

Chief Gold Commissioner's Reasons for Decision - *Mineral Tenure Act* Section 67

Issue

1. Pacific Booker Minerals Inc. (PBM) has requested the Chief Gold Commissioner (CGC) to set aside the July 23rd, 2020 forfeiture of mining lease 1069796 pursuant to the CGC's authority under section 67 of the *Mineral Tenure Act* (the Act) and allow a further period of time to comply with Section 6.31(2)(a) of the Act.

Legislative Context

2. Section 67(1) of the Act provides a definition of "intervening claim" as a claim that is in respect of land that was subject to a forfeited claim or an expired lease and is registered in the period between the date the record of a forfeited claim or expired lease was deleted from the registry and the date the chief gold commissioner makes an order in respect of a forfeiture or expiry under subsection (2).
3. Section 67(2) of the Act says that even if a claim is forfeited or a lease expires under this Act because the recorded holder fails to comply with a requirement of this Act within a time limit, the chief gold commissioner, by order, may set aside the forfeiture or the effect of the expiry and allow a further period of time for compliance.
4. Section 67(3) of the Act says that the chief gold commissioner, under section 6.36, may delete an intervening claim from the registry.
5. Section 6.36(1)(b) of the Act allows the chief gold commissioner to delete or amend an entry in the registry if the registration does not comply with the Act or the regulations. This is in keeping with Section 6.7 of the Act that prohibits overlapping mineral cell claim registrations, which would be the case if a mining lease is reinstated where it overlaps an intervening mineral cell claim.
6. Section 6.31(2)(a) states that the recorded holder of a lease must register an application to renew the term of a lease under Section 42.
7. Section 42(5) states that if the lessee complies with this Act, the regulations and any conditions of the mining lease issued under subsection 42(4), the lessee is entitled to a renewal of a mining lease for one or more further terms not exceeding 30 years each, subject to the approval of the chief gold commissioner that the mining lease is required for a mining activity.
8. Through amendments to the Act which came into effect on January 1st, 2005, mineral staking, the historic process by which claims were registered under the Act, was replaced by an electronic map selection process administered under an electronic registry called Mineral Titles Online (MTO). The electronic map is divided into 'cells' based upon an electronic grid. Claims are registered by selecting adjoining cells with the MTO registry from the electronic map. Pursuant to the Act, claims

previously registered under the mineral staking process were represented overtop of the grid area on the electronic map as legacy claims. Legacy claims can be converted to cell claims in accordance with section 3 of the Mineral Tenure Act Regulation.

Events that Occurred Prior to the Forfeiture of Mining Lease 1069796

9. In August 2009, PBM first registered an application to convert mineral claims 625123, 625143, and 625183 to a mining lease. In October 2012, under the Environmental Assessment Act, a decision was made not to issue an environmental assessment certificate for PBM's Morrison mine proposal. The mining lease area is the area where the Morrison mine is proposed, which is an open pit mine design complete with ore processing and tailings storage facilities. PBM filed a petition for judicial review of the Environmental Assessment Office (EAO) Ministers' decision not to issue the assessment certificate. This decision was quashed by the Court and remitted back to the EAO Ministers for reconsideration. A subsequent decision has not yet been made.
10. A mining lease from the August 2009 application was issued on July 22nd, 2019 for an initial term of one year. Since the time this lease was issued, PBM did not register an application to renew the term of the lease as required by Section 6.31(2)(a) of the Act. As a result, the lease forfeited at midnight on July 22nd, 2020.
11. On March 27th, 2020, I issued an order pursuant to Section 66 of the Mineral Tenure Act, that extends the time limit for registering a statement of exploration and development, registering payment instead of exploration and development, registering a revised expiry date, or registering a lease rental payment, until December 31, 2021, for all mineral and placer mineral titles as described in a schedule attached to the order. A copy of the order was posted on the Mineral Titles Branch website. The effect of this order on mining leases is to grant more time (until December 31, 2021) to make an annual lease rental payment, which is normally due on the first day of the annual rental year.
12. After the March 27th, 2020 time extension order was issued, an "information sheet" was posted on the MTO website to provide further explanation of what the time extension order does and does not do. This "information sheet" states that the extension order does not change the term of a lease and does not extend a lease term expiry date. It also states that if a lease term is due to expire prior to December 31, 2021, the recorded holder must still register an application to renew the term of the lease, if they wish the lease to continue.

The Request to Set Aside the Forfeiture and Review of Submissions

13. On July 23rd, 2020, I received an email from PBM indicating that their mining lease had forfeited and that new mineral claims had been registered over the former lease

area. The recorded holders of the new claims contacted PBM to inform them of these events. I replied by email to PBM confirming these events and indicating to PBM that the time extension order issued on March 27th, 2020 only granted extra time to pay annual lease rental and did not extend the term of a lease.

14. On July 28th, 2020, I sent an email to the intervening claim holders who had registered claims over the former mining lease area, informing them that PBM had requested that I exercise my discretion under Section 67(2) of the Act, and inviting them to make submissions to me.
15. On August 2nd, 2020, I wrote to representatives of the Lake Babine Nation and their legal counsel informing them that PBM had requested that I exercise my discretion under Section 67(2) of the Act and inviting them to make submissions to me.
16. I have reviewed submissions from PBM, the intervening claim holders, and Lake Babine Nation. Following is a detailed list of submissions I have received and considered even if I do not explicitly refer to them in these written reasons.
 - Email correspondence between myself, PBM and their legal counsel, LBN and their legal counsel, and the intervening claim holders and their legal counsel.
 - August 27th, 2020 letter from Mr. James Pflanz on behalf of his clients, the intervening claim holders 1240089 BC Ltd. and 1258713 BC Ltd.
 - September 1, 2020 submission from Mr. Brian Abraham, on behalf of his client, PBM.
 - Digital images of six display posters detailing a chronology of the Morrison mine proposal submitted to me in person by Mr. Erik Tornquist of PBM of July 30th, 2020.
 - September 30th, 2020 letter from Ms. Dominique Nouvet, on behalf of her client, Lake Babine Nation, complete with attached two letters from the BC EAO to PBM dated Feb 4th, 2019 and June 18th, 2019.
 - October 27th, 2020 letter from Mr. Brian Abraham, on behalf of his client, PBM.
 - November 9th, 2020 letter from Mr. James Pflanz, on behalf of his clients, the intervening claim holders 1240089 BC Ltd. and 1258713 BC Ltd.
17. The submissions from the intervening claim holders, Lake Babine Nation, and the September 1st, 2020 submission from PBM have been shared with each party, except for the digital images of the six display posters submitted by Mr. Tornquist. Mr. Abraham has shared PBM's October 27th, 2020 submission with Mr. Pflanz and Ms. Nouvet. I provided a copy of Mr. Pflanz's letter of November 9th, 2020 to the other parties on November 11th, 2020 for their information and indicated that I was not expecting a further response from them.

18. The submission from the intervening claim holders asserts that PBM was negligent in failing to register an application to renew the lease term before the lease expired. At the very least, it is apparent that PBM made a very grave mistake. While I am of the view that such mistakes are avoidable, it seems apparent that PBM had absolutely no intention of putting their mining lease in a position that would cause its forfeiture.
19. The submission from the intervening claim holders argues that in the event I decide to grant more time to PBM to register an application to renew the term of the lease, I should consider not deleting the intervening claims until such time as a decision has been made on a term renewal application. While I can appreciate the utility of this option to the intervening claim holders, it would be contrary to Section 6.7 of the Act to have both a mining lease and mineral claims in good standing over the same area at the same time. The lease must be in good standing in order for the lessee to register the lease term renewal application, and therefore any intervening claims must be deleted.
20. The submissions from Lake Babine Nation express agreement with the submissions made by the intervening claim holders. The Lake Babine Nation submissions assert that I should consider PBM's lack of substantive response to the EAO's requirement for PBM to submit a Supplemental Application Information Requirements (SAIR) report and their alleged lack of diligence in advancing the Morrison mine project as reasons not to reinstate the mining lease and grant more time to register an application to renew the lease term. I do not agree that it would be reasonable to not reinstate PBM's mining lease for such reasons. I do agree that these points raised in Lake Babine Nation's submissions could be taken into consideration as part of an application to renew the term of PBM's mining lease. Section 42(5) of the Act states that the Chief Gold Commissioner must be satisfied that a mining lease is required for a mining activity when considering an application to renew the term of a mining lease.
21. PBM's submissions include a detailed chronology of events related to the exploration of the claims since 1997, as well as the development of the mineral resource deposit and subsequent application for the Environmental Assessment Certificate. The submissions also include a chronology of events since the 2012 EAO Ministers' decision not to grant the EA certificate for the Morrison mine proposal.
22. Mr. Pflanz's letter of November 9th, 2020, references a decision made in 2016 where forfeited claims owned by Carmax were reinstated by order under Section 67, and intervening claims were deleted. In that instance, Carmax made an error when registering exploration on their Eaglehead claims, in that they performed a subsequent claim amalgamation event in Mineral Titles Online including a claim that was not included in the prior work registration event. Despite that, it very clearly states in Mineral Titles Online that amalgamated claims assume the earliest expiry date of all claims being amalgamated, and that it very clearly shows the new expiry date of the subsequently amalgamated claims, this was ignored and overlooked by the person who made these registrations for Carmax. Clearly this was done in error, and

although an argument may be made that such an error should have been avoided, it none the less happened, and was by no means intended or deliberate. I felt it was reasonable to accept Carmax's submission at the time that this was an unintended error.

23. The November 9th, 2020 submission from Mr. Pflanz suggests that the Mineral Titles office had informed PBM prior to the forfeiture that their lease was due to forfeit. I could not find any information to suggest that this had happened, and Mr. Pflanz did not provide any information to confirm this assertion.

Decision of the Chief Gold Commissioner:

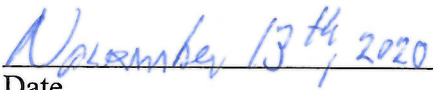
24. PBM admits in its submissions that it failed to correctly comprehend the March 27, 2020 order allowing extra time to pay annual rental to holders of mining and placer leases and allowing extra time to exercise rights under Section 29 of the Act to recorded holders of claims. I accept that PBM misunderstood the wording of the order and I accept that this error leading to the forfeiture of the mining lease was inadvertent and unintended.
25. I am of the view that it is reasonable to assume that PBM would not intentionally allow the forfeiture of the mining lease and place their mineral titles in jeopardy. Even if PBM never fully develops the mining lease area or any of their adjoining mineral claims into a permitted mine, the assets associated with the development of their mineral titles continue to hold value in the market.
26. If mining lease 1069796 is not reinstated, it seems likely that the intervening claim holders could stand to make windfall profits from the mineral claims they registered. Some profit taking may have already occurred, given that the number of intervening claim holders has declined since the area was first re-staked after the forfeiture.
27. If mining lease 1069796 remains forfeit, PBM loses a multi-million-dollar investment.
28. If mining lease 1069796 is reinstated, the intervening claim holders lose their claim acquisition fees, which can be refunded. Any profits made by the intervening claim holders would only be a direct result of PBM's sunk costs to explore and develop their mineral titles at Morrison Lake.
29. For these reasons, I think it is reasonable to reinstate mining lease 1069796 until May 20th, 2021, in order to allow PBM to comply with Section 6.31(2)(a) of the Act. I might have considered a much shorter reinstatement period for PBM to comply with Section 6.31(2)(a) of the Act, since it only takes a few minutes to register a lease term renewal application online. However, reinstatement of the lease for a very short time period would once again create a situation where the lease is forfeited, and the area would be re-staked with new claims. Six months seems like a reasonable amount of

time to conclude an application by PBM for a lease term renewal, assuming PBM registers an application promptly. Should more time be required to reach a decision on a mining lease term renewal application, PBM may apply for an additional extension of time.

30. Pursuant to Sections 67(3) and 6.36 of the Act, the new mineral claims registered over the area of the forfeited mining lease will be treated as intervening claims. These intervening claims will be cancelled and deleted from the registry and the claim registration fees paid by the recorded holders will be refunded.
31. In exercising my discretion to reinstate mining lease 1069796, the factors I consider to be of particular significance are the long standing exploration history and development, the significant investment of PBM to date, the extraordinary prejudice to PBM compared to the relatively small impacts to the intervening claim holders, and the inadvertent nature of PBM's error.



Mark Messmer, Chief Gold Commissioner



Date