ON the LAND

Mining and First Nations have not always gotten along, but what if they were one and the same?

By Eavan Moore

For a long time, Hans Matthews did not connect his mining career to his background as a member of the Wahnapeitae First Nation. A childhood mineral enthusiast who dug “gold” out of the road at age seven, he had risen to vice-president of a mining company without thinking much about aboriginal land issues.

But when a violent land-use standoff between the Mohawks and the army in Oka, Quebec in 1990 led mining executives to fear they would lose the ability to mine in Canada, the nightmare visions shared by his colleagues left Matthews skeptical. He quit his job, got up to speed on treaty and land claim issues, and founded an organization to inform and aid aboriginal groups asking the same question he had always had: “Why aren’t more communities involved in mining when mines are in their backyards?”

Since founding the Canadian Aboriginal Minerals Association (CAMA) and serving as its president for the last 22 years, Matthews says the conversation has changed. Most obviously, the fears of 1990 have turned into awareness among mining companies that genuinely successful mining projects depend on community cooperation. But a handful of aboriginal groups have turned that notion on its head. Why should First Nations, Inuit, or Métis groups not build their own mines?

Self-sufficiency

The Dene Nations of the Northwest Territories (N.W.T.) have become the latest to act on that vision and are the most ambitious so far. In 2013, Denen-deh Investments Limited Partnership formed an exploration and mining company and bought up brownfield mineral properties in the N.W.T. with the intent of developing and operating a metal mine.

The decision to explore arose from broad discussions amongst Dene in N.W.T. communities about their vision for economic development in a region driven by the mining industry. Darrell Beaulieu, president and CEO at Denen-deh Investments, tells the story of an elderly woman from the Yellowknives Dene who showed a prospector a lump of gold in 1932 and kicked off the development of the Giant mine. Beaulieu himself got his start in the exploration business. Since then, his focus on economic development as a former Yellowknives Dene First Nation chief and Dene business leader has often involved mining in some form or another. But over those years, Beaulieu says, “The Dene have not really fully participated in the way that they wanted to.” Economic self-sufficiency is their new vision. Through exploring, developing, and directly benefiting from their resources, the Dene can diversify their economies and sustain existing aboriginal-owned mine services businesses, more than 60 of which have sprung up in the N.W.T. in the last decade. As far as Beaulieu knows, they would be the first aboriginal owners of a metal mining company in Canada.
As resident owners, they also want to show potential investors a competitive edge. “We live here, we’re based here, we operate here,” Beaulieu explains, “whereas people in the past have seen mining companies come from other jurisdictions not really knowing the lay of the land.”

The Denendeh Exploration and Mining Company, or DEMCo, bought four brownfield mining properties in the Caniass River mining area near Great Bear Lake in 2013. The Terra mine is the most exciting property, with a past history of silver production. There is also potential for other minerals in the total assembly of leases, which includes the former Smillwood, Northrim, and Norex mines. The claimholder of Norex was a lone prospector, geologist and mining engineer who optioned it to DEMCo and asked to be a director of the company.

DEMCo is now focused on compiling existing exploration data and using that information to create three-dimensional models. Denendeh Investments has raised close to the $1 million needed to carry the project through this phase. After the models are complete, DEMCo will hit the mining conventions in Yellowknife, Vancouver, and Toronto and begin in earnest to seek out a joint venture partner, whether from Canada or overseas.

**Project proponents, not beneficiaries**

With a vision, good management and a strong funding base, DEMCo could generate far more income as a project proponent than impact and benefit agreements would provide. “I think First Nations are starting to realize that that’s where the real substantial income is made,” says Merle Alexander, a partner at Gowlings, who practises aboriginal resource law, “and that they have to start looking at their own territory and identifying areas where they could find it acceptable for there to be mining development and then trying themselves to start staking claims.”

Aboriginal-run mining operations are out there. Many First Nations run gravel pits, which have low start-up costs, ranging up to $1 million. A few Aboriginal groups have run industrial minerals operations producing graphite, garnet or marble, which can cost several million dollars to develop. Matthews and CAMA helped a Labrador Inuit company start up two Labradorite quarries. A Sudbury-area garnet mine owned by members of the Mohawk Nation and located on Wahnaptae land has been running for about 10 years. In 2013, Mohawk Garnet received $4.3 million from the Northern Ontario Heritage Fund to expand its processing plant.

But despite the potential, Alexander says the topic of becoming a project proponent seldom surfaces in his conversations with clients. While there are numerous reasons why more First Nations have not started up their own mines, they generally come down to money: “To be a mine operator you have to have a lot of cash, and so that excludes a lot of people, not just First Nations,” points out Glenn Nolan, vice-president, aboriginal affairs at Nornet Resources and former chief of the Missanabie Cree. But First Nations have it particularly hard, as their income sources put tight limits on what they can actually do.

“Most communities get probably 90 per cent of their money from government revenues,” says Matthews. “Maybe the other 10 per cent comes from their own economic development ventures.” Government cash contributions are measured within short timeframes from one year to several years, limiting their usefulness on major infrastructure projects.

“Other orders of government do not function on such short financial horizons,” says Harold Calla, co-founder and executive chair of the First Nations Financial Management Board (FNFMBoard) and member of the Squamish Nation in British Columbia. “Most governments will finance their infrastructure assets over the life of the asset. We’re being expected to pay for them in 12 months. It’s just not realistic in the world we have today.”

More important than cash is the ability to obtain loans. Here, too, Aboriginal governments are at a disadvantage. Rarely does a First Nation have the financial track record to reassure lenders, it is also difficult to get a loan without collateral, which is the case for First Nations whose assets are on reserve land. Those assets cannot be put up as collateral, because the lender has no right of seizure and no ability to sell to another party.

And finally, there are multiple types of expertise involved in starting a mine. Most communities, although they may have residents and businesses that have worked at and for mines, do not have experience when it comes to managing one. Making major financial calls in general, says Calla, exceeds most communities’ capacity and expertise. “The Indian Act froze us in time,” he says. “We were not allowed to engage in the economic mainstream. And we’ve been that way for 300 years. All of a sudden, in the last 20 years, we’ve been unfrozen, but we’ve not had those 300 years to evolve.”

That’s why the First Nations Finance Authority exists. The non-profit was incorporated in 1993 to provide alter-
One way to do this is to divert the proceeds from their revenue sharing agreement into buying shares. Another way, used by the Naaspan Nation of Kawachikinamach in northern Quebec, is to negotiate a carried interest to be paid back when the project starts producing. The Naaspan was originally approached by an iron company looking for investors on the LabMag project, and they agreed to use their treaty settlement funds to pay for environmental baseline studies in exchange for a 16.5 per cent stake in the project. When New Millennium Iron Corp. bought out the owners, it negotiated an additional 3.5 per cent stake and a 0.333 per cent gross overriding royalty on future production with the Naaspan. The First Nation will pay back its share of development costs, but only when the project turns a profit. By then, a joint-venture partner will have come on board, so the Naaspan will be paying for a fraction of the cost of the project gets off the ground.

The right partnership can eventually take a community to 100 per cent ownership without upfront risk. In a transitional ownership model, the group can partner with an owner, generate money from the project, and then use it to gain full control – on the condition that the company pay for a specific product. This has been used in the forestry industry and the Bafokeng expanded on that principle to finance their own mining venture, Canadians may have thought that the Bafokeng’s early, 1990s, way of earning money from platinum mining was as good as gone. But it was not.

In 2007, the Bafokeng started taking advantage of the roughly 1,200-square-kilometre block of land that the Bafokeng had owned for 500 years, and which was for years a blacked-out mining project.

A growing number of firms are offering small equity shares to Aboriginal communities without cash changing hands. Avalon Rare Metals hopes to develop its Nechalacho rare earth project under a joint-venture agreement with the Canada Health Act, which has for years been treated as a sacred cow.

The path to ownership

How can Aboriginal groups earn a significant stake in a multi-billion-dollar project with limited funds? The FNMBF proposes that First Nations acquire their option when the private sector brings the project online, so that cost overruns and delays do not hit them. "So you can imagine how beneficial any revenue has materialized.

One day we thought this was an important thing that First Nations as governments can use to support achieving their goals and aspirations." For ambitious projects, however, First Nations could use more help, and Calla suggests that Aboriginal groups accept a significant minority stake as a good stepping stone. It does not have the same profit potential, but it guarantees a portion of the wealth while skirting risk. When First Nations who lived eating porcupine and pullign grass for fuel also had their first exposure to the promise of natural gas (LNG) in British Columbia, they expressed an interest in buying a share of the project. FNMBF did not have an example LNG project and came up with a financing proposal. Why shouldn't the federal government of Canada backstop some of the purchase price? "An equity participation in a $37-billion project is beyond the financial capacity of any single or group of First Nations likely in this country," says Calla. "And so as part of the duty to consult and accommodate, what we have suggested is that Canada should consider engaging in the Bafokeng case to help the Bafokeng should deem appropriate, bringing to the table a federal loan guarantee program, so that the private sector and First Nations would know that an equity play by First Nations was possible."

The FNMBF’s proposal, released in October, 2014, was built on an illustrative gas pipeline, intending that everyone should know precisely what the numbers would look like for a First Nation to participate in a large LNG project. (A few gas companies have already offered First Nations about a third of the equity in a project.) Assuming that a $37-billion project is financed on a 60-40 debt-to-equity split, a one-third equity interest would cost $4.5 billion. "So you can imagine how beneficial any revenue has materialized."

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