

Appendix 4.

Faro ownership and management: 1953–2021

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Contents

1. Introduction
2. Company Ownership and Management: 1953–1998
 - 2.1 1953–1964 The early prospectors and explorers
 - 2.2 1964–1973 Dynasty Explorations Ltd., Cyprus Mines Ltd, Anvil Mining Corporation
 - 2.3 1973–1982 Cyprus Anvil Mining Corporation
 - 2.4 1982–1986 Hudson’s Bay Oil and Gas Co. Ltd., Dome Petroleum
 - 2.5 1986–1994 Curragh Resources Inc. (and Curragh Holdings Inc., Curragh Resources Corporation)
 - 2.6 1994–1998 Anvil Range Mining Corporation
3. Government Ownership and Management: 1998–2021
 - 3.1 1998–2003 Plan of Arrangement, Devolution Transfer Agreement
 - 3.2 2003–2009 Permanent closure declared; management of care and maintenance by the Interim Receiver continues; Yukon Government and Canada jointly manage closure planning.
 - 3.3 2009–2018 Yukon Government manages Faro care and maintenance; Yukon Government and Canada jointly continue to manage closure planning.
 - 3.4 2018–2021 Faro Transition Agreement; Canada takes over full responsibility for the management of care and maintenance and closure planning, Faro closure YESAB review is triggered; Ross River Dena Council–Broden Mining Ltd. Agreement in Principle to jointly establish the Tse Zul Development Corporation. A new beginning?

4. Discussion

References

Figures

Figure A4-1 Faro Land holdings as of August 2021

Figure A4-2 Southern portion of Figure A4-1

Boxes

Box A4-1 The Sa Dena Hes mine

Box A4-2 Characteristics of the Reclamation Security Trust

Box A4-3 Insolvency and bankruptcy

Box A4-4 *Waters Act*, 2003 (Yukon), Section 37

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1. Introduction

Ownership and management are central ingredients in the story of any mine. They are key to understanding the nature and distribution of benefits, costs and risks, responsibilities, and accountabilities.

The purpose of this Appendix is to offer a comprehensive description of Faro’s ownership and management of the Faro mine operations and related claims, leases, and facilities. It covers a period from exploration in the early 1950s to the present day. The result is a synthesis that is foundational to the contribution analysis to follow — but it is not the whole Faro story.

Figure A4-1 is a map that shows the relevant Faro Area Land holdings as they stand in 2021.

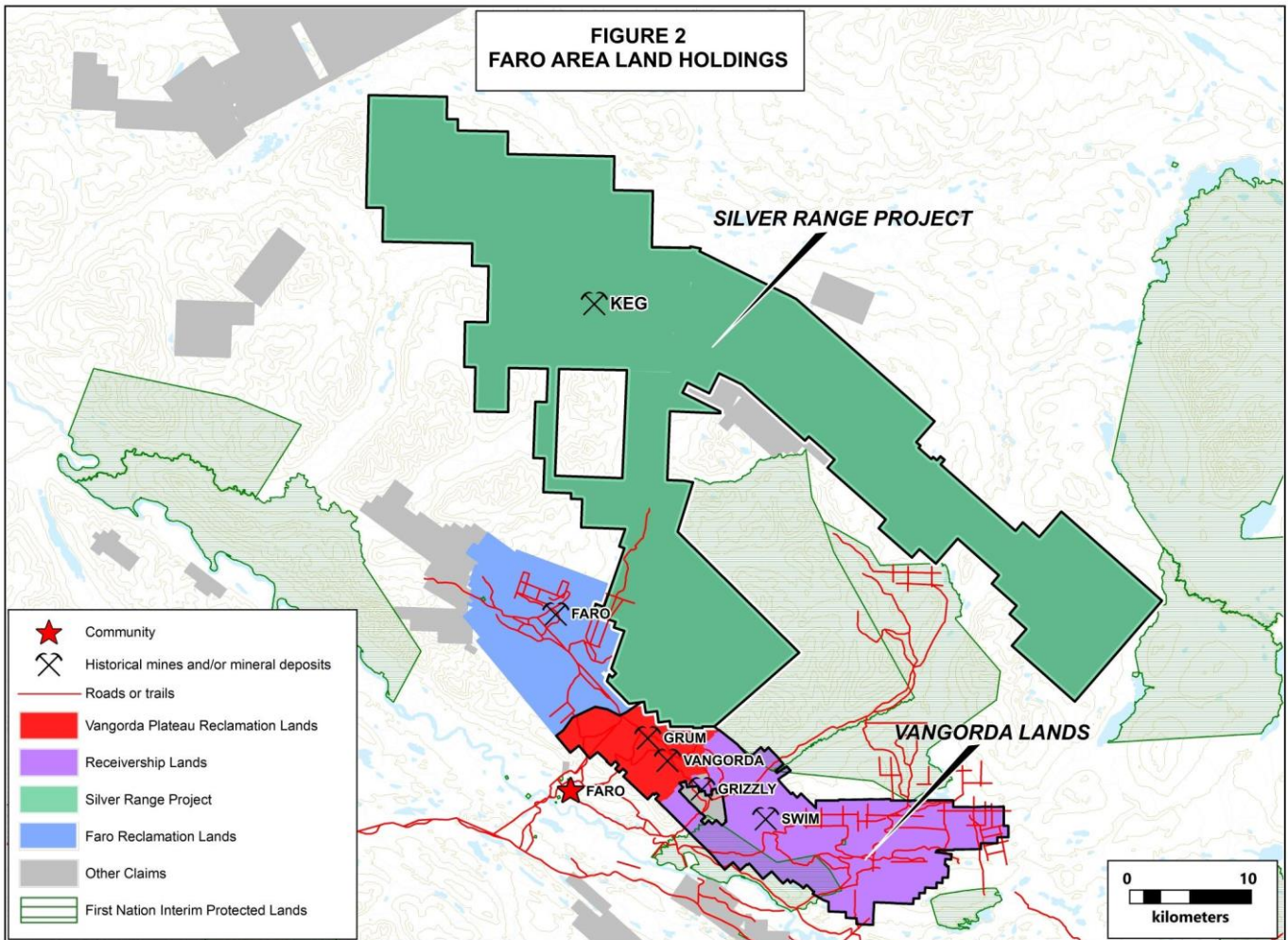


Figure A4-1. Faro area land holdings as of August 2021 (Source: Strategic Metals, 2021)

The Faro operation is marked by two distinct phases of ownership and management.

In an initial phase from 1953 to about 1998, the project was driven by company initiative, ownership and management. Government served in a support role, mainly focussed on its desire to grow the Yukon economy, although over time its responsibility as land steward grew, and the Canadian Constitution acknowledged and recognized Indigenous rights. At the end of this first phase, corporate ownership

dissipated as the owner dropped into receivership. In a second phase, beginning about 1998, government was forced into ownership and to assume responsibility for management. It has continued in this role until today. During this phase, the importance of government's role as land steward has increased, respect for Indigenous rights has gradually increased, and devolution of some powers from the Government of Canada to the Yukon Government has occurred.

The boundary between the two phases is not firm but is a transition over several years. Government was anticipating the collapse of corporate ownership and management of the mine several years in advance of these events and had begun thinking about managing the large environmental liability that was looming. After the collapse, for a period of several years, yet another company maintained an interest in assuming ownership and reopening the mine.

This Appendix is organized to reflect the evolution described above. After this Introduction, the two phases are addressed sequentially. A final section offers observations that emerge from this part of our work.

Sections 2.1 to 2.6 describe the ownership profile of the principal individuals and companies who participated in the discovery, development, and operation of the Faro, Vangorda, and Grum deposits through to the end of the mine's operational phase in 1998. They are:

- 2.1 1953–1964. The early prospectors and explorers
- 2.2 1964–1973. Dynasty Exploration Ltd., subsequently entering a 40:60 joint venture with Cyprus Mines Corporation to form Anvil Mining Corporation Ltd.
- 2.3 1973–1982. Cyprus Anvil Mining Corporation
- 2.4 1982–1986. Hudson's Bay Oil and Gas Co. Ltd., which Dome Petroleum soon took over through its subsidiary Dome Canada Ltd.
- 2.5 1986–1993. Curragh Resource Holding and Curragh Resources Inc., later amalgamated to form Curragh Inc., and, finally,
- 2.6 1993–1998. Anvil Range Mining Corporation.

The corporate ownership picture is complicated by numerous crossholdings linked to concentrate sales and financing agreements. These relationships are described here to the extent it has been possible to untangle them.

Sections 3.1–3.4 discuss the second phase that begins in 1998 as the Faro mine operation enters the closure phase of the project life cycle. It is marked by the insolvency of Anvil Range Mining Corporation. At that time, an Interim Receiver, Deloitte & Touche, was appointed by the Ontario Court to manage all of Anvil Range's assets, including the elements of the operation that were under care and maintenance, as well as a significant block of claims covering exploration lands in the surrounding area. Serious discussions about reopening the mine continued until 2001 when reopening was finally declared uneconomic and closure planning and implementation could fully proceed.

Unfortunately, the Devolution Transfer Agreement, which came into effect in 2003, effectively made both levels of government jointly responsible for closure planning and implementation: the federal government was responsible for funding and the Yukon Government was responsible for implementation of site remediation. This lack of a clear division of responsibility, authority and accountability resulted in a relatively inefficient decision-making process between two levels of government with different perspectives on the remediation and closure of the site.

The Interim Receiver stayed in place until 2009 when the Yukon and federal governments decided not to renew the expiring Water Licence. At this point, the Faro mine site was abandoned by the Interim Receiver pursuant to a court order, the Interim Receiver was discharged, and Anvil Range was put into bankruptcy. In turn, this triggered the appointment of a Bankruptcy Trustee (also Deloitte & Touche) and the Yukon Government, as Manager of Yukon Public Lands (under the Devolution Transfer Agreement)

assumed responsibility for the care and maintenance of the closed mine facilities. Deloitte & Touche as Bankruptcy Trustee, continued to hold the remaining surrounding claims.

By 2018, both levels of government had realized that the current joint responsibility for remediation and closure needed to change before there could be any implementation of a closure plan for the site. The decision was therefore taken to transfer responsibility for care and maintenance, as well as closure planning and implementation back to the federal government. Ultimately, a Yukon Order-in-Council will transfer ownership of the abandoned mine site back to the federal government. Again, Deloitte & Touche, as Bankruptcy Trustee, continued to hold the surrounding claims.

In a new development, August 2021 saw the Ross River Dena Council sign an Agreement in Principle with a Vancouver-based mining group to form the Tse Zul Development Corporation. Tse Zul's purpose is to acquire and assess the development potential of the Vangorda Lands within the Ross River Kaska Dena traditional territory. It may open a whole new chapter in the evolving Faro story.

The material in this Appendix draws from a variety of sources. In a few cases, inconsistencies emerged in the dating and interpretation of events. We resolved these inconsistencies as best as possible. However, with further research, further refinements may occur.

2. Company ownership and management, 1953–1998

2.1 1953–1964

The early prospectors and explorers

In the early 1950s, Al Kulan hired a team of Kaska men to work with him in his prospecting. Kulan's team included Joe Ladue, Robert Etzel, Joe Etzel, Jack Ladue, Art John and Jack Sterriah (Ladue, 2013, p. 9). In July 1953, Joe Ladue guided Kulan's first visit to the showing that would be recognized as the Vangorda lead-zinc deposit (Gaffin, 2005, p. 57). Jack Sterriah and his son Jack Jr. had first seen the showing several years earlier while hunting (Town of Faro, 2021).

In the same year as Kulan's visit to the showing, Kulan and Bert Law began staking the Wynne and Elle mineral claims (Macpherson, 1978, p. 116; Gaffin, 2005, p. 55). They went on to sell their claims to Prospector Airways Ltd. of Toronto, who formed Vangorda Mines Ltd. (Dynasty Explorations Ltd., 1965, sec. Progress Report). Through the following two years, Prospector Airways drilled off the Vangorda deposit, and in 1956 Kerr Addison Mines took control of Vangorda Mines Ltd.

Aaro Aho was a dominant figure in this play of exploration and development. Aho first came to the Yukon in 1948 as an assistant with the Geological Survey of Canada, and then again in 1953 as manager of British Yukon Exploration Co. Ltd., a subsidiary of the White Pass and Yukon Corporation (Aho, 1966, p. 127).

In late 1963, Kerr Addison Mines surveyed and staked 72 claims at Swim Lakes, southeast of the Vangorda deposit, and the Dickson-Yukon Syndicate staked 200 claims northwest of the Vangorda deposit (Dynasty Explorations Ltd., 1965, sec. Progress Report). In 1964, the Dynasty Syndicate of Aro Aho, Al Kulan, Gordon Davies, and Ronald Markham incorporated to form Dynasty Exploration Ltd.

In sum, during early exploration, the key players included independent prospectors Al Kulan with Ross River Dena colleagues including Joe Ladue, Jack Sterriah and his son Jack, Jr.; Prospector Airways Ltd.; Vangorda Mines Ltd.; Kerr Addison Mines; and the Dickson-Yukon Syndicate. A boom in exploration during the 1960s and 1970s saw activity by many other prospectors and exploration companies in the region.

2.2 1964–1973

Dynasty Explorations Ltd. of Vancouver, Cyprus Mines of Los Angeles, Anvil Mining Corporation

1964: Intense exploration

Aho led the Vancouver-based Dynasty Syndicate that included Al Kulan, Gordon Davis and Ronald Markham. In early 1964 the syndicate staked 169 claims in the Vangorda district, and on 23 Apr 1964, seeking to expand their exploration and staking activities in the Vangorda district, the syndicate incorporated Dynasty Exploration Ltd. (N.P.L.), with Aho as President.

Aho conceived district-wide saturation exploration and staking. During their 1964 exploration program, Dynasty staked some 800 new claims (Dynasty Explorations Ltd., 1965, sec. Progress Report, 1970, p. 6). They also completed a program of airborne geophysical surveys that revealed major conductivity, magnetic, and gravity anomalies in the area. These proved to be key indicators of what would evolve to become the Faro mine (Davis, 2019, pp. 48, 51).

1965: Discovery, Anvil Mining Company is incorporated from the Dynasty/Cyprus Mines joint venture

Seeking additional funding for exploration, Dynasty converted to a public company on 07 Jan 1965 (Dynasty Explorations Ltd., 1965, sec. Progress Report). The company subsequently sought out a partnership with Cyprus Mines Corporation of Los Angeles who would bring the technical knowledge and financial resources needed to bring an exploration target to an operating mine (Davis, 2019, pp. 27 – 61).

Three months later, on 31 Mar 1965, Dynasty and Cyprus Mines formed a Joint Venture Agreement for exploration, development, and production. In their agreement, Cyprus Mines provided financing and received a 60% interest while Dynasty managed operations and received a 40% interest. In July 1965, Dynasty acquired a 125-claim property from the Dickson-Yukon syndicate. By 31 Aug 1965, Dynasty held about 2400 staked claims in the area (Dynasty Explorations Ltd., 1965, sec. Progress Report, 1970, p. 6).

On 01 Dec 1965, Anvil Mining Corporation Ltd. incorporated under the *Companies Act* of British Columbia. Three days later, on 04 Dec 1965, Dynasty Explorations, Cyprus Mines, and Anvil Mining signed a Master Agreement. Among other provisions, the agreement transferred all properties and assets of the Joint Venture to Anvil Mining Corporation Ltd. (Dynasty Explorations Ltd., 1965, sec. Progress Report, 1970, p. 14; Macpherson, 1978, p. 117).

Dynasty's 1965 exploration season initially focused in the area of the Swim deposit, with few encouraging results. In June 1965, they shifted to the Faro target that airborne geophysical studies had identified. On 27 Jun 1965, their first drill hole struck what would become the "No. 2 Zone, a faulted extension of the main ore body" (Davis, 2019, p. 63).

This strike confirmed the Faro discovery.

1966: Staking rush, intention to bring Faro online by late 1969

Interest in the area sparked a major staking rush in the Anvil-Dynasty-Vangorda area. The 1965-1966 exploration season saw some 20 to 30 companies prospecting, approximately 10,000 claims recorded, and an estimated \$5 million spent on geophysical, geochemical, and drilling programs in the area. This exploration rush included Kerr Addison's evaluation of the Vangorda deposit (Department of Indian Affairs and Northern Development, 1967, pp. 36, 37; Dynasty Explorations Ltd., 1970, pp. 8–9).

In August 1966, Anvil Mining announced plans to bring the Faro No. 1 orebody into production by late 1969 (Department of Indian Affairs and Northern Development, 1967, p. 36).

1967–1973: Decision to proceed, construction, mine is up and running on time and within budget

On 20 Mar 1967, Cyprus Mines, speaking as the major shareholder in the Anvil Mining Corporation, announced its decision to proceed with the mine conditional on: (1) Government of Canada provision of infrastructure funding and development; (2) successful negotiation of adequate sales contracts for concentrates, and (3) confirmation of financing from financial institutions. On 21 Aug 1967, Canada and Anvil Mining signed an agreement setting out the obligations of the government and the company. The terms of that agreement are summarized in Appendix 6. Concentrate sales contracts were confirmed with Japanese interests and financing was put in place. With the key conditions met, mine construction proceeded.

Initial mine rough grading began in July 1967. In the following two years, all hard and soft infrastructure was established. The first concentrate meeting contract specifications was produced in December 1969. The official mine start-up for tax purposes took place in January 1970. The start-up investment of Anvil Mining Corporation, the Government of Yukon, White Pass & Yukon Corporation, and the Government of Canada totalled roughly \$100 million (Department of Indian Affairs and Northern Development, 1970, pp. 70–71; Dynasty Explorations Ltd., 1970, p. 5).

By 01 Jan 1970, the project was up and running on time and within budget.

2.3 1973–1982 Cyprus Anvil Mining Corporation

1973: Dynasty and Anvil Mining Corporation amalgamate as Cyprus Anvil Mining Corporation

In early 1973, Dynasty and Anvil Mining Corporation signed an Agreement in Principle to amalgamate, and on 21 Apr 1973, they did so under the BC *Companies Act*, forming Cyprus Anvil Mining Corporation (CAMC) (Cyprus Anvil Mining Corporation, 1975, p. 17; Dynasty Explorations Ltd., 1973).

With the creation of Cyprus Anvil, Aaro Aho left his executive role with Anvil Mining Corporation and returned to exploration with the newly formed AEX Minerals (Davis, 2019, pp. 67–68). Later in 1973, AEX and Kerr Addison discovered the Grum deposit in an area that Prospector Airways Ltd. had staked in August 1953 for a syndicate of Noranda Mines Ltd and Kerr Addison Gold Mines Ltd. (Weinstein, 1992, p. 37; Yukon Geological Survey, 2020, sec. Work History).

1974–1977: Consolidation of claims in the region, discovery of the Cirque deposit in BC

From 1974 to 1977, Cyprus Anvil extensively explored their claims on the Grum deposit (Cyprus Anvil Mining Corporation, 1978, p. 12). Concurrently, in 1975, Kerr Addison Mines also continued intense exploration on their Swim Lake and Grum deposit properties. In 1976, Cyprus Anvil made discoveries on the DY claim group (alias Dy and Grizzly) that were a projection of the Grum and Vangorda deposits that Kerr Addison mines controlled. Cyprus Anvil also drilled on the DY deposit in 1977 (Cyprus Anvil Mining Corporation, 1975, p. 5, 1976, p. 5, 1977, p. 5).

Elsewhere in 1977, a joint venture of Cyprus Anvil and Hudson Bay Oil and Gas Ltd. discovered the Cirque Deposit in northern BC, located along the Tintina fault to the southeast in the Kechika Trough.¹

¹ In 1992, the BC Government approved Curragh Resources's Stronsay Project for production at the Cirque occurrence. This development did not proceed after the Curragh bankruptcy of 1993. With the eventual bankruptcy of Anvil Range in 1998, Stronsay fell to the current owners, a 50:50 joint venture of Teck Resources and Korea Zinc (Zinc X. Resources Corp., 2018).

1978: Regional exploration continues

Through the late 1970s and early 1980s, Cyprus Anvil continued exploration in the Anvil District including the Faro, Grum, Vangorda, DY and Swim deposits, as well as other projects in Yukon and BC, including joint ventures with Hudson's Bay Oil and Gas, Kerr Addison Mines Ltd., Metallgesellschaft AG, and Preussag AG. The last two companies were also West German buyers of concentrates from Cyprus Anvil (Cyprus Anvil Mining Corporation, 1978, p. 8, 1980, p. 10).

1979: Further consolidation of claims in the Anvil District, Amoco takeover of Cyprus Mining

On 07 Feb 1979, Cyprus Anvil announced an Agreement in Principle with Kerr Addison Mines and Canadian Natural Resources Ltd. to purchase all their mineral properties within the Anvil district, plus Kerr Addison's 70% interest in Vangorda Mines Ltd., plus all outstanding shares of Vangorda Mines Ltd. Among these properties in the Anvil district were the Grum, Vangorda, and Swim mineral deposits and claims (Cyprus Anvil Mining Corporation, 1978, pp. 3–4, 10, 12–17, 1979b). The acquisition took place on 15 May 1979 (Cyprus Anvil Mining Corporation, 1979a, pp. 2–3).

1979 was a good year for mining in general. In the mid- and late-1970s, the oil and gas industry, flush with resources from the 1970s energy boom, were drawn to invest in the mining industry. One resulting action was that in 1979 Amoco, a subsidiary of Standard Oil of Indiana (Comoco), took over Cyprus Mining of Los Angeles. Although this transition took place far from Faro, Amoco now controlled 60% of Cyprus Anvil, replacing Dynasty's former American partner with a new American partner.

2.4 1981–1986

Hudson Bay Oil & Gas Co. Ltd., Dome Petroleum

1980–1981: Block of the Cyprus Anvil sale to Amoco by FIRA, purchase by Hudson's Bay Oil and Gas Co. Ltd.

Amoco's purchase meant there was a change in the American control of Cyprus Anvil, a Canadian company. The change triggered a review by the Canadian Foreign Investment Review Agency (FIRA), the federal agency set up to ensure that any foreign acquisition of a Canadian business was of net benefit to Canadians. In this case, FIRA blocked the sale. The ruling was controversial — particularly because the Amoco purchase of Cyprus Anvil simply replaced one American partner with another (Davis, 2019, p. 91). The ruling also had far-reaching and unexpected implications.

For their part, Amoco, who now controlled Cyprus Anvil and who had oil and gas holdings in Alberta worth far more than their stake in Cyprus Anvil, accepted the ruling and opted to simply quickly sell Cyprus Anvil to a qualified Canadian buyer in a sealed-bid process (Davis, 2019, pp. 89, 91, 95). The successful bidder was Hudson's Bay Oil and Gas Co. Ltd. (HBOG) (Cyprus Anvil Mining Corporation, 1981; Dome Petroleum Limited, 1982; Smyth, 1999, p. 56).² HBOG went on to purchase all outstanding shares in Cyprus Anvil, and by the end of 1981, they had acquired 100% of Cyprus Anvil shares.

² Hudson Bay Oil and Gas Company Ltd. (HBOG) was a Canadian non-integrated petroleum company founded in 1926 as Hudson's Bay Marland Oil Company (HBMO), a joint venture between the Hudson's Bay Company (HBC) and American oilman Ernest Marland's Marland Oil Company. HBMO was to be a mechanism to exploit the HBC's remaining 4.5 million acres of landholdings and mineral rights (including oil and gas but excluding precious minerals) from the Crown's grant in the 1670 HBC charter. In 1929, HBMO became a subsidiary of the Continental Oil Company (later Conoco) and was renamed Hudson's Bay Oil and Gas (HBOG). In 1952, HBC exercised an option from the 1926 founding of HBMO to purchase 25 percent of HBOG. HBOG remained private until 1957 when Conoco made a public offering of 9.3% of HBOG's shares (McKenzie-Brown, 1998, pp. 9–10, 48–51). The vast extent of the HBOG land holdings and mineral rights in Manitoba, Saskatchewan, Alberta, BC, and the Northwest Territories meant that wherever an oil or gas play occurred in Canada, the HBOG almost inevitably had adjacent land and mineral rights (Hudson's Bay Oil and Gas Company Limited, 1978, p. 7). HBOG

As it turned out, the Hudson's Bay Oil and Gas ownership of Cyprus Anvil was very short lived.

1981–1982: Dome Petroleum hostile takeover of Hudson's Bay Oil and Gas, Recession

Dome Petroleum Ltd. of Calgary was founded as Dome Exploration (Western) Ltd. in 1950 as a subsidiary of Dome Mines of Toronto. By the 1970s, it had become a significant player in the oil and gas industry, and by the 1980s, it was the third-largest Canadian private sector corporation (Lyon, 1983, pp. 37–38, 205).³

In the early 1980s, Dome Petroleum was 65 percent foreign-owned. On 30 Jan 1981, Dome Petroleum established a new Canadian subsidiary, Dome Canada Limited to carry out its exploration work while working around the economic nationalism of the National Energy Program that tied grants and tax incentives for oil exploration and development to domestic ownership and control of oil companies (Dome Petroleum Limited, 1981, pp. 3, 25; Smyth, 1999, pp. 56–57). To increase its limited cash flow, Dome Canada almost immediately mounted a hostile takeover bid for Hudson's Bay Oil and Gas.

Dome Petroleum's \$4 billion acquisition of HBOG was the biggest corporate takeover in Canadian history up to that date (Lyon, 1983, p. 206). HBOG's majority shareholder was Conoco. To force Conoco to divest from HBOG, Dome Petroleum purchased a 20 percent stake in Conoco and then negotiated an exchange of that stake with a cash top-up to obtain Conoco's 52.9 percent interest in HBOG. The deal was made on 31 May 1981. Dome financed the first 52.9 percent with a \$2 billion loan from the Toronto Dominion Bank, the Bank of Montreal, the Canadian Imperial Bank of Commerce, and the Royal Bank of Canada (the "Big Four" Canadian banks).

Shortly after making the deal, interest rates rose to unprecedented levels. In November 1981, the Big Four Banks altered the terms of the loan to Dome by requiring Dome to repay \$1.3 billion by 30 Sep 1982 instead of in ten years. Because the dividends from Dome's part ownership of HBOG were not enough to service the loan, Dome sought more cash by buying the rest of HBOG (Lyon, 1983, pp. 184–186).

On 10 Mar 1982 Dome acquired the outstanding 47.1 percent of HBOG. At the same time, Dome sold 12.5 percent of HBOG to each of three other companies: Dome Petroleum's 48 percent-owned subsidiary Dome Canada, Dow Chemical Canada Inc.'s wholly-owned subsidiary Maligne Resources, and TransCanada PipeLines Resources Ltd, (in which Dome Petroleum and Dome Petroleum's subsidiary Dome Canada owned a 47 percent interest). These sales totalled 37.5% of HBOG (Dome Petroleum Limited, 1981, p. 51; Lyon, 1983, pp. 15–17).⁴

The events that followed this deal threatened to destabilize the Canadian economy. Financing for the 47.1 percent of the HBOG deal was provided by a loan from a consortium of US and foreign banks led by Citibank of New York. However, Dome used the same collateral for the consortium's loan as for the loan from the Big Four Canadian Banks. When Dome Petroleum almost defaulted on its obligations in May 1982, this debt threatened to send Dome Petroleum into receivership and, many feared, destroy the Big

emerged as a major oil and gas company with major producing and pipeline interests. In addition to their exploration in Canada, they were active in the 1970s in ten countries including Australia, Indonesia, and the North Sea, with other holdings in the United States and Middle East ("Hudson's Bay Oil and Gas Company," 2021; Hudson's Bay Oil and Gas Company Limited, 1978, pp. 8–10).

³ By the early 1980s Dome Petroleum operated in the context of economic nationalism of Canada's National Energy Program (NEP), introduced in 1980 and ending in 1985. The NEP was supposed to reduce use on foreign oil, increase Canadian participation in the oil and gas industry, and change pricing and taxation for oil and natural gas. Among the program's initiatives, it changed Income Tax provisions and grants for exploration expenditures and development expenditures. These new incentives that were supposed to develop new oil sands facilities and frontiers in the North and offshore (in particular the Beaufort) were linked to Canadian ownership and control of oil companies (Dome Petroleum Limited, 1981, p. 3; Lyon, 1983, pp. 5–6, 7; Minister of Finance, 1980, pp. 5, 9–10).

⁴ For its part, Dome only lasted another few years. In an ironic twist, in 1988, Amoco Canada – the Canadian subsidiary of Amoco who had been subject of the FIRA rejection of the Cyprus Anvil Mining Corporation purchase in 1980 – purchased Dome Petroleum Limited for \$5.5 billion, thus gaining control of the former HBOG assets.

Four Banks, with grave consequences for Canada as a whole. Consequently, on 29 Sep 1982, the Government of Canada and the Big Four Banks signed an Agreement in Principle to provide Dome Petroleum \$1 billion more in loan financing and defer the 30 Sep 1982 repayment of the \$1.3 billion of Dome Petroleum's existing loans. This Agreement in Principle became known as the Dome bail-out (Lyon, 1983, pp. 184–186).

In sum, this turbulent sequence of events meant that ownership of Cyprus Anvil by Hudson's Bay Oil and Gas lasted for only a matter of months. By March 1982, Dome wholly owned and controlled Cyprus Anvil. However, the timing for Dome, Cyprus Anvil, and the Yukon, was unfortunate.

1981-1982 saw a major global recession. In August 1981 the bank of Canada prime interest rate exceeded 20 percent, and in December 1982 Canada's unemployment rate exceeded 13 percent, the highest unemployment rate from the Great Depression until Covid-19 (Cross et al., 2013, pp. 19–20; "Early 1980s Recession," 2021; Kose et al., 2020, p. 11). Critically for Cyprus Anvil, 1982 saw historically low prices for lead and zinc (Dome Petroleum Limited, 1982, p. 20).

During this time, Dome reorganized its control of Cyprus Anvil. Subsequent to the HBOG deal, Dome Petroleum's subsidiary, Dome Canada, became part-owner of Cyprus Anvil. The reason for this was that one condition of the 29 Sep 1982 Agreement in Principle (the "Dome bail-out") was that Dome Petroleum could not pay the principal on any other loans. This condition became a problem when Dome Petroleum was due to make a \$300,000 payment on a \$1.3 million loan that Cyprus Anvil, by then a wholly-owned subsidiary of Dome, owed to Mitsui bank of Tokyo. To make the payment possible, Dome Petroleum sold part of its controlling interest in Cyprus Anvil to Dome Petroleum's 48 percent-owned subsidiary, Dome Canada, for a payment of \$20. This freed Dome Petroleum from making a payment to Mitsui bank that was contrary to the terms of the Agreement in Principle with Canada and the Big Four Banks (Lyon, 1983, p. 209).

1982–1983: Suspension of operations from temporary to indefinite, pressure to reopen

For Cyprus Anvil, the continuing drop in metal prices combined with increasing operating costs (transportation, energy, labour, various supplies) led to a negative cash flow by the end of 1981. This negative cash flow, combined with the precarious financial position of the new owner, Dome Petroleum (partly of its own making and partly due to world conditions), resulted in a decision to suspend operations for two months on 04 Jun 1982 (Dome Petroleum Limited, 1982, pp. 20, 57; Faulkner, 1986, p. 28; Indian and Northern Affairs Canada, 1983, p. 16). In July 1982, Cyprus Anvil extended the shutdown to four months, and in September 1982, Dome announced the closure would be indefinite (Martin, 1985).

The shock to the Yukon economy was massive and the resulting pressure to find a means to reopen the Faro mine was intense.

For many, the solution seemed to be government action, especially government ownership of the mine. On 26 Aug 1982, Paul Lucier, Liberal Senator for the Yukon, suggested nationalizing Cyprus Anvil Corporation and reopening the mine (Smyth, 1999, p. 82). On 08 Dec 1982, the Yukon Territorial Legislature passed a motion to request the Government of Canada take steps to reopen the mine (Smyth, 1999, p. 86). On 13 Dec 1982, the Canadian Labour Congress called on Liberal Prime Minister Pierre Trudeau to nationalize the mine if Dome Petroleum did not reopen it immediately (Smyth, 1999, p. 86). Following this lead, on 13 Jan 1983, Maurice Byblow, NDP MLA for Faro, and Dave Power of the United Steelworkers of America Local 1051, which represented the operating workers at the mine, asked the federal government to nationalize the mine if Dome Petroleum did not reopen the mine quickly (Smyth, 1999, p. 88). In addition, on 25 Mar 1983, the Council of Yukon Indians confirmed it had discussed the possibility of buying the mine with interests from the United States and Japan (Smyth, 1999, p. 93).

1983–1984: Attempts to find a new owner intensify

For its part, during the 1982-83 fiscal year, DIAND reported expending “considerable federal effort” in response to the Faro mine closure (Indian and Northern Affairs Canada, 1983, p. 16). As part of this effort, a federally funded multi-million dollar stripping program began in late spring 1983 and continued sporadically after that for some three years.

In the federal general election of 04 Sep 1984, the Mulroney Conservatives swept to power with a majority government.⁵ On 18 Oct 1984, NDP Leader Ed Broadbent urged the federal government to help find a buyer for the mine and for the Yukon government to nationalize the White Pass railway (Smyth, 1999, p. 120).

On 23 Oct 1984, the new Conservative Minister of Indian Affairs and Northern Development, David Crombie, met with residents of Faro and promised to assist in finding a buyer for the mine (Smyth, 1999, p. 120). Shortly after, on 13 Nov 1984, Crombie appointed analyst Pierre Lassande, Vice-President of Bentel Goodman of Toronto to review the situation, advise on the sale of the mine, and report back by 31 Dec 1984 (Smyth, 1999, p. 121).

By the end of 1984, Dome reaffirmed its desire to sell its interest in Cyprus Anvil. However, they were unsuccessful, and on 16 May 1985, Dome announced their intent to formally close Faro operations by the end of August 1985 (Smyth, 1999, p. 128). Perhaps this was a negotiating tactic: behind the scenes huge effort to find a buyer was being extended not only by Dome but also by the federal government and Yukon government.

2.5 1986–1993

Curragh Resources Inc. (and Curragh Holdings Inc., Curragh Resources Corporation)

1985: Curragh purchase of Cyprus Anvil and Faro reopening

As a result of these efforts, in early June 1985 Dome signed an Option Agreement for the sale of Cyprus Anvil to Curragh Resources Corporation, which was owned by Clifford Frame of Toronto and a group of associates (Smyth, 1999, p. 129).

In August 1985, Boliden Ore and Metals AB of Sweden agreed to participate in Curragh’s purchase of the Faro mine by taking an ownership interest in Curragh Resources Corporation (Curragh Resources Inc., 1987, pp. 6–7). Then, on 28 Sep 85, Curragh Resources Corporation and a numbered holding company representing American resource investment interests, 340586 Alberta Ltd. (reputedly owned by prominent industrialists and investors), struck an agreement to form the Alberta-registered Curragh Resources partnership.

In this partnership, Curragh provided 5% of the capital and 340586 Alberta Ltd. contributed the remaining 95% (Curragh Resources Inc., 1987, pp. 19, 23, 25). Finally, on 01 Oct 1985, Curragh Resources Corporation signed an agreement to purchase the Cyprus Anvil assets (Smyth, 1999, p. 132).

On 28 Oct 1982, the Yukon Government announced an agreement between Curragh Resources Corporation, the federal government, and the Yukon Government for financing arrangements that would permit the mine to reopen. The Yukon Government also introduced legislation guaranteeing Curragh’s line of credit (Smyth, 1999, pp. 133–134).

With the players and financing in place, the stage was set for the sale and reopening of the Faro mine.

⁵ Over the subsequent nine years, Mulroney liberalized Canadian economic policy and programs, a stark redirection from the economic nationalism of his predecessor, Trudeau, Sr.

Curragh's purchase of Cyprus Anvil was formalized on 22 Nov 1985. At that time, Curragh acquired all of Cyprus Anvil's assets in the Yukon and BC, including the Faro mine, mill, and property; the Grum, DY, and Vangorda deposits; the Faro townsite facilities; the Cirque deposit in BC; and various other mining claims and associated geographical/geological information related to prospects in Western Canada (Curragh Resources, 1986, pp. 19, 23).

In this purchase, Cyprus Anvil retained a 15% net profit interest on the Faro mine and up to 25% net profit interest on the other undeveloped deposits that the Curragh Resources partnership had acquired (Curragh Resources Inc., 1987, pp. 9, 23). Dome Petroleum, who held interests in Cyprus Anvil, participated in the sale, as did Dome Canada Ltd. and TransCanada PipeLines Ltd.

Curragh moved quickly to reopen the mine. Waste rock stripping re-started in December 1985, mill modification and rehabilitation started in March 1986, the mill restarted on 02 Jun 1986, the first concentrates were trucked to Skagway on 07 Jun 1986, full mill capacity was achieved in July 1986, and the first shipment of concentrates to Korea and Japan departed from Skagway on 12 Aug 1986. For accounting purposes, "mine start-up" was declared on 01 Oct 1986 (Curragh Resources Inc., 1987, pp. 4-11, 19; Smyth, 1999, p. 140).

1986: Cost cutting, initial success

Curragh also moved quickly to divest itself of "non-essential" assets. Signalling a departure of the "company town" concept that had been embraced at the inception of the Faro project, in January 1986 the Curragh Resources partnership sold 420 houses in the Town of Faro to Faro Real Estate Ltd. Not seeing themselves in the energy business, and to enhance their focus on their core business of mining, the partnership also sold "certain assets" to the Northern Canada Power Commission and the Yukon Government in April 1986 (Curragh Resources Inc., 1987, p. 7).

Curragh's ownership structure was complex. Curragh Holdings was the parent company of Curragh Resources Inc., which was a partner in the Curragh Resources partnership that owned the Faro mine assets (Curragh Resources Inc., 1987, p. i, 1990, p. 35). Curragh Holdings was held by Clifford Frame and colleagues with Sweden's Boliden Mineral AB and Japan's Mitsui & Company also being shareholders. The full details of the Curragh corporate structure remain to be clarified.

The reopening of the Faro Mine under Curragh initially proved to be very successful. Soon after the 1982 recession ended, metal prices rose, and robust market conditions set in. Curragh was able to discharge its loan and loan guarantee obligations to the federal and territorial governments well ahead of schedule. Curragh's early success led to expansionary action on their part.

1989: Acquisition of interest in Asturiana de Zinc in Spain and Westray Coal in Nova Scotia

In May 1989, Curragh acquired a 20% interest in Asturiana de Zinc SA in Spain, operator of the West's third-largest zinc smelter. Asturiana cross-held 4% of Curragh Holdings Inc., the parent company of Curragh Resources Inc., and 15% of Curragh's Cirque project (Curragh Resources Inc., 1989, p. 36).

In November 1989, Curragh repurchased the common share warrants still held by Cyprus Anvil. (Curragh Resources Inc., 1990, p. 33).

Also in 1989, Curragh took a 90% interest in the Westray coal property in Nova Scotia. Previously, 630902 Ontario Inc. had owned 80% of Westray Coal Inc. and Boliden International Mining AB owned the remaining 20% indirectly through Boliden Canada Ltd. Boliden Canada Ltd. exchanged this 20% shareholding in Westray Coal Inc. for a 20% royalty interest in Curragh's Westray mine project (Curragh Resources Inc., 1990, pp. 10, 34).

1990: Curragh restructuring

In 1990, Curragh went public. On 23 May 1990, Curragh Resources Inc. amalgamated with its parent, Curragh Holdings Inc., with Clifford Frame as majority shareholder (Curragh Resources Inc., 1990, pp. 33-

34). On 24 May 1990, the company's filings for a United States Initial Public Offering took effect and on 25 May 1990, the Canadian filings took effect (Curragh Resources Inc., 1990, pp. 33–34). In June 1990, Curragh Resources Inc. began public trading on the New York, Toronto, and Montreal stock exchanges (Curragh Resources Inc., 1990, pp. 2, 34).

1991–1992: Westray opening, divestiture of Asturiana, development permit for Stronsay (Cirque)

In August 1991, Curragh opened the Westray mine, much supported by provincial and federal government subsidies (Curragh Resources Inc., 1991, p. 16; Dubreuil, 2014). The mine had a fifteen-year contract to supply more than 70% of its coal, pre-sold, to the Nova Scotia Power Authority who operated a coal electricity plant a few kilometres away from the mine (Curragh Resources Inc., 1990, p. 3, 1991, p. 18).

Also in 1991, and to increase its liquidity, Curragh divested from Sherritt Gordon Ltd. while simultaneously divesting its 20% interest in Asturiana to Sherritt Gordon Ltd., a transaction that it completed on 02 Mar 1992. On the same date, Asturiana sold its own cross-holdings in Curragh and Curragh's Stronsay (Cirque) project.⁶

By this time, Curragh had also gained an 80% share of the small Lead-Zinc Să Dena Hes mine located 45 km north of Watson Lake in the traditional territory of the Liard First Nation. Hillsborough Resource Ltd. held the remaining 20% (See Box A4-1, below).

1992: Westray disaster, beginning of Curragh's end

In 1992, tragedy hit Curragh's Westray coal mine in Nova Scotia.

On 09 May 1992, an underground methane explosion occurred at the mine. All the 26 miners who were underground died. The effects of the disaster reverberated across the country. Throughout Canada, people expressed grief openly; Westray became a recurring topic within folk music (Sparling, 2012).

Within a week, the Nova Scotia government convened a public inquiry. The Nova Scotia Department of Labour filed charges against Curragh and four mine managers but later dropped these charges. The RCMP filed charges of criminal negligence and manslaughter against Curragh and two of the mine managers. The criminal case led to a Supreme Court of Canada decision that found a mistrial and ordered a retrial but the Crown ultimately dropped the charges based on doubt that a conviction could be attained ("Charges Dropped in Westray Explosion," 1998; *R. v. Curragh Inc.*, 1997, para. 14).

In 1997, the public inquiry reported that poor management by the Curragh CEO and managers, poor enforcement by the Department of Labour and Department of Natural Resources, and "a mind-set or operating philosophy that appears to favour expediency over intelligent planning and that trivializes safety concerns" led to the disaster (Westray Mine Public Inquiry (N.S.) & Richard, 1997, sec. Executive Summary, Conclusion; Whyte, 1997).

Curragh's stock value plummeted; creditors called in their loans. Curragh as a company did not withstand the social and financial pressure.

Box A4-1

The Să Dena Hes Mine

⁶ Asturiana's sale gave Curragh full control of the Stronsay project (Curragh Inc., 1993a, p. 6; Curragh Resources Inc., 1991, pp. 3–4, 36, 45). In December 1992, the Government of British Columbia issued a Mine Development Certificate to Curragh for a mine/mill complex at Stronsay with a daily milling rate of 3,500 tonnes per day (Zinc X. Resources Corp., 2018).

Curragh Resources Inc. acquired the Mt. Hundere (Sä Dena Hes or SDH) property in October 1989 when it purchased an 80% interest in a joint venture that had purchased the Mt. Hundere mineral claims in March 1989 (Yukon Geological Survey, n.d.). In 1990, Curragh signed a benefits agreement with the Kaska Dena Nation that included an option to purchase 5% of the project for \$5,000,000 before 31 Dec 1993 (Curragh Resources Inc., 1990, p. 36).

Curragh constructed Sä Dena Hes over ten months starting in October 1990, operating under Yukon Water Licence IN90-002. The first truckload of concentrate left for Skagway on 01 Aug 1991 (Curragh Resources Inc., 1991, p. 10). The mine operated for 16 months until 31 Dec 1992 when the mine entered temporary closure (Curragh Resources Inc., 1991, p. 10; Yukon Territory Water Board, 1991). At that time, Curragh owned 88.94% of production at Sä Dena Hes (Curragh Inc., 1993a, 1993b, p. 2). During its operating life, it produced approximately 700,000 tonnes of ore (Access Mining Consultants, 2016, sec. 1.1)

With the demise of Curragh in 1993, a court-appointed receiver, Coopers & Lybrand, administered the mine. The receivership continued until a joint venture partnership of Cominco (25%), Teck (25%), and the wholly-owned subsidiary of Korea Zinc, Pan-Pacific Metal Mining Corporation (50%), purchased the mine in March 1994 (Cominco Ltd., 1994, p. 20; Teck Resources Ltd. Dormant Properties et al., 2012, sec. 1.0). Cominco served as operator of the mine (Cominco Ltd., 1996, p. 20).

In October 1997, Cominco and the Liard First Nation signed a socio-economic participation agreement for the Sä Dena Hes mine (Cominco Ltd., 1997, p. 23, 1998, p. 19).

In 2001, Teck increased its shareholding in Cominco to 50 percent, and in July 2001, the two companies merged to form Teck Cominco Ltd. (Teck Cominco, 2001, p. 35). On 01 Oct 2008, Teck Cominco announced a name change to Teck Resources Ltd., or Teck, a name change that was formally approved on 22 Apr 2009 (Teck Resources Limited, 2009). Also in 2001, Teck acquired Yukon Quartz Mining Production Licence QML-0004 for Sä Dena Hes (Teck Resources Ltd. Dormant Properties et al., 2011, sec. 1.0).

In January 2012, Teck Resources announced it would put the mine into permanent closure after 31 Jan 2013 (Teck Resources Ltd. Dormant Properties & Ryder, 2013, sec. 3.0). On 29 Jan 2013, Teck began implementing a decommissioning and reclamation plan. It finished permanently closing Sä Dena Hes in 2015. As of 2021, the mine is in post-closure monitoring during a 25-year post-reclamation phase (Access Mining Consultants, 2016, sec. 1.0; Teck Resources Ltd. Dormant Properties & Ryder, 2013, sec. 3.0).

1993: Attempted restructuring, bankruptcy

Far from Nova Scotia, the Faro operation was caught in the fallout from Westray. In December 1992, Curragh temporarily suspended operations at Faro, and on 02 Apr 1993, Curragh announced the full suspension of Faro operations (Curragh Inc., 1993a, p. 14).

During this time, Curragh explored financial restructuring through sales of equity to Korea Zinc Co. Ltd., Samsung Corporation, and other private investors. They also sought financing from the Yukon government to develop the Grum ore deposit and they entered into discussion with all lenders and creditors (Curragh Inc., 1993b, 1993c).

On 05 Apr 1993, Curragh Inc. filed for and received court protection from its creditors under the *Companies' Creditors Arrangement Act*, 1985 (Canada). The Court required Curragh to provide a plan of arrangement with creditors by 01 Jun 1993 (Curragh Inc., 1993b, sec. Dear Shareholder, Analysis of Results of Operations and Financial Condition).

On 14 Apr 1993, Curragh defaulted on the interest payment due on its senior notes. On 30 Apr 1993, Curragh failed to repay their bridge loan facility, and all its bank debt came due (Curragh Inc., 1993b, sec. Analysis of Results of Operations and Financial Condition). By 30 Jun 1993, Curragh reported a first half of 1993 loss close to \$100 million, about a quarter of which was a write-down for Westray assets.

On 15 Oct 1993 Curragh's creditors pushed the company into receivership. The Ontario Court (General Division) ordered the appointment of three interim receivers to control Curragh's assets pursuant to s. 47 of the *Bankruptcy and Insolvency Act*, 1985 (Canada): Coopers & Lybrand Ltd. for the Sä Dena Hes mine and Stronsay deposit, Peat Marwick Thorne (KPMG) for the Westray mine, and Deloitte & Touche for all other assets — principally the Faro Mine. A month later, KPMG took over the interim receivership for Faro

(Canada (Minister of Indian Affairs & Northern Development) v. Curragh Inc., 1994, para. 1; Can. V. Curragh Inc., 1999, para. 7). Curragh also undertook ancillary proceedings in Alaska under the US Bankruptcy Code (Curragh Inc., 1993b).

2.6 1993–1998

Rise and fall of Anvil Range Mining Corporation

1993 – 1994: Anvil Range purchase of Curragh assets

With Curragh in receivership, a group of investors, including several Curragh Board members, recognizing the potential of the Faro, Vangorda, and Grum deposits, organized to take over Curragh's assets. The principles were Ralph Sultan, Adrian White, Kurt Forgaard, John Rudolf, and former Minister of Indian Affairs and Northern Development, Bill McKnight.⁷

On 02 Feb 1994, they incorporated 2998661 Canada Inc. "to pursue the acquisition of the Faro properties and assets ... from the interim receiver of certain property and assets of Curragh Inc." On 18 Feb 1994, the numbered company changed its name to Anvil Range Mining Corporation (Anvil Range Mining Corporation, 1995a, p. 18).

At that time, the equity interests in Anvil Range were the five founders along with: five additional entrepreneurs from Prince George, BC, at 7% – 15%; Puccetti Farrell Capital Corp. at 39% – 44%; flow through special shares at 22% – 24%; and Hyundai at 22% – 25% (these figures are taken from Anvil Range Mining Corporation, 1995a, pp. 6, 13, 16, where discrepancies exist in the text).

On 20 Jun 1994, the Interim Receiver and Anvil Range agreed to a Purchase and Sale Agreement. Anvil Range would acquire Curragh's Faro and Whitehorse assets for \$27 million plus a payment of up to \$1 million for the interim receiver's costs (Anvil Range Mining Corporation, 1995a, pp. 1, 12). An amended Purchase and Sale Agreement was approved by the Ontario Court (General Division) on 27 Jun 1994 (Anvil Range Mining Corporation, 1995a, pp. 1, 5).

The Purchase and Sale Agreement was supplemented by an Anvil Range-INAC Reclamation Security Agreement (RSA) which created a Reclamation Security Trust (RST) to fund reclamation costs and "future environmental liabilities." The RST was held by an independent third party (Mutual Trust Company).

Funds in the trust would accumulate from a net smelter royalty (NSR) "determined on a graduating scale based on prevailing zinc prices" starting at 0.5% for zinc prices over \$0.50 USD per pound and increasing in increments after that. The fund would be capped at \$100 million (Anvil Range Mining Corporation, 1995a, p. 12).

Importantly, the RST was structured to meet the terms of being a "Qualifying Environmental Trust" under the *Income Tax Act* (see Box A4-2).

In addition to receiving future contributions, the RST brought together all the various elements that up until that time had been set aside for reclamation. These elements included about \$4 million that was being held in escrow from previous trusts.

The RST required a quarterly contribution from Anvil Range (which Anvil Range complied with until they went into receivership in January 1997). As of October 2021, the RST remains in place.

⁷ McKnight held five different cabinet portfolios in the Mulroney government over nine years between 1979 and 1993 including Minister for Indian and Northern Development from 1986 to 1989 and Minister of Energy, Mines, and Resources in 1993 (Wilson, 2006).

According to Anvil Range, INAC saw this as “the most progressive agreement of its kind entered into to-date in Canada,” and hoped that it would become the standard for future projects (Anvil Range Mining Corporation, 1995a, pp. 2, 5, 19).⁸

On 06 Oct 1994, Anvil Range and the Ross River Dena Council signed a benefits agreement that included a \$100,000 annual payment for Anvil Range to have first rights for mineral and exploration proposals in Ross River Dena territories within 50 miles of the Faro mines. The agreement also provided financial assistance for the Ross River Dena to purchase and relocate twenty-five mobile homes from the Faro town. In addition, the agreement promised benefits to the Ross River Dena that included: scholarship funds, summer jobs, finance training projects, and consideration of Ross River Dena bidders on all outside contracts (Anvil Range Mining Corporation, 1995a, pp. 2, 13).

Box A4-2

Characteristics of the Reclamation Security Trust

The Reclamation Security Trust (RST) is a separate legal entity from Anvil Range. As such, it was not subject to distribution to creditors through the court-approved Plan of Arrangement of 2001 but remained available to the Crown for reclamation costs.

The RST is best thought of as a form of “financial security” not as a “trust” in the strict sense of the word. Two basic options exist for ensuring long term financial security for closure in Canada:

1. Post an irrevocable letter of credit from a Canadian Bank. Depending upon the financial resources of the company, the company will either have to post cash collateral for the letter of credit or have the amount deducted from the company’s borrowing ceiling with the bank.
2. Post hard cash as security – typically in a Trust held by a third, independent party. In this case, contributions result in a tax deduction to the contributing company.

There are pros and cons for each approach, and the right one for a given company depends on its financial situation.

A letter of credit is an ironclad claim on a Canadian schedule A or B Bank. It must be paid if called by the Crown. The effect is to transfer the credit risk to the banks from the government: the banks – not government – must do the credit analysis and establish credit worthiness before they agree to the letter of credit.

Junior companies may not have the credit rating to borrow to get a letter of credit to cover closure costs. As a result, they would have to put up cash collateral to an amount agreed to by the bank in order to get a letter of credit. The alternative is to post cash security with the government to be held in a secure instrument such as a third party-managed trust. Either way the cash is not available for other uses.

Trusts were addressed in 2001 and 2003 amendments to the Income Tax Act which created the concept of “Qualified Environmental Trusts” (QET). A QET is taxable at the corporate tax rate, which is much lower than the tax rate for a personal trust.

The advantage of the Trust is that it is a separate financial entity from the corporation so if the corporation becomes insolvent or bankrupt, the trust is not affected. With a Qualified Environmental Trust, insolvency and bankruptcy are triggering events which make the Crown the beneficiary of the Trust.

On 04 Nov 1994, the Anvil Range purchase agreement closed in escrow (Anvil Range Mining Corporation, 1995a, p. 1) and on 08 Nov 1994, Anvil Range formally acquired the Faro properties (Anvil Range Mining Corporation, 1995a, p. 12) and assumed the Water Licences associated with these properties (Anvil Range Mining Corporation, 1995a, p. 3).

⁸ The RST is attached to the component of the Faro property that carry environmental liabilities for which the federal government is responsible. This is the “western claim block” of the Faro properties (Figure A4-1). The “eastern claim block” (Exploration Lands Blocks A (red) and B blue) on Figure A4-1) remained separate and continued to be held by Anvil Range and managed by Deloitte & Touche as Interim Receiver until they were discharged in 2009 then subsequently held by the Bankruptcy Trustee — also Deloitte & Touche. This split would eventually facilitate the agreement announced on 30 Aug 2021 between RRDC and Broden Mining to examine the possibility of further mining in the area. See discussion in Section 4. Discussion (Preliminary).

On 12 Dec 1994, Anvil Range was listed on Toronto Stock Exchange as “ARO.” honouring Aaro Aho (Anvil Range Mining Corporation, 1995b, p. 5 see also, p. 13).

On 22 Dec 1994, after receiving Korean government approval, Hyundai invested \$24.5 million in common shares financing in Anvil Range and became the sales agent for Korea, Japan, and China (Anvil Range Mining Corporation, 1995a, pp. 1, 13). As sales agent, Hyundai was mandated to “sell 50% of all allotted concentrates” for the region of Korea, Japan, and China during the term of the agreement of seven years from the commercial production date, with an option of an additional year (Anvil Range Mining Corporation, 1995a, pp. 13, 15–16).

Also in December 1994, Anvil Range began pre-stripping waste and overburden from the Grum pit (Anvil Range Mining Corporation, 1995a, p. 5)

1995–1996: Contracts, financing, and the start of production once again

In early 1995, Anvil Range negotiated long-term contracts with smelters in Asia and Europe, including Korea Zinc and other buyers (Anvil Range Mining Corporation, 1995a, p. 4, 1995b, p. 5). Starting in June 1995, Hyundai Canada Inc. financed Anvil Range with a US \$15 million bridge loan. Anvil Range also received operating lines of credit from Toronto Dominion Bank (Anvil Range Mining Corporation, 1995b, p. 6). In August 1995, Anvil Range and 473665 BC Ltd. entered a sales agency agreement to market 40% of allotted concentrates for Europe. As part of this agreement, Anvil Range was to buy cross-holdings in the sales agency agreement (Anvil Range Mining Corporation, 1995b, pp. 5, 15).

In total, Anvil Range raised \$85.2 million of equity (common shares, flow-through shares, and silver royalty units) and \$20.4 million of bridge financing from Hyundai Canada Inc. to fund purchasing the Faro properties, mine, and mill capital assets (Anvil Range Mining Corporation, 1995b, p. 6).

On 31 Oct 1995, Anvil Range and Cominco entered an exclusive sales agency agreement for Europe (Anvil Range Mining Corporation, 1995b, p. 15). As of that date, Anvil Range had 2,300 claims and 67 mineral leases “forming a package encompassing 11,500 hectares,” including the Grum, DY, and Vangorda orebodies (Anvil Range Mining Corporation, 1995b, p. inside front cover). Anvil Range renamed the DY (Dy) orebody “Grizzly.”

Anvil Range, began commercial production for accounting purposes on 01 Nov 1995 (Anvil Range Mining Corporation, 1995b, p. 13).

By 15 Dec 1995, Anvil Range announced its intention to issue convertible debentures of \$30 million to \$35 million. By mid-December 1995, Anvil Range had both long-term contracts and smaller contracts with smelters. The long-term contracts included a seven-year contract with Korea Zinc and a seven-year contract with “a major European smelter” (Anvil Range Mining Corporation, 1995b, p. 2).

On 8 May 1996, Anvil Range issued convertible debentures to fund exploration, equipment purchases, and increase working capital (Anvil Range Mining Corporation, 1997b, pp. 16, 24).

1996: Temporary suspension of mining

On 20 Nov 1996, Anvil Range announced that it was temporarily suspending mine operations and would be laying off 300 of the mining employees effective 20 Dec 1996. Some 150 milling employees were to continue working from stockpiles until April 1997 (Anvil Range Mining Corporation, 1997b, p. 22; Smyth, 1999, p. 262).

According to Anvil Range, “The suspension decision was based on weak metal prices and a stronger Canadian dollar, as well as lower head grades, mechanical problems in the mill and lower metal recoveries which contributed to less than planned production.” (Anvil Range Mining Corporation, 1997b, p. 5). On 20 Dec 1996, the suspension of mining operations began (Anvil Range Mining Corporation, 1997b, p. 2). Following this action, Anvil Range commissioned an independent review of Faro operations

that recommended waiting for base metal prices to improve before restarting the mine (Anvil Range Mining Corporation, 1997b, pp. 5, 22).

1997: Cost reductions, financing, milling of stockpiled ore ends, attempted resuscitation with Cominco and Glencore, more cost reductions, brief working of Grum

Concerned about their precarious financial position, Anvil Range also sought to further reduce costs. In early 1997 they signed a Memorandum of Understanding with the Yukon Government that would see government fund training and exploration activities and explore collaborative ways of reducing Anvil Range's energy costs (Anvil Range Mining Corporation, 1997c).

On 06 Feb 1997 Anvil Range completed a private placement of shares with Cominco Ltd. The placement reduced Hyundai's investment in Anvil Range to approximately 20% (Anvil Range Mining Corporation, 1997a, 1997b, p. 27).

Milling of stockpiled ore ceased on 30 Mar 1997 (Anvil Range Mining Corporation, 1997a) and mine staff were reduced to a "stand-by" status until 30 Jun 1997 (Anvil Range Mining Corporation, 1997c).

Also in the second quarter of Fiscal Year 1996-97, Anvil Range announced a loan from Cominco to finance three months of stripping at the Grum orebody, but Anvil Range simultaneously announced that it needed another \$25 million to \$30 million to fund mill modifications and restart options (Anvil Range Mining Corporation, 1997c).

On 07 Aug 1997, Anvil Range announced that it would begin reopening the mine with the loan from Cominco (Anvil Range Mining Corporation, 1997c, sec. Financing and Future Plans for Anvil Range; Smyth, 1999, p. 267). Near to this time, the Skagway ore terminal lacked activity and shut down (State of Alaska Department of Environmental Conservation, 2015).

In a final phase of activity at the complex, in 1997 Q3 (01 Jul 1997 to 30 Sep 1997) Anvil Range started a drilling program at the northwest corner of the Grum pit and recommenced stripping in the Grum Pit. In September 1997 they moved a small quantity of ore from the Grum pit (Anvil Range Mining Corporation, 1997d).

On 20 Nov 1997, Anvil Range announced short term funding from Cominco and Glencore Group (Glencore International AG, a Swiss commodity-trading firm) to resume production. Anvil Range also entered an agreement with the Glencore Group for Glencore to be the exclusive buyer of Anvil Range zinc and lead concentrates (Anvil Range Mining Corporation, 1997d; McFarland, 1998).

However a short time later, Cominco reduced investment in Anvil Range and other investments and properties due to volatility in metal prices, especially after the Asian financial crisis that started on 02 Jul 1997 (Cominco Ltd., 1997, pp. 5, 39). In the fourth quarter of 1997, a significant failure occurred in the Grum pit wall, and Cominco decided to withdraw further participation even with an indemnity to clear them of historic environmental liabilities.

To close observers, the end for Anvil Range would seem inevitable.

1998: End of operations, creditor protection, Interim Receiver appointed

Then, with little warning, on 16 Jan 1998, Anvil Range closed the mine and laid off its employees, citing falling zinc prices as the reason and sought court protection from its creditors under the *Companies' Creditors Arrangement Act* (McFarland, 1998; Smyth, 1999, p. 270).

As in the previous experience with Curragh, the attempt to restructure the company's finances under court protection did not succeed and Anvil Range's creditors pushed the company into receivership under the *Bankruptcy and Insolvency Act, 1985 (Canada)* (*Anvil Range Mining Corp. (Re)*, 2002, para. 5). At the

recommendation of Cominco, the company's principal creditor, the Ontario Court (General Division)⁹ appointed Deloitte & Touche to be the Interim Receiver.

In December 1998, when it became apparent to most of the creditors of Anvil Range that the Faro mine was not going to be able to be sold as a going concern, INAC assumed most of the funding obligations for the Interim Receiver's environmental management activities at the mine (Anvil Range Mining Corp. (Re), 2002, para. 9). See Box A4-3 for a short explanatory discussion about insolvency and bankruptcy.

Including their pre-mining stripping program, Anvil Range had operated the mine for a short two years before ending mine operations.

Box A4-3
Insolvency and Bankruptcy

According to the Canada Revenue Agency, "A receiver is a third party appointed by a court through a court order or by a secured creditor through a letter of appointment to: take control of property, supervise liquidation proceedings, and remit the proceeds according to priorities established by common or statutory law.

There are two types of receivers: court-appointed receivers, and privately appointed receivers, appointed by a secured creditor." (Canada Revenue Agency, 2021)

In Receivership, the Receiver replaces the company management team, but the corporate entity continues to exist. While a company's executive acts on behalf of shareholders, the Receiver acts on behalf of its creditors. In a court ordered Receivership, the process is very court-driven. The Receiver is appointed by court order and is an officer of the court who reports to and takes direction from the court. In this process, the court makes all major decisions including the approval of budgets and allocations to creditors.

In the case of Anvil Range, the Interim Receiver, Deloitte & Touche, was appointed by the court on a motion by Cominco in 1997, the largest secured creditor in Anvil Range. Anvil Range continued to exist while the Interim Receiver served as the manager of Anvil Range. The Interim Receiver was discharged in February 2009 and Anvil Range put into bankruptcy. Because the Interim Receiver was acting on behalf of Anvil Range, it held the Water Licences.

In contrast, Bankruptcy is a process which is driven by to provisions of the *Bankruptcy and Insolvency Act* (Canada). When a company is put into bankruptcy a Bankruptcy Trustee is appointed whose powers and decision-making authority are described in detail in the legislation. The Trustee has the power to subpoena people and documents, and directly make decisions regarding allocations to creditors.

⁹ Name Changes of this Court: Ontario Supreme Court to 1989, Ontario Court (General Division) 1989 to April 1999, Ontario Superior Court of Justice after April 1999.

3. Government ownership and management, 1998–2021

3.1 1998–2003

Plan of Arrangement, Devolution Transfer Agreement

1997–1998: Government begins to examine options for covering closure costs

INAC and the Yukon government were already anticipating that the receivership of Anvil Range could leave Canada with major liabilities if no private sector solution was found for the mine. So, they had already begun to work with the Yukon Government, First Nations, and industry to, in the words of INAC “deal with the closure” of Faro (Indian and Northern Affairs Canada et al., 1999, pp. 31, 32).

Once appointed, the Interim Receiver (Deloitte & Touche) became responsible for the care and maintenance of the Faro property. This responsibility would continue until 2009 when the Interim Receiver was discharged, and Anvil Range was placed into bankruptcy (see Section 3.3 below).

1999 – 2000: Cominco – a potential new owner

On 10 Aug 1999, Cominco, the Government of Canada, and the Government of Yukon signed a Memorandum of Understanding that gave Cominco control of the mine and an option to operate the mine without up to \$100 million of potential environmental liabilities. INAC agreed to contribute up to 65 percent of the total annual costs of maintaining the property, costs that were estimated to be between \$1 million and \$2 million per year. The Government of Yukon agreed to pay \$200,000 a year for maintenance until the mine was reopened or sold. Cominco and the Government of Canada agreed to set up a trust to meet environmental laws for the site, and Cominco had the first option to operate the mine on behalf of a holding company (Minnis, 1999; Robinson, 1999). At the time, Teck owned 50 percent of Cominco, which in turn owned a number of lead-zinc properties in Yukon and BC that included several former Anvil Range properties (Teck Cominco, 2001, p. 35).¹⁰

Meanwhile, attempts were underway through negotiation to address creditors’ claims on Anvil Range assets.

2001: Plan of Arrangement agreed to, Court approved, appealed, and appeal dismissed

In early 2001, after about a year of settlement negotiations that included a dedicated settlement conference, Anvil Range’s secured creditors came to a settlement (“Faro Cleanup Estimated to Cost \$47-Million,” 2000; *Anvil Range Mining Corp. (Re)*, 2002, paras. 10, 13) (Our Appendix 3, section 2001).

The Plan of Arrangement included the following terms (reference to add)

- Cominco and the other private sector creditors relinquished their claim against the Faro mine site and its associated buildings, plant and machinery, leaving Canada, the Yukon Government and the Yukon Workers’ Compensation and Health and Safety Board (YWCB) as the only creditors with a claim against the mine site real property.

¹⁰ Teck first purchased shares in Cominco in 1986, Teck owned 50 percent of Cominco by 2000, and the two companies merged in July 2001 to form Teck Cominco Ltd. (Teck Cominco, 2001, pp. 35–36) On 01 Oct 2008, Teck Cominco rebranded as Teck, and on 23 Apr 2009 it legally changed its name to Teck Resources Ltd. (Teck, 2009, p. 5; Teck Resources Limited, 2009; “Teck Scraps Cominco Brand,” 2008).

- Cominco and the other private sector creditors received the proceeds from the sale of the mine's mobile equipment.
- Canada received the corporate tax returns, GST/HST refunds, Water Board security, plus the proceeds from the sale of fixed equipment (e.g. the mill).

On 29 Mar 2001, the Ontario Superior Court approved and sanctioned the Plan of Arrangement under the *Companies' Creditors Arrangement Act*, 1985 (Canada). Some of the creditors of Anvil Range subsequently appealed but in 2002 the Ontario Court of Appeal subsequently dismissed the appeal (*Anvil Range Mining Corp., Re*, 2001, para. 21; *Anvil Range Mining Corp. (Re)*, 2002, paras. 37, 40–41).

In the appeal, the Yukon Territorial Government recorded a claim for unpaid property taxes and the Yukon Workers' Compensation and Health and Safety Board (YWCB) claimed for unpaid compensation for workers. Together, their claim was for about \$1 million. In comparison however, the INAC claim was more than \$60 million and was secured by a court ordered first charge over all remaining property of Anvil Range as the funding for the Interim Receiver's expenses and mine remediation by the Federal government was considered a debt to the Crown (*Anvil Range Mining Corp. (Re)*, 2002, p. 16).

2001–2003: Devolution Transfer Agreement (DTA) signed 29 Oct 2001 and comes into force 01 April 2003, Yukon Government becomes Manager of Public Lands, Faro status confirmed as a Type II Mine with liability costs to be covered by Canada; the DTA splits authority, responsibility, and accountability related to Faro

The Devolution Transfer Agreement (DTA) was signed 29 Oct 2001 and came into force on 01 Apr 2003. On that date, the Yukon Government took over from the federal government as Manager of Public Lands in the Yukon. Thus with a few minor exceptions, such as federal parks, public lands previously managed by the federal government began to be managed by the Yukon Government.

As a result, the regulatory framework for all of Anvil Range's assets, including mineral claims, water licences, land use permits, safety approvals, and other assets was now administered by the Yukon Government instead of Canada. An exception was Fisheries. The Fisheries Act is federal legislation and continues to be administered by DFO.

The DTA listed Faro as a "Type II" site which meant that responsibility for covering costs of closure and abandonment was retained by the Government of Canada (Government of Canada & Government of Yukon Territory, 2001, pp. 85–94), while the Yukon Government, as the manager of Public Lands in Yukon was responsible for managing care and maintenance as well as implementing any remediation and closure plan. This effectively made both levels of government jointly responsible for care and maintenance and remediation of the mine site. This was a recipe for relatively ineffective management of the site, given that the two levels of government involved had very different financial and human resources, as well as very different perspectives on environmental risk, cost management, and the use of the project for economic development purposes.

3.2 2003–2009

Permanent closure declared; management of care and maintenance by the Interim Receiver continues; Yukon Government and Canada jointly manage closure planning

Discussions had been ongoing with Cominco about reopening the mine. Finally, in early 2003, they withdrew interest when a failure occurred in the Grum pit wall, metal price dropped, and market conditions deteriorated.

Shortly thereafter, the federal government declared that reopening the Faro operation was not economically viable and all efforts to find a new owner/operator ceased.

This determination of permanent closure of the site allowed formal steps be taken to complete the design and implement a closure strategy (Indian and Northern Affairs Canada, 2005, sec. Performance Measurement-Faro).

From 2003 – 2009, the Interim Receiver, Deloitte & Touche, continued to serve as care and maintenance manager of the Faro site. Annual Faro budgets were negotiated with Northern Affairs (after discussions involving the Interim Receiver, the Yukon Government, and Northern Affairs staff) and approved by the Court. Most of the money came through the Federal Contaminated Sites Action Plan.

Closure planning was pursued jointly between the Interim Receiver, the Yukon Government Faro Closure Office, and Northern Affairs, who maintained an informal collaborative working relationship.

3.3 2009–2018

Bankruptcy; Yukon Government manages Faro care and maintenance; the Yukon Government and Canada jointly continue to manage closure planning

2009: Transition year

In 2009, the Yukon Government, the federal government and the Interim Receiver faced the question of whether to renew a water licence when it expired. In the event, the decision was taken to **not** renew the water licence. With that decision:

- The Interim Receiver abandoned the Faro and Vangorda Plateau sections of the Faro Mine property and all of the buildings plant and machinery on the mine site was conveyed to the Yukon Government.
- Deloitte & Touche was discharged as Interim Receiver.
- Anvil Range retained the mineral claims and leases comprising the eastern half of the Faro Mine property, as well as a small block of mineral claims to the west of the Faro section of the property and was put into bankruptcy (as opposed to receivership).
- Deloitte & Touche was appointed as Bankruptcy Trustee.

With the abandonment, the Yukon Government assumed responsibility for management of the care and maintenance of the site pursuant to Section 37 of the *Waters Act*, 2002 (Yukon) (See Box A4-4).

Box A4-4.

Waters Act, 2003 (Yukon) Section 37

37(1) Where the Minister believes, on reasonable grounds, that

(a) a person has closed or abandoned, temporarily or permanently, a work related to the use of waters or the deposit of waste, and

(b) either (i) the person has contravened or failed to comply with any condition of a licence or any provision of this Act or the regulations, whether or not the condition or provision relates to closing or abandonment, or (ii) a danger to persons, property, or the environment may result from the past operation of the work or from its losing or abandonment,

the Minister may take any reasonable measures to prevent, counteract, mitigate, or remedy any resulting adverse effect on persons, property, or the environment, and for that purpose may enter any area, place, or premises, except one that is designed to be used and is being used as a permanent or temporary private dwelling-place.

2009–2018: the Yukon Government manages Faro care and maintenance; the Yukon Government and Canada continue to jointly manage closure planning.

During this period, the Yukon Government managed Faro's care and maintenance and the Yukon Government and Canada together jointly continued to manage closure planning.

Funding was provided by Canada through the Federal Contaminated Sites Action Plan (FCSAP) which was managed by Environment Canada and Treasury Board.

3.4 2018-2021

Return of responsibility to the federal government, YESAB Review, new collaborative agreement may signal new beginning

2018: Faro Transition Agreement

For a number of years, both Canada and the Yukon Government had realized that a more effective and efficient management arrangement was necessary for both the care and maintenance of the property and to implement a remediation plan for the site. In the end, both governments decided that the best solution was to transfer management of all operations at the site to the federal government. Initially the Federal government would manage the site under section 37 of the *Waters Act* but would apply for a water licence for the implementation of the remediation plan for the site. As a result, the Faro Transition Agreement was signed and became effective on April 1, 2018. Ultimately, a Government of Yukon Order-in-Council will transfer administration and control of the Faro Remediation Lands from the Yukon Government back to the federal government along with full responsibility for care and maintenance of the Faro site as well as closure (Crown-Indigenous Relations and Northern Affairs Canada, 2020).

2020: YESAB review triggered, NAMRP Replaces FCSAP Funding

In August 2020, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) submitted the Faro Mine Remediation Project to the Executive Committee of the Yukon Socio-economic Assessment Board

for screening, triggering the next step in implementation of the final Faro closure plan (Yukon Environmental and Socio-economic Assessment Board, 2020, p. 4).

Up until the end of March 2020, care and maintenance and remediation expenditures at Faro were funded through the FCSAP Program (Federal Contaminated Sites Inventory, 2021). From 01 Apr 2020, care and maintenance and remediation expenditures at Faro have been funded through the Northern Abandoned Mines Remediation Program, a separate and specific program dedicated to funding the remediation of the largest contaminated mine site managed by the Northern Contaminated Sites Program of CIRNAC.

2021: Ross River Dena Council – Broden Mining Ltd. Agreement in Principle to jointly establish the Tse Zul Development Corporation. A new beginning?

On 30 Aug 2021, the Ross River Dena Council and Broden Mining Ltd. of Vancouver announced an agreement in principle to form the jointly owned Tse Zul Development Corporation.

Tse Zul was created to acquire and assess the development potential of the Vangorda lands within the Ross River Kaska Dena traditional territory (Government of Yukon et al., 2021).

Broden Mining Ltd. is 40% owned by Strategic Metals Ltd. Who in turn own a large claim block to the north of the Faro lands that contains the Keg deposit, a high-grade silver target (Figure A4-1). Strategic’s interest in Broden is increased indirectly by an 18.1% shareholding in Silver Range which owns 10% of Broden and retains a net smelter return interest in mineral production from it’s mineral claims in the area (see Map A4-1) (Strategic Metals, 2021).

In the event of any commercial production from these properties, Silver Range will receive a one-time payment of \$10 million and a net smelter return royalty of 2% on all future precious metal production and 1% on all future non-precious metals production (Silver Range Resources Ltd., 2021)

Figure A4-2 shows the southern part of Figure A4-1.

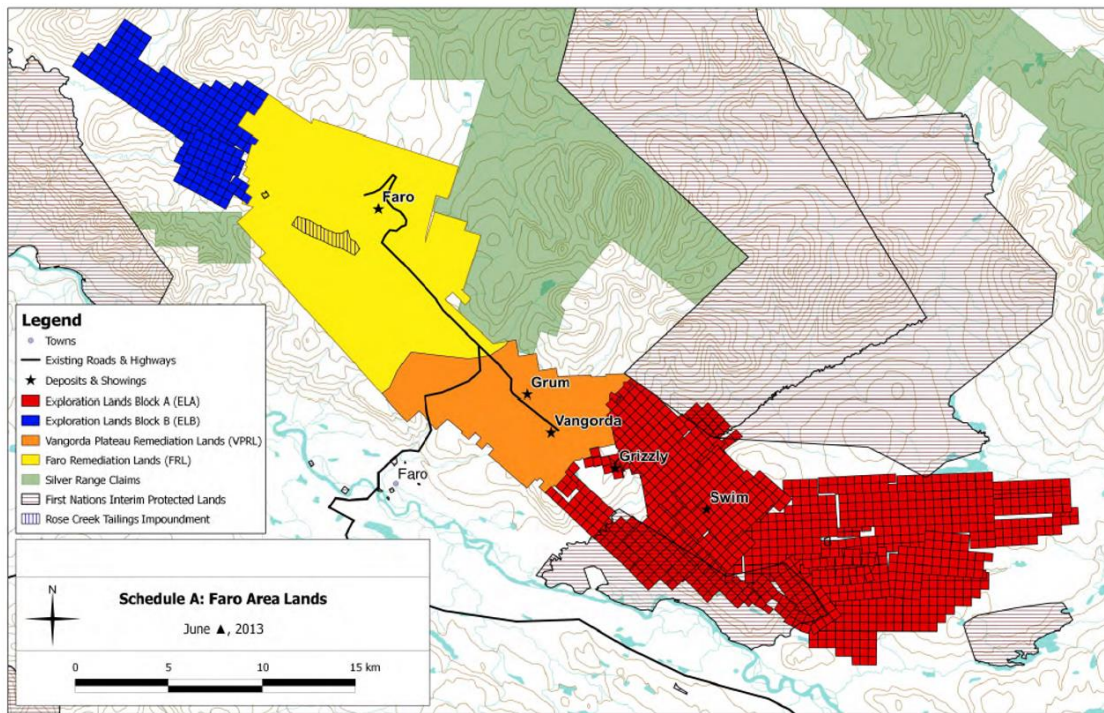


Figure A4-2. More detailed claim map.

The intention is that the blue, red, and green claim blocks shown in Figure A4-2 plus 42 mineral leases on the Vangorda Plateau Remediation Lands (orange block) will be sold to/acquired by Tse Zul.

- On Figure A4-2, the yellow and orange blocks were formally abandoned to the Yukon Government with the discharge of the Interim Receiver in 2009 (see Section 3.3)
- The blue and red blocks have been held by the Bankruptcy Trustee (Deloitte & Touche) since 2009 when Anvil Range was put into bankruptcy (See Section 3.3 above). In the proposed arrangement, mineral rights would be sold to Tse Zul.
- The yellow block contains the Faro site that is subject to the current closure process under review by YESEAB. This block will stay under federal management and ultimately be transferred back to federal administration and control. The remediation liabilities will remain with the federal government. All proceeds held by the Reclamation Security Trust would apply to this property.
- The orange block contains the Grum and Vangorda deposits. In the proposed arrangement, mineral rights and environmental liabilities of this block would be assumed by Tse Zul along with all care and maintenance infrastructure. Water treatment facilities on the Vangorda Plateau were designed and built by Cominco some 35 years ago and continue to function effectively.
- The red block contains the Grizzly (DY) and Swim deposits. In the proposed arrangement, mineral rights in the red and blue blocks would be sold to Tse Zul.
- The green block is currently held by Strategic Metals and contains the Keg deposit. In the proposed arrangement, mineral rights would be transferred to Tse Zul.
- Tse Zul would also assume responsibility for further exploration and development throughout the Ross River Kaska traditional territory.

In the Agreement in Principle between Tse Zul, the Yukon Government and the federal government, following the "Initial Close" of the agreements Tse Zul, following YESAB review, would apply as soon as possible for a Water Licence to undertake care and maintenance activities related to the Vangorda Plateau Lands. Once the Water Licence is in hand, the "Final Close" in the agreements will occur allowing Tse Zul to occupy the property and complete investigations required to assess the potential for production. Once Tse Zul has been granted a Production Licence by the Yukon Government for the development of a mine, Tse Zul will assume responsibility for the remediation of the Grum and Vangorda mine sites on the Vangorda Plateau.

Creation of the Tse Zul Development Corporation offers the potential for concrete Ross River Dena leadership and participation in exploration and development, something that has never been realized to date. If commercial production is in fact eventually realized, ownership and a steady stream of royalties would provide a strong financial foundation for the Ross River Dena.

At the same time, the strong positioning that has been taken by the Ross River people related to preservation and nourishment of their traditional language and culture leaves hope that these values will strongly guide future activities.

4. Discussion (preliminary)

Complexity

Faro's ownership maze during Phase 1 – and thus the distributional picture of financial returns to owners – was complex, reaching many players and countries including Canada, the United States, Japan, Germany, Korea, Sweden, and Spain. Broadly speaking, the main ownership of Faro rested in Vancouver, Los Angeles, Toronto, and Calgary. When the properties defaulted to government, the ownership became simple but other complexities in management arose because of the Yukon–federal relationship.

Data and information availability

Interestingly, under Phase 1, because companies are governed by financial and corporate reporting requirements, there is significant data and information available. In the case of Faro, this situation was greatly enhanced by the 2009 decision of the Interim Receiver to lodge all the records in the Yukon Archives which are available for public scrutiny. Once Faro had defaulted to government at the beginning of Phase 2, records became less available. Cabinet decisions are held in confidence for a period of 20 years (*Canada Evidence Act*, Section 39) and annual government reporting is in many instances obscure and difficult to follow. Departmental expenditures are contained in the annual Estimates, but project-by-project spending (say on Faro closure) may be spread confusingly between more than one program element, making it almost impossible to follow after-the-fact.

Evolving government role through the Project Life Cycle.

A discernable trend is evident across the Faro experience in terms of the role of government:

From the 1960s through the 1980s, the federal government was singularly focused on subsidizing development – with the new Faro mine in the 1960s and through the large effort to keep the mine going in the mid-1980s (e.g., the 1985 Curragh – DIAND Reopening Agreement).

During the 1980s and 1990s, environmental values were gaining strength across society and the federal government was increasingly reflecting its role as steward of Crown lands as well as developer. Curragh had agreed to voluntarily create an environmental trust fund, but its terms did not adequately secure resources for reclamation in the event of bankruptcy. In contrast, the 1994 Curragh – Anvil Range Sales Agreement and 1994 Reclamation Security Agreement, which was included in the Curragh – Anvil Range Sales Agreement, was written to ensure that the resources held in the Reclamation Security Trust Fund went to reclamation. The mechanism is innovative even if the magnitude of funds in the trust turned out to be far below closure requirements.

In the 2021 Ross River – Broden Mining Agreement, both the Yukon Government and the federal government are now balancing development, Crown land stewardship, and respect for Indigenous peoples' rights by serving as a partner with First Nations in facilitating their direct management of resources on their traditional territory.

Closure

Legislation regarding closure security has evolved. The *Northern Inland Waters Act*, 1972 (Canada) limited the amount of security that could be set to 10% of capital costs. This limit was intended to protect downstream users. For a brief period from March 1982 to October 1985, the then owner, Cyprus Anvil Mining Corporation was assigned full responsibility for closure including financing by the Water Board as a term of the Water Licence. This responsibility was removed in 1985 to facilitate the sale of the mine to Curragh. From then on a whole sequence of demands for closure or abandonment plans including financing was requested from the company but no fully accepted and adequate strategy was ever approved (see Appendix 7).

In 1993, the *Yukon Waters Act, 1993* (Canada) changed the security limit to the full costs of remediation. This change reflected both a major leap in the dollar limit of security but more importantly, a major leap in thinking to one that is more in line with societal values.

Full closure plans are now needed including financing plan for full closure costs; doubt remains about adequacy. Today, for new mines, a full closure plan is required including commitments to a financing arrangement that will see security coverage of full closure costs. In the Yukon, these are now entrenched in a dedicated agreement that is subject to public review in both YESAA and Water Board processes. However, recent events related to inadequate closure security set aside for the Wolverine Mine (opened in 2006 and closed in 2015) and Ketz Gold Mine (licensed in the 1980s and abandoned in 2015) have raised doubt that adequate regulatory and enforcement measures are actually in place (see Appendix 10).

Company – government tension over closure. Evolving closure requirements have been accompanied by significant tension between companies and government. For existing mines built with inadequate security (and not asked to have higher levels of security by the “rules” of the day), imposition of an after-the-fact requirement for full security would likely render the operation insolvent and the Crown would be left with the full liability. Keeping a mine going with less-than-adequate closure security – not a palatable state of affairs – would at least potentially lead to the Crown recovering some portion of the ultimate environmental liability in comparison to nothing if the company collapsed. This strategy has generally been adopted, even recognizing that there would be significant shortfalls.

From another perspective, the closure experience shows that company perspective on “efficient” use of money (focusing on company finances on the short term in response to investor expectations) is not the same as government perspective (focusing on government finances over the long term). This, too, has contributed to accompanying tensions.

Closure costs may render projects uneconomic but responsibility lies with the project proponent. In some cases, inclusion of closure costs may render a property uneconomic for development. However, it is now recognized that in fairness and consistent with the environmental law principle of “polluter pays”, full responsibility for closure costs lies with the project proponent.

The cost of inaction; closure costs integrated into the price of metals. Over time, closure costs are being integrated into the economic evaluation of a property. In turn, these costs will be passed on and integrated into the price of the mined metal or mineral. Unfortunately, there has been a time lag because even though planning for closure was recognized as a need in the early 1970s, law, regulation, and policy were not adapted fast enough and the cost of inaction has left government (and therefore society) with significant liabilities.

Faro used both private and public financing

The Faro operation was brought online with the support of both private and public financing. At various points in the project life cycle, both private and public injections of funds occurred. Detailed accounting of this has not been possible to date, but an estimate – important for the contribution analysis – will be prepared as part of Phase 2.

Influence of events outside the Yukon

World events well beyond the Yukon played a dominant role in shaping the Faro story. Of high significance were the major swings in the world economy with resulting significant oscillations in metal prices which in turn significantly influenced the Faro operation’s financial picture.

Federal policy swings also had a significant impact. Changes in federal trade and foreign investment policies reflecting economic nationalism and protectionism by the Diefenbaker and Trudeau governments on the one hand and the liberalization of markets and free trade by the Mulroney and Chrétien governments on the other hand, greatly affected the operating context for Faro. Key instruments in these

changes included the National Energy Program of 1980 to 1985, changes in the Foreign Investment Review Agency (later, Investment Canada), and various trade agreements.

Push to keep the mine open

The effort put into keeping the mine going in the 1980s and then again in the 1990s was massive – by government and corporate players. The pressure by organized labour and the local community was similarly large. This effort and pressure crossed all party lines. In retrospect, those spearheading the pressure, while driven by a desire to maintain employment numbers, the contribution to the Yukon economy, and the town of Faro, simply may not have been willing to accept the reality of the mine's declining economic health. This situation is common across the mining industry particularly when closure and related transition planning has not been adequate.

Implications for First Nations and their increasing role of First Nations

Clearly through Phase 1, First Nations received little benefit from the Faro operations compared to other interests. However, equally clearly, the role and influence of First Nation's people and organizations has significantly increased through the Faro project life cycle.

Weaving the Faro story

The Faro story that is described in this Appendix is woven together with seven distinct threads which affect both the "rules" and the results achieved. These are:

- (1) the evolution of societal values;
- (2) changes in environmental legislation and regulation;
- (3) the recognition of the rights of Indigenous People;
- (4) changing powers of the Yukon Government through devolution;
- (5) changing law, regulation, and policy (federal and Yukon) governing the mining industry;
- (6) changing world economic conditions; and
- (7) changing practices within the mining industry itself.

These threads are taken up in the main Phase 1 Report.

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