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The Peel issue is undoubtedly headed to the courts

By [Chuck Tobin](#) on August 12, 2011 at 3:41 pm

The future of the Peel River watershed will be decided in a courtroom.

Hate to say it, but that's the way it's going to be.

There's just too much disputed ground between industry and the First Nations which are backed up by a significant pro-conservation lobby.

The expanse was clear to former Yukon premier Dennis Fentie. That's why the timing of the Peel planning process has been pushed to the limit, and won't be wrapped up until after this fall's territorial election.

The deadline for final comments from the various governments, the Yukon and four affected First Nation governments isn't until November.

Premier Darrell Pasloski has to be happy he's not having to take a stand on the Peel before polling day, because he'll most likely be rejecting the commission's recommendation for maximum conservation if it's up to him as the next premier. He doesn't have much choice.

The premier will be pushed and prodded during the campaign to state clearly what the Yukon Party's position is on the final land use plan recommended last week by the Peel planning commission.

With the current state of the territorial cabinet, he'll be hard-pressed to take a position.

Fentie's gone, three more ministers are retiring, and two have lost their bids to win their riding nominations. This is hardly the time for a cabinet to take a stance on the hottest issue to hit the territory in some time.

Pasloski's Yukon Party is bound to the interests of the private sector, just as the New Democrats are tied to the left.

And Fentie has already said no to the draft recommendation, and even the planning commission indicated last week that not much has changed in its final recommendation.

The rookie premier is also staring at a mountain of existing legal rights which say mining companies have the right to work their mineral claims inside the Peel watershed, and the right of reasonable access to those claims – roads. That's reality.

The Liberals and New Democrats have stated their undying support for the desire of the First Nations and the pro-conservation movement to have the Peel largely withdrawn from development.

They have, however, not said what they're prepared to do about the existing third party interests inside the planning area. That's the million-dollar question.

Exploration and mining companies could surrender their rights inside the Peel, as a sign of good corporate citizenship.

It's been suggested, and it did happen during the formation of the Tombstone Territorial Park when a junior exploration company turned back a relatively small inventory of claims, and politely got out of the way of the park proposal.

There are some 8,400 mineral claims in the Peel watershed. Almost all of them are inside the large area where the final plan recommends that there be no roads nor surface access of any type – ever. Mining companies can still work their claims, but no roads, winter or summer.

Under existing law, however, companies have the right of reasonable access. That doesn't mean a spaceship 100 years from now. It means a road – today.

Included in those 8,400 claims spread throughout the area recommended for the highest level of protection are the 525 iron-ore leases owned by Chevron – the international oil company.

It's not likely somebody sitting in the boardroom on the 100th floor of the Chevron tower will put much ahead of what's best for the company's shareholders. Nor will its legal department, which takes up the first 99 floors.

If Pasloski is the next premier, when he rejects the plan – and he will – the aboriginal community will go ballistic with anger. Understandably.

More deeply, they'll be hurt.

They put a lot of eggs into the basket of trust when they signed off on their land claim agreements not so long ago. Those agreements were meant to foster

co-operation, and joint management of the territory's resources.

If there's one place in the territory which remains largely unspoiled and pristine, an area deserving of permanent protection, it's the Peel, the First Nations maintain.

But 97 per cent of the Peel watershed is territorial Crown land, which gives the Yukon government the final say when it comes to land use planning.

On one hand, there is a piece of paper written 100 years ago in Ottawa which gives mining companies the right to go where they want in the Yukon.

In the other, aboriginal tradition and culture carved into the Peel landscape over thousands of years, a past as fluid as the rivers that make the Peel what it is.

For the First Nations, their history, their future, is so much more than paydirt.

And they'll go to the edge of the Earth to protect their traditional territories inside the Peel watershed.

They've said as much.

The edge of the Earth will likely be the Supreme Court of Canada.

The question will be: Does the commitment in the Yukon's modern day treaties to uphold and honour the ability of First Nations to maintain their traditions and culture outweigh the right to drive a road into a mine site, or vice-versa?

Unfortunately, it's a matter for the court to decide.

Should either NDP Leader Liz Hanson and Liberal Leader Arthur Mitchell become premier, it would not be the end of the debate, nor legal challenges.

It would only mean shifting the chairs around in the courtroom.

COMMENT

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