

**YUULU?IL?ATH FIRST NATION GOVERNMENT
SUBSURFACE RESOURCES ACT**

YFNS 53/2016



This law enacted on January 11, 2017

Signed


Les Doiron, President of the
Yuulu?il?ath First Nation

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS

ON 11/Jan/2017



Signature of Law Clerk

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PREAMBLE

The Yuulu?il?ath assert that we have occupied, benefited from and governed our traditional territory, lands, waters and resources since time immemorial. The Yuulu?il?ath traditional territory has in the past provided the resources necessary to sustain us and we honour our connection to the lands, waters and resources of our traditional territory which provide for our physical and spiritual needs.

It is the desire of Yuulu?il?ath that we promote a healthy and prosperous future that ensures the continued existence of Yuulu?il?ath as a strong political, social and cultural community that aspires to grow as an organized, determined, successful and self-reliant people. To that end, the Yuulu?il?ath must continue to access the resources of our Yuulu?il?ath lands and Yuulu?il?ath territory in a sustainable manner.

To assist with realizing these goals, the Yuulu?il?ath government seeks to establish a law that speaks to and reflects our goals by establishing the governance and administrative structures necessary to allow and oversee the sustainable harvest of our natural resources, including our subsurface resources on and under our Yuulu?il?ath lands.

The Yuulu?il?ath government adopts this Act based on these values.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Subsurface Resources Act.

Executive oversight

1.2 The member of the Executive holding the lands and resources portfolio is responsible for the Executive oversight of this Act.

Authority and application

- 1.3** (a) This Act is enacted under
- (i) 4.1.2 of Chapter 4 Subsurface Resources and 13.14.1 of Chapter 13 Governance of the Maa-nulth Treaty, and
 - (ii) section 3.2(c) and (d) of the Constitution.
- (b) The purpose of this Act is to establish a regime for the management and sustainable development of subsurface resources on or under Yuulu?i?ath lands for the benefit of the Yuulu?i?ath government, including mechanisms for permitting mining activity, overseeing and ensuring compliance with permitting conditions and establishing royalties on production of subsurface resources.
- (c) This Act applies to all Yuulu?i?ath lands and subsurface resources and, for certainty, to all mines on Yuulu?i?ath lands during exploration, development, construction, production, closure, reclamation and abandonment of those mines.
- (d) For certainty,
- (i) this Act does not apply to Yuulu?i?ath foreshore, and
 - (ii) this Act is subject to 4.2.0 of Chapter 4 Subsurface Resources of the Maa-nulth Treaty for the subsurface tenures listed in Part 4 of Appendix E-15 of the Maa-nulth Treaty.

Definitions

1.4 In this Act,

“abandoned mine” means a mine for which all permit obligations under this Act have been satisfied and in respect of which the associated natural resource licence has expired;

“agent” means a person having control of a mine on behalf of the owner;

“authorized person” means a qualified person appointed by the operator to perform specified duties;

“closed mine” means a mine at which all mining activities have ceased but in respect of which the owner, agent, operator or permittee remains responsible for compliance with this Act, the regulations, the code and that person’s obligations under the permit for that mine;

“code” means the health, safety and reclamation code established under the Mines Act (British Columbia);

“detrimental environmental impact” occurs when the quality of air, land or water substantially reduces the usefulness of the environment or its capacity to support life;

“inspector” means a person appointed by the lands manager as an inspector of mines;

“licensee” means the holder of a valid natural resource licence issued under the Land Act;

“operator” means the person appointed under section 5.2 to be responsible for the management and operation of a mine;

“mine” includes

- (a) a place where mechanical disturbance of the ground or any excavation is made to explore for or to produce any subsurface resource,
- (b) all activities including exploratory drilling, excavation, processing, concentrating, waste disposal and site reclamation,
- (c) a closed mine or an abandoned mine, and
- (d) a place designated by the lands manager, by directive, as a mine;

“mining activity” means any activity related to

- (a) the exploration or development of a subsurface resource, or
- (b) the production of a subsurface resource,

and includes the reclamation of a mine;

“owner” includes every person who is the immediate holder, proprietor, lessee, occupier or permittee of a mine or of any part of it, but does not include a person who

- (a) receives only a royalty or rent from a mine, or

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- (b) is the owner of the surface rights of land in, on or under which a mine exists but who is not the immediate holder, proprietor, lessee, occupier or permittee;

“permit” means a permit issued under section 4.4;

“permittee” means the holder of a permit issued under section 4.4;

“produced” or “production” means, in respect of a subsurface resource, that it is in a saleable form or has been removed from a producing mine;

“producing mine” means a mine

- (a) for which a permit has been issued under this Act for production of one or more subsurface resources, and

- (b) that is currently operating;

“qualified person” means a person who, in the reasonable opinion of the operator, is qualified because of the person’s knowledge, training and experience and is familiar with the provisions of this Act, the code, the regulations and applicable permit that apply to the duties for which the person is appointed.

PART 2 - ADMINISTRATION OF SUBSURFACE RESOURCES

Power to appoint inspectors

2.1 The lands manager may, by directive, appoint a person as an inspector for the purposes of this Act.

Authority

2.2 Despite section 2.1, the lands manager has the rights and powers conferred on an inspector under this Act.

Delegation authority

2.3 (a) On the approval of the director of operations, the lands manager may delegate, in writing, the performance of any of the lands manager's duties or the exercise of any of the lands manager's powers under this Act to

- (i) the director of operations,
- (ii) an inspector appointed under section 2.1,
- (iii) another Yuulu?il?ath senior manager,
- (iv) a Yuulu?il?ath government employee, or
- (v) an independent contractor of the Yuulu?il?ath government.

(b) Despite the delegation of any duties or powers under subsection 2.3, the lands manager remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

PART 3 - INTERESTS IN SUBSURFACE RESOURCES

Classes of subsurface resources

3.1 The Executive may, by regulation, establish any class of subsurface resources for the purposes of this Act.

Interest attaching to natural resource licence

- 3.2** (a) A licensee is deemed to be entitled to an interest in all subsurface resources of the class or classes enumerated in the natural resource licence situated vertically downward from and inside the boundaries of the applicable Yuulu?il?ath lands set out in the natural resource licence.
- (b) The interest created in subsection (a) is a chattel interest and, for certainty, is not an interest in the applicable Yuulu?il?ath lands.

PART 4 - MINING ACTIVITY PERMITTING

Permit required for mining activity

- 4.1** (a) Before starting any mining activity on Yuulu?il?ath lands, an owner, agent, operator or any other person must hold a permit issued by the lands manager authorizing that mining activity.
- (b) An owner, agent, operator or any other person must
- (i) ensure that no mining activity takes place on the applicable Yuulu?il?ath lands, except under and in accordance with a permit, and
 - (ii) comply with all the conditions of the applicable permit.

Application for permit

- 4.2** (a) An application for a permit must be submitted to the lands manager in the prescribed form and include a management plan outlining the details of the proposed mining activity.
- (b) The management plan under subsection (a) must include a plan for the protection and reclamation of the land and watercourses affected by the mine, including the information, particulars and maps required by the regulations or the code.

Exemption from permit requirement

- 4.3** (a) The lands manager, in writing and on any terms and conditions the lands manager decides are necessary or advisable in the circumstances, may exempt a person from the requirement under section 4.1 to hold a permit if the lands manager is satisfied that, because of the nature of the proposed work, it is not necessary for the person to hold a permit.
- (b) Without limiting subsection (a), the terms and conditions imposed by the lands manager under that subsection may include terms and conditions respecting any or all of the following:
- (i) the provision of security;
 - (ii) notification and reporting requirements;
 - (iii) the use of qualified professionals;
 - (iv) environmental protection and reclamation; and

- (v) public health and safety.
- (c) A person exempt from the requirement under section 4.1 to hold a permit must comply with the terms and conditions, if any, imposed under subsection (a) or (b).

Permit and conditions

- 4.4** (a) If the lands manager decides an application for a permit is complete and satisfactory, the lands manager may issue a permit.
- (b) A permit may contain any terms and conditions the lands manager decides are necessary or advisable in the circumstances.

Security

- 4.5** (a) The lands manager may, as a condition of issuing a permit under section 4.4, require that the owner, agent, operator or permittee give security in the amount and form, and subject to the conditions, specified by the lands manager
- (i) for mine reclamation, and
 - (ii) to provide for protection of, and mitigation of damage to lands and watercourses affected by, the mine.
- (b) If required by the lands manager, the owner, agent, operator or permittee, in each year, must deposit with the lands manager from time to time security in an amount and form satisfactory to the lands manager so that, together with the security under subsection (a) and calculated over the estimated life of the mine, there will be sufficient resources necessary to perform and carry out properly
- (i) all the conditions of the applicable permit relating to the matters referred to in subsection (a) at the proper time, and
 - (ii) all the directives and requirements of the lands manager or an inspector respecting the fulfillment of the conditions relating to the matters referred to in subsection (a).

Revision of conditions

- 4.6** (a) An owner, agent, operator, permittee or inspector may apply to the lands manager for a revision of the conditions, or an extension of the term, of a permit issued under section 4.4 and the lands manager may revise the conditions or extend the term, as the case may be.

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- (b) If the lands manager decides it necessary or advisable, the lands manager may impose additional conditions or changes in the existing conditions, including changes to the security required or the term of the applicable permit, with or without an application under this section.

Failure to comply with condition

- 4.7** If the owner, agent, operator or permittee fails to perform or comply with the conditions of a permit to the satisfaction of the lands manager, the lands manager, after giving at least 30 days' notice to remedy the failure, may do one or more of the following:
- (a) by directive, require the owner, agent, manager operator or permittee to stop the mining operation;
 - (b) apply all or part of the security toward payment of the cost of the work required to be performed or completed;
 - (c) by directive, close the mine; or
 - (d) by directive, cancel the permit.

Advisory committee

- 4.8** The lands manager may establish and, if established, must chair, an advisory committee of no more than three individuals to review applications for permits referred to it by the lands manager and to assist the lands manager in carrying out his or her duties under this Act.

PART 5 - COMPLIANCE AND INSPECTION

Health, safety and reclamation code

5.1 The code and any amendments to it apply to mines on Yuulu?il?ath lands.

Appointment of operator

5.2 An owner or agent must

- (a) before mining activity begins, appoint an operator and ensure that there is a person acting in that capacity at all times,
- (b) immediately after each appointment, notify the lands manager in writing of the name of, and contact information for, the operator, and
- (c) provide the operator with every resource necessary or advisable for conducting the operation of the mine in accordance with the requirements of this Act, the regulations and the code.

Operator's qualifications and responsibility

- 5.3**
- (a) Each operator must possess the qualifications to be an operator established by the regulations or the code.
 - (b) The operator must attend daily at an operating mine when mining activities are conducted.

Operator's absence

5.4 Each operator must appoint a qualified person to be responsible during the operator's absence to ensure compliance with this Act, the regulations, the code and the applicable permit.

Compliance

- 5.5**
- (a) The owner, agent or operator must take all reasonable measures to ensure compliance with this Act, a directive issued under it, the regulations, the code and the applicable permit.
 - (b) Every supervisor and employee must take all reasonable measures to ensure that the requirements of this Act, the regulations, the code and any directives applicable to the work they perform or over which they have supervision are followed.

Contractors

- 5.6** If a mining activity is carried out by a contractor, the contractor and the contractor's manager, in addition to the owner, agent and operator of the mine, must take all reasonable measures to ensure compliance with the provisions of this Act, the regulations, the code, the applicable permit and any directive under this Act for the mining activity over which they have control.

Inspections

- 5.7** (a) At any time an inspector may inspect
- (i) a mine, or
 - (ii) a site considered by the inspector to be a mining activity site that is operating without a permit.
- (b) The owner, agent, operator, permittee and all persons in, on or about a mine must provide an inspector with all assistance necessary to complete an inspection or investigation under this Act.

Inspection report

- 5.8** (a) An inspector must complete an inspection report within seven days and promptly provide the operator with a copy of the completed inspection report and the report must
- (i) list the workplaces inspected,
 - (ii) note any contraventions of a directive made under this section or section 5.9,
 - (iii) note any contraventions of the Act, the regulations, the code, the applicable permit or any directive issued under this Act, and
 - (iv) if necessary, direct remedial action, specify the results to be obtained by the remedial action and specify time limits for compliance with the directive or any provision of the Act, the regulations, the code or applicable permit.
- (b) Within 15 days after receiving the inspection report, the operator must
- (i) submit a written report outlining the remedial steps taken and the work still outstanding, and

- (ii) promptly provide a copy of that report to the inspector.

Detrimental environmental impact – inspector directives

5.9 If an inspector believes on reasonable grounds that a person has contravened or is contravening this Act, the code, the regulations, the applicable permit, a directive issued under this Act or the Environmental Protection Act and that the contravention has had, or is likely to have, a detrimental environmental impact, the inspector may, by directive, require the owner, agent, operator, permittee or any other person who appears in charge in, on or about a mine to do any of the following:

- (a) take immediate remedial action;
- (b) suspend regular work until the remedial action is taken; or
- (c) close the mine, or part of the mine, until the remedial action is taken.

Posting of reports and directives

- 5.10** (a) Each operator must post in a conspicuous place at a mine for 30 days all inspection reports and any directive issued under this Act.
- (b) Each operator must ensure that all documents required to be posted are maintained in a legible condition.

Abandoned mine

- 5.11** (a) If an inspector is of the opinion that work may be necessary in, on or about a closed mine or an abandoned mine to avoid danger to persons or property or to abate pollution of the land or watercourses affected by the mine, the inspector may enter the mine and cause work to be done to remove or alleviate the danger or remedy the pollution.
- (b) The amount expended plus interest at the prescribed rate is a debt due and payable to the Yuulu?if?ath government and forms a lien and charge in favour of the Yuulu?if?ath government on the mine and the interest of the applicable licensee in all subsurface resources of the class or classes enumerated in the applicable natural resource licence.

Accident investigations

5.12 An inspector may, and if required by the lands manager must, make an investigation of and report on any accident in, on or around a mine that has caused serious property or environmental damage or serious personal injury.

Power to compel persons to answer questions and require disclosure

- 5.13** For the purposes of conducting an investigation under section 5.12, an inspector may, by directive, require a person to do any of the following:
- (a) attend, in person or by electronic means, before the inspector to answer questions on oath or affirmation, or in any other manner; or
 - (b) produce for the inspector any record or thing in the person's possession or control relating directly, or indirectly, to the accident.

Appeal of directive

- 5.14** (a) A person who is affected by a directive under this Part may request a review of that directive under the Administrative Decisions Review Act.
- (b) An request for review under subsection (a) does not operate as a stay or suspend the operation of the directive being reviewed unless the lands manager, by directive, indicates otherwise.

Enforcement of directives in Supreme Court

- 5.15** (a) If a person fails or refuses to comply with a directive of an inspector under this Part, the lands manager may apply to the Supreme Court for an order directing the person to comply.
- (b) The failure or refusal of a person subject to a directive under section 5.13 to do any of the following makes the person, on application by the lands manager to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

PART 6 - SUBSURFACE RESOURCE ROYALTIES

Appointment of royalty administrator

6.1 The director of operations must, by directive, appoint an employee of the Yuulu?il?ath government as the royalty administrator.

Royalties

- 6.2** (a) Royalties are reserved to the Yuulu?il?ath government on all subsurface resources produced by a licensee.
- (b) The Executive may prescribe the royalty that is payable to the Yuulu?il?ath government for any subsurface resource or class of subsurface resources.

Duty to pay, penalty for breach and refund in cases of overpayment

- 6.3** (a) Every person required to pay a royalty under this Act must, on or before the applicable prescribed date,
- (i) pay any royalty due and payable to the Yuulu?il?ath government, and
 - (ii) complete and file with that payment a report in the form and manner required by the lands manager.
- (b) If a person required to pay a royalty fails to comply with subsection (a)(ii) the person must, in addition to any royalty payable, pay the prescribed penalty.

False or misleading information

- 6.4** A person must not
- (a) make or participate in, assent to or acquiesce in making, a false or deceptive statement in a document or record filed or made under this Act,
 - (b) destroy, alter, mutilate, hide or otherwise dispose of a document or record to evade payment of a royalty imposed under this Act,
 - (c) make, or assent to or acquiesce in making, a false or deceptive entry in a document or record required under this Act,
 - (d) omit, or assent to or acquiesce in the omission of, an entry in a book or record required under this Act, or
 - (e) willfully, in any manner, evade or attempt to evade compliance with this Act or the regulations or payment of a royalty imposed under this Act.

PART 7 - OFFENCES

General

7.1 A person who contravenes a provision of this Act, or a directive made under this Act, commits an offence.

Specific offences other than under Part 6

- 7.2**
- (a) Without limiting section 7.1, a person who obstructs, impedes or otherwise interferes with an inspector performing his or her duties, or exercising his or her powers, under this Act commits an offence.
 - (b) A contractor or contractor's manager who fails to comply with section 5.6 commits an offence and is liable, on summary conviction, to a fine or imprisonment as if they were the owner, agent or operator of the mine.
 - (c) A person who commits an offence, other than under Part 6 of this Act, is liable, on summary conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding six months.
 - (d) The inspector may deliver in accordance with Yuulu?il?ath law a notice to a person alleging a contravention of this Act, or a directive made under this Act, and that person is liable, on summary conviction and in addition to the penalty under subsection (c), to not less than \$1,000 and not more than \$5,000 for every day during which the offence continues to be committed after receipt of that notice.
 - (e) If a corporation is convicted of an offence under this section, an officer, director or agent of a corporation who authorized, permitted or acquiesced in the offence also commits the offence and is liable, on summary conviction, to the punishment provided under this section.

Offences under Part 6

- 7.3**
- (a) Without limiting section 7.1, a person who obstructs, impedes or otherwise interferes with the royalty administrator in carrying out his or duties under this Act commits an offence.
 - (b) A person who contravenes subsection (a) or Part 6 commits an offence and is liable, on summary conviction, to a fine not exceeding \$500 per day for each day the offence continues up to a maximum of \$5,000 plus not less than 25% and not more than double the amount of the royalty that was sought to be evaded.

- (c) A person does not commit an offence under section 6.4(a) or 6.4(c) in respect of a false or deceptive statement or entry if the person did not know that the statement or entry was false or deceptive and, in the exercise of reasonable diligence, could not have known that the statement or entry was false or deceptive.
- (d) If a corporation is convicted of an offence under this section, an officer, director or agent of a corporation who authorized, permitted or acquiesced in the offence also commits the offence and is liable, on summary conviction, to the punishment provided under this section.

Offences created by regulation

- 7.4 (a) The Executive may, by regulation, provide that
- (i) a contravention of a regulation is an offence, and
 - (ii) a person who contravenes a regulation is liable, on summary conviction, to a fine not exceeding \$5,000.
- (b) If the maximum fine prescribed under a regulation referred to in subsection (a) is less than that provided for under this Act, then the regulation prevails.

PART 8 - GENERAL

Regulations regarding the administration of subsurface resources

8.1 Subject to this Act, the Executive may make regulations

- (a) for the interpretation of this Act, and
- (b) that it considers necessary or advisable for the purposes of this Act, including with respect to the following:
 - (i) governing exploration, development, operation, closure or abandonment of a mine and mining property;
 - (ii) respecting applications for, and issuing of, permits and approvals, including prescribing time limits within which specified steps in the application process must be taken;
 - (iii) respecting the type, application, use and operation of equipment, machinery and other property in, on or about mines, whether moveable or immovable or whether used in mining operations or not;
 - (iv) relating directly or indirectly to the health and safety of all persons, including the public, in, on or about mines, either underground or on the surface;
 - (v) respecting standards for environmental protection and reclamation of a mine; and
 - (vi) respecting the conservation of cultural heritage resources.

Regulations regarding royalties on subsurface resources

8.2 (a) Subject to this Act, the Executive may make regulations with respect to the following:

- (i) the classification of subsurface resources by any factors or characteristics including type, qualities or locations;
- (ii) royalty rates;
- (iii) reporting requirements;
- (iv) the assessment and reassessment of a royalty;
- (v) appeals from assessment or reassessment of a royalty;

- (vi) refunds of a royalty;
 - (vii) exemptions from payment of a royalty;
 - (viii) the calculation and payment of interest on overpayment of a royalty;
 - (ix) penalties;
 - (x) the person or class of person required to pay the royalty, and
 - (xi) time limits and time periods related to royalties including assessments, reassessments, appeals, refunds or exemptions and including different time limits and time periods for different classes of persons.
- (b) For the purposes of the regulations made under subsection (a), the Executive may delegate powers to, and confer discretionary powers on the royalty administrator.

Immunities

8.3 No action for damages may be brought against the lands manager, an inspector, the royalty administrator or the Yuulu?il?ath government because of anything done or omitted in good faith

- (a) in the performance or intended performance of any duty under this Act, or
- (b) in the exercise or intended exercise of any power under this Act.

Commencement

8.4 This Act comes into force on the date it is enacted.