

In the matter of the
MINERAL TENURE ACT
R.S.B.C. 1996, c.292

and

In the matter of
Mining Lease Application
Pacific Booker Minerals Inc.

Mineral Titles Online Event Number 4330154

File Number 13880-02-587

Reasons for the Chief Gold Commissioner's Decision

Section 42(4) of the *Mineral Tenure Act* gives the Chief Gold Commissioner the authority to issue a mining lease containing terms and conditions specified by the Chief Gold Commissioner. Pacific Booker Minerals Inc. (PBM) has applied to replace mineral claims 625123, 625143 and 625183 with a mining lease.

I. Nature and Scope of the Decision

The decision to issue a mining lease is made under section 42(4) of the *Mineral Tenure Act*, R.S.B.C. 1996, c. 292.

Pacific Booker Minerals Inc. (PBM) applied for a mining lease on August 28, 2009, to replace mineral claims 625123, 625143 and 625183. PBM requested the maximum lease term of 30 years.

The Province has a duty to consult and, if appropriate, accommodate First Nations with respect to a decision that could impact asserted or established Aboriginal or treaty rights and Aboriginal title. The mining lease application area is located within the consultation area of the Lake Babine Nation (LBN) and the Yekooche First Nation (YFN).

I have considered relevant information, including information received from local governments, and Provincial agencies, and the content and adequacy of consultation with the LBN and YFN on the mining lease application.

a. Mineral Claims

The mining lease application area is known as the Morrison mine project and is comprised of mineral claims 625123, 625143 and 625183, encompassing approximately 1,090 ha. These three mineral claims are located along the shore of Morrison Lake, which is approximately 65 kilometres northeast of Smithers.

PBM has held the mineral claims over the application area since about 2001 and is proposing to develop a copper-gold-molybdenum mine with an estimated mine life of 21 years.

b. Application for an Environmental Assessment (EA) Certificate

The province's environmental assessment (EA) of the proposed Morrison Mine Project began in 2003 when PBM submitted a project description to the Environmental Assessment Office (EAO). The EAO determined that the proposed project was reviewable and on September 28, 2009, PBM submitted an application for evaluation. EAO did not accept the application for review because it did not contain required information. A revised application was accepted for review on June 28, 2010.

On September 24, 2012, The Minister of Environment and the Minister of Mines refused to issue an Environmental Assessment Certificate (EAC) to PBM for the proposed Morrison mine project. In December 2013, the BC Supreme Court quashed the decision not to issue the EAC and ordered the matter be resubmitted to the Ministers for reconsideration and that PBM be provided an opportunity to make further submissions prior to a decision.

On July 7, 2015, PBM was issued an order pursuant to Section 17(3)(c)(iii) of the *Environmental Assessment Act* stating that the Morrison Mine Project undergo further assessment in accordance with 'Schedule A' of the Order. To date, PBM has not fulfilled the requirements of this Order,

although they have submitted a draft Supplemental Application Information Requirements as of April 18, 2019.

c. Application for a *Mines Act* permit

PBM currently does not have a valid authorization under the *Mines Act* to conduct mining activity on the mining lease application area. In PBM's letter reply of May 16, 2019 to the letter of April 22, 2019 from the Chief Gold Commissioner, PBM stated that they hope to have the final decision on the Environmental Assessment Certificate, and to be able to make the application under Section 10 of the *Mines Act* for a permit before the end of the year.

I have reviewed recent correspondence between PBM and the EAO, with respect to PBM's requirement to fulfill the Order pursuant to Section 17(3)(c)(iii) of July 7, 2015. This recent correspondence includes a letter from PBM to Kevin Jardine of April 4, 2019, a letter of March 5, 2019 from PBM, a letter from Kevin Jardine to PBM of March 25, 2019, and a letter from Kevin Jardine to PBM of June 18, 2019. The most recent letter of June 18, 2019 indicates that the province is still awaiting PBM's fulfillment of the July 7, 2015 Order, and that EAO is therefore not able to advance further review of PBM's Morrison mine proposal.

II. Referrals to Agencies

Referrals on this application were distributed by Front Counter BC through the E-referral system to the Ministry of Forests, Lands and Natural Resource Operations and Rural Development (FLNRORD), Ministry of Energy, Mines and Petroleum Resources (EMPR), Ministry of Environment and the Regional District of Bulkley - Nechako.

FLNRORD and Ministry of Environment's BC Parks Branch responded that the lease application area covers a map reserve for the Use, Recreation, and Enjoyment of the Public (UREP), and request that the proponent consider ensuring public access to Morrison Lake in another location.

EMPR's Permitting Branch provided no comments on the mining lease application, and no other comments were received.

III. First Nations Consultation

The Province has a duty to consult and, if appropriate, accommodate First Nations with respect to decisions that could impact asserted or established Aboriginal or treaty rights or Aboriginal title. The depth and intensity of consultation varies with the circumstances.

FLNRORD is responsible for leading provincial First Nation consultation efforts on behalf of EMPR. For this mining lease application, FLNRORD initiated consultation with LBN and YFN.

Consultation began February 5, 2019 by notifying LBN and YFN of the application and inviting input on how the mining lease application may impact their Aboriginal rights and title.

LBN responded by stating their firm opposition to a decision to issue a mining lease and requested an in-person meeting with the statutory decision maker. No response was received from YFN.

On February 26, 2019, I met with representatives of LBN. LBN stated their strong opposition to the mining lease application indicating that the application area and surrounding area is culturally and environmentally sensitive, and contains highly significant cultural, sustenance and fish habitat values. LBN also raised concerns regarding historical and future potential for water contamination from any mining activity near Morrison lake.

On April 12, 2019, I sent a letter (attached) to PBN and LBN indicating that I was considering a decision to issue a mining lease for an initial term of one (1) year, and not the 30-year term requested by PBM in its application.

On May 13, 2019, LBN responded to my letter re-stating their objections to the issuance of a mining lease and that my decision should be to not issue the lease.

On May 16, 2019, PBM responded that they do not object to a decision to issue a mining lease for a one-year term.

On June 3, 2019, I replied to both parties attaching a copy of their respective submissions.

FLNRORD provided a consultation summary report, dated June 26, 2019, which provided information regarding the consultation on the mining lease application and indicated that consultation had been completed.

I also reviewed the Recommendations of the Executive Director of September 20, 2012 regarding PBM's Morrison Mine project proposal. From my understanding of this review, it was concluded that the proposed Morrison mine project has the potential to create negative impacts to LBN's aboriginal rights, and that such impacts cannot be readily mitigated or accommodated. The issuance of a mining lease, especially for a very short term, would not have similar impacts and does not dictate future decisions under other legislation.

IV. Consideration and Comments

I have reviewed the province's consultation record for this mining lease application, as well as comments received through the agency and local government referrals and the First Nation consultation process. While the Chief Gold Commissioner is the statutory decision maker for a mining lease application under the Act, any proposed mine or mining activity would require independent statutory decisions under separate legislation. A mining lease conveys the exclusive right to all minerals on the lease area to the recorded holder and does not authorize mining activities required or related to the production of minerals.

A recorded holder of a mining lease may register an application to renew the term of the mining lease for a period of up to thirty years. The renewal of the term of a mining lease is subject to the approval of the Chief Gold Commissioner that the mining lease is required for a mining activity.

V. Conclusion

I am satisfied that the consultation process has been reasonable and appropriate. With respect to any future mining activity on the application area, there will be further opportunities to engage in consultation and, if appropriate, provide accommodation. Those opportunities to engage will have the benefit of this consultation record; however, they will also require assessment of new information as it becomes available, and new assessment of the level of potential impacts to Aboriginal rights and other interests, in the context of comprehensive legislative requirements, regulations and policies.

I have considered relevant facts and submissions, even if they are not specifically identified in this document, and I am of the view that a decision to issue a mining lease to replace mineral claims 625123, 625143 and 625183, with an initial term of one year, will not significantly impact the Aboriginal rights and interests of the Lake Babine Nation and the Yekooche First Nation.

The applicant has fulfilled the requirements of Section 42(1) of the *Mineral Tenure Act* by completing a survey approved by the Surveyor General, posting a notice in the prescribed form in the office of the Chief Gold Commissioner, and publishing a notice in one issue of the Gazette and in local newspapers, as required.

For these reasons, I am satisfied that it is reasonable to issue a mining lease according to the approved surveyed boundaries that comprise the area of existing mineral claims 625123, 625143 and 625183 for a term of one year.



Mark Messmer
Chief Gold Commissioner

Dated at Vancouver, British Columbia
this 19th day of July 2019.

File Number: 13880-02-587

Attachments: April 12, 2019 letter to LBN and PBM
May 13, 2019 response letter from LBN
May 16, 2019 response letter from PBM



File:13380-02-587

April 12, 2019

Mr. John Plourde
President and CEO
Pacific Booker Minerals Inc.
1103 – 1166 Alberni Street
Vancouver, BC V6E 3Z3

Chief Gordon Alec
225 Sus Avenue
P.O. Box 879
Burns Lake, BC V0J 1E0

Dear Chief Gordon Alec and Mr. Plourde:

On August 28, 2009, Pacific Booker Minerals Inc. (PBM) registered an application to convert mineral claims 625123, 625143, and 625183 to a mining lease.

In December 2018, PBM confirmed with Mineral Titles Branch that it wants the Chief Gold Commissioner to proceed to a decision on its mining lease application.

The Province has engaged in initial consultation with representatives from Lake Babine Nation regarding the mining lease application. The Lake Babine Nation has expressed significant concerns that a decision to issue a mining lease would adversely affect Lake Babine Nation's aboriginal rights. The proximity of the proposed mine and tailings storage facility present a long term risk to the spawning habitat of sockeye salmon in Morrison Lake. The Lake Babine Nation rely heavily on sockeye salmon from Morrison Lake for sustenance as well as the fulfillment of their traditional culture and way of life.

Section 42 of the Mineral Tenure Act states:

- 42 (1) A recorded holder of a mineral claim who wishes to replace the mineral claim with a lease must do all of the following:
- (a) comply with section 6.32 and pay the prescribed fee;
 - (b) if required to do so by the chief gold commissioner, have the mineral claim over which the mining lease will be issued surveyed by a British Columbia land surveyor and have the survey approved by the Surveyor General;
 - (c) post a notice in the prescribed form in the office of the chief gold commissioner stating that the recorded holder intends to apply for a mining lease;
 - (d) publish promptly in one issue of the Gazette, and once each week for 4 consecutive weeks in a newspaper circulating in the area in which the mineral claim is situated, a copy of the notice referred to in paragraph (c).

.../2

(2) [Repealed 2007-8-50.]

(3) [Repealed 2004-22-39.]

(4) If the chief gold commissioner is satisfied that the recorded holder has met all of the requirements of subsection (1), the chief gold commissioner must issue a mining lease for an initial term not longer than 30 years on conditions the chief gold commissioner considers necessary.

(5) If the lessee complies with this Act, the regulations and any conditions of the mining lease issued under subsection (4), the lessee is entitled to a renewal of the 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.

(6) The right of renewal of a mining lease under subsection (5) applies to a lease issued before December 1, 1995.

PBM's mining lease application included the request for an initial lease term of thirty (30) years.

It is my understanding that a final decision has yet to be made regarding the application for a certificate pursuant to the *Environmental Assessment Act* for the mine proposed by PBM as located on mineral claims 625123, 625143, and 625183.

It is also my understanding that PBM has not made an application pursuant to section 10 of the *Mines Act* to conduct operations for the proposed mine.

In the circumstances, I am considering a decision to issue a mining lease for an initial term of one (1) year. If a mining lease is issued for an initial term of one year, PBM would have the opportunity to register an application to renew the term of the mining lease for another term, pursuant to Section 42(5) of the Act, at any time during the term of the lease. Once a mineral claim is converted to a mining lease, the claim is cancelled and ceases to exist. A mining lease does not revert back to mineral claim once its term expires, or on forfeiture of the lease for any reason.

I invite Lake Babine Nation and PBM to make any submissions to me at this time. I expect to make a decision on the mining lease application after May 20th 2019.

Any submissions from each party will be shared with the other party.

If you have any questions or wish to discuss this further, please contact me at mark.messmer@gov.bc.ca or 604-660-2814.

Sincerely,



Mark Messmer
Chief Gold Commissioner and Executive Director
Mineral Titles Branch

cc.

Brian Hearnden Brian.Hearnden@gov.bc.ca

Tom McCarthy Tom.McCarthy@gov.bc.ca

Dominique Nouvet Dominique@nouvetlaw.ca

Verna Power Verna.Power@lakebabine.com

Betty Patrick Betty.Patrick@lakebabine.com

Georgina West Georgina.West@lakebabine.com

Shelley Murphy Shelley.Murphy@gov.bc.ca



Lake Babine Nation

225 SUS AVENUE
P.O. BOX 879
BURNS LAKE, BC VOJ 1E0

TEL: 250-692-4700
FAX: 250-692-4790

May 13, 2019

Mark Messmer
Chief Gold Commissioner
Mineral Titles Branch
300-865 Hornby Street
Vancouver BC V6Z 2G3

by email: mark.messmer@gov.bc.ca

Dear Mr. Messmer:

Re: PBM's lease application

Thank-you for your letter of April 12. The Crown should not be issuing any lease to PBM for the proposed Morrison Mine Project area. A lease would infringe our Aboriginal title in the heart of our Territory. Even the Province has acknowledged that we have a strong Aboriginal title claim there. The lease would support a project that would seriously interfere with our harvesting rights, jeopardize our salmon fisheries, food security and culture, and permanently damage an area that we must protect for our future generations.

Pursuant to the 2017 *Foundation Pathway Agreement* and the 2018 *Memorandum of Understanding to Guide Rights Implementation and Reconciliation Negotiations*, we are at an advanced stage of negotiations with BC on a road map to collaboratively implement Lake Babine's Aboriginal title and rights and find ways to implement the *UN Declaration on the Rights of Indigenous Peoples*, including the principle of free, prior informed consent. Unilaterally granting rights to a company that seeks to permanently damage lands in the heart of our Territory would be totally inconsistent with that reconciliation work.

Meaningful Crown accommodation of our section 35 rights in this situation involves rejecting PBM's lease application.

Sincerely,

Chief Gordon Alec



pacific booker minerals inc.

#1103 - 1166 Alberni Street Vancouver, BC V6E 3Z3

Telephone: (604) 681-8556

Toll Free: 1-800-747-9911

Fax: (604) 687-5995

email: info@pacificbooker.com

Symbols: bkm-tsx venture / pbmlf-OTC

Website: pacificbooker.com

May 16, 2019

Mark Messmer
Chief Gold Commissioner and Executive Director
Ministry of Energy, Mines and Petroleum Resources
Mineral Titles Branch
300-865 Hornby Street
Vancouver, BC V6Z 2G3

by email to: mark.messmer@gov.bc.ca

Dear Mr. Messmer;

Thank you for your letter dated April 12, 2019.

We appreciate your consideration of this matter.

PBM has no objection to the mining lease being issued for a one year term at this time.

We hope to have the final decision on the Environmental Assessment Certificate and to be able to make the application pursuant to Section 10 of the Mines Act to conduct operations for the proposed mine before that year is over.

Respectfully,

John Plourde
President/CEO
Pacific Booker Minerals Inc.