and findings must also be shared with communities. In so doing, it would advance community members' right to information which is crucial for the protection of human rights. In addition, by better understanding the gap between predicted versus actual realized impacts of an already closed mine in the region (i.e., the Victor Mine), a "lessons learned" approach can be applied to proposed future developments in the region.

For these reasons, we urge the governments of Canada and Ontario to respect the recent call for a moratorium on activities in the Ring of Fire by some Mushkegowuk Chiefs and Neskantaga First Nation of Treaty 9 and immediately enact a moratorium on prospecting, exploration, development, and project-specific decision-making in the Ring of Fire. We further recommend that decision-making only move forward when meaningful Indigenous engagement has been undertaken to meet the Crown's obligations towards First Nation communities, the Regional Assessment process has been completed, and protection plans are in place that safeguard sensitive wetlands and watersheds.

Sincerely,

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¹² See online: "Friends of the Attawapiskat River comments on the Ring of Fire" (28 January 2020), online: <https://cela.ca/friends-of-the-attawapiskat-river-comments-on-ring-of-fire/>, p 3

¹³ *Ibid*

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