

The Honourable Jay Macdonald
Minister of Environment and Climate Change

Application of Waters Act Provisions to the Sale or Transfer of Mining Assets

Mr. Speaker, I have a Return to Written Question asked by the Member for Yellowknife North on February 6, 2026, regarding the Application of Waters Act Provisions to the Sale or Transfer of Mining Assets.

The Member asked what legislation, regulation, policy, or best practice supports the Department's stated position that the applicability of financial testing under the *Waters Act* depends on whether a transaction is structured as an asset purchase or a share purchase.

Section 39(1) of the *Waters Act* is clear that financial testing only applies when there is “a sale or other disposition of any right, title or interest of a licensee in an appurtenant undertaking”.

In a share purchase transaction, there is no sale or disposition of the undertaking itself, only the ownership of the licensee changes. As a result, a share purchase does not constitute an assignment of a water licence.

The Member also asked the Minister to explain how Section 39 of the *Waters Act* is applied in cases where mining assets change ownership through a share purchase, including situations involving a change in controlling shares.

Section 39(1) of the *Waters Act* does not apply to any share purchase transaction even if the transaction results in a change in control of the company. The applicable land and water board is responsible for administering section 39 of the *Waters Act* when that section applies.

Further the Member asked the Minister to provide either publicly, or confidentially, to Members, any existing analysis by the Department on how Section 39 of the *Waters Act* has been applied thus far to sales or transfers of mining assets, over the last ten years.

Section 39 of the *Waters Act* is administered under the responsibility of the applicable land and water board. The Department is not aware of any existing analysis undertaken by the Board on how it has applied Section 39 of the *Waters Act* historically.

Thank you, Mr. Speaker.