

Feds created an endless permitting boondoggle

By JANE GAFFIN

Keno, the venerable old gentleman mine, refuses to die a natural death as long as a probable hundred million ounces of silver keep its heart beating. Yet, the federal government is bent on subjecting the mine to euthanasia.

I believe the mine deserves a dignified burial.

In a series of articles being published in the *Star* each Friday, I'm saying last rites and farewell to a great mine that served as the Yukon's lifeblood off and on for more than 80 years.

Here's part 22.

The Minto copper project's Nov. 1, 1998, production date was lost to permitting delays. The Oct. 1, 1999, target date came and went, too.

The major financing partner, ASARCO, was jittery about low copper prices. It turned off the money-supply spigot.

COMMENT

The founder of Vancouver-based Minto Explorations, Lutz Klingmann, insisted he could make a profit with copper prices depressed to 65 cents US a pound. Besides, prices would always rebound, maybe before the mill walls were erected.

Had Minto Explorations not been held hostage by permitting delays, it could have met the first production target; had ASARCO released the final amount of its \$25 million US commitment, Minto Explorations could have met the second target date.

Then Minto Explorations would have been in control as project operator. As soon as the mine was earning a profit, payments would have been paid to ASARCO, Teck, Falconbridge and the Selkirk First Nation. Ideally, all the players and participants would have been happy.

It wasn't in the stars. The red tape, permit delays and financial hang-ups left Minto Explorations vulnerable to another "unforeseen circumstance" completely beyond the control of Minto Explorations, bureaucrats and politicians.

A Mexican conglomerate completed its tender for the outstanding shares of New York-based ASARCO. Ironically, the merger was expected to be completed on Nov. 17, 1999, the date a three-day, government-sponsored mining advisory workshop convened in Whitehorse.

Industry representatives were presenting their grumblings about permitting snarls while government reps yapped *ad nauseam* about piling on new ones.

Meanwhile, Rome was burning!

Grupo Mexico of Baja, Calif., ranked as a significant multinational operating in Mexico, Peru and the United States. and was an important fixture on the world stage.

With the takeover of ASARCO's operations in Arizona, Grupo Mexico could double its one billion-pound copper production. It also operated numerous silver and zinc mines in Mexico, and owned the country's largest rail system.

Through other connections, Grupo Mexico was a large producer of molybdenum, zinc and gold, and retained exploration activities in Chile, Canada, Australia and Ireland.



Star file photo

LONE MINE STANDING – At one point, Viceroy Resources was the Yukon's only producing mine. It had operated the Brewery Creek heap-leach gold mine near Dawson City since 1996.

In the ASARCO deal, the Mexican conglomerate gained a 54-per cent stake in Southern Peru Copper and 19 per cent in the Coeur d'Alene (Idaho) Mines.

An incestuous relationship existed between ASARCO and Grupo Mexico. American Smelting and Refining Company, founded in 1899, belonged to the Guggenheim empire of New York.

During the early 1900s, the Guggies were gold dredging in the Klondike under the banner of Yukon Gold Corp. (part 2 of this series, *Star*, Aug. 13/04).

The company's mining engineer, Alfred Kirk Schellinger, heard of tantalizing silver prospects over in the Mayo district. ASARCO in New York returned instructions that Schellinger be dispatched to investigate.

On July 29, 1919, he staked the Keno claim and was named assistant engineer of Keno Hill Mining, formed by the Guggies to work Keno Hill silver veins during the 1920s.

In 1901, ASARCO had begun doing business in Mexico as Americas Smelting and Refining Company. In 1965, ASARCO had to be reorganized into Asarco Mexicana to accommodate the Mexican government that wanted 51-per cent controlling interest.

In 1974, Asarco Mexicana's handle was changed to Industrial Minera Mexico, and ASARCO, as an American entity, had its participation clipped to 34 per cent and, presumably, was absorbed.

Four years later, in 1978, the Mexican controlling group created Grupo Industrial Minera Mexico. The two entities did business together as GMEXICO and Americas Mining Corporation.

The name "ASARCO" doesn't pop up again in the chain of events until the buy-out of November 1999.

Although Minto's 6.5 million (metric) tonne project was only a hic-

cup in the giant's assets, it was a dream that Grupo Mexico could be persuaded to honour the financial agreement with Minto, direct or through its ASARCO ownership.

Not a chance. When the take-over boiled out, it was crystal-clear that the corporation wasn't prepared to muck around with a tiny copper deposit governed by a bunch of rank amateur regulators up in Canada's Yukon Territory.

These slick directors, who know all about shares, stock markets, metal markets and take-over bidding, would have laughed until their sides hurt if they had witnessed the nonsense unfolding at the mining advisory workshop running concurrent to the Mexican conglomerate winning a bidding war. It thwarted big rival Phelps Dodge's plan to take over ASARCO and complete a three-way merger with Cyprus Amax Minerals.

The Minto project was important to the Yukon's small economy but wasn't worth a piece of lint in the grand scheme of Grupo Mexico, which posted a website "For Sale" sign on the property and ordered ASARCO to dump it.

Why would anybody buy it? Among the endless litany of permitting problems already in the fore, the Department of Indian Affairs and Northern Development (DIAND) also required a company to possess a development and production licence pursuant to sec. 133, Part II, of the revised Yukon Quartz Mining Act.

Surprise! No such licence existed. In Ottawa's zeal to regulate the complex, multifaceted mining industry, the system had been reduced to chaos, which became abundantly clear at the workshop at the Yukon Inn.

Klingmann was among the 60 representatives from government, first nations, conservation society and industry attending what was supposed to be a communication seminar to discuss what's right and what's wrong

with the mining land-use regulations which had come into effect nearly a year before in December 1998.

The title alone was a misnomer, creating confusion. Mining land-use regs pertain strictly to hardrock exploration sites, or any placer mining operation not covered by a water licence – not operating mines.

To boot, the regulations were put into effect on an "experimental basis". How was a mining industry supposed to operate as "an experiment"?

Much of the rigmarole seemed to be open to bureaucratic interpretation. Government mining land-use agents could not or were afraid to attempt answering questions about implementation of the new regulations.

Industry and first nations representatives were justifiably frustrated by the lack of straightforward answers.

DIAND's top guy was summoned as an impromptu luncheon speaker. But then-regional director general Terry Sewell was clueless, and dashed away while delegates still had their mouths full of food.

Additionally, the government had been bumping along for nearly three years on a new set of environmental regulations, a separate set of contradictory mining laws, which had been jammed into the Quartz Mining Act in 1996-97.

The only way to straighten out the regulatory mess was in a courtroom; or for the feds to fess up to their mistake and withdraw the conflicting Part II regulations from the parliamentary mining statute and reprint the act.

A year before, delegates attending a 1998 first nations mining conference had been told that preliminary drafting work was underway on the required production regulations.

The regulations were still not ready for public scrutiny in November 1999.

The second draft of the Yukon

Quartz Mine Production Licence wasn't circulated until January 2000. Yet Ottawa, in its wisdom, had released the regulatory-infested version of the Yukon Quartz Mining Act in 1996-97.

This was brainless, unless the government's ulterior intention was to destroy the mining industry by introducing a contradictory, discretionary, incomprehensible regulatory regime so the feds could take over controlling interest Mexican-style.

Production regulations weren't in place to issue the production licences. Yet the latest mining act required all development and production activities related to quartz mining in the Yukon be carried out in accordance with a licence signed by DIAND's minister in Ottawa under the provisions of the regulations.

The minister possessed discretion to sign or not sign the licence.

No matter. Any company falling under this category needed a development or production licence no later than June 16, 1999.

Viceroy Resources was the Yukon's only producing mine. It had operated the Brewery Creek heap-leach gold mine near Dawson City since 1996. Viceroy had applied for a production licence on Feb. 22, 1999.

The government couldn't produce a licence, which translated into the company contravening the mining act and its inclusive regulations.

Technically, Viceroy could have been shut down and fined to the hilt for every day it was in non-compliance.

As the adage says, "This is a hellava way to run a railroad."

Maybe the government should have consulted Grupo Mexico. It operated the biggest rail system in Mexico. And, who knows? Maybe it even knows how to make the trains run on time!

It was obvious the bureaucrats

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Wanna buy a mine el cheapo?

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hadn't thought the process through and were caught in their own web while companies took the full brunt. It's doubtful that even the staunchest, anti-industry judge on the bench would have upheld the government's position in that colossal screw-up.

Regardless, Viceroy's legal security of tenure had evaporated into mist.

To "correct" the glitch, the audience was told of Ottawa's legal department returning word that the Whitehorse bureaucrats could rely on policy.

Viceroy was nearly three years into production when the rules changed and had invested millions of dollars that hinged on nothing more than an arbitrary policy?

An interim production licence was issued to Viceroy in early August 1999, before any production regulations were soundly in place.

The Minto copper project was in development stage. Subsequently, and under the identical policy, it was issued an interim Yukon Quartz Mine Production Licence on Oct. 4, 1999, which was three days past Minto Explorations' second production date.

The government officials insisted the licences weren't "interim"! What



TERRY SEWELL

else could they be? The regs hadn't been written.

This is but one sampling of the quagmire the thoughtless feds created when amending the Yukon Quartz Mining Act that was going to be dealt off to the Yukon government to grapple with.

It destroyed all legal security of tenure for operators.

When a mine was exhausted, decommissioned and the land reclaimed to perfection, there was no guarantee a bureaucrat would release

the operator from provisions of the production licence.

Conceivably, a company could be responsible for the minesite forever and never be able to retrieve its millions of dollars held by the government as a security bond deposit.

Picture, if you can, Grupo Mexico executives playing around with Ottawa boobus who make up the rules after the game is in progress. A presenter told the workshop what Viceroy Resources thought about the shortfalls and twisted knots of obtaining permits and approvals.

The words fell on deaf ears.

Another problem surfaced in the regulatory confusion. Mining companies trying to permit a mine expected the Yukon Development Assessment Process Act (DAP) to soon take precedence over the federal Canadian Environmental Assessment Act (CEAA).

How CEAA came about is another tangled story. Basically, it has no built-in timelines and no clear guidelines as to what kind of baseline information a company was expected to present to the review board.

The environment directorate kept sending companies back for more studies. Some proponents on perpetual spin-cycle gave up, which appeared to be the intentions behind



ALFRED SCHELLINGER

the unworkable process.

However, the workshop scuttlebutt surfaced that the government and first nations had taken DAP behind closed doors without industry's input. DAP legislation then went on hold for an indefinite period of time.

Then it was the first nations' turn to be sore. They learned that government and industry had been behind closed doors trying to iron out wrinkles in the environmental screening process.

Nobody knew if the feds would devolve administration of mining and other natural resources to the Yukon government by April 1, 2000. (It was April 2003.)

Although Development Assessment Process legislation was developed in accordance with the land-claim settlement Umbrella Final Agreement, a government official told the workshop it wouldn't be needed.

The territory would develop its own environmental assessment act known as YEAA. The concept of "development" was repugnant and the masters wanted to replace the word with "environmental".

While it was easier to speak of

"dapping" a project, delegates thought it was far more fun to say WYE-EE-AYE, which they likened to the braying of jackasses.

At the relevant time, the feds didn't know which process was coming first. Industry was left out on a limb assuming it would continue to deal with CEAA, which was supposed to be obsolete if DAP had been replacing it.

The first draft had been prepared on Oct. 15, 1998. (The second draft was not released until August 2001.)

Regardless of whether the chicken or the egg came first, timelines were not incorporated and the process still left the proponent's business affairs at the mercy of non-accountable board members and regulators who had no vested interest in the project succeeding.

Writing rules that harbour grudges against mining operators was encouraging an invisible "everything has its price" mentality.

In these lopsided situations, "tipping" and offering favours serve as a "cost of doing business" incentives for board members to fast-track applications, screenings and approvals.

Cash paid under the table can dissuade regulators from suspending revocable licences and issuing fines for a while. But there is never a cap on extortion fees. The operator can only secure his property tenure until the money supply is exhausted by too many greedy out-stretched hands.

Hey, anybody wanna buy an ore-body with mining potential in the Yukon? El cheapo!

Jane Gaffin is author of *Cashing In*, a definitive history of the Yukon's hardrock mining industry, 1898 to 1977. You can e-mail her at janegaffin@canada.com or visit her at www.diArmani.com

Next week: independent mine developer Lutz Klingmann gets the final word before his beloved project is put up for sale.

Rotary Club helps out anti-land mine cause

The Rotary Club of Whitehorse is putting \$2,000 toward removing land mines in Bosnia after the recent Night of a Thousand Dinners fundraiser.

During that event, people came out for dinner and to raise money and awareness about the international cause, reads a statement by the local club.

It notes the club strongly supports Canada's role in achieving the 1997 Ottawa treaty - an international tool to rid the world of land mines.

While 133 countries signed on to the convention, there are still 42 that

have not come on board, including the U.S., Russia, China, India, Saudi Arabia, Israel and Egypt, among others.

The treaty does permit land mines to be used to blow up tanks or military vehicles.

"In Canada, we are safe and removed from the ravages of war and daily aggression," Steven Gasser, a local Rotarian and ex-Canadian military engineer, said in the statement.

"We rarely see the extent of human suffering that anti-personnel mines cause to innocent people, usu-

ally those who have so little to begin with.

"I've seen the horrible effects of these land mines in Bosnia and I'm pleased this club has dedicated some of its money towards this worthwhile global cause."

Approximately 100,000 land mines are removed around the world annually, thought there are more than 100 million located in more than 70 countries.

The UN estimates someone is killed by a land mine every 20 minutes.

FUND RAISING

BOTTLE DRIVE!

Monday, January 3rd
10:30 am - 3:00 pm

Whitehorse Minor Hockey Association's Peewee, Bantam and Midget Rep teams

will be knocking on your doors, wearing their team jerseys, asking for donations of your extra bottles, cans and anything refundable including water bottles and tetra packs.

Thank you in advance for supporting this fund raising effort. All funds collected will go directly toward travel.

You are invited
to the annual
*Commissioner's
Levee*

Saturday, January 1, 2005
at the Elijah Smith Building
from 2:00 - 4:00 p.m.

Come share in the spirit of the festive season

Call (867) 667-5121 for more information



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