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B.C. Reg. 19/99

O.C. 95/99

IMPORTANT INFORMATION

Deposited January 25, 1999

Mineral Tenure Act

Mining Rights Compensation Regulation

[includes amendments up to B.C. Reg. 161/2010, July 1, 2010]

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Definitions

1 In this regulation:

"arbitrator" means an arbitrator appointed under section 9 (4);

"conservancy" has the same meaning as in the *Park Act*;

"date of expropriation" means the date on which land, or land in relation to which rights, expropriated under section 11 (2) of the *Park Act* is established as, or included in, a park or conservancy;

"evaluator" means an evaluator qualified under section 4 (1);

"evaluator's report" means an evaluator's report prepared as set out in this regulation;

"expropriated mineral title" means rights under all or part of a claim, lease or Crown granted 2 post claim that are expropriated, after the coming into force of this regulation, under section 11 (2) of the *Park Act*;

"group of titles" means a group of adjoining titles, owned by a single holder, if, before the announcement of a park proposal, the application to have those titles recognized as one or more groups was recorded with and approved by a gold commissioner, as required under section 32 of the *Mineral Tenure Act*;

"holder", in relation to an expropriated mineral title, includes an owner of a Crown granted 2 post claim and a recorded holder as defined in the *Mineral Tenure Act*;

"mining activity" means any activity related to

- (a) the search for a mineral or placer mineral,
- (b) the exploration and development of a mineral or placer mineral, or
- (c) the production of a mineral or placer mineral;

"park" has the same meaning as in the *Park Act*;

"park proposal" means a proposal by the government to establish an area of land as a new park or conservancy, or add land to a park or conservancy, under a government approved land use planning process involving the public, if the land is subsequently established as a park or conservancy or part of a park or conservancy;

"party" means the minister and a holder;

"value" means an amount as estimated under sections 5 and 6 or determined by either of the following:

- (a) an agreement reached under section 3;
- (b) a decision of the single arbitrator appointed under this regulation.

[am. B.C. Reg. 215/2006, Sch. s. 4.]

Expropriated mineral title holder's affidavit

2 (1) On expropriation of a mineral title under section 11 of the *Park Act*, the minister responsible for the *Mineral Tenure Act* must, for the purposes of determining compensation under section 17.1 of the *Mineral Tenure Act*, serve on the holder of the expropriated mineral title a notice within 90 days of the date of expropriation requesting that the expropriated title holder deliver to the minister an affidavit that

- (a) provides the information and records requested in the notice, and
- (b) meets the requirements of subsection (2).

(2) Promptly after receipt of the notice under subsection (1), the holder of the expropriated mineral title or the holder's agent must deliver to the minister an affidavit that includes all of the following:

- (a) the statement of the holder, or of an individual authorized by the holder, stating to the best of the holder's or individual's knowledge, information and belief, the particulars of the expenditures incurred by the holder including

the purchase price paid to a third party to acquire the title, up to the date of expropriation,

(i) to acquire and maintain the expropriated mineral title or group of titles, and

(ii) to conduct mining activities in relation to that expropriated mineral title or group of titles;

(b) the information and records as requested by the minister in the notice under subsection (1);

(c) a description of mining activity carried out on the expropriated mineral titles before the date of expropriation and the results of that activity.

(3) The holder of the expropriated mineral title may include in the affidavit any other information that existed at the date of expropriation and is considered by the holder to be relevant to the determination of expenditures or value.

(4) On receipt of an affidavit under subsection (2), the minister may, by written notice, require supplementary responses from the holder as requested.

(5) Any supplementary response required under subsection (4) must be delivered to the minister within 30 days of delivery of the request to the holder.

(6) An affidavit under subsection (2), together with any supplementary response made under subsection (4), must be considered to be a complete presentation with respect to the holder's claim for compensation.

(7) The minister may refuse to proceed with the determination of compensation until

(a) the holder provides an affidavit that meets the requirements of subsection (2),

(b) the holder provides supplementary responses, if requested under subsection (4), and

(c) the holder discloses, in a manner satisfactory to the minister, any document, report or information relevant to the evaluation.

(8) The minister may deny compensation under section 17.1 of the *Mineral Tenure Act*, if a holder

(a) fails to deliver to the minister the affidavit required under subsection (2) within 365 days of the issuance of the request under subsection (1), or

(b) fails to deliver to the minister a supplementary response required under subsection (4) within 365 days of the date of delivery of the minister's request under subsection (4).

(9) After the receipt of the affidavit under subsection (2), the minister may make a determination under section 17.1 (4) of the *Mineral Tenure Act* and deny compensation.

Undertaking to negotiate

3 (1) The parties must negotiate in good faith as soon as practicable after the affidavit of the holder made under section 2 (2) is delivered to the minister.

(2) The parties must agree to make themselves available to conduct negotiations in response to any reasonable request from either party to meet.

(3) The parties may agree to extend the time for delivery of the preliminary report under section 8.

(4) Despite anything in this regulation, the minister and the holder may, at any time, agree as to the compensation to be paid to the holder.

Evaluator

4 (1) For the purposes of section 17.1 of the *Mineral Tenure Act*, an evaluator is qualified to participate in the

determination under this regulation of the value of an expropriated mineral title if the evaluator

(a) is a professional engineer or professional geoscientist who is a member of the Association of Professional Engineers and Geoscientists of British Columbia or of a similar self regulatory association or body in another jurisdiction,

(b) has no interest, either direct or indirect, with respect to the expropriated mineral title or the holder and has not had such an interest at any time during the immediately preceding 5 years, and

(c) has a minimum of 5 years experience relevant to the evaluation of mineral titles.

(2) An evaluator who participates in the evaluation of an expropriated mineral title, whether on behalf of the minister or the holder of the expropriated mineral title, must prepare an evaluator's report that contains all of the following:

(a) a statement of the qualifications of the person giving the report, together with that person's signature and professional seal, if any;

(b) a description of the expropriated mineral title;

(c) a description of the mining activity on the site of the mineral title including any pre-feasibility study reports, feasibility study reports and production data;

(d) a map of the expropriated mineral title in relation to the relevant park or conservancy boundary or boundaries;

(e) appraisal data related to the value of the expropriated mineral title, including any other filings with a government or other regulatory authority;

(f) the evaluator's estimate of the value of the expropriated mineral title as of the date of expropriation, and a description of the assumptions and methodology used to arrive at that estimate of value;

(g) any other data used to arrive at the estimate of the value of the expropriated mineral title.

(3) For the purposes of subsection (2) the evaluator must

(a) prepare a preliminary report on the matters referred to in subsection (2) and provide a range of estimated values for subsection (2) (f), and

(b) if instructed by the minister as provided in section 8, prepare a final report.

(4) A final report must contain the evaluator's determination of a specific value to be paid as compensation.

[am. B.C. Reg. 215/2006, Sch. s. 5.]

Determination of value

5 (1) The value of an expropriated mineral title must be determined by estimating the value that would have been paid to the holder of the expropriated mineral title if the title had been sold on the date of expropriation, in an open and unrestricted market between informed and prudent parties acting at arm's length.

(2) The evaluator must estimate the value of the expropriated mineral title using the information supplied in the affidavit made under section 2 (2) and (4), information considered by the evaluator under section 4 (2) and the information supplied under section 8 (2) by the holder of the expropriated mineral title.

(3) The evaluator must use evaluation methods and techniques that are

(a) consistent with the nature and type of information available, and

(b) commonly used by evaluators in determining the value of mineral properties including, without limitation,

consideration of the normal business risks associated with mining activity.

(4) The value of an expropriated mineral title must not take into account the negative or positive impact in respect of an expropriated mineral title of any of the following:

(a) a park proposal made before or on the date of expropriation;

(b) the construction, operation or maintenance of a road, building, camp, power line, pipeline, dam, processing facility or other similar structure or facility beyond what the evaluator believes is reasonably required to adequately explore, develop or produce minerals from the expropriated mineral title.

(5) The value of an expropriated mineral title must not include consequential damages caused to the expropriated mineral title holder as a result of the expropriation or the expenditures incurred in acquiring or operating an equivalent mineral title elsewhere.

Group of titles

6 (1) If the expropriated mineral titles are part of a group of titles, and the group of titles is determined by the minister's evaluator to include the probability of a mineral deposit that is partially expropriated and the expropriation eliminates the feasibility of exploiting the remaining portion of the deposits in the area, the holder may elect to have the value determined based on the value of either:

(a) the expropriated mineral titles, or

(b) all the mineral titles in the group of titles.

(2) If a holder makes an election under subsection (1) (b), the minister must offer to acquire each title in the group of titles, other than the expropriated titles, for a price of \$1 each, and the holder must accept the offer of the minister and agree to sell the titles on that basis.

Pre-settlement investigation

7 (1) The minister may investigate the site of an expropriated mineral title for one or more of the following purposes:

(a) to determine the area of the expropriated mineral title that lies within the park or conservancy;

(b) to verify the boundaries of the expropriated mineral title;

(c) to examine evidence of mining activity on the expropriated mineral title;

(d) to determine the nature and size of improvements on the expropriated mineral title that may need to be considered during evaluation;

(e) to confirm the facts contained in the affidavit made by the holder under section 2.

(2) The minister must provide the holder with the results of the investigation under subsection (1).

[am. B.C. Reg. 215/2006, Sch. s. 6.]

Evaluator's report

8 (1) Within 240 days of receipt of the affidavit made by the holder under section 2 or such other time as agreed by the parties under section 3 (3), the minister must deliver to the holder a preliminary report prepared by an evaluator under section 4 (3) (a) on behalf of the minister for consideration by the expropriated title holder.

(2) On receipt of the preliminary report under subsection (1),

- (a) the holder may make submissions to the minister with respect to the interpretation of the facts and assumptions used in preparing the preliminary report, and
- (b) the minister, in response to the submission of the holder under paragraph (a), may require a supplementary response from the holder in response to specific queries about the facts and assumptions made by the minister.
- (3) Any supplementary response required under subsection (2) must be delivered to the minister within 30 days of delivery of the request.
- (4) The minister may deny compensation under section 17.1 of the *Mineral Tenure Act*, if a holder fails to deliver to the minister any supplementary response required under subsection (2) (b) within 365 days of the date of delivery to the holder of the minister's request under subsection (2) (b) for the supplementary response.
- (5) After the holder complies with any request made under subsection (2) (b) and at any time after 90 days after the minister delivers a copy of the preliminary report to the holder,
 - (a) the minister may advise the holder of the minister's intention to proceed to arbitration under section 9 and to require the evaluator who prepared the preliminary report to prepare a final report for the expropriated mineral title, or
 - (b) the holder may advise the minister of the holder's intention to proceed to arbitration under section 9.
- (6) Within 30 days of either party declaring an intention to proceed to arbitration, the minister must instruct the evaluator who prepared the preliminary report to prepare a final report for the expropriated mineral title, and to request that the final report be provided within 90 days of the request.
- (7) Within 30 days of the minister's receipt of the final report, the minister must present to the title holder the minister's final offer, which must be at least the value in the final report.

Preliminaries to arbitration

- 9** (1) The minister or the holder of the expropriated mineral title may, by notice to the other party, require that the amount of compensation payable to the holder under section 17.1 of the *Mineral Tenure Act* be settled by a single arbitrator under this regulation.
- (2) The question as to the value payable to the holder under section 17.1 of the *Mineral Tenure Act* as compensation for the expropriated mineral title may proceed to arbitration after
- (a) the minister prepares and delivers to the holder the final offer under section 8 (7), and
 - (b) the holder does all of the following, as applicable:
 - (i) within 90 days of the holder's receipt of the minister's final offer, confirms to the minister that an evaluation report has been prepared by an evaluator on behalf of the holder;
 - (ii) prepares and delivers to the minister the holder's final offer to accept compensation equal to or less than the value in that report;
 - (iii) in the case of an expropriated mineral title that is a mineral claim or placer claim, applies under section 37 of the *Mineral Tenure Act* to abandon the claim;
 - (iv) in the case of an expropriated mineral title that is a mining lease or placer lease, surrenders the lease under section 52 of the *Mineral Tenure Act*;
 - (v) in the case of an expropriated mineral title that is a Crown granted 2 post claim, delivers a transfer of the Crown granted 2 post claim in registrable form to the registrar in the land title office.
- (3) For the purposes of subsection (2), paragraph (b) (iii) to (v) of that subsection applies to all mineral titles in a group of titles if the holder's evaluator determines that

- (a) the expropriated mineral titles are part of a group of titles and the group of titles is determined by the holder's evaluator to include the probability of a mineral deposit that is partially expropriated,
 - (b) the expropriation eliminates the feasibility of exploiting the remaining portion of the deposits in the area, and
 - (c) determination of value in the report of the holder's evaluator is based on all the mineral titles in the group of titles.
- (4) The minister must, within 60 days of the completion of the parties' obligations under subsection (2), appoint as arbitrator an individual from the roster of qualified arbitrators, based on the rotational order established under section 11 (1) (c), and deliver coincidentally the material described in section 12 (1) (a).

Decision by final offer selection

10 The arbitrator must decide by selecting either the minister's final offer or the title holder's final offer.

Roster of qualified arbitrators

11 (1) For the purposes of arbitration required under this Act, the minister must, after reaching agreement with the British Columbia and Yukon Chamber of Mines and the Mining Association of British Columbia on the names of the arbitrators to be added to the register, do the following:

- (a) establish and maintain a register of arbitrators;
- (b) enter in the register the names of at least 3 individuals who
 - (i) have a good general knowledge of business principles,
 - (ii) have demonstrated abilities to arbitrate disputed matters, and
 - (iii) are members of a self regulatory organization;
- (c) maintain a rotational order for the arbitrators.

(2) If an arbitrator advises the minister that he or she is unable to act, the minister must select the next available arbitrator.

Commencement of arbitration proceedings

12 (1) An arbitration under this regulation must commence promptly after

- (a) the minister delivers to the arbitrator the material described in section 9 (2) (a) and (b) and delivers to the arbitrator and the holder the minister's final report under section 4 (3) (b),
- (b) the holder delivers to the arbitrator and the minister the holder's evaluator's report prepared under section 9 (2) (b) (i),
- (c) the minister informs the arbitrator that the minister is satisfied that the holder has complied with sections 2 (4), 8 (3) and 9 (2) (b), and
- (d) the arbitrator informs the holder of the expropriated mineral title that the relevant information has been received and confirms a date for proceedings to commence.

(2) For the purposes of subsection (1) (d),

- (a) the arbitrator must inform the holder of the expropriated mineral title within 30 days of the arbitrator's appointment that the relevant information has been received, and

(b) the date confirmed for proceedings to commence must be no later than 90 days after the appointment of the arbitrator.

Time

13 (1) The arbitrator may, at any time, extend or abridge a period of time relevant to the arbitration.

(2) If the arbitrator makes an order under subsection (1), the arbitrator must provide written reasons.

Independence and impartiality

14 (1) An arbitrator must be and remain at all times independent and impartial.

(2) On accepting an appointment as arbitrator in a dispute between the minister and the holder of an expropriated mineral title, the arbitrator must sign a statement declaring that

(a) he or she knows of no circumstance likely to give rise to justifiable doubts as to his or her independence or impartiality, and

(b) he or she will disclose any such circumstance to the parties if they arise after that time and before the arbitration is concluded.

(3) A copy of the statement referred to in subsection (2) must be

(a) delivered to the minister, and

(b) provided to the holder of the expropriated mineral title.

Place of arbitration

15 (1) The place of arbitration is to be agreed to by the parties or designated by the arbitrator in the absence of agreement.

(2) The arbitrator may conduct proceedings at any other place he or she considers necessary for consultation, to hear witnesses, experts or the parties, or for the inspection of documents.

Conduct of the arbitration

16 (1) The arbitrator may conduct the arbitration in the manner he or she considers appropriate in the circumstances.

(2) Each party must be treated fairly and must be given full opportunity to present the case based only on the following:

(a) the affidavit made under section 2;

(b) the evaluator's final report to the holder of the mineral title delivered under section 9 (2) (b) (i);

(c) the final offer made by the holder of the mineral title under section 9 (2) (b) (ii);

(d) the evaluator's final report to the minister made under section 4 (3) (b);

(e) the minister's final offer made under section 9 (2) (a).

(3) The arbitrator must strive to achieve a timely selection of the minister's final offer or the holder's offer, based on their merits.

Pre-hearing conference

17 (1) The arbitrator may convene a pre-hearing conference within the period of 20 days immediately before the commencement date of the arbitration hearing.

(2) The purposes of a pre-hearing conference are to identify administrative matters and facilitate the efficient and expeditious resolution of the dispute.

(3) The arbitrator must record any agreement or order made at the pre-hearing conference and must within 14 days of that meeting send a copy of that document to each party.

Application of Rules of Court

18 Subject to section 16 (2), the Supreme Court Civil Rules relating to the following apply to proceedings before the arbitrator:

(a) subpoenas to witnesses;

(b) discovery and inspection of documents;

(c) examination for discovery.

[am. B.C. Reg. 161/2010.]

Hearings and evidence

19 (1) The arbitrator may do one or more of the following:

(a) direct the order of the proceeding;

(b) divide the proceeding into stages;

(c) exclude repetitive testimony;

(d) direct the parties to address specific issues, the determination of which may dispose of some or all of the dispute.

(2) Evidence at a hearing before an arbitrator is to be on oath or affirmation.

(3) The arbitrator may require that the evidence be recorded by a clerk, secretary or reporter assisting in the arbitration.

Default of a party

20 If a party to an arbitration proceeding under this regulation is properly notified of the arbitration but fails to attend a hearing before the arbitrator, the arbitrator may continue the proceeding and decide the matters in dispute, taking into account the material delivered by both parties under section 16 (2).

Arbitration award

21 (1) On completion of the arbitration proceedings, the arbitrator must make an award to the holder of the expropriated mineral title in the amount of either the minister's or the title holder's final offer.

(2) The arbitrator must give written reasons for the award.

Arbitrator's costs

22 The fees and expenses of the arbitrator in an arbitration proceeding under this regulation, or of a clerk, secretary or reporter assisting in the arbitration, must be paid by the party whose final offer is not selected.

Parties bear own costs of arbitration

23 Parties to the arbitration must bear their own costs of the arbitration.

Register of arbitration awards

24 (1) Within 14 days after an arbitrator makes an award or gives reasons for an award, the arbitrator must deliver a copy of the award or reasons for the award to the minister.

(2) A person designated by the minister must keep a register to be called the Register of Expropriated Mineral Titles Arbitration Awards.

(3) The person designated by the minister must place promptly in the register a copy of every arbitration award or reasons for an arbitration award received under subsection (1) and copies of the information described in section 12 (1) (a) and (b).

(4) A copy of the register must be kept at the offices of the chief gold commissioner and the gold commissioner for the mining division in which the expropriated mineral title is situated and is to be made available for inspection by the public during ordinary office hours.

[Provisions of the *Mineral Tenure Act*, R.S.B.C. 1996, c. 292, relevant to the enactment of this regulation: sections 17.1 and 65 (2) (d.1)]

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