



Comité consultatif pour l'environnement de la Baie James
James Bay Advisory Committee on the Environment
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James Bay Advisory Committee on the Environment:

Recommendations concerning the revision of the Mining Act per Bill 14 – An Act respecting the development of mineral resources in keeping with the principles of sustainable development

November 2011

INTRODUCTION

The James Bay Advisory Committee on the Environment ('JBACE' or 'Committee,' hereafter) has the mandate to review and oversee the administration and management of the environmental and social protection regime established by and in accordance with Section 22 of the James Bay and Northern Quebec Agreement (hereafter 'JBNQA'). The JBACE exercises its mandate as the preferential and official forum for responsible governments concerning the adoption of policies, laws and regulations or measures having an incidence on Section 22 of the JBNQA.

In accordance with its role, this JBACE brief outlines concerns and offers recommendations regarding Bill 14 – An Act respecting the development of mineral resources in keeping with the principles of sustainable development ('Bill,' hereafter), designed to revise the Mining Act (R.S.Q. Ch. M-13.1).

This exercise is particularly significant from a northern perspective. Since the signing of the JBNQA in 1975, the James Bay Territory¹ has been subject to considerable biophysical and social change. The Territory's environment, natural resources and communities are now the object of increasing development pressure, mineral and otherwise. In light of the announcement of the Northern Plan ('Plan Nord') and of existent and potential mining development projects, the JBACE finds it necessary to offer its concerns and recommendations on the subject, given that environmental protection remains at the center of the Committee's activities. In doing so, the JBACE highlights certain unique rules and protocols which apply for mineral exploration and exploitation activities occurring on the James Bay Territory, in accordance with the JBNQA.

Bill 14 illustrates the efforts made by the government to promote economic development in harmony with social progress and environmental protection. Here, the JBACE shares the opinion that the Mining Act be revised and that the integration of sustainable development principles within the mining regime is essential. We thus highlight the unique context of the James Bay Territory as well as certain concerns relating to mineral resource development. We then offer our recommendations in light of these concerns, and trust that these may be accounted for in the current revision of the Mining Act.

¹ Please refer to [Appendix I](#) for a map of the James Bay Territory.

A. Context of the James Bay Northern Québec Agreement

The jurisdictional particularities applicable to the James Bay Territory were a source of JBACE concern during our reflections on Bill 14. We feel it necessary to reiterate five contextual points unique to the James Bay Territory, as defined in the JBNQA, that relate to mineral resource development and that must be taken into account.

1. Mineral and subsurface rights on Category I lands

The JBACE recognizes that Section 341 of the Mining Act remains unchanged, such that the Mining Act “...applies subject to the Act respecting the land regime in the James Bay and New Québec territories (chapter R-13.1) [and to] the Act approving the Agreement concerning James Bay and Northern Québec (chapter C-67)...”

In light of this provision in the Mining Act, we must understand that Section 5 of the JBNQA outlines the land regime applicable to the Territory. This section establishes certain Cree rights and guarantees for each category of land designated in the JBNQA. For Category I lands, the JBNQA stipulates:

“In Category I lands, Québec remains the owner of the mineral and subsurface rights with the exception of rights already granted by Québec, as of the execution of the Agreement.

However, no minerals or other sub-surface rights can be obtained, extracted, mined or exercised from or with respect to all Category I lands without the consent of the particular community with rights over such lands and only upon payment of compensation agreed upon, for the use of rights over such lands.” (Par. 5.1.10).

The JBACE finds that Bill 14 is not sufficiently clear on the subject. Here, we must underline the importance of respecting the provisions of Section 5 of the JBNQA, as it is protected by Section 35 of the Constitution Act of 1982.

2. The special status of the Crees and public consultation on the James Bay Territory

The JBACE appreciates the various improvements proposed in the Bill aimed at promoting socially-acceptable mineral resource development which meets the needs of communities. The Committee is of the opinion that it is in the interest of proponents and governments alike to consult the public as early as possible in the mining process, in accordance with the principles of Québec’s Sustainable Development Act, and with the guiding principles of the environmental and social protection regime outlined in Section 22 of the JBNQA (see [Appendix II](#)). In light of this, the JBACE wishes to bring to your attention two unique realities pertaining to the territory under the JBNQA:

- 1) Schedule 1 of Section 22 of the JBNQA clearly specifies that all major mining operations occurring in the James Bay Territory are automatically subject to the environmental and social impact assessment and review procedure, including requisite public consultations.

- 2) The environmental and social protection regime applicable in the Territory, as outlined in Section 22 of the JBNQA, provides for a “...*special status and involvement for the Cree people over and above that provided for in procedures involving the general public through consultation or representative mechanisms wherever such is necessary to protect or give effect to the rights and guarantees in favour of the Native people established by and in accordance with the Agreement*” (Par. 22.2.2c).

The Committee holds that Article 3 of the Bill, which ensures that First Nation communities are consulted, is a notable improvement. It equally appreciates Articles 51 and 55 of the Bill which obligate claim holders to hold public consultations prior to applying for a mining lease and to create and implement monitoring committees, in the manner prescribed by regulation.

However, we must point out that these consultations, as they are described in Bill 14, would occur upstream and in addition to those already prescribed by the environmental and social impact assessment and review procedure, as outlined in Section 22 of the JBNQA. Indeed, Articles 51 and 55 of Bill 14 will oblige claim holders to hold public consultations and create monitoring committees to ensure compliance with the commitments made over the course of these public consultations. These upstream consultations cannot replace the JBNQA’s assessment and review procedure, including its consultations, and the formation of monitoring committees must respect the special status of the Crees.

3. Notice to the owner

The JBACE supports Article 32 of Bill 14 which seeks to oblige claim holders to inform owners or lessees of lands granted, alienated, or leased by the State for the purposes other than mining purposes, of their claims.

We reaffirm, however, that the James Bay Territory is organized according to a traditional system of traplines,² which is recognized by paragraph 24.3.25 of the JBNQA (see [Appendix III](#) for a map of Cree traplines). This system provides for the designation of a Cree tallyman who supervises the wildlife harvest on each trapline, hence the importance placed on protection of the environment, including wildlife resources, in the JBNQA (Par. 24.2.4) and on the protection of Cree harvesting rights and guarantees³ (see [Appendix III](#) for an overview of these rights and guarantees). Currently, providing notice to Cree tallymen by mining proponents that are present in the James Bay Territory is a matter of goodwill – it is discretionary.

The Committee affirms that tallymen and other users of the Territory should be aware off all mining-related activities affecting the Territory. The JBACE holds that such notifications must also be communicated to certain Cree institutions which may assist the tallymen with an administrative process for which they may not be necessarily equipped.

² A ‘Cree trapline’ is an area where harvesting activities are carried out under the supervision of a tallyman (Pars. 24.1.8 & 24.1.9 of the JBNQA).

³ Harvesting includes hunting, fishing and trapping activities, per Par. 24.1.13 of the JBNQA.

4. Cree wildlife harvesting rights per Section 24 of the JBNQA⁴

The environmental and social protection regime outlined in Section 22 of the JBNQA is designed to ensure that the Crees may fully exercise the harvesting rights and guarantees outlined in Section 24 of the JBNQA.

Articles 90 and 91 of Bill 14 afford ministerial discretion in excluding mining-related activities from areas designated within urbanization perimeters and areas dedicated to vacationing under a land use or development plan, or to avoid conflicts with other uses of the territory. Unfortunately, nothing in the current text of the bill leads us to believe that these harvesting rights and guarantees, as expressed in the JBNQA, may be the object of such exclusions under these articles, so as to protect the continued exercise of Cree traditional activities in certain areas.

5. Cree governance

The Committee must reiterate that the governance structure applicable to the James Bay Territory is currently in negotiation, and that no land use and resource use plans currently exist for the Territory.

The signing of the '*Framework agreement between the Crees of Eeyou Istchee and the gouvernement du Québec on governance in the Eeyou Istchee James Bay Territory*,' on May 17th 2011, allows for a one year period to sign a final agreement which will crystallize the future governance structure for the Territory. The final agreement will consolidate the regional governance of the Territory and will outline the future structures and responsibilities of the various administrative and planning bodies responsible for Category IB, II and III lands. Here, the Cree will be empowered to develop land and resource use plans on their own Category IB and Category II lands, and jointly with Jamesian representatives for Category III lands.

Evidently, the Territory will experience a redistribution of municipal power and a reshuffling of the land use and resource planning bodies. These changes will undoubtedly have an effect on the nature and timing of the land and resource use plans that will be produced,⁵ and on the delineation of urban perimeters and areas dedicated to vacationing.

In line with the issues of Cree governance and Cree land and resource planning, the Committee would like to stress that a Cree policy regarding mineral resource development already exists – the *Cree Nation Mining Policy*.⁶ This policy outlines the vision of the Cree Nation regarding mineral resource development in light of three objectives which are, in a general sense, quite

⁴ For the purposes of the current brief, we focus on 'Cree rights and guarantees' but recognize that Section 24 applies to all Native beneficiaries to the JBNQA, and defined as such per the provisions of Schedule IV from Section 24 of the Agreement (modified pursuant to Complementary Agreement N° 1).

⁵ For example, all work on the *James Bay Regional Plan for Integrated Resource and Land Development*, which was proposed in December 2010 by the then applicable *Regional Natural Resource and Land Commission*, has been suspended pending the resolution of this governance issue – per correspondence with the MRNF, dated May 30th 2011.

⁶ Available at: www.gcc.ca/pdf/ENV00000014.pdf. Last accessed on October 20th 2011.

similar to those found in Québec's *Mineral Strategy*. The *Cree Nation Mining Policy* is based on three fundamental principles:⁷

- The promotion and support of mining activities;
- The promotion of sustainable practices in the mining sector; and,
- Transparency and collaboration.

The JBACE affirms that the principles delineated in this policy must be accounted for in Bill 14.

B. Concerns regarding mineral resource development activities

1. Expropriation

Per Article 80 of the Bill, holders of a mining right or claim and the owners of mineral substances may still acquire, by expropriation, any property necessary to access the land or carry out exploration work or mining operations in areas granted, alienated or leased by the State for purposes other than mining purposes. In other words, claim holders will continue to define the scope of these expropriations as they will determine, on their own, the land requirements for their intended exploration or exploitation activities.

Although the Committee clearly understands that expropriations are very exceptional occurrences, it is of the opinion that the Mining Act requires much added clarity in this regard – particularly, in terms of the minimum rights of property owners and/or lessees when faced with expropriation, and the inclusion of First Nation burial sites in the areas exempt from expropriation.

2. Exploration

The Committee understands that the mining process, from the initial prospecting phase through to the exploitation phase, is a capital-intensive endeavour involving appreciable risk and uncertainty. We also appreciate that the exploration phase of the mining process represents a pivotal stage in determining the viability of a given deposit or project. It must be noted, however, that the exploration industry is becoming increasingly active in Québec, where exploration activities have grown by an average of 65% per year since 2000. We also note that 57% of the province's exploration expenditures in 2010 occurred in the Nord-du-Québec region, followed by the Abitibi-Témiscamingue region (32%), and the Côte Nord region (8%).⁸

The JBACE has been aware of this trend for some time, and that it will be actively supported in light of this Bill, as is expressed in the very first line of its text, and within the context of the Plan Nord.

⁷ *Ibid.*, pages 4-8.

⁸ Per page 23 of '*Québec's Mineral Industry Cluster: Socio-economic contribution to the development of Québec and its regions - 2010*,' published by the Association Minière du Québec (AMQ) and the Association de l'Exploration Minière du Québec (AEMQ). Available at: http://www.amq-inc.com/images/stories/documentation/tude_eb_data_eng.pdf. Last accessed on September 20th 2011.

In light of this reality, the JBACE considered the matter of mineral exploration in its 2008 report on the revision of Schedules 1 and 2 of Section 22 of the JBNQA.⁹ This report concluded that several mineral exploration activities, including drilling, stripping and subsurface exploration, can have significant impacts on the environment. Indeed, environmental impacts can vary considerably with the five general phases of exploration:

1. Initial prospecting;
2. Minor sampling;
3. Excavation to rocky substratum;
4. More substantial sampling, occasionally requiring blasting; and,
5. If positive results are obtained, the first stage of mining consisting of drilling and extraction of substantial amounts of ore.¹⁰

The report also stated that “*Although mineral exploration is generally exempted from [environment and social] impact assessment, it still creates problems because the distinctions between mineral exploration and actual mining are sometimes vague.*”¹¹

For the moment, we believe that issues relating to the authorization of exploration activities for a given quantity of extracted material remain unclear and should be more directly oriented towards the environmental impacts created by these activities. Indeed, following the amendments proposed by Article 33 of Bill 14, ministerial authorizations for the extraction of more than 50 metric tons of material remains discretionary and the actual activities requiring these authorizations are not defined. In order to ensure more rigorous oversight and assessment, mineral exploration activities should therefore be characterized as a function of the damage they are likely to cause to the physical and social environments, in order to define and review the impact thresholds for mineral exploration activities. As is necessary, this oversight must also include formal environmental impact assessment or review.

The Committee does not want to add to administrative requirements, nor does it wish to suggest that all exploration activities occurring on the James Bay Territory become the object of an environmental impact assessment or review under Section 22 of the JBNQA. Instead, it recommends that a clear picture of all activities significantly affecting the environment, including those related to mining exploration, be the object of government oversight to ensure adequate environmental protection, health, and quality of life of the affected communities, per the principles of the Sustainable Development Act.

⁹ JBACE, 2008. Review of Schedules 1 and 2 of the Environmental and Social Protection Regime: Lists of Development Projects Subject to and Exempt from impact Assessment and Review. Available at: <http://www.ccebj-jbace.ca/english/publications/documents/Report-ReviewofSchedules1-2-WebSite.pdf>.

¹⁰ *Ibid.*, page 28.

¹¹ *Ibid.*, page 29.

3. Cumulative effects

In light of the rapidly accelerating development pressure affecting the James Bay Territory, the JBACE is concerned of the combined and cumulative effects of human development activities on the environment. Moreover, as mentioned earlier, exploration has increased and is expected to continue to do so in the Nord-du-Québec region, including the James Bay Territory. We expect that exploitation will follow this trend.

Mineral exploitation and exploration activities, particularly when these are characterized as ‘advanced,’ generally involve other developments in proximity to the site of the given work being done (i.e. road or airstrip constructions, camps, fuel storage, etc.). A combination of activities is therefore involved which, when considered together, produce such cumulative effects. Furthermore, an increase in the overall number of mines and ‘advanced’ exploration projects within the Territory will also produce cumulative effects at a regional scale. These regional cumulative effects are thus further compounded when also considering the other supporting developments that are involved in the mining regime, and the other development activities occurring in the region.

Neither Bill 14, nor the Mining Act, considers the cumulative effects of the mining regime or of the mining process. For this purpose, the government and regional decision-makers should be more clearly informed of all mining activities so as to:

- Strengthen the oversight of these activities;
- Ensure adequate environmental monitoring of these activities;
- Obtain an overall, or global, portrait of the collection of activities occurring simultaneously in the region.

Moreover, it would be quite innovative for the government to exercise discretionary power to refuse certain mining activities in order to attenuate such cumulative effects in areas where many development projects are already occurring, or in the areas already heavily affected by human activities.

4. Restoration and Rehabilitation

The JBACE recognizes the particular advancements proposed in Bill 14 regarding site restoration and rehabilitation. The Committee appreciates these improvements given its continued concerns regarding the orphan mine sites and the contamination problems experienced on certain sites over the years in the James Bay Territory. We question, however, the need to afford a three-year grace period between site closure and the mandatory commencement of restoration and rehabilitation works. We trust that site decommissioning and closure may be adequately planned for.

5. Access to information and the register of mining activities

Public access to information is a key component in raising awareness and in ensuring effective implementation of sustainable development.¹² The JBACE applauds the various amendments proposed in Bill 14 which offer added clarity regarding the register of mining activities and that relate to public notification and consultation.¹³

However, the JBACE remains concerned about the register alluded to in Bill 14, and in the Mining Act (i.e. GESTIM-Plus). The JBACE is of the opinion that this register is rather difficult for the layman to access and does not contain all of the information relating to exploration or exploitation projects, decommissioned sites, or contaminated sites. Indeed, public access to information via the GESTIM-Plus register remains limited to:

- Mining titles and leases (including maps);
- Mining concessions;
- The list of authorization certificates issued for exploration and exploitation projects, which generally only consist of the project name, the proponent's name, and a very brief description of the area. They do not provide meaningful descriptions of the actual or proposed exploration or exploitation activities;
- Québec mineral activities reports, published annually by the MRNF (i.e. after the work begins or sometimes even after it has been completed); and,
- Technical reports and press releases issued by the exploration or exploitation companies.

Given these shortfalls, a comprehensive list of additional items and activities that must be included in the public register, including information on all aspects of a given mining project's life cycle, is required. In doing so, the register must also be made more easily accessible and offer non-technical documents and information.¹⁴

The JBACE agrees that certain information may remain out of the public domain, particularly those relating to financial aspects of the plans and reports listed in Section 228 of the Mining Act. On the other hand, a maximum of information, plans and reports relating to the environment should be made publicly-available given the perspective of the current exercise.

¹² See the 'Access to knowledge' principle on page 7 of Québec's *Sustainable Development Act* (R.S.Q. Ch. D-8.1.1).

¹³ Articles 8, 9, 10, 32, 51, and 55 of Bill 14.

¹⁴ The JBACE has recommended a more robust central register, providing for hassle-free public access, for some time. Recent JBACE initiatives with the MRNF include a letter addressed to the Associate Deputy Minister of Mines, on April 14th 2011, and another addressed to the Deputy Minister, on August 4th 2010.

JBACE Recommendations

The JBACE is of the opinion that the amendments to the Mining Act, proposed by Bill 14, represent positive steps forward in terms of aligning the current mining regime with sustainable development principles. In light of the concerns expressed herein, we offer the following recommendations with regards to Bill 14:

1. Article 2 of the Bill must be amended so as to reference Québec's Sustainable Development Act and its set of 16 principles, so as to clarify the overall connotations of what constitutes sustainable development in the context of the mining regime.
2. Article 3 of the Bill, is a notable improvement. However, it must be amended to clearly and specifically account for the JBNQA in the Bill.¹⁵
3. Article 4 of Bill 14 is unclear when considered in the context of Category I lands. The JBNQA clearly confirms that Québec retains all mineral rights for Category I lands. A ruling regarding the applicability of Article 4 of the Bill on Category I land is required, given that Article 341 of the Mining Act remains unchanged.
4. Articles 51 and 55 of Bill 14 will oblige claim holders to hold public consultations and create monitoring committees to ensure compliance with the commitments made over the course of these public consultations. These consultations cannot replace Section 22's assessment and review procedure, including its related consultation protocols. In terms of consultation, the JBACE recommends:
 - a) The inclusion of an article or reference in the Bill that affirms that these consultations will occur in an established framework and in accordance the guiding principles of Section 22 of the JBNQA.
 - b) That these consultations occur in partnership with the local authorities or governments, and maximize Cree participation.

In terms of the monitoring committees, the JBACE recommends that Articles 51 and 55 be amended to:

- c) Ensure that claim holders operating in the James Bay Territory account for the special status of the Crees when setting up the requisite monitoring committees, in order to guarantee adequate Cree participation and representation thereon.
- d) Ensure that the monitoring committees benefit from very clear mandates, objectives and responsibilities so that they may function as intended.

¹⁵ Again, only Section 341 of the Mining Act, in the 'Miscellaneous and Transitional Provisions' section at the end of the Mining Act, makes reference to the legislation applicable to the James Bay Territory. Given that the JBNQA goes much farther than the Bill and the Mining Act regarding public consultation, and that the JBNQA is protected under Section 35 of the Constitution Act, we hold that Article 3of the Bill must be amended to bring the JBNQA to the forefront.

- e) Ensure government oversight of the work of these monitoring committees, given that they will be formed unilaterally by the claim holders themselves.
5. Article 32 of the Bill must be amended to ensure that certain Cree institutions are systematically notified of all mining activities that affect a given community's traplines. These notices must be sent as soon as the status of a claim is clarified and once the claim holder proceeds forward with the first drilling programme.¹⁶
 6. Articles 90 and 91 of the Bill must be amended, or another article added, so that Cree harvesting rights and guarantees, as outlined in Section 24 of the JBNQA, may be integrated within the purview of the ministerial discretion to disallow certain mining activities in certain areas. This will allow for the discretion to refuse certain mining activities from occurring in areas intensively used by the Crees for the exercise of their traditional activities. Moreover, we strongly recommend that the Cree be afforded meaningful opportunities to participate in land and resource planning, so that the minister's discretionary power need not be unduly exercised to avoid conflicts with other land uses.
 7. Bill 14 must be amended to include an article in the 'Miscellaneous and Transitional Provisions' section of the Mining Act which recognizes and will account for the new developments in Cree governance and land use and resource planning, applicable to the James Bay Territory.
 8. Bill 14 requires added clarity with regards to expropriation and exploration. In terms of expropriation, the JBACE recommends:
 - a) That the Bill be amended to afford greater clarity regarding the minimum rights of property owners and lessees of public lands granted, alienated or leased by the State for purposes other than mining purposes when faced with expropriation.
 - b) That it be amended to include First Nation traditional burial sites in areas to be exempted from such expropriations, as is currently the case for Roman-Catholic cemeteries and for non-Catholic cemeteries so-approved by the Minister of Health and Social Services under the Non-Catholic Cemeteries Act (R.S.Q., Ch. 17).

In terms of exploration, the JBACE recommends:

- c) That Article 33 of Bill 14 be amended to establish clear definitions, thresholds and measures to ensure a greater degree of oversight and detailed review of those mining exploration activities that have potential to create significant environmental impacts, and impacts on land use. This oversight must also include formal environmental impact assessment or review, as is necessary.

¹⁶ The JBACE affirms that tallymen and other users of the Territory should be aware of mining-related activities affecting the Territory. We hold that such notifications must also be communicated to certain Cree institutions which may assist the tallymen with an administrative process for which they may not be necessarily equipped (e.g. local governments, Cree Regional Authority, Cree Trapper's Association, and Cree Mineral Exploration Board).

- d) That the Bill be amended to clearly stipulate the obligation to obtain authorisations for those exploration activities which produce significant impacts, as well as the ministerial obligation to include these authorizations in the public register.
9. The government must take into consideration the cumulative effects of the mining regime and mining process. To this end, the JBACE recommends:
- a) That government and regional decision-makers be more clearly informed of all mining activities in order to strengthen the oversight of these activities, to ensure adequate monitoring, and to obtain a global portrait of the activities occurring simultaneously in the region.
 - b) That the government hold discretionary power to refuse certain mining activities in order to attenuate such cumulative effects in areas where many development projects are already occurring, or in areas that are already heavily affected by human activities. Articles 90 and 91 of Bill 14 must be amended accordingly
10. Article 76 of the Bill must be amended to oblige claim holders to begin restoration and rehabilitation works immediately upon closure and, if closure is unforeseen, to provide just cause for the required delay in commencing these works. Such derogations should then require review by the pertinent monitoring committees and subsequent authorization by the ministry.
11. Bill 14 must be amended to establish a comprehensive list of the additional items and activities that must be included in the public register. In doing so, the register must also be made more easily accessible, offering non-technical documents and information. The locations and detailed descriptions of the following items must be systematically included in the register:
- a) All exploration activities;
 - b) All actual and proposed mining activities;
 - c) Restoration and rehabilitation plans;
 - d) Monitoring committee reports
 - e) Inspection reports;
 - f) Decommissioned, abandoned or contaminated sites.
12. Section 228 of the Mining Act must be amended in light of the previous recommendation concerning the register.

Conclusion

The James Bay Advisory Committee on the Environment appreciates that Bill 14 is allied with Québec's *Mineral Strategy*¹⁷ across economic, environmental and social axes – the three recognized 'pillars' of sustainable development.¹⁸

We further understand that the integration of sustainable development within Québec's mining regime will serve to reorient Québec's mining policy away from one of 'free mining,'¹⁹ to one of 'sustainable mining development' with adequate consideration of the economic, environmental and social aspects of the mining regime.

We recognize that such an exercise is a colossal task, requiring the integration and harmonization of several other laws, regulations and policies. We assert, however, that commonalities regarding sustainable development can already be found within Québec's *Sustainable Development Act*, the guiding principles of Section 22 of the JBNQA, and the principles underlying the *Cree Nation Mining Policy*, which may strengthen and enrich this important exercise.

In the current context, where protection of ecosystems is now tantamount, and in the particular context of the James Bay Territory, where traditional activities and the health of the users of the territory depend directly on quality of the environment, rigorous oversight of those activities which are likely to significantly impact the territory is essential. In this respect, the recommendations offered in this brief are aimed at strengthening Bill 14 in order to more adequately frame mineral development activities, and to ensure their compatibility with the environmental and social protection regime of the JBNQA, in the spirit of sustainable development.

¹⁷ Per the Ministère des Ressources naturelles et de la Faune (MRNF). Available online at: http://www.mrn.gouv.qc.ca/english/publications/mines/strategy/mineral_strategy.pdf. Last accessed on September 20th 2011.

¹⁸ Per the 'Explanatory Notes' of the Sustainable Development Act (R.S.Q. Ch. D-8.1.1);

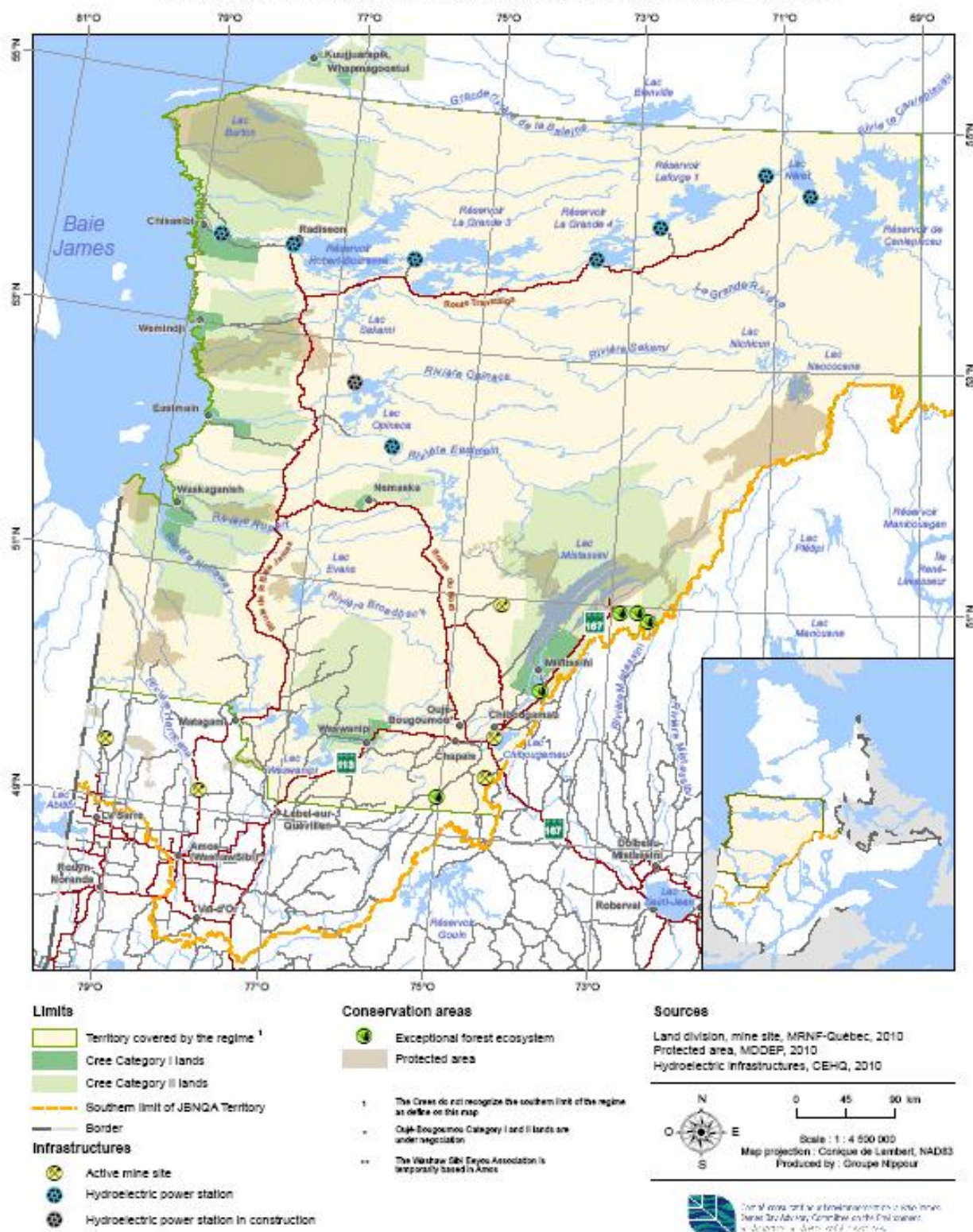
¹⁹ Per page 11 of the *Mineral Activities Report – 2009*, published by MRNF, 'Free mining' pertains to:

- "Free access to the mineral resource, regardless of the applicant's [claim holder's] means;
- On a first-come, first-served basis, applicants [claim holders] obtain the exclusive right to search for all mineral substances in the domain of the State;
- Reasonable assurance that mining rights will be granted in the event of a discovery."

In essence, 'free mining' encapsulates the current primacy of the Mining Act over other laws, regulations, plans and existent rights to land or resources.

Appendix I – Map of the James Bay Territory

Territory covered by the environmental and social protection regime



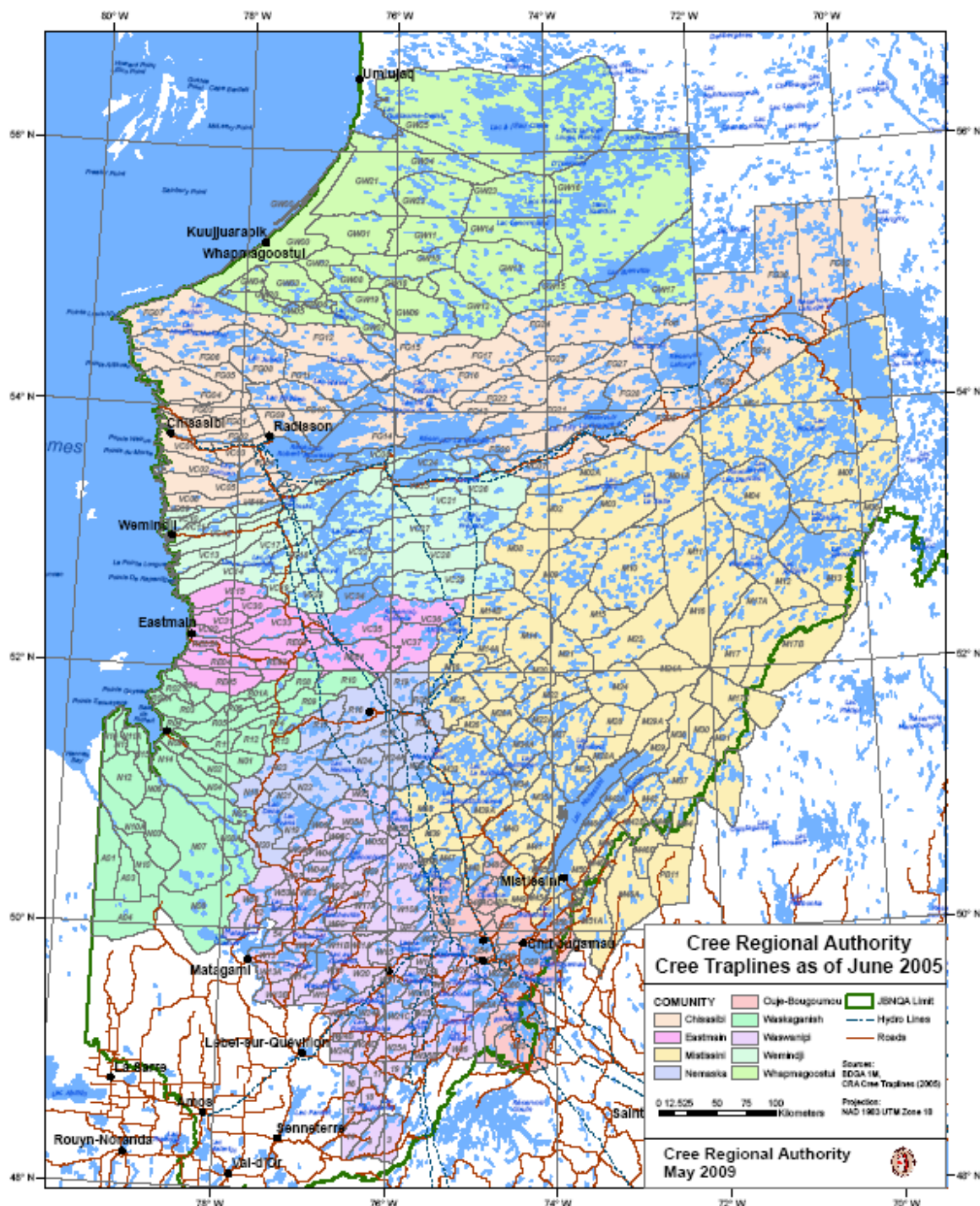
Appendix II – Guiding principles of the environmental and social protection regime per Section 22 of the JBNQA

The environmental and social protection regime applicable to the James Bay Territory, as outlined in Section 22, is subject to a unique set of nine guiding principles. Per paragraph 22.2.4 of the JBNQA:

“The responsible governments and the agencies created in virtue of this Section shall within the limits of their respective jurisdictions or functions as the case may be give due consideration to the following guiding principles:

- a) “The protection of the hunting, fishing and trapping rights of Native people in the Territory, and their other rights on Category I lands, with respect to developmental activity affecting the Territory;*
- b) The environmental and social protection regime with respect to minimizing the impacts on Native people by developmental activity affecting the Territory;*
- c) The protection of Native people, societies, communities, economies, with respect to developmental activity affecting the Territory;*
- d) The protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory with respect to developmental activity affecting the Territory;*
- e) The rights and guarantees of the Native people within Category II established by and in accordance with Section 24 until such land is developed;*
- f) The involvement of the Cree people in the application of this regime;*
- g) The rights and interests of non-Native people, whatever they may be;*
- h) The right to develop by persons acting lawfully in the Territory;*
- i) The minimizing of the negative environmental and social impacts of development on Native people and on Native communities by reasonable means with special reference to those measures proposed or recommended by the impact assessment and review procedure.”*

Appendix III – Map of Cree traplines and outline of Cree harvesting rights and guarantees²⁰ per Section 24 of the JBNQA²¹



²⁰ For the purposes of the current brief, we focus on ‘Cree rights and guarantees’ but recognize that Section 24 applies to all Native beneficiaries to the JBNQA, and defined as such per the provisions of Schedule IV from Section 24 of the Agreement (modified pursuant to Complementary Agreement N° 1).

²¹ These harvesting rights and guarantees are directly linked to Section 22’s environmental and social protection regime (see Par. 24.11.1).

Cree Rights & Guarantees	Section 24 Paragraph(s)
The sole and exclusive right to harvest (hunt, fish and trap any species of wild fauna).	24.3.1, 24.3.3 & 24.3.19
Right to harvest at all times of the year without prior administrative authorization, and in all of the Territory, with a minimum of control or regulations applied to them.	24.3, 24.3.10, 24.3.18 & 24.4.30
Crees' harvesting activities are subject to the Principle of Conservation (they may not harvest species requiring complete protection to ensure their continued existence or that of a population).	24.2.1; 24.3.2
Crees' harvesting activities are subject to limitations to ensure public safety (no harvesting within non-Native settlements; possible restrictions on harvesting methods and equipment).	24.3.5, 24.4.7, 24.3.9, 24.3.12, 24.3.14
Right to personal and community use and to the exchange and sale of harvests between Cree communities and between members of a Cree community or communities.	24.3.11a & 24.3.11c
Right to possess and transport the products of harvesting activity.	24.3.15
Right to commerce and trade in all harvest-related by-products.	24.3.16
Exclusive right to trap in the Territory, including the right to trap for commercial purposes.	24.3.19
Exclusive right to establish and operate, within Cat. I & II lands, commercial fisheries related to the species reserved to the Crees.	24.3.26
Exclusive right to hunt for commercial purposes in designated areas where Crees have harvesting rights the species listed in Schedule 7 of Complementary Agreement # 12.	24.3A
Exclusive right to keep in captivity or practice the husbandry of the species listed in Schedule 8 of Complementary Agreement # 12	24.3A
Priority of Cree harvesting – whereby, in the event of scarcity or rarity of harvestable species, priority must be afforded to Cree harvesters in light of non-Native interests (e.g. sport hunting and fishing).	24.6.2 & 24.6.3
Certain species of mammals, fish and birds are reserved for the exclusive use of the Crees.	24.7.1 & Schedule 2 of Section 24
The Crees have the exclusive right to hunt and fish within Category I & II lands within the Cree area of interest. Control is exercised over the number of non-Natives permitted to hunt and fish in Category III lands and over the places therein and times where they may hunt and fish with a view to giving effect to the principle of conservation and the rights and guarantees in favour of the Crees established by and in accordance with the harvesting regime.	24.8.2 24.8.6
Outfitting, being considered as a principal means of controlling non-Native hunting and fishing activity above the 50 th parallel, and the Crees have a right of first refusal to operate as outfitters in Category III lands for a period of 30 years.	24.8.7 & 24.9.3