

**File No. 2063**  
**Board Order No. 2063-1**

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**December 9, 2019**

**SURFACE RIGHTS BOARD**

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT  
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF  
DISTRICT LOT 8329 CARIBOO DISTRICT  
(The "Lands")

BETWEEN:

Keith Robinson and  
Madelene Robinson

(APPLICANTS)

AND:

Ironstone Mining Corporation

(RESPONDENT)

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**BOARD ORDER**

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Heard: By written submissions  
Appearances: Brian Abraham, Barrister and Solicitor, for the Applicants  
Ling Jiang, Barrister and Solicitor, for the Respondent

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### **INTRODUCTION AND ISSUE**

[1] The Applicants, Keith and Madelene Robinson, are the owners of the Lands legally described as DISTRICT LOT 8329 CARIBOO DISTRICT. The Respondent, Ironstone Mining Corporation (IMC) held a Free Miner Certificate and was the recorded holder of placer claims 398996 and 398997 (the Placer Claims) overlapping the Lands and adjacent Crown land. Mr. and Mrs. Robinson claim IMC trespassed on the Lands and caused damage to the Lands in the course of accessing the Lands for mining activities. They claim compensation for the alleged damage equivalent to the estimated cost to remediate the Lands in the amount of \$272,135.66.

[2] IMC admits it trespassed on the Lands but submits there was a mutual mistake as to the boundary of the Lands. IMC disputes that the alleged damage was caused entirely by its activities and disputes the amount of compensation claimed.

[3] Section 19(2) of the *Mineral Tenure Act* provides that a free miner or recorded holder, or any person acting under the authority of a free miner or recorded holder, is liable to compensate the owner of a surface area for damage or loss caused by the entry, occupation, or use of the surface area for mining activities. The issues, therefore, are to determine whether the alleged damage was caused by the entry, occupation or use of the Lands by IMC for mining activities and, if so, to determine the compensation payable.

### **EVIDENCE AND FINDINGS**

[4] I have thoroughly reviewed the evidence before me and all of the submissions of both parties. I will not recite every bit of evidence nor will I make findings on all of the contested evidence before me where findings are unnecessary to determine the issues. I have not relied on the Inspection Report of Inspector Grant Feldinger dated August 15,

2018 (the Feldinger Report) in making any of the following findings of fact or in determining the issues before me. I admitted the Feldinger Report over IMC's objections and allowed submissions with respect to it. As the Feldinger Report relates to an inspection of the main mine site on Crown Land and does not relate to any alleged mining activity on the Lands, it does not assist with determining whether the alleged damage to the Lands was caused by IMC or the amount of any compensation payable.

[5] Keith and Madelene Robinson are the legal and beneficial owners of the Lands as well as an adjoining parcel legally described as DISTRICT LOT 12411 CARIBOO DISTRICT. They use the Lands and adjoining lot comprising 203 acres in total for vacation purposes.

[6] IMC is a British Columbia corporation incorporated November 9, 2015. Tieshi Li is a director and shareholder. Tony Yingting Guo is another shareholder.

[7] IMC purchased the Placer Claim in or around March 2017 and was the recorded holder of the Placer Claim until October 30, 2018. IMC operated a mine site on Crown Land adjacent to the Lands. Dapeng Li, Teishi Li's son, was the mine manager.

[8] The mine site could be accessed via a Forest Service Road. It could also be accessed from paths located on the Lands.

[9] IMC's evidence is that the former owner of the Placer Claim represented that he had used paths through the Lands and that it was a condition of the Placer Claim purchase that the former owner would get the Robinsons' consent for IMC's continued use of paths through the Lands. IMC says the former owner represented that the Robinsons consented to the use of the paths through the Lands provided that IMC would build a road for the Robinsons and allow them to use the excavators and other large commercial equipment for free to renovate or build a residence.

[10] The Robinsons say they had verbally allowed the previous owner of the Placer Claim casual access to cross the Lands but deny the former owner of the Placer Claim had a right of entry through the Lands to access the Placer Claim or any right to conduct mining activity on the Lands. The Robinsons' evidence is that they directed the former owner of the Placer Claim to give IMC their phone number and that they did not consent to IMC's use of paths on the Lands.

[11] The evidence is that Mr. Robinson and Mr. Guo spoke on the phone in May 2017. IMC's evidence is that Mr. Robinson confirmed his consent with the condition of building the road and using the equipment. Mr. Robinson's evidence is that he asked Mr. Guo if he had accessed the claim via the Forest Service Road and informed him not to upset his wife. He indicated they could meet when he was on the Lands.

[12] I accept the Robinsons evidence that they did not provide permission for IMC to access its claim through paths on the Lands and did not consent to the building of a road on the Lands. I have no evidence to corroborate the hearsay accounts of what the former owner allegedly represented to IMC. I have not been provided with a copy of the purchase and sale agreement to corroborate the evidence respecting the condition of sale. Even if use of the paths and permission to build a road was a condition of sale, and even if the condition was removed on the basis of oral representations from a previous owner of a claim, these factors would not operate on their own to grant IMC permission to access the Lands or to construct a road on the Lands in the absence of an agreement to that effect with the Robinsons. IMC's evidence that Mr. Robinson indicated consent to the building of a road on the Lands in the context of a phone conversation with a person he had not yet met is not credible.

[13] Due to wildfires in the Cariboo during the summer of 2017, the Robinsons did not visit the Lands until September. On September 19, 2017, Mr. Robinson met Mr. Teishi Li. As Mr. Li does not speak English, they spoke through an interpreter on a satellite phone. IMC's evidence is that Mr. Robinson asked why mining machinery was being kept on area alleged to be the Robinsons' land and that Mr. Li advised that he had been

told by the previous owner of the Placer Claim that the area belonged to him and was part of the claim. IMC's evidence is that Mr. Robinson responded he was not sure who the land belonged to and that he did not press the issue. Mr. Robinson's evidence is that he explained through the interpreter that IMC was illegally on his property and had caused major damage. He advised they would be reported to the Ministry of Mines. He informed the interpreter to remove all mining equipment from his property and that trespassing and hunting were forbidden. The interpreter asked if Mr. Robinson would meet with the mine manager in a few days to clear things up, and Mr. Robinson agreed.

[14] Mr. Robinson's version of the conversation is corroborated by an email dated September 19, 2017 from Mr. Robinson to Mr. Guo in which Mr. Robinson advises of clearing on his land, advises that mining equipment is being kept on his land and that his gate posts were damaged. He confirms he is not allowing access through his property.

[15] Also, on September 19, 2017, the Robinsons made a Private Land Owner Complaint by phone to the Ministry of Mines.

[16] I accept that Mr. Robinson advised Mr. Li on September 19, 2017 that IMC was using the Lands for its activities.

[17] Mr. Robinson met with Teishi Li and Dapeng Li on September 23, 2017. They spent approximately four hours walking on the Lands. IMC's evidence is that they confirmed the existing boundary, as marked by a metal gate and post with a warning about private land. Mr. Robinson's evidence is that he explained the gate was not the property line but the best place to block ATV's from trespassing. His evidence is he told Mr. Li to get a survey and he denies confirming the boundary corresponded to the placement of the gate. I do not accept IMC's evidence that Mr. Robinson confirmed the location of the boundary in the location suggested by IMC.

[18] An email dated September 25, 2017 to Mr. Guo from Grant Feldinger of the Ministry of Mines confirms there is private land under IMC's Notice of Work area. I find that regardless on any confusion on IMC's part as to the exact location of the boundary, IMC had been told and was aware that it had entered the Lands in September 2017.

[19] In response to the Robinson's telephone complaint, Inspector Mike Cloet conducted an inspection. His report is dated October 3, 2017 (the Cloet Report). Mr. Cloet reports that he attended the mine site as a result of a complaint from the Robinsons. He met with Mr. Teishi Li and an interpreter. He advised that mechanical work was not to be done without a permit in place and advised of the need to serve landowner notification prior to starting any mining. He advised they should get a written agreement in place for their own protection and left them with information respecting mineral tenures, notice for access to private land and the Health, Safety and Reclamation Code for Mines in BC.

[20] Mr. Robinson followed up with Mr. Cloet by email dated October 9, 2017 wondering how long he should give IMC to get their equipment off his property and repair damage to road, land and stream. I accept that Mr. Robinson allowed access to the Lands to clear equipment away, but that he did not allow access for any mining activities, nor did he agree to the building of a new road across the Lands.

[21] By letter dated October 24, 2017, Mr. and Mrs. Robinson wrote to Mark Messmer, the Chief Gold Commissioner, setting out damage they observed during the visit to their property in September 2017 and providing photographs of the observed damage. The letter describes the observed damage as follows:

- Morehead Creek (a salmon bearing creek) was driven through by excavator, work trucks, trailers, wheeled and non-wheeled mining equipment and four wheel drive vehicles. Rock and clay was moved to widen the road leading down and through the stream.
- Up to an acre of timber was cleared from our property within 10 meters of Morehead Creek by IMC.

- Private road had been turned into impassable mud hole due to IMC's repeated access across our property. Access via our Ford F250 4x4 truck was made impossible and extremely dangerous at several areas.
- Timber along our private drive was excavated and chain sawed for storage of mining equipment owned by IMC – excavator, generator, trommel and large piles of metal parts were staged along our private drive. A large metal screen weighing several tons is hanging by a chain from an evergreen tree.
- A grove of evergreens bordering the road along Quesnel River was cleared to create additional access leading to the IMC claim.
- Trash, waste and littering were present.
- Active mining signs posted by IMC on our entry gate to private drive and at Morehead Creek.
- Hoping to circumvent our gate, the clearing of a new road from Quesnel River bed into our property was also attempted by IMC.

[22] In a letter dated October 27, 2017, Mr. Messmer found IMC had contravened sections of the *Mineral Tenure Act* and the *Mines Act* in conducting unauthorized mining activities on the Placer Claim and the surface of the Lands. Mr. Messmer issued an interim order under section 18(1)(b) of the *Mineral Tenure Act* requiring IMC to negotiate a settlement for compensation to the owners of the Lands, serve notice pursuant to section 19 of the *Mineral Tenure Act* before accessing the Lands, and cease all mining activity on the Placer Claim and not conduct any mining activity without a permit issued under section 10 of the *Mines Act*.

[23] Mr. Robinson sent Mr. Guo an email on May 5, 2018 to confirm notification that no one affiliated with IMC was to trespass on the Lands. Mr. Robinson indicated a professional assessment of the damage would be obtained and brought to IMC's attention for compensation.

[24] In June of 2018, IMC agreed to pay, and the Robinsons agreed to accept, \$34,000 to enable restoration of damage. IMC said it would provide the payment in three installments in July, August and September 2018. The payments were never made.

[25] In September, 2018 IMC entered the Lands again violating the October 2017 cease work order and without fulfilling its conditions. Mr. and Mrs. Robinson allege IMC again caused significant damage.

[26] Inspectors Mark Newell and Chris Castle conducted an inspection September 19-21, 2018. Their observations and resulting orders are documented in a report dated September 27, 2018 (the Newell Report). Orders include a stop work order, an order that a legal survey be conducted to identify the western boundary of the Lands, and the creation of a reclamation plan to remediate all unauthorized disturbance by IMC on the Lands.

[27] The Robinsons engaged Exton and Dodge, Land Surveying Inc. to conduct a survey of the western boundary of the Lands. They did so on September 26, 2018. Mr. Dapeng Li noticed the presence of the surveyors and asked them to leave. IMC's evidence is that a few days later it received notice from the inspectors and Mr. Mesmer that IMC had trespassed and ordering them to stop any mining activity. IMC's evidence is that it was not until receiving this notice that it had the knowledge that "the previously agreed border was not accurate" and that "some of the area" where IMC was engaged in mining "now belonged" to the Robinsons.

[28] I wholly reject that it was not until late September 2018 that IMC knew it had trespassed on the Lands. I accept that Mr. Robinson told Mr. Li that IMC had trespassed on September 19, 2017. Further the email from Mr. Feldinger to Mr. Guo on September 25, 2017 confirms there was private land under IMC's Notice of Work Area. Mr. Cloet advised Mr. Li of the necessity of serving a Notice of Work on the landowners – such notice would not have been necessary if IMC's planned activities did not include activity on the Lands. I find that IMC knew or ought to have known by September 2017 that some of its mining activities had occurred on the Lands. The Chief Gold Commissioner's Orders of October 27, 2017 requiring IMC to negotiate a settlement with the landowners should have confirmed that knowledge.



[29] I also wholly reject IMC's evidence respecting a mutual mistake as to the boundary of the Lands. IMC's submissions characterize the boundary as having changed following the survey in September 2018. The boundary did not change – it always existed in its present location and could have been verified with due diligence on the part of IMC.

[30] The Chief Gold Commissioner conducted a hearing on October 25, 2018 attended by Tieshi Li, Director of IMC, and Dapeng Li, mine manager. Mr. Dapeng Li confirmed during the hearing the findings of the Newell Report and confirmed notice had never been served in accordance with section 19 of the *Mineral Tenure Act* on the surface owner of the Lands. By Orders dated October 30, 2018, the Chief Gold Commissioner cancelled IMC's Free Miner Certificate and cancelled the Placer Claims.

[31] I have found IMC knew or ought to have known it had entered the Lands to conduct its mining activities. It did not have permission or authority to conduct mining activity on the Lands. But, whether IMC thought it had permission to enter the Lands and whether it was mistaken as to the location of the boundary, are not defences to its liability for damage caused by its entry to the Lands. The liability to compensate the surface owner for damage or loss caused by the entry, occupation or use of land for mining activities exists whether the entry is lawful or unlawful, deliberate or mistaken. The issues remain:

- a) Was the alleged damage caused by the entry, occupation or use of the Lands by IMC for mining activities?
- b) If so, what should be the compensation payable to the surface owners of the Lands?

**Was the alleged damage caused by the entry, occupation or use of the Lands by IMC for mining activities?**

[32] Mr. and Mrs. Robinson obtained an Impact Assessment and Restoration Plan for the Lands prepared by Richard Holmes of Cariboo Envirotech Limited. His report,

dated December 31, 2018 (the Holmes Report), identifies damage to the Lands from 2017 to 2018, including:

- Existing access road damage, approximately 2.3 kms
- New road development covering 1.025 hectares
- Morehead Creek stream crossing impacts
- Excavations adjacent to Morehead Creek
- Felled and pushed over timber along the road
- Broad clearcutting of timber
- Topsoil removal
- Open excavations
- Storage of tailings

[33] IMC submits not all of the alleged damage was caused by its activity on the Lands and points in particular to the Cloet Report. Mr. Cloet reports that he attended the mine site as a result of a complaint from the Robinsons, met with Mr. Teishi Li and an interpreter, and provided advice and information respecting mineral tenures, permits, landowner notification, and the Health, Safety and Reclamation Code for Mines in BC. Mr. Cloet then reports as follows:

I then walked part of the proposed mining area. The area has been heavily disturbed by previous mining activity going back 100 years. Evidence of old Chinese mining (stacked rocks) is in the area. A very old cabin remains on site. Pervious (*sic*) excavations and alterations to the ground are evident. There is existing equipment and supplies on site.

[34] IMC submits that the above paragraph confirms it had not conducted any excavation on the Lands because of the use of the word “proposed” and is evidence of pre-existing damage not caused by IMC. While Mr. Cloet documents having seen some historical damage, the Cloet Report does not specify whether the historical damage was on the Lands or on the adjoining Crown land. Mr. Cloet’s report neither confirms nor denies the Robinson’s allegations of specific damage alleged to have been caused by IMC, nor does it confirm that IMC had not conducted any excavation on the Lands.

[35] The Newell Report documents Inspectors Gentle and Newell’s observations from their inspection in September 2018. The Newell Report indicates placer mining activities had been conducted on the Lands and confirms that IMC had “utilized

unapproved access, created unauthorized new roads, dug multiple excavations, felled timber and stocked tailings on the Lands”. The inspectors ordered work be stopped effective September 26, 2018. They ordered a survey of the western boundary of the Lands and the creation of a reclamation plan to remediate all unauthorized disturbance by IMC on the Lands. The Newell Report provides photographs of the road construction, felled trees, and other damage on the Lands. The Newell Report does not say anything about historical damage on the Lands.

[36] The Robinsons engaged Exton and Dodge, Land Surveying Inc. to conduct a survey of the western boundary of the Lands. The survey, done September 26, 2018 and drawn October 8, 2019, depicts the western boundary and shows an area of 1.21 hectares on the Lands cleared for Placer Mining. IMC argues some of the area identified on the survey comprised the historical damage noted in the Cloet Report. Mr. Daipeng Li sketched areas within the surveyed area cleared for Placer Mining that he says are the location of historical damage. Mr. Li’s sketching is not verified with a proper survey and I do not accept its accuracy. There is no evidence that the historical damage observed by Mr. Cloet was actually on the Lands. On the other hand, there is very clear evidence in the Newell Report of recent damage actually on the Lands including new roads, multiple excavations, felled timber and stocked tailings as well as a shifting to the east and expansion of the mine site. I note in IMC’s submissions its admissions to having damaged a tree and to having made excavations on the Lands in 2018. It denies damaging the paths but there is no evidence that any other person or entity could have damaged the paths or constructed the unauthorized road.

[37] The damage noted in the Newell Report and fully detailed in the Holmes Report is recent, not historical damage, and consistent with the Robinson’s original observations reported to the Ministry of Mines. The identified damage is clearly attributed by both Holmes and inspectors Gentle and Newell to IMC’s activities on the Lands. The Chief Gold Commissioner ordered IMC to come up with a reclamation plan for the Lands. Such an order would not have been made against IMC if its activities had not resulted in damage to the Lands.

[38] IMC submits it is being asked to compensate for damage caused by others but has not provided any professional evidence to dispute that the alleged damage was not caused by its activities on the Lands. The damage for which the Robinsons seek compensation is consistent with the damage attributed to IMC in the Newell Report. The evidence provided by Mr. and Mrs. Robinson including their own observations, the Newell Report and the Holmes Report lead me to conclude that it is more likely than not that all of the alleged damage was caused by IMC's entry, occupation and use of the Lands for mining activities. The evidence does not support a likelihood that any of the alleged damage to the Lands was caused by anything other than IMC's activities on the Lands.

**What should be the compensation payable to the surface owners of the Lands?**

[39] The Holmes Report provides recommendations for restoration of the identified damage and estimates the cost of recommended work. A summary of the estimated cost is set out below:

Damage and summary of recommended work	Estimated Cost
Existing access road including restoration of road, cleanup of fallen and stockpiled timber, tree and tree planting and seeding costs, and vehicle and camp costs	\$15,160.00
New road reclamation including scarification of road surface, placement of woody debris, tree and tree planting and seeding costs, and vehicle and camp costs	\$12,154.00
Morehead Creek crossing including purchase, delivery and placement of gravel substrate, tree and tree planting costs, harvest and planting of willows, seed and seeding, and vehicle and camp costs	\$5,937.00
Reclamation of 2017 excavation of .4 hectare surface area including scarification of surface area, purchase, delivery and blending of topsoil, placement of woody debris, trees and tree planting, seed and seeding, and vehicle and camp costs	\$33,795.00
Reclamation of 2018 excavation of 1.21 hectare surface area including overburden placement, purchase, delivery and blending of topsoil, placement of woody debris, trees and tree planting, seed and seeding, and vehicle and camp costs	\$113,581.00

Reclamation monitoring for 5 years	\$25,000.00
Other professional services including Silviculture Forester and Geotech professional	\$9,500.00
Subtotal	\$215,127.00

[40] To the estimated costs above, Mr. Holmes adds 15% for contingencies and 10% for project management resulting in a final estimated project total of \$272,135.66. This is the amount the Robinsons seek in compensation for damage to the Lands.

[41] IMC argues the claim is excessive in relation to the value of the Land. It points to BC Assessment's 2019 assessment of the Lands at \$47,000. IMC suggests \$10,000 is more than adequate to compensate for any change to the value of the Lands but provides no evidence to support that figure. Mr. Robinson's evidence is that he paid \$200,000 for the Lands and adjoining parcel in 2007 and has invested upwards of \$70,000 in the property since then casting some doubt on the accuracy of the assessed value as a reflection of the properties' market value.

[42] The only evidence before me of the cost to reclaim the damage is that in the Holmes Report. IMC is liable to rectify the damage caused. It does not matter that the cost of rectifying the damage may exceed the value of the land.

[43] IMC makes arguments opposing a claim for emotional suffering, however no monetary claim for emotional suffering has been advanced. The claim for compensation is simply for the cost of remediating the damage to the Lands.

[44] IMC submits an appropriate order would be to require IMC to build the road and reclaim any damaged areas rather than a cash award to the Robinsons. IMC submits it wants to obtain an independent expert to assess the damage. IMC has had more than adequate opportunity to come up with a reclamation plan for the Lands and provide its own evidence assessing the damage. The Newell Report ordered IMC to come up with a reclamation plan for the Lands to be received by October 31, 2018. IMC failed to do so. IMC's failure to come up with a reclamation plan by the due date or since leaves me

with little confidence that an Order of this Board requiring IMC to reclaim the damage will be acted upon.

[45] The owners of the surface must be compensated for the damage to the Lands so that the Lands can be restored to their pre-damage condition. The only professional evidence before me to quantify the damage, provide a reclamation plan, and estimate the cost of that plan is the Holmes Report. I accept the professional evidence before me of the estimated cost to remediate the Lands and provide judgement in favour of the Robinsons for the estimated cost of remediation of \$272,135.66.

**ORDER**

[46] Ironstone Mining Corporation must forthwith pay to Keith and Madelene Robinson the sum of \$272,135.66 as compensation for damage to the surface of the Lands caused by the entry, occupation and use of the Lands for mining activities.

[47] The Board retains jurisdiction to deal with any issues of costs.

DATED: December 9, 2019

FOR THE BOARD



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Cheryl Vickers, Chair