

**IN THE MATTER OF THE MINING ACT BEFORE THE PROVINCIAL MINING  
RECORDER**

**Our File No. Adj-D-04-2011**

**IN THE MATTER OF: A dispute filed by,**

**Eric Mosley on behalf of Noront Resources Ltd**

**Disputant**

**- Against the mining claims of record held by-**

**Canada Chrome Corporation and KWG Resources Inc.**

**Respondents**

**IN THE MATTER OF:** Mining claims of record P 4256490, P 4256491 and P 4256492 located in BMA areas 526 862 and 527 861

**AND IN THE MATTER OF:** "Filed only" application to record mining claims 4265631, 4265632, 4265633, 4265634, 4265635, 4265636 and 4255731, staked for more or less the same area of land as the mining claims of record.

**AND IN THE MATTER OF:** "filed only" mining claims 4256496, 4256497 and 4256498, staked for the same area of land as the mining claims of record.

**WHEREAS:** The parties were given opportunity to present material and make representations on their behalf during a hearing at the Willet Green Miller Centre, in Sudbury on April 24 and 25 2014.

**UPON:** Due consideration of the evidence presented to me,

**IT IS ORDERED:**

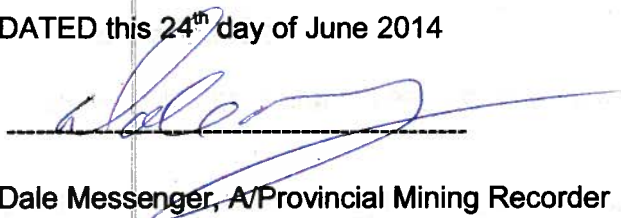
- 1) That the dispute is dismissed.
- 2) That the filed only applications to record remain refused.
- 3) That the note of pending proceedings is to be removed from the claims of record.
- 4) That the time for performing and reporting assessment work on mining claims P 4256490, P 4256491 and P 4256492 is excluded for the period during which proceedings were pending from June 24, 2011 to June 24, 2014, being 1097 days.
- 5) Pursuant to subsection 67(3) of the *Mining Act*, the 22<sup>nd</sup> day of June 2016, be fixed as the date by which the first unit of assessment work must be performed and filed on mining the mining claims and all subsequent anniversary dates are deemed to be June 22<sup>nd</sup>.

- 6) That the for performing and reporting assessment work on mining claim P 4256492 is excluded for the period during which proceedings were pending from June 24, 2011, to June 24, 2014, being 1097 days.
- 7) Pursuant to subsection 67(3) of the *Mining Act*, the 24<sup>th</sup> of June 2016, be fixed as the date by which the first unit of assessment work must be performed and filed on the mining claim and all subsequent anniversary dates are deemed to be June 24<sup>th</sup>.

**AND PLEASE TAKE NOTICE:**

That Section 112 of the *Mining Act* provides the parties a legal right to appeal to the Mining and Lands Commissioner within 30 days of the date of this order. An Appeal is begun by filing the necessary documents in the office of the Commissioner, 700 Bay Street, Toronto, Ontario. Please also file a copy of the Notice of Appeal in the Provincial Recording Office.

DATED this 24<sup>th</sup> day of June 2014



Dale Messenger, A/Provincial Mining Recorder

## THE HEARING

For the Disputant,

Matthew Fleming, Solicitor  
John Zerucelli, Solicitor  
John Mosley, Exploration Manager, Noront Resources, Inc.  
Walter Russell, Witness

For the Respondent,

Richard Butler, Solicitor  
Nicole Peterson, Solicitor  
Moe Lavigne, KWG Resources Inc.  
Ken Pye, Witness

Mr. Fleming called John Mosley for the Disputant while Mr. Butler called two witnesses, Mr. Lavigne and Mr. Pye for the Respondents.

## BACKGROUND

Geographically, the mining claims in dispute are in a remote location within what has been called the Ring of Fire area. The lands that came open were in proximity of other Noront Resources, Canada Chrome and KWG claims.

Mr. Eric Mosley of Noront Resources Ltd, testified that knowing the potentially valuable land was coming open the morning of June 17, 2011, he had hired two men to stake the lands. The following four single unit claims were staked on June 17, 2011, 4265631, 4265632, 4265633, 4265634. Three additional claims were staked on June 18, 2011, 4265635 (4units), 4265636 (16 units), 4255731 (16 units).

The Noront Resources claims were all taken filed only by the Provincial Recording Office as the Canada Chrome and KWG claims had earlier completion times.

### **Priority of completion prevails**

*44(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands. R.S.O. 1990, c. M.14, s. 44 (2).*

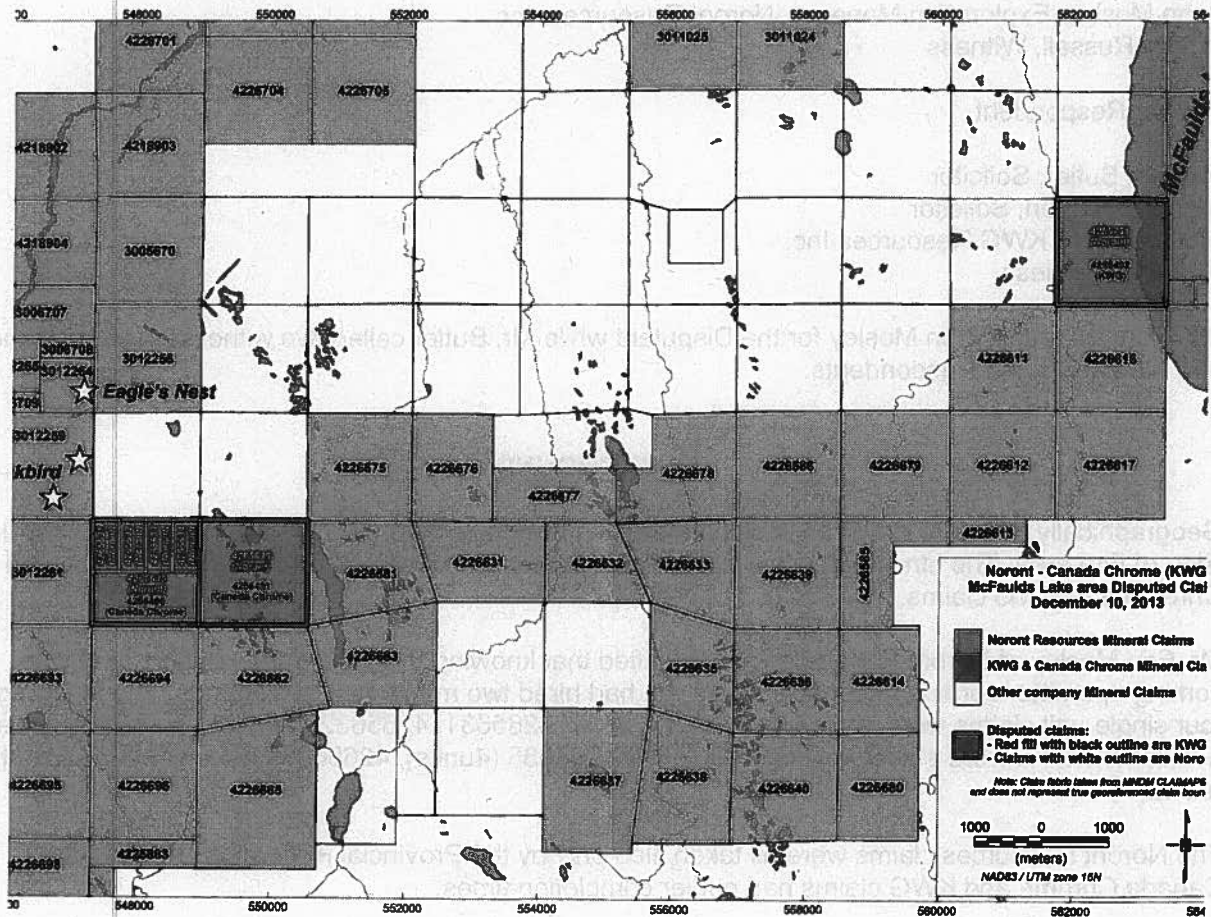
Having been advised by the Provincial Recording Office that their Applications to Record were all taken filed only (refused), Mr. Mosley of Noront Resources filed a dispute against the Canada Chrome and KWG claims on June 24, 2011.

Mr. Pye testified that he had been contracted by Canada Chrome and KWG to stake the ground that was to come open for staking on June 17, 2011. The mining claims of record P 4256490, P 4256491 and P 4256492, were subsequently staked by Recording Licensee Mr. Ken Pye and assistants. The claims were staked utilizing a helicopter. Mr. Pye was strapped into the back of the helicopter and dropped the posts at predetermined marked locations. The posts were dropped in a manner that made them stand vertically, thereby erecting the posts. The posts were tagged and inscribed in the helicopter before erecting. Mr. Pye had helpers stationed at key locations around the claims in order to commence blazing the lines once the staking started. All posts for the claims were erected while travelling in a clockwise direction.

As mentioned, the staking of the claims of record took place on June 17, 2011, within the first 24 hours after the lands came open.

The applications to record were filed on June 21 and June 23, 2011.

Map showing the claims under dispute:



### Alleged defects in the respondents staking:

During the summary stage of the hearing Mr. Fleming, outlined various defects in the Respondents staking that he believed were fatal and should disqualify the claims from being recorded.

The allegations are as follows:

- 1) Erecting claim posts by dropping them from a Helicopter is not in compliance with the *Mining Act* and Regulations and the claims should be cancelled.
- 2) Mr. Pye was not on the ground to erect the posts Recording Licensee must erect all posts.
- 3) Several instances where Mr. Pye did not erect the claims posts or they fell down after erection.
- 4) Blazing claim lines simultaneously before posts are in the ground is not permitted.



5) The *Mining Act* refers to ground staking therefore you must be on the ground.

## **REASONS/ FINDINGS**

### **Ground staking, recording licensee**

4. (1) A ground staked mining claim must be staked under the direction of a recording licensee. O. Reg. 43/11, s. 4 (1).
- (2) In order to direct the ground staking of a mining claim under subsection (1), the recording licensee must be present in each area under staking for a mining claim at the time the area is being staked for the purpose of recording the mining claim. O. Reg. 43/11, s. 4 (2).
- (3) The recording licensee must direct other licensees as well as non-licensees in constructing claim posts and marking the perimeter of a mining claim. O. Reg. 43/11, s. 4 (3)

Mr. Fleming contends that erecting a claim post by dropping it out of a helicopter is not in compliance with the *Mining Act* and Regulations because Mr. Pye was not "present on the ground during staking."

Mistakenly Mr. Fleming was referring to the previous version of Regulation, O Reg 7/96 which required that the licensee be present on the ground during staking. The wording of O Reg 43/11 now in force, does not contain this requirement. The updated rules now provide that the licensee must be present in each area under staking for a mining claim at the time the area is being staked for the purpose of recording the mining claim.

Therefore the changes to Section 4 of Ontario Regulation 43/11 clearly state that the "licensee must be present in each area under staking for a claim at the time the area is being staked". It no longer says the licensee must be present on the ground during staking.

Furthermore the Commissioner contemplated a licensee's use of a vehicle during staking in the case of *Estate of Carl Forbes, et v Michael Tremblay et al*. The Commissioner held that the wording in the regulation did not imply that the licensee had to proceed on foot at all times during staking.

" It is becoming increasingly clear that those engaged in competitive staking, while required to meet the various tests set out in Section 43 of the *Mining Act*, are increasingly using every available means by which to shave seconds off of the time for staking. Clearing the lines of deadfall, shrubs and young trees, often pre-blazing or flagging and preparation of posts to be used are becoming common in competitive staking situations. The tribunal has reviewed the requirements of the staking regulation (OReg 7/96) and cannot locate either explicit wording prohibiting the use of a vehicle, nor can such an interpretation be implied."

In this case Mr. Pye's mode of transportation was a helicopter and he was not on the ground to erect posts, the posts were erected by dropping them from the helicopter at predetermined locations. Mr. Pye stated under oath that if a post did not land upright when dropped they would land the helicopter and physically erect the post by hand.

I find that there is nothing in the *Mining Act* or Regulations that prohibits the dropping (erecting) of claim posts from a helicopter.

### **Erecting of posts**

In *Klassen vs Staines* file No. MA 011-06 the Commissioner stated that;

“Mr. Klassen’s #1 post had been knocked down in the interim, a fact which he regarded with great suspicion. In fact, this is not an uncommon occurrence in the field and one which carries little weight. An experienced staker, working from a sketch would be able to find felled posts with little difficulty, assuming they had not been carted away”.

Mr. Fleming suggested that in some cases Mr. Pye did not erect the posts or they fell down after erection. As mentioned above Mr. Pye stated under oath that if a post did not land upright they would land the helicopter and physically erect the post. Eventually most loose posts do end up falling down at some point after staking.

### **Blazing of claim boundaries**

In *Royal Oak vs Strike Minerals* file No. MA 012-98 the Commissioner stated that;

“ Blazing claim boundaries is an integral part of the staking procedure. If staking begins in two different places there may be an argument that the staking Regulation does not authorize it. At this time I prefer to consider it as something the Staking Regulation does not prohibit. Royal Oak was required to begin in the northeast corner and proceed in a clockwise direction. They did that. They also started in the southeast corner and the regulation does not address whether it can be done or not”

In the hearing it was explained how Mr. Pye and his crew blazed the claim lines. They did something similar to the above *Royal Oak vs Strike Minerals* file. Pye’s helpers were stationed at key locations around the claims in order to commence blazing when the staking started. During the hearing we heard from Mr. Pye that at the completion of their designated claim line segment, the helicopter picked up the team members at designated sites. The helicopter immediately placed team members at new locations on the next mining claim.

### **Ground Staking Definition**

Mr. Fleming stated that the term ground staking means that you must be physically on the ground when staking mining claims.

The definition of ground staking in the *Mining Act* says that “ground staking” means the delineation of the area of a mining claim on the ground using posts, tags, flags, blazes or any combination of them, in the manner provided by this Act and the regulations.

The delineation of a mining claim on the ground could be done by dropping and erecting posts from a helicopter. The remaining requirements of staking like flagging and blazing has to be performed by someone on the ground.

### **Substantial compliance with Act and regulations sufficient**

43. (1) *Where claims are staked by ground staking, substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as to the ground staking of mining claims is sufficient. 2009, c. 21, s. 21 (1).*

#### *Deemed substantial compliance*

(2) *The ground staking of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific ground staking requirements if,*

*(a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity;  
and*

*(b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations. R.S.O. 1990, c. M.14, s. 43 (2); 2009, c. 21, s. 21 (2).*

### **CONCLUSION**

I find that there is nothing in the *Mining Act* that prohibits the erecting of posts by dropping them from a helicopter. When O Reg 43/11 was amended it eliminated the need for the recording licensee to be "on the ground during staking". The wording now says that the Recording Licensee must be present in each area under staking.

Given the evidence presented to me I find that the respondents mining claims do meet the standard of substantial compliance and should remain the claims of record.

The dispute is dismissed.

Dale Messenger  
A/Provincial Mining Recorder

