



# The Mining and Lands Commissioner Le Commissaire aux mines et aux terres

File No. MA 038-99

L. Kamerman )  
Mining and Lands Commissioner ) Friday, the 7th day  
of April, 2000.

## THE MINING ACT

### IN THE MATTER OF

Mining Claims L-1225677 and 1226882, both recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, situate in the Township of Van Hise, in the Larder Lake Mining Division, hereinafter referred to as the "Mining Claims Drilled by Johnson";

(Amended April 7, 2000)

### AND IN THE MATTER OF

Mining Claims L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1238906, situate in the Township of Milner; and 1207053, 1223905, 1223906, 1223932, 1224216 and 1223217, and 1238902 to 1238905, both inclusive, situate in the Township of Van Hise, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the name of Lake Superior Resources Corporation, hereinafter referred to as the "Superior Mining Claims";

(Amended April 7, 2000)

### AND IN THE MATTER OF

Mining Claims L-1225672 situate in the Township of Milner; and 1225673 to 1225676, both inclusive, 1225678, 1225680, 1226881, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199 and 1227255, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, hereinafter referred to as the "Swain Mining Claims";

(Amended April 7, 2000)

**AND IN THE MATTER OF**

A Joint Venture Agreement between Randsburg International Gold Corporation and Lake Superior Resources Corporation involving lands in Milner and Van Hise Townships and alleged to include the Mining Claims;

**B E T W E E N:**

W. JOHNSON MINING AND OIL FIELD SERVICES LTD.  
Applicant

- and -

RANDBURG INTERNATIONAL GOLD CORPORATION and  
LAKE SUPERIOR RESOURCES CORPORATION  
Respondents of the First Part

- and -

GLENN WALTER BRAY, SHARON ADELIA COTTON,  
FRED ROSS SWAIN, 903573 ONTARIO LIMITED and  
MARGARET KAYE MONTGOMERY  
Respondents of the Second Part

**AND IN THE MATTER OF**

An agreement dated the 16th day of July, 1999, between Randsburg International Gold Corporation, as contractee and W. Johnson Mining and Oil Field Services Ltd. as contractor for drilling and other services on lands in Milner and Van Hise Townships and alleged to be on the Mining Claims;

**AND IN THE MATTER OF**

An application under section 69 of the **Mining Act** for the vesting of ownership of the Mining Claims Drilled by Johnson from the Respondents of the Second Part, Bray, Cotton, Swain, 903573 Ontario Limited and Montgomery and a vesting of the interest in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims from the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Corporation, to the Applicant, by reason of default in payment for work performed by the said Applicant and such other relief as the tribunal deems just.

(Amended April 7, 2000)

### INTERLOCUTORY ORDER

**WHEREAS** in a letter dated the 22nd day of February, 2000, to the tribunal from Mr. Ken Fitz, solicitor for the Applicant, W. Johnson Mining and Oil Field Services Ltd., a request was made that notations of "pending proceedings" be registered against any mining claims held by the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Corporation, which may reasonably be considered to fall in and around the Firth Lake area until the hearing and determination of the application by the tribunal;

**AND WHEREAS** in a letter dated the 23rd day of February, 2000, to the tribunal from Mr. Michael Bourassa, solicitor for the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Corporation, the application was opposed for the reasons that, first, it constitutes an amendment of the Statement of Claim and second, that an application under section 69 of the **Mining Act** is limited to the mining claim(s) where actual work occurred;

**UPON** consideration of the letters filed by Mr. Fitz and Mr. Bourassa,

**1. THIS TRIBUNAL ORDERS** that the notation of "pending proceedings" be placed by the Provincial Mining Recorder against Mining Claims L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1238906, situate in the Township of Milner; and 1207053, 1223905, 1223906, 1223932, 1224216 and 1223217, and 1238902 to 1238905, both inclusive, situate in the Township of Van Hise, which are recorded in the name of the Lake Superior Resources, and against Mining Claims L-1225672 situate in the Township of Milner; and 1225673 to 1225676, both inclusive, 1225678, 1225680, 1226881, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199 and 1227255, situate in the Township of Van Hise, which are recorded in the names of Glenn Walter Bray, Sharon Adelia Cotton, Fred Ross Swain, 903573 Ontario Limited and Margaret Kaye Montgomery, to be effective the date of this application being November 22, 1999, **nunc pro tunc**.

**2. THIS TRIBUNAL FURTHER ORDERS** that the Title of Proceedings in this matter be amended to reflect the Mining Claims set out in Paragraph 1 hereto.

3. **THIS TRIBUNAL FURTHER DIRECTS** that the parties be prepared to argue the scope of the applicability of section 69, as is further discussed in the Reasons attached to this Interlocutory Order, **AND FURTHER DIRECTS** that any party requesting time to make additional filings contact tribunal Registrar, Daniel Pascoe.

Reasons for this Interlocutory Order are attached.

**DATED** this 7th day of April, 2000.

Original signed by

L. Kamerman  
MINING AND LANDS COMMISSIONER



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(Amended April 7, 2000)

### AND IN THE MATTER OF

Mining Claims L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1238906, situate in the Township of Milner; and 1207053, 1223905, 1223906, 1223932, 1224216 and 1223217, and 1238902 to 1238905, both inclusive, situate in the Township of Van Hise, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the name of Lake Superior Resources Corporation, hereinafter referred to as the "Superior Mining Claims";

(Amended April 7, 2000)

### AND IN THE MATTER OF

Mining Claims L-1225672 situate in the Township of Milner; and 1225673 to 1225676, both inclusive, 1225678, 1225680, 1226881, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199 and 1227255, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, hereinafter referred to as the "Swain Mining Claims";

(Amended April 7, 2000)

**AND IN THE MATTER OF**

A Joint Venture Agreement between Randsburg International Gold Corporation and Lake Superior Resources Corporation involving lands in Milner and Van Hise Townships and alleged to include the Mining Claims;

**B E T W E E N:**

W. JOHNSON MINING AND OIL FIELD SERVICES LTD.  
Applicant

- and -

RANDBURG INTERNATIONAL GOLD CORPORATION and  
LAKE SUPERIOR RESOURCES CORPORATION  
Respondents of the First Part

- and -

GLENN WALTER BRAY, SHARON ADELIA COTTON,  
FRED ROSS SWAIN, 903573 ONTARIO LIMITED and  
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**AND IN THE MATTER OF**

An agreement dated the 16th day of July, 1999, between Randsburg International Gold Corporation, as contractee and W. Johnson Mining and Oil Field Services Ltd. as contractor for drilling and other services on lands in Milner and Van Hise Townships and alleged to be on the Mining Claims;

**AND IN THE MATTER OF**

An application under section 69 of the **Mining Act** for the vesting of ownership of the Mining Claims Drilled by Johnson from the Respondents of the Second Part, Bray, Cotton, Swain, 903573 Ontario Limited and Montgomery and a vesting of the interest in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims from the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Corporation, to the Applicant, by reason of default in payment for work performed by the said Applicant and such other relief as the tribunal deems just.

(Amended April 7, 2000)

## REASONS

This Interlocutory Order is a result of the request dated February 22, 2000, from Mr. Ken Fitz, Solicitor for the Applicant, W. Johnson Mining and Oil Field Services Ltd. (Johnson), for the registration of a notation of "pending proceedings" on any mining claims registered in the names of the Respondents of the First Part in this matter, Randsburg International Gold Corporation (Randsburg) and Lake Superior Resources Corporation (Lake Superior) which may reasonably be considered to fall in and around the Firth Lake area until this matter is heard and determined.

Mr. Michael Bourassa, Counsel for Randsburg and Lake Superior responded in a letter dated February 23, 2000, opposing the request for two reasons. The first reason is that the request goes beyond a request for pending proceedings to be placed on certain abstracts, but amounts to a request to amend the Statement of Claim. The second reason is that the scope of an application under section 69 of the **Mining Act** is limited to those mining claims on which actual assessment work was performed.

On February 25, 2000 Mr. Bourassa submitted the materials to be relied upon by Randsburg and Lake Superior. At Tabs 5 and 6 of this submission are Mining Claim Summaries for what are being called the "Superior Claims" and the "Swain Claims" respectively.

The Superior Claims bear claim numbers L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1238906, situate in the Township of Milner; and 1207053, 1223905, 1223906, 1223932, 1224216 and 1223217, situate in the Township of Van Hise.

The Swain Claims bear claim numbers L-1225672 situate in the Township of Milner; and 1225673 to 1225678, both inclusive, 1225680 to 1226882, both inclusive, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199 and 1227255, situate in the Township of Van Hise. A review of the claim maps for Milner and Van Hise Townships shows that mining claims L-1225673, 1225674 and 1227199 in fact straddle the boundary and are located in both Townships, despite what is shown on the summaries. It is noted that Mining Claims L-1225677 and 1226882 fall into this group of what are being called the Swain Claims, which are held by the Respondents of the Second Part, namely Glenn Walter Bray, Sharon Adelia Cotton, Fred Ross Swain, 903573 Ontario Limited and Margaret Kaye Montgomery.

Also found at Tab 6, which is to have been the Swain Claims, are Mining Claims bearing numbers L-1238902 to 1238905, both inclusive, situate in the Township of Van Hise, which are in fact recorded in the name of Lake Superior. It is further noted that these were staked in August, 1999.

A further examination of the mining claim summaries discloses that the Superior Claims represented at Tab 5 are comprised of 211 sixteen hectare units ( $211 \times 16 = 3,336$  hectares), or approximately 8,546.7 acres. The Swain claims represented at Tab 5 are comprised of 207 sixteen hectare units ( $207 \times 16 = 3,312$  hectares), or approximately 8,184 acres. The misfiled Superior Claims found in Tab 6 are comprised of an additional 30 sixteen hectare units ( $30 \times 16 = 480$  hectares), or approximately 1,186 acres. This represents a total of 7,328 hectares or approximately 17,916 acres.

As alluded to above, the tribunal has obtained copies of the claim maps for Milner and Van Hise Townships directly from the Recording Office. The various mining claims listed form a triangular shape, which runs along most of the west boundary of both Townships. The triangle comes to a point moving eastward in Van Hise Township. The Superior Claims comprise most of the northern and southern points of the triangle, with the Swain Claims forming most of the middle band coming to the eastern point. There are several Superior Claims located in within the broad Swain band and similarly, there are several Swain Claims within the southern tip area.

Frith Lake straddles both Townships. The claim numbers which coincide with the Lake's location are: L-1227049 (Swain); 1225678 (Swain); 1225674 (Swain); 1225680 (Swain); 1227199 (Swain); 1225674 (Swain); 1227153 (Superior); 1224239 (Superior); 1224294 (Superior); 1224293 (Superior); and perhaps 1224238 (Superior), although the shoreline appears to end just to the north of that claim line's northern boundary.

The tribunal notes that no work has been filed and applied to either of Mining Claims L-1225677 and 1226882, and indeed, no work has been filed and applied to any of the Swain Claims. This may not be material, however, as work is not due on the Swain Claims until November, 2000.

The tribunal has also noted the various press releases filed at Tab 5 of the Applicant's materials, page one of which attributes to Randsburg a drill program to begin on the Milner and Van Hise Township Joint Venture, which is described as a (7300) 16,000 acre property.

Finally, the tribunal notes that the issue of additional claims was raised in the February 3rd, 2000 letter of Mr. Fitz, wherein he states:

... the fact that my client has concerns that the Respondents may deal with their interests in the properties in question. ... As you are aware, "pending proceedings" cautions have only been placed on the abstracts of Mining Claims L-1225677 and 1226882 even though our client's agreement and the Respondents, and therefore our action, is not limited to those two claims (see paragraphs 6, 7 and 33(a)(2) of our Statement of Claim).



## Findings

There are several issues tied up in Mr. Fitz' request to place additional claims under "pending proceedings". Although not proved at this time, Randsburg appears outwardly in its Press Releases to be dealing with mining claims located in Milner and Van Hise Townships comprised of 16,000 acres, more or less on which a drilling program is to take place some time after July 12, 1999. As the Superior and Swain Claims for which Mr. Bourassa has filed Summaries are located on and around Frith Lake, there is a strong presumption that these are the same lands as are referred to in the Randsberg Press Releases. The issue is complicated by the fact that all of the claims referred to in the filings are recorded in the names of either Swain et al. or Lake Superior. Added to this, six of the nine, perhaps ten claims surrounding Frith Lake are held by Swain et al.

The first issue raised by Mr. Bourassa is whether the request amounts to an amendment of the Statement of Claim. From a strictly technical point of view, adding any mining claims to those currently under "pending proceedings" may be considered an amendment, although this is an extremely narrow view. The basis of the application does not appear to change as a result of the request. Johnson is alleging that compensation pursuant to an agreement for work done on mining claims has not been paid, and is seeking the vesting of those claims. Adding claims does not serve to broaden the underlying basis for which this application has been brought. Also, adding claims in no way changes the fact that the Applicant must prove his case and that a decision in this matter can only be made after a hearing on the merits.

The tribunal notes that paragraph 33(a)(2) of the Statement of Claim reflects both the wording of section 69 and refers to the interest in the mining claims in the Firth Lake project **of the Respondents of the First Part, namely Randsburg and Lake Superior**. It becomes quite clear that Johnson is seeking to establish its interest in all of the claims through its section 69 application, and to allow "pending proceedings" to be noted on either the Swain or Superior Claims, or both, is merely a refinement of establishing the nature of the interest for which the vesting order is sought.

Section 69 of the **Mining Act** refers to "the holder of an interest in a mining claim". It does not refer to the recorded holder of the mining claim. Until such time as this can be fully argued and finally determined, the tribunal takes this to mean the holder of a legal or beneficial interest, however it might arise. Therefore, this would include those mining claims considered to be "the Company's property Milner & Van Hise Township Northern Ontario, Canada" as set out in the first recital of the Agreement between Johnson and Randsburg, found at Tab 1 of the Applicant's materials.

As to the exact nature of the interest Randsburg may have in the Swain and Superior Claims, if any, the tribunal can merely state that it is not uncommon in the mining industry for option agreements and joint venture agreements to not be shown on the abstracts of mining claims affected. The complexity of the relationship between Randsburg, Lake Superior and Swain et al. has been alluded to through mention of a Joint Venture, Memorandum of Understanding in the materials, as well as an Agreement which may or may not be at an end.

The tribunal finds that the notation of "pending proceedings" will be placed on all of the Superior Claims and Swain Claims listed above on the basis that, until otherwise proved, there is sufficient information set out in the filings to support that these are the claims in Milner and Van Hise Townships which may be referred to in the Agreement between Randsburg and Johnson. This finding will apply to the date of the application, **nunc pro tunc**.

The tribunal also finds that the Title of Proceedings will be amended to reflect the fact that Statement of Claim seeks a vesting of the interest of the Respondents of the First Part, namely Randsburg and Lake Superior, in all of the mining claims involved in the Firth Lake project, in the Applicant. Swain et al. will remain as Parties of the Second Part, being the recorded holders of many of the claims, including those on which the work was alleged to have been done. The referral to the relief sought, with respect to Swain et al., will not change at this time.

As to whether any prejudice may result to either the Respondents of the Second Part or the Respondents of the First Part, the tribunal is satisfied that it has jurisdiction under section 121 of the **Mining Act** to make its findings based upon the real merits and substantial justice of the case. Any prejudice which may result through the preparation of their case on the part of either set of Respondents can be alleviated through requests for additional time to make further filings as may be required. In addition, there is jurisdiction in the tribunal for having any matter or proceeding heard without undue formality, pursuant to clause 116(1)(a), and to give such other directions as may be considered proper (116)(1)(c). Proceedings before the tribunal are not governed by the Rules of Civil Procedure. The tribunal will continue to exercise its jurisdiction in matters such as this application to place "pending proceedings" on the abstracts, to extent that the tribunal finds it necessary, so that it has before it the proper question for determination. This is in keeping with its jurisdiction under section 121.

The tribunal is also concerned with the second issue raised by Mr. Bourassa regarding section 69, namely that the application of this section is limited to the single or specific mining claim(s) upon which the actual work is conducted.

While not seeking to limit in any way the issues which may be raised by the parties in the course of the hearing on the merits, the tribunal will direct the parties to be prepared to argue the scope of the applicability of section 69 to the facts of this case and directs that argument address the following. Section 69 remains unchanged in form from section 82 of the **Mining Act**, R.S.O., 1980, c. 268. What effect, if any, should be given to the interpretation of section 69 in light of provisions regarding assessment work credit which may be performed on one mining claim and assigned to contiguous mining claims. Subsection 66(3) is a new provision, introduced by S.O. 1989, c.62, s. 47 which appears in its current form through S.O. 1994, c. 27, s. 134(3) and states:

66(3) Exploration work performed on mining lands may be allocated as assessment work to contiguous unpatented mining claims, in the prescribed manner.

Assessment work generally is governed by Ontario Regulation 7/96, and specifies, among other things, how assessment work performed on one mining claim may be applied to unpatented and patented claims which are contiguous.

Is the tribunal being asked to find that, notwithstanding that work performed on one mining claim may lead to the filing and approval of assessment work credits being applied to any number of contiguous unpatented mining claims, that when payment for the work is in default, section 69 is limited in its applicability to those mining claims only on which the work occurred? Is the applicability limited to the literal reading of section 69 or does it require a large and liberal interpretation, relying on the purpose set out in section 2, and by reading the **Mining Act** as a whole?

The interpretation of section 69 has not been an issue before the tribunal since amendments to the **Mining Act** became effective on June 3, 1991.

### **Conclusions**

The notation of "pending proceedings" will be ordered placed on all of the Superior and Swain Claims. The Title of Proceedings will be amended accordingly. Also, the nature of the relief sought will be amended to reflect the interest of Randsburg and Lake Superior in all of the claims, and the reference to the relief sought against Swain et al. will not change at this time.

The parties will be directed to be prepared to argue the scope of the application of section 69. Should time be required by any party as a result of the Interlocutory Order, the parties are directed to make their request to tribunal Registrar, Daniel Pascoe. It is hoped, however, that any necessary additional filings can take place simultaneously, so that this matter can proceed to hearing as expeditiously as possible.