

JAN 25 2016

NO. _____
VANCOUVER REGISTRY

 IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*
R.S.B.C. 1996, c. 241

BETWEEN:

CHINA MINERALS MINING CORPORATION and
CASSIAR GOLD CORP.

PETITIONERS

AND:

MINISTER OF FORESTS, LANDS AND NATURAL
RESOURCE OPERATIONS, MINISTER OF ABORIGINAL
RELATIONS AND RECONCILIATION, KASKA DENA
COUNCIL AND 0995817 B.C. LTD.

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

Minister of Forests, Lands, and Natural Resource Operations
PO Box 9049 Stn Prov Govt
Victoria, BC V8W 9E2

Minister of Aboriginal Relations and Reconciliation
PO Box 9100 Stn Prov Govt
Victoria, BC V8W 9B1

Kaska Dena Council
House #64
Lower Post, BC V0C 1W0

0995817 B.C. Ltd.
House #15
Lower Post, BC V0C 1W0

Deputy Attorney General
Ministry of Justice

PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7

This proceeding is brought for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s)

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or,
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	The Law Courts 800 Smithe Street Vancouver, BC V6Z 2E1
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<p>(2)</p>	<p>The ADDRESS FOR SERVICE of the petitioner(s) is:</p> <p>Fax number address for service (if any) of the petitioner(s):</p> <p>E-mail address for service (if any) of the petitioner(s):</p>	<p>McMillan LLP Barristers and Solicitors 1500 – 1055 West Georgia Street Vancouver, British Columbia V6E 4N7 Telephone: (604) 893-7639 Attention: Joan M. Young</p> <p>Fax: 604-893-2672</p> <p>joan.young@mcmillan.ca</p>
<p>(3)</p>	<p>The name and office address of the petitioner's(s') lawyer is:</p>	<p>Same as above</p>

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. A declaration that:
 - (a) The Minister of Aboriginal Relations and Reconciliation violated the Petitioners' right to procedural fairness by failing to consult the Petitioners before signing an Incremental Treaty Agreement (the "ITA") with the Kaska Dena Council (on behalf of the Dease River First Nation, the Daylu Dena Council and the Kwadacha First Nation) (collectively the "Kaska Dena");
 - (b) The Minister of Forests, Lands and Natural Resource Operations violated the Petitioners' right to procedural fairness by failing to consult the Petitioners before transferring to 0995817 B.C. Ltd. in fee simple district lot 7385 and district lot 7384 in the Cassiar District (the "Troutline Intake and Troutline Powerhouse lands") pursuant to the Incremental Treaty Agreement;
 - (c) Article 6 of the Interim Treaty Agreement is invalid;

- (d) The transfer of the Troutline Intake and Troutline Powerhouse Lands is invalid.
2. An order in the nature of *certiorari* quashing Article 6 of the Interim Treaty Agreement.
 3. An order in the nature of *certiorari* quashing Ministerial Order No. M412 and the subsequent transfer of the Troutline Intake and Troutline Powerhouse Lands and directing the Minister of of Forests, Lands and Natural Resource Operations to consult the Petitioners and reconsider the decision to transfer the Troutline Intake and Troutline Powerhouse following adequate consultation with the Petitioners.
 4. Costs.
 5. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

The Parties

1. The petitioner, China Minerals Mining Corporation (“China Minerals”) is a company duly incorporated under the laws of British Columbia with a records and registered address of Suite 1100 – 1111 Melville Street, Vancouver, BC, V6E3V6.
2. China Minerals is publicly traded on the TSX Venture Exchange under the symbol CMV and in the United States on the OTC Pink marketplace under the symbol HWTHF.
3. The Petitioner, Cassiar Gold Corp. (“Cassiar”) is a wholly owned subsidiary of China Minerals and is a British Columbia company with a records and registered address of Suite 1100 – 1111 Melville Street, Vancouver, BC, V6E3V6.
4. The respondent Minister of Forests, Lands and Natural Resource Operations is a member of the Executive Council and he (and his delegates) hold statutory powers and duties respecting the management of public lands pursuant to the *Land Act*.
5. The respondent Minister of Aboriginal Relations and Reconciliation is a member of the Executive Council and does not hold any statutory powers and duties under the *Land Act*

but is the principal representative of the Province of British Columbia (“British Columbia”) in respect of treaty negotiations with First Nations and signed the ITA on behalf of British Columbia.

6. The respondent 0995817 B.C. Ltd. is a “Designated Company” as that term is defined in section 1 of the ITA and has been granted fee simple title to the Troutline Intake and Troutline Powerhouse Lands pursuant to the ITA.

7. The Kaska Dena Council is a society, established under the *Society Act*, to advance interests of Kaska individuals who are potential beneficiaries of a treaty settlement with Canada and British Columbia.

The Mineral Titles and Investments to Date

8. The Petitioners are engaged in the exploration and development of mineral properties and hold mineral tenures in an area of the Liard Mining Division in north-central British Columbia (collectively the “Cassiar Gold Project”).

9. The Cassiar Gold Project is approximately 58,900 hectares in size and includes 217 mineral claims and 2 placer claims (collectively referred to as the “Mineral Tenures”) of which China Minerals, through Cassiar, owns a 100% undivided interest.

10. The Petitioner Cassiar is required by the provisions of the *Mineral Tenure Act* and the specific terms of the Mineral Tenures granted to it by the Province of British Columbia to make certain minimum expenditures per annum on exploration, or, alternatively, is required to make certain payments to government to keep the Mineral Tenures in good standing. At all times the Petitioners have complied fully with these obligations and made the required expenditures or payments.

11. The Cassiar Gold Project is divided into two properties: (1) the Table Mountain Property (located in the southern part of the project) and (2) the Taurus Property (located in the northern part of the project).

12. Approximately 425,000 ounces of gold have historically been produced in the Cassiar gold district, mainly from underground mines on Cassiar's current mineral tenure holdings on the Table Mountain Property.

13. The Table Mountain Property is highly developed and contains the Main (formerly Erickson), Bain, Cusac, and Vollaug mines, which are past producing underground high-grade gold mines. A permitted 270 tonne per day gravity/floatation mill (currently in "care and maintenance" status), power plant, assay lab and tailings impoundment facility are located on the Table Mountain Property.

14. The Table Mountain Property contains both indicated and inferred mineral resources.

15. The Taurus Property is a large-tonne, low-grade gold deposit. The property is strategically located within eight kilometers from the gravity/floatation mill located on the Table Mountain Property.

16. The Taurus Property contains inferred mineral resources known as the Taurus Deposit. The Taurus Deposit is open in several directions around the periphery of the deposit and also internal to the known deposit footprint. Additionally, four high priority exploration targets have been indentified to have potential for higher-grade mineralization. Three of the four targets are in close proximity to Cassiar's mineral claim 226149 and the fourth target lies at the eastern part of the Taurus Property.

17. Since 2008, the Petitioners have invested approximately \$36 million in acquiring title and drilling and exploration activities in connection with the overall Cassiar Gold Project. Costs directly attributable to the Taurus Property and the Table Mountain Property are approximately \$15 million and \$21 million respectively.

Lack of Consultation and Erroneous Information

18. On April 10, 2013, without any prior consultation with or notice to the Petitioners, the Minister of Aboriginal Relations and Reconciliation signed the ITA with the Kaska Dena. Among other things, article 6 of the ITA provides that, subject to certain conditions, British

Columbia will provide the Troutline Intake and Troutline Powerhouse lands in fee simple to a Kaska Dena company.

19. On July 18, 2013, several months after the ITA had already been executed, the petitioners received a letter from the Ministry of Aboriginal Relations and Reconciliation advising that the Troutline Intake and Troutline Powerhouse lands would be transferred to the Kaska Dena as contemplated by the ITA. In the letter, the ministry stated, in part:

... The impact to you as a subsurface tenure holder will be having a new landlord for the land surface rights and access for those areas of your tenure that overlap with Kaska parcels.

20. The Ministry of Aboriginal Relations and Reconciliation failed to advise the Petitioners that the change from Crown owned land to fee simple land owned by a third party would result in a significant change in the underlying regulatory regime and would impair the ability of the Petitioners to develop their mining interests.

21. The July 18, 2013 letter indicated the lands would be surveyed and “will be owned by the Kaska Dena First Nations in fee simple.” No input was sought from the Petitioners and there was no indication British Columbia would in any way consider changing its course of action. The letter simply concluded “The Province of British Columbia is committed to addressing any questions or concerns regarding any of the information contained in this letter...” despite the knowledge that the Minister of Aboriginal Relations and Reconciliation had already executed an agreement to transfer the lands to a corporation owned by the Kaska Dena.

22. On April 30, 2014, the Petitioners sent a letter to the Minister of Aboriginal Relations and Reconciliation expressing concerns about the proposed transfer of lands pursuant to the ITA and the Minister’s failure to consult the petitioners. The petitioners requested a meeting with the Minister to determine if a consensual resolution could be reached, but the Minister refused or neglected to do so.

23. Through 2014 and early 2015 the Petitioners, directly and through their counsel, continued to express opposition to provincial officials and to seek a resolution to their concerns.

24. A Ministerial Order No. M412 was passed on December 1, 2014 authorizing the transfer of the Troutline Intake and Troutline Powerhouse lands. This Ministerial Order was not disclosed to the Petitioners.

25. Despite a number of communications and a meeting with government representatives on January 21, 2015, the Petitioners' interests and concerns remained unresolved.

26. On March 31, 2015, the Troutline Intake and Troutline Powerhouse lands were transferred in fee simple to 0995817 B.C. Ltd. pursuant to the earlier Ministerial Order No. M412.

27. On April 15, 2015, the transfer was registered at the provincial Land Title Authority.

The Conflicting Use and the Impact on the Petitioners

28. The Kaska Dena interest in the Troutline Intake and Troutline Powerhouse lands relates to the development of a proposed hydroelectric project. British Columbia is and was at all material times aware of the Kaska Dena's intention to develop a hydroelectric project, and British Columbia has provided and publicly announced funding for one of the Kaska Dena Nations to support feasibility work for the proposed Troutline Creek hydro project.

29. According to a map provided to the Petitioners by agents for the Kaska Dena, the proposed hydroelectric project at the Troutline Intake and Troutline Powerhouse lands will overlap the petitioners' development of its mineral claims in the following ways:

(a) The headpond, intake location, and laydown are located on Cassiar's mineral claims 226149 and 226148.

(b) The penstock route directly overlaps with Cassiar's mineral claims 226148, 510750 and 514937.

(c) Proposed routes to the project overlap with the Cassiar's mineral claims 226142, 226144, 226146, 226151, 226150, 331106, 226147, 226148, 226149, 331167, 332630, 510750, 514945 and 514937.

(d) The point of interconnection, powerhouse location, and laydown are located on mineral claim 514937.

(e) Mineral claim 617143, a placer claim, covers a number of creeks and channels which collectively feed into the headpond.

(f) In addition, the location of the proposed infrastructure and penstock route on the lands would impair access to and development of the mineral tenures.

30. Cassiar's objective for the Taurus Project is to identify the potential for a combination large tonnage open pit and high grade underground mine. If economic, the ore from either scenario could be processed at the existing gravity/floatation mill located on the Table Mountain Property.

31. The potential open pit design and related facilities for the Taurus Project intersects Cassiar's mining claim 226149 in the same location of the proposed headpond and intake location rendering the two proposed projects – being the hydroelectric project and the open pit mine – fundamentally incompatible.

32. The Taurus Project also includes two placer mineral claims one of which is mineral claim 617143.

33. Mineral claim 617143 covers a number of creeks and channels which are targets for placer mining. All of these creeks and channels feed into the headpond. A placer mining operation by its nature would create silt and rock to flow into any dam for the proposed headpond and ultimately the intake, again rendering the two proposed projects incompatible.

34. In order to complete exploration and development of the Taurus Property substantial further investment would be required, and the Petitioners would need to obtain numerous further permits from the Ministry of Energy and Mines, the Ministry of Environment and other federal and provincial agencies.

35. As a result of the ITA, the transfer of the Troutline Intake and Troutline Powerhouse lands and the clearly stated intentions of the Kaska Dena respecting power development at this site, the permission of the Respondent 0995817 B.C. Ltd. as landowner will now be required. Previously there was no legal or other requirement for permission of 0995817 B.C. Ltd.

36. The Petitioners' ability to access surface land in order to explore and develop minerals has been modified due to the change from Crown land to fee simple land owned by 0995817 B.C. Ltd. has adversely affected the Petitioners.

37. The Petitioner China Minerals is subject to disclosure laws regulating publicly traded companies and was therefore required to state in public corporate filings that "the potential impact of the Troutline Intake and Troutline Powerhouse lands transfer is being assessed and could result in an impairment write down."

38. The transfer was made pursuant to the ITA, despite there being no implementing legislation to give legal effect to an ITA, unlike a Final Agreement negotiated under the BC Treaty Commission process. An ITA is not one of the six stages of the BC Treaty Commission process and there is no future requirement that British Columbia enter into a Treaty with the Kaska Dena regarding the subject lands.

39. The failure of the Minister to consult with the Petitioners in advance of the agreement to transfer lands in fee simple to the Kaska Dena, through its "Designated Corporation," has resulted in the Petitioners' interests being adversely affected. The failure of the Minister to adequately consult with the Petitioners in advance of the transfer foreclosed the opportunity for the Petitioners to propose other options that would not adversely impact their legal interests including options such as:

- (a) not including the Troutline Intake and Troutline Powerhouse lands in the ITA but providing some other parcels of land or other opportunities of equal interest to the Kaska Dena;
- (b) specifying a period of time for which the Petitioners would have priority rights to develop the mineral claims even if that had the effect of delaying the development of the hydroelectric project; and
- (c) providing compensation to the Petitioners for the adverse impacts on their interests, and potentially having the Petitioners release some of their mineral claims so as to enable the ITA to be signed without the conflicting intended uses.

Part 3: LEGAL BASIS

Failure to consult before signing the ITA and transferring the lands

1. Before a governmental decision-maker makes a decision that can reasonably be expected to affect the legal rights of third parties, principles of administrative fairness require the decision-maker to consult such third parties so that they may make submissions regarding how the pending decision could affect their legal interests.

2. In the present case, no consultation was undertaken with the Petitioners before the ITA was signed.

3. Similarly, no meaningful consultation was undertaken with the Petitioners before the Troutline Intake and Troutline Powerhouse lands were transferred to 0995817 B.C. Ltd.

4. The Petitioners' rights and interests have been affected, both directly and indirectly, in several ways by the decision to enter into the ITA and subsequent decision to transfer the Troutline Intake and Troutline Powerhouse lands. Specifically:

(a) The Petitioners ability to access surface lands for the purpose of working the minerals is now subject to the provisions of the *Mineral Tenure Act* respecting access on private lands. This is a significantly different and more restrictive access regime than applies on Crown land, and includes requirements for notice, the potential for compensation and arbitration and complete prohibitions on activities in certain locations. This is contrary to the province's characterization of the effect as simply having a "new landlord".

(b) In any mineral exploration and development project, a series of permits must be obtained ranging from exploration to bulk samples to full-fledged operation. The Petitioners will require numerous additional permits to advance exploration and development, and any statutory decision-maker will now have to consider the interests of the Kaska Dena in the Troutline Intake and Troutline Powerhouse lands when adjudicating the Petitioners' permit applications. This may be a significant issue given the clearly stated intentions of the Kaska Dena to use the Troutline Intake and Troutline

Powerhouse lands for hydroelectric development, and the Crown's duty to consult and accommodate the Kaska Dena in any such decision-making. Courts have repeatedly made clear that one of the purposes of the duty to consult is to ensure that statutory decisions are made in a manner that is consistent with and supportive of the negotiation of aboriginal treaties, and by including these lands in the ITA the nature of the duty to consult and accommodate will have been increased in respect of these lands, which in turn will affect the petitioners ability to obtain approval of, or affect the terms of, exploration and development permits.

(c) the Petitioners' financial interests have also been affected, as their ability to secure investment or financing is influenced by the factors noted in (a) and (b) above. This potential has already been publicly noted by the Petitioners, pursuant to their public reporting and securities requirements.

5. The above noted impacts and concerns are not in any way addressed by provisions of the ITA which preserve the mineral claims as "Permitted Encumbrances" (section 1 and 8.1).

6. *Mineral Tenure Act*, R.S.B.C. 1996. c. 292

7. *Land Act*, R.S.B.C. 1996, c. 245

8. *Ministry of Lands, Parks and Housing Act*, R.S.B.C. 1996, c. 307

9. *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

10. Rules 14-1, and 16-1 of the *Supreme Court Civil Rules*.

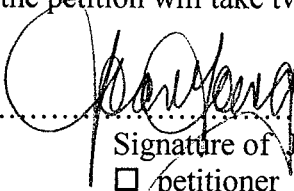
Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Bernard H. Kahlert; and

2. Such further and other materials as this court may permit.

The petitioners estimate that the hearing of the petition will take two (2) days.

Date: January 25, 2016



 Signature of Joan M. Young
 petitioner lawyer for petitioners

JOAN M. YOUNG
[type or print name]

To be completed by the court only:

Order made

- in the terms requested in paragraphs of Part 1 of this notice of application
- with the following variations and additional terms:

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.....

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Date:

.....

Signature of Judge Master