

LEGISLATIVE RETURN



SUBMITTED BY: Hon. John Streicker, Minister of Energy, Mines and Resources

1. On March 11, 2024, Kate White, Member for Takhini-Kopper King
 - asked the following question during the Oral Question Period at page(s) 4647 and 4648 of *Hansard*
 - submitted the following written question – WQ No. #
 - gave notice of the following motion for the production of papers – MPP No. #

RE: Michelle Creek Mining Project

OR

2. This legislative return relates to a matter outstanding from discussion with [MLA] on [date] related to:
 - Bill No. # Second Reading Third Reading
 - Committee of the Whole: [Vote]
 - Motion No. # RE: [subject]
 - at page(s) [page numbers] of *Hansard*.

The response is as follows:

Please see attached.

18-March, 2024

Date

Signature



February 13, 2023

Gary Thompson, CEO
Silver47 Exploration Corp.
551- 409 Granville Street
British Columbia, V6C 1T2

Dear Mr. Thompson

RE: YESAB Report - Michelle Creek

Thank you for your letter on January 11, 2023. I understand your concern that you have received an Evaluation Report from the Yukon Environmental and Socio-economic Assessment Board (YESAB) that recommends your project on Michelle Creek not proceed.

Following the issuance of the Evaluation Report, the Government of Yukon, as the Decision Body for the project, must respond to YESAB's recommendation and issue a Decision Document. We are currently reviewing the Evaluation Report and assessing the recommendations within. This will also involve consulting with affected First Nations on the recommendations and we are committed to fulfilling our duty to consult.

While a Decision Document is being prepared, we are unable to consider any new information from the proponent related to the project that was not part of the assessment. I can, however, assure you that the Evaluation Report will be carefully assessed and considered prior to a Decision Document being issued.

The complexities of this project, and its potential interactions with the Peel Watershed Land Use Plan, may contribute to extended consultation with affected First Nations. Consequently, there may be longer timelines for finalizing the Decision Document. We appreciate your patience during this time.

February 13, 2023
Gary Thompson
Page 2

If you have any questions regarding your project, please contact Stephen Mead, Assistant Deputy Minister at 867-332-5512.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Streicker', with a long horizontal flourish extending to the right.

John Streicker
Minister
Energy, Mines and Resources

cc: Moira Lassen, Ministerial Advisor to Minister Streicker
Paul McConnell, Deputy Minister, Energy Mines and Resources
Stephen Mead, Assistant Deputy Minister, Mineral Resources and Geoscience Services
Heather Burrell, Archer Cathro and Associates (1981) Ltd.
Kevin Chen, CFO, Silver47 Exploration Corp.



Silver47 Exploration Corp.

January 11, 2023

VIA EMAIL (john.streicker@yukon.ca)

Yukon Legislative Assembly
Box 2703
Whitehorse, Yukon Y1A 2C6

Attention: Minister John Streicker

Re: YESAB Report - Michelle Creek

We write to express our concerns over the YESAB recommendation that the "Project not be allowed to proceed." Silver47 understands that the Yukon Government (YG) has started drafting a Decision Document. We believe that the Decision Document should be informed by this letter, in particular by the six themes summarized below. We also request a meeting with you in the coming week, when we can detail and elaborate the themes and respond to any YG concerns with our Class 3 application.

We also advise that we will continue to consult with the First Nation of Na-Cho Nyak Dun and Tr'ondëk Hwëch'in First Nation. Silver47 looks forward to discussing First Nation economic benefits in the current exploration phase as well as in a later development phase if a mine is proposed in due course.

1. The Recommendation Contradicts Reasonable Regulatory Expectations

The Report recommendation does not account for YG guidance respecting the regulation of exploration programs. While the regulatory regime has over the past 15 years evolved significantly, the one constant is that the regime honours existing mineral claims. For example:

- In 2008, YG issued a "Class 3 Mining Land Use Approval" respecting the subject claims and exploration was allowed under permit LQ00230.
 - In 2011, YG published the initial Peel Watershed Final Recommended Plan, followed thereafter in January 2014 by a first version of the Peel Watershed Regional Land Use Plan. While both introduced new protection measures, they continued to honour existing claims.
 - In 2015, YG's order prohibited new claims but "does not apply to entry on a recorded claim by the owner or holder of the recorded claim."
 - After the 2017 Supreme Court of Canada decision prompted the YG to release what is now the Peel Watershed Regional Land Use Plan in 2019 (referred to below as the "Peel Plan"). While the Peel Plan severely limited industrial development, it confirmed that "existing mineral claims and leases are respected and can be developed" (p. xv, Key Recommendations), even in areas where new industrial land use is prohibited.
 - In January 2020, YG guidance reinforced that pre-existing mineral claims and leases would be recognized in each type of land management use area in the Peel Plan. This guidance was formalized by its March 2020 Order in Council exempting owners and holders of recorded claims from new mineral prohibitions.
-

Informed by these regulatory expectations, Silver47 in early 2021 acquired the existing claims. In December 2021, we filed our application to YESAB for environmental assessment of exploration at the existing claims (an assessment triggered by our application to use Class 3 exploration activities at the existing claims).

The Report recommendation conflicts with YG's pattern honouring existing claims. The task of maintaining the integrity of the above-noted exemptions for exploration claims rests with YG. That said, Silver47 acknowledges that certain YESAB findings may reasonably inform Class 3 terms and conditions if they do not otherwise undermine the reasonable regulatory expectations set out above. The YESAB Report's negative recommendation, however, should not govern the YG terms and conditions.

2. Planning Council Support for the Project

In June 2020, the Peel Plan Implementation Committee confirmed that Yukon Land Use Planning Council (YLUPC) advice should be "a component of the YESAB assessment process." Silver47 accordingly applied for, and received, favourable conformity advice from the YLUPC. For example, the YLUPC advised in part:

This project is occurring on existing mineral claims. Existing mineral claims and leases are respected and can be developed, including those within a Wilderness Areas.

There are currently no thresholds for linear and surface disturbance for Wilderness Areas that would apply to existing claim development.

Regardless of the lack of thresholds for linear disturbance and surface disturbance, this project adds little linear or surface disturbance to these landscape units. [emphasis added]

The YESAB Report acknowledges this advice at page 57, and adds comments about the evolving responsibilities for conformity checks. We do not comment on this evolution, other than to say YG should give considerable deference to the YLUPC advice, given its past experience in providing eleven conformity checks.

3. YESAB Conflation of Exploration and Development

Our Class 3 application and submissions to YESAB scoped the project as exploration as opposed to "mine development." We did so with the knowledge that mine development would be subject to its own environmental, economic, social and First Nation scrutiny if and when it is proposed. The YG also applies the "exploration" v. "development" distinction, notably:

- The *Quartz Mining Act* describes exploration as "an activity undertaken for the sole or principal purpose of assessing land for its suitability for the production of minerals", whereas development is described as the "construction of a facility or work for the production of minerals, but excludes the construction of a facility or work for the sole or principal purpose of assessing land for its suitability for the production of minerals."
- The Peel Plan (at page 21) states: "Compared to development, exploration usually has less intense, but more dispersed, effects on other regional values. If exploration is successful, resource development or extraction may follow if market and regulatory conditions are favourable."
- YESAA section 47 triggers environmental assessment respecting Class 3 "exploration for the purposes of quartz mining..."; we applied for such Class 3 approval. A separate trigger applies for applications for Class 4 activities (e.g. extraction/development).

Yet, despite the above, the Report frequently conflates the Project's narrowly scoped exploration activities with broader (often hypothetical) mineral extraction concerns submitted by critics. In doing so, the Report betrays a fundamental misunderstanding of the basic phases of mining: exploration activities (including those of the Project) tend to be short term on-site activities which test for feasibility of long-term extraction;

only a very small portion of exploration projects result in a mine (and as stated above, such mine proposals would be subject to further assessments and regulatory reviews). Respectfully, as can be detailed further, the Report findings paid undue attention to development activities falling outside of the Project's exploration proposals.

4. Unreasonable Baseline Data Expectations

The Report's finding of inadequate baseline data served as a primary basis for recommending that the Project should not be approved. The Report did not specify criteria for adequate baseline data collection, but we understand from other mine projects that such exercises can take 1-2 years covering different seasons. Such timelines are not feasible for exploration, especially in our short program (5 years of 4-5 months on-site work). This explains why baseline data collection is commonly required only when a mine project enters the development stage. Mine proponents generally understand that a significant period of time is necessary to compile adequate baseline information for environmental assessment purposes, especially in areas (such as the Peel) where there have been limited studies. The imposition of baseline data collection on this Project (and arguably any other exploration project) would render the exploration of the existing Michelle claims unfeasible.

That said, Silver47 respects YG's expectation that projects in the Peel region should be held to a higher standard. Accordingly, Silver47 has committed to undertake certain baseline data collection not typically required otherwise. Moreover, Silver47 deliberately applied for only a 5-year Class 3 approval (instead of 10 years) in the knowledge that the Peel Plan is up for review in about 5 years; it is our intention to reasonably tailor our explorations with new Plan aspirations.

5. Speculative "Cumulative Effects"

Section 42(1)(d) of YESAA directs YESAB to assess "cumulative effects" where the project effects combine with "any activities that have been carried out, are being carried out or are likely to be carried out...". Applying this criterion, the Report stated at page 69 that although "there currently no active mining land use approvals ... [m]ineral exploration or development activities could occur at any of the active claims..." and "... could cumulatively impact wildlife and First Nation wellness..." [emphasis added] That these impacts could occur served as a key basis for recommending that the Project not be approved.

We respectfully suggest that YESAB summarily speculates that other exploration or development "could" hypothetically arise. We believe that YESAA requires a more rigorous approach. Determining what is "likely" should identify fact-based possibilities, even if only in a *prima facie* way. The cumulative effects assessment, for example, should have expressly specified the "likely" nature and scope of these other activities, their location in relation to existing roads and wildlife habitat, significance to First Nation concerns, and their timing (e.g. within the 5 years duration of Silver47 or beyond).

6. Inadequate Scrutiny of Submissions

The YESAB Report lists many concerns submitted by critics of the Project. Presenting such views is appropriate for fact-finding bodies such as YESAB.

Our concern, however, is that YESAB appears to accept the submissions at face value and without qualification. As can be detailed, many untested submissions were nonetheless used to justify the recommendation that the Project not be allowed to proceed. In essence, YESAB imposed an impossible onus on Silver47 – we were impliedly required to disprove unsubstantiated assertions, and which onus was even more problematic because there was no process for doing so. At the very least, the Report should have expressly noted that relied-upon submissions have not been tested through cross-examination or by Information Requests (methods used in other environmental assessment procedures).

Sincerely,



Gary Thompson

CEO

cc: Moira Lassen, Strategic Advisor (moira.lassen@yukon.ca)
Paul McConnell, Deputy Minister (paul.mcconnell@yukon.ca)
Stephen Mead, Assistant Deputy Minister (stephen.mead@yukon.ca)
