MANITOBA ECO-NETWORK

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February 16, 2024

Natural Resources Canada
Comments submitted via Let's Talk Natural Resources

Re: Feedback on Critical Minerals List Criteria

The Manitoba Eco-Network is submitting this letter to provide feedback on the proposed updated criteria that the Government of Canada will use to determine which minerals are placed on the Critical Minerals List.

Overall, the proposed criteria appear to be overly focused on the potential economic benefits associated with mining. In doing so, the criteria deemphasize the relationship between "critical minerals" and the energy transition and minimize important safeguards to ensure environmental protection, social sustainability, and the advancement of reconciliation.

Specifically, the material lacks attention to how a mineral deemed critical will be developed in a way that will lead to a circular and more sustainable economy. The criteria developed should ensure any benefits associated with critical mineral status (e.g., government funding) comes with a commitment to the highest standards of protection for the environment and human health, as well as advancing reconciliation.

Further, more clarity is required with respect to how each criterion will be interpreted, and ultimately applied, in order to generate the list of minerals which Canada deems are critical.

Critical minerals will play an important role in the global transition to a sustainable, low-carbon economy. However, more clarity and direction are needed to ensure that Canada's focus on critical minerals does not perpetuate unfettered development by replacing one source of greenhouse gas emission with another, nor does it unfold in a manner which provides little benefit for local communities who bear the burden of the environmental consequences of mining. A strong critical minerals strategy, underpinned with a clear, concise definition, is essential to ensure the industry is best positioned to meet this important challenge.

Q1: Do you agree with the criteria?

To summarize, the criteria proposed by Natural Resources Canada are as follows:

- Criterion 1: Essential to Canada's economic or national security.
- Criterion 2: Required for our national transition to a sustainable low-carbon and digital economy.
- Criterion 3: A sustainable and strategic source of critical minerals for our international allies.
- Criterion 4: Mineral supply is threatened.
- Criterion 5: The mineral has a reasonable likelihood of being produced in Canada.

The Eco-Network does not agree with the proposed Criterion 1.

The inclusion of "economic security" as a factor to be considered in the assessment of criticality opens up the list to minerals which are not centred at the forefront of the energy transition. This will likely result in an unfocused approach to critical minerals, with too much emphasis on potential economic benefits to industries that currently play a large role in any regional economic development strategy.

Should an "economic security" component be included in the criteria, the Eco-Network recommends that the main purpose of economic considerations in the context of critical minerals should be to identify minerals that are critical for Canada's transition to a sustainable, low-carbon economy.

As it relates to regional economic development, we note the inclusion of the following: "The various critical minerals lists produced by provinces and territories will also be considered since each province and territory has minerals that are relevant to its own regional economic security and prosperity." The Eco-Network has undertaken preliminary research regarding the critical mineral lists in each Canadian jurisdiction (federal, provincial, territorial). The results of this research flag that there is no consensus among Canadian jurisdictions regarding what are critical minerals. As a result, Canada's proposed approach is likely to result in an unfocused and overly broad approach to critical minerals if all minerals deemed "critical" by other Canadian governments are included in the federal list. There are significant differences across Canada, and it is unclear how the proposed approach will weigh the strategies of other provincial and territorial governments when determining criticality.

For example, this lack of consensus between jurisdictions was highlighted in our preliminary research which demonstrated that zinc is currently the only mineral identified as critical by all Canadian jurisdictions. Some minerals are deemed critical by most, but not all, jurisdictions, such as zinc, copper and Rare Earth Elements. Five minerals were listed by only one jurisdiction[1] and similarly, six minerals were listed by only two jurisdictions[2].

Given this lack of consistency across Canadian provinces and territories, and the potential for an overly broad and unfocused federal list, Eco-Network raises the question of whether a threshold of provincial/territorial support should be required to achieve federal criticality (e.g., at least 50% of provincial/territorial governments).

Related to both criteria 1 and 3, there is also a lack of consistency amongst international jurisdictions in designating minerals as critical. For example, the Canadian Critical Minerals Strategy compares critical minerals across select international jurisdictions, showing that the Rare Earth Elements Group is the only one that is deemed critical across jurisdictions.[3] Once again, Canada's critical minerals list should include those that are at the forefront of Canada's transition to a sustainable, low-carbon economy, rather than focusing on the needs of other jurisdictions.

The Eco-Network requires more clarity regarding the definition of "national security" when determining the criticality of a mineral. The Eco-Network strongly recommends against the exploitation of Canada's mineral reserves for national defense purposes, e.g., use of uranium for nuclear weapons. As supporters of the Treaty on the Prohibition of Nuclear Weapons, we urge the federal government to carefully

[1] Selenium, rubidium, phosphate rock, hafnium, and fluorine.
[2] Aluminum, arsenic, beryllium, iron, silicon, silver.
[3] The Canadian Critical Minerals Strategy, 2022, p 47, online: https://www.canada.ca/content/dam/nrcan-rncan/site/critical-minerals/Critical-minerals-strategyDec09.pdf

consider the detrimental environmental and human health impacts associated with the manufacture and use of nuclear weapons.

However, if "national security" is intended to focus on ensuring citizens can achieve their basic needs (e.g., food, water, shelter), the Eco-Network would be more supportive of this element being a consideration in determining mineral criticality. Thus, more clarity is needed about the intended focus of this element and whether or not "national security" encompasses a broader range of issues than national defense, such as protection the national food supply chain and ensuring food security for all Canadians.

The Eco-Network is supportive of Criterion 2, in principle, but requires more clarity about how it will be interpreted and applied.

In order to truly assist in leading to a sustainable economy, the designation of a mineral as "critical" should require a commitment by those pursuing related development opportunities to more than just mineral extraction activities. For example, it would be useful to have more details regarding the value chains considered important for the transition to a low-carbon and digital economy. The current description and examples appear to be too broad.

There is also currently a lack of clarity in Criterion 2 (and Criterion 1, as discussed above) about how the designation of a mineral as "critical" will help contribute to transition Canada to a circular economy. We note the discussion regarding sustainable development and circular economy in the current federal critical minerals strategy. To operationalize that discussion, we recommend that in order for a mineral to be considered as required for our national transition to a sustainable low-carbon and digital economy under Criterion 2, a plan should be formulated for that mineral to contribute to a circular economy. For example, there should be consideration of existing recycling activities associated with a mineral deemed critical.

Based on the description of Criterion 2 and 3, it is also unclear how "sustainability" will be assessed when determining if a mineral is "critical". There appears to be two different standards contemplated, one for mineral operations that produce for domestic use, and a different standard for minerals that are exported to our international allies. While there is currently no definition of "sustainable" associated with Criterion 2, the following language is used in Criterion 3:

> Canada's allies are increasingly looking to ensure materials entering their countries are from responsible sources with strong environmental, social, and governance (ESG) credentials. Creating a sustainable and ethical mineral supply chain supports and accelerates the transition to a low-carbon economy along the value chain.

This description for Criterion 3 appears to imply that a higher standard of will be applied to minerals that could be exported internationally. We strongly recommend that the same high standard should be applied to both operations that produce for domestic and international use.

We also recommend that the assessment of a mineral based on Criteria 2 and 3 include consideration of the impacts of critical mineral extraction and production, including social, cultural and economic impacts on all citizens, but particularly on vulnerable populations.

Overall, the Eco-Network suggests refining the factors outlined in Criterion 2 (and Criterion 3) to establish clear standards for assessing a mineral supply chain's contribution to a sustainable low-carbon economy. This requires development of criteria that assesses a mineral's supply chain's environmental, human health and social impacts, and its impacts on Indigenous rights and governance, as well as whether these impacts can be justified in light of potential benefits (e.g., social, economic). Clear environmental standards could help limit the scope of the Critical Minerals List and more meaningfully contribute to our national transition to a sustainable low-carbon economy.

There is also a need for more clarity about the application of Criterion 3.

In particular, we recommend further details about the criteria for determining who are Canada's "international allies". Specifically, there is current a lack of detail regarding on what basis Canada will determine that the mineral is critical for an international ally. While these international allies may be looking for sustainable sources of critical minerals, we recommend that Canada should also examine the commitments made by these international allies to environmental protection, social sustainability and Indigenous rights and governance. The Eco-Network does not support the export of critical minerals for other purposes, such as the manufacture and production of nuclear weapons.

Finally, we recommend the provision of more details regarding Criterion 5.

Currently, Criterion 5 focuses on the need for the mineral to have a "reasonable likelihood of being produced in Canada." Further clarity is needed regarding the statement that "(m)inerals must be capable of being economically shipped to relevant markets." This is because Criterion 5 appears to be focused on the potential for domestic production, while Criterion 3 relates to exporting to international allies. It is unclear to us why Criterion 5 refers to economically shipping to relevant markets. We recommend clarification regarding the relationship between mineral production in Canada and being able to economically ship minerals to relevant markets for purposes of Criterion 5.

Q2 & Q3: Are all criteria needed? Would any additional criteria be useful?

Due to the lack of clarity around the interpretation of the criteria, as discussed above, it is unclear whether the proposed criteria are sufficient or if additional criteria would be helpful. At the very least, further information and details are needed for the criteria identified to create a list of critical minerals that will not be overly broad.

As noted above, depending on how the proposed criteria are defined and applied, especially as discussed above with respect to component in Criterion 2, there may be a need for more criteria to ensure consideration of potential negative impacts of future critical mineral operations on the environment and human health.

There may also be a need to include additional criteria to ensure the assessment of critical mineral activities captures overall production, from extraction to end of useful life, and is not just limited to extraction. This could include promoting an ever-expanding circular economy in support of the energy transition through supplemental requirements such as recycling.[4] This would be an innovative way to encourage more sustainable development of critical minerals.

[4] See for example, Kalen, S. (2021). Mining Our Future Critical Minerals: Does Darkness Await Us? *Envtl. L. Rep., 51*, 11006.

The Eco-Network is concerned with the proposed approach for applying the listed criterion. As described in the material, a mineral must meet one of criterion 1-3, and both criterion 4 and 5. We do not agree with this approach. **We recommend that a mineral should be required to meet criteria 2, 4, and 5 in order to be considered critical.**

Criteria 2, 4 and 5 criteria identify minerals which are important for a national energy transition, have threatened supply, can be part of a circular economy if developed in a sustainable manner and are likely to be produced in Canada. Collectively, these criteria focus on what is of importance to Canada**.** Criterion 3 could remain as an optional criterion given that it focuses on the needs of international allies. Please note, our suggestion presumes that Criterion 2 has been revised in a manner that requires assessment of a mineral supply chain's potential contribution to environmental and human health protection, social sustainability and Indigenous rights and governance, as discussed above.

Should Criterion 1 be revised to focus on the transition to a sustainable low-carbon economy and ensuring citizens can achieve their basic needs (e.g., food, water, shelter), we recommend that it could also be required to be met to be considered a critical mineral.

Finally, entirely missing from the proposed criteria is the role and the impact of critical minerals on advancing reconciliation with Indigenous peoples. Similar to our suggestions for encouraging more sustainable ways of extracting and producing critical minerals, these criteria should also require adequate assessment of the impact of critical mineral developments on Indigenous peoples and promote the advancement of reconciliation. While we acknowledge that Canada's current critical minerals strategy refers to advancing reconciliation with Indigenous peoples, further engagement should be undertaken with Indigenous nations and organizations on how the criteria themselves could advance reconciliation.

This is also an opportunity for NRCan to have important conversations with Indigenous communities about their role in resource development activities and work towards implementing the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). For example, the UN Declaration Act Action Plan released in 2023 includes commitments to developing guidance around Article 32 of UNDRIP regarding consultation and free, prior, informed consent of Indigenous communities when it comes to natural resource developments on their lands and/or with the potential to impact their rights. Thus, any further development of criteria or other guidance materials related to critical minerals should be directly aligned with the work currently being done to implement UNDRIP and better empower Indigenous communities to engage in natural resource development processes.

Q4: Are there specific methodologies that would be more useful to determine criticality?

In addition to our comments above, we recommend establishing a process through which both the list of critical minerals and the criteria used to define Canada's critical minerals would be regularly reviewed and updated, if needed. What is considered critical today may not be considered critical tomorrow, and this is also true for the criteria used to determine criticality. For example, will the energy transition remain a priority or will new priorities need to be addressed? Will the current technology used to address challenges remain relevant? As a result, it will be important to consider whether the current lists and criteria truly reflect what are "critical" minerals.

We also emphasize the importance of evidence-based decision and independent, public processes for reviewing impacts of mining. This is significant in this context for two main reasons: (1) the application of the criteria to decide which minerals will be deemed critical and (2) review processes to assess the impacts of mining.

In terms of determining which minerals are deemed critical, we note that the current list of Canada's critical minerals was "(d)eveloped in consultation with provincial, territorial, and industry experts".[5] The Eco-Network recommends evidence-based decision-making to apply the criteria and determine which minerals will be placed on the list. This should include the consideration of independent expert evidence regarding the application of the criteria for specific minerals, and not only industry submissions.

The Eco-Network also recommends that independent public processes continue to take place for project-specific licenses, where necessary, whether a mineral is deemed critical or not.

Conclusion

This consultation is important as Canada transitions to a sustainable, low-carbon future. To meet this challenge, it is important that we position ourselves in a manner that not only reflects evolving economic interests, but also adequately protects people and the environment.

Further clarifying how adverse environmental impacts caused by a mineral supply chain will be minimized in pursuit of a circular economy could create a significant opportunity for Canada to be a leader in the global transition to a sustainable low-carbon economy. There is also opportunity to support federal commitments to the implementation of UNDRIP by working with Indigenous communities to develop guidance on the role of Indigenous peoples in decision-making processes and projects involving critical minerals. Ensuring a methodology that will require regular review of the list and the criteria will also be important to reflect changing societal and environmental needs and priorities.

The Eco-Network appreciates your consideration of our comments and recommended changes to the proposed criterion for the Critical Minerals List. We welcome future opportunities to engage with Natural Resources Canada to ensure the highest level of environmental protection measures are enacted to help us protect Manitoba's environment for the benefit of current and future generations.

Sincerely,

Heather Fast, Policy Advocacy Director

[5] The Canadian Critical Minerals Strategy, 2022, p 9, online: https://www.canada.ca/content/dam/nrcan-rncan/site/critical-minerals/Critical-minerals-strategyDec09.pdf