File No.: 2191
Board Order No.: 2191-1

May 4, 2022

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

DL 587 Lillooet District Chipmunk Place, PID 008-204-276
(The "Lands")

BETWEEN:

Andrea Schaeppi and
Thomas Kennedy

(APPLICANTS)

AND:

Bralorne Gold Mines Ltd. and
Talikser Resources Ltd.

(RESPONDENTS)

BOARD ORDER

Heard:	by Zoom March 31, 2022 and by written submissions closing April 8, 2022
Appearances:	Brian Abraham, Barrister and Solicitor, for the Applicants Jennifer S. Nyland, Barrister and Solicitor, for the Respondents

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INTRODUCTION AND ISSUE

[1] Does the Surface Rights Board (the Board) have jurisdiction under the *Mineral Tenure Act,* R.S.B.C. 1996, c. 292 (the *MTA*) to resolve disputes between the surface owners of land and the owners of Crown granted minerals below the surface of the land arising from the mineral owner's use and occupation of the surface for mining activities?

[2] Crown grants, granting outright ownership in subsurface minerals, are an historical method of acquiring mineral rights. I am told the Crown granting of minerals was phased out in or around 1957. Crown granted minerals are an interest in land registered in the Land Title Office.

[3] The *MTA* establishing current methods of acquiring rights to Crown owned minerals was first enacted in 1988. The current *MTA* gives rights to free miners to explore for minerals and requires the registration of mineral claims in an online registry (the Registry) maintained by the Chief Gold Commissioner. The owner of a claim registered in the Registry is known as a "recorded holder". A recorded holder is entitled to the minerals held by the government situated downward from the inside boundaries of the claim subject to various legislative requirements and has the right to use and occupy the surface of a claim for exploration. A recorded holder's interest in the minerals is a chattel interest.

[4] The *MTA* provides a dispute resolution process in accordance with which the Applicant owners of land applied to have the Board resolve disputes between them and

the Respondent owners of Crown granted minerals. The Respondents submit the Board does not have jurisdiction.

[5] Whether the Board has jurisdiction to resolve matters in dispute between these parties is the only issue before me.

FACTS

[6] The Applicants, Andrea Schaeppi and Thomas Kennedy (the Landowners), are the owners of Lands legally described as: DISTRICT LOT 587 LILOOET DISTRICT.

[7] The Respondent, Bralorne Gold Mines Ltd. (Bralorne), is the registered owner of a Crown granted mineral claim lying under the Lands (the Mineral Rights). The Respondent, Talikser Resources Ltd. (Talikser) is the owner of Bralorne.

[8] The Mineral Rights were originally granted by the Crown in 1901 under the then in force *Mineral Act* and were granted again in 1926 under the then in force *Escheats Act*. Bralorne is the successor in title to the Mineral Rights and the registered owner of those rights on the Title to the Lands.

[9] The 1901 Crown grant grants unto the grantees their heirs and assigns, “all minerals precious and base (save coal and petroleum) which may be found in veins, loads or rock in place, and whether such minerals are found separately or in combination with each other, under that Parcel or Lot of Land situated in Lillooet District, and numbered Lot Five hundred and eighty seven (587)…and known as the “Golden King” Mineral Claim, and the right to the use and possession of the surface of such mineral claim, including the use of all the timber thereon for the purpose of winning and getting from and out of such claim the minerals contained therein, including all operations connected therewith or with the business of mining.”

[10] The grant contains a number of provisos, including “that the grant hereby made shall be subject to the laws for the time being in force respecting mineral claims”. The 1926 Crown grant is subject to the original provisos in the 1901 Crown grant.

[11] Bralorne and Talikser are free miners and are recorded holders of mineral claims under the *MTA* other than the Mineral Rights.

[12] Bralorne has a permit under the *Mines Act* to conduct mining activity on the Lands.

[13] On January 14, 2022, Bralorne gave notice to the Landowners pursuant to section 19(1) of the *MTA* of proposed mining activity on the Lands (the Notice). The relevant portions of section 19(1) of the MTA provide:

> 19 (1) A person must not begin a mining activity unless
> (a) the person first serves notice, in the prescribed form and manner, on
> (i) the owner, other than the government, of every surface area,
> …, and
> b) the prescribed period has elapsed from the date that notice was served under paragraph (a).

[14] Section 19(1.1) of the *MTA* permits the Chief Gold Commissioner to exempt a person from providing notice in prescribed circumstances. The Chief Gold Commissioner has not exempted Bralorne from providing notice.

[15] In the Notice, under the heading Free Miner or Mineral Title Holder Contact Information, Bralorne named itself as the Free Miner or Mineral Title Holder and named Talikser as the Company. The signatory to the Notice certifies that the information given in the application is “true and complete”. The Notice also states:

> A person is required to serve notice in accordance with section 19 of the *Mineral Tenure Act* and is liable to compensate the owner of a surface area for loss or damage by the entry, occupation or use of that area. A free miner or mineral title

> holder has the right to enter upon and use the surface of private land for the exploration and development or production of minerals or placer minerals in the business of mining subject to the provisions of the *Mineral Tenure Act*, *Mines Act* and/or *Mining Right of Way Act*.

[16] Section 19(2) of the *MTA* establishes the obligation of free miners, recorded holders and those acting under or with the authority of a free miner or recorded holder, to compensate the owner of the surface of land for loss or damage caused by the entry occupation or use of the land by or on behalf of the free miner or recorded holder for location, exploration and development, or production of minerals.

[17] The remainder of section 19 of the *MTA* sets out a dispute resolution process commencing in section 19(3) with an application to the Chief Gold Commissioner. Section 19(3) provides:

> (3) On receipt by the chief gold commissioner of an application from a free miner, recorded holder, owner or other person who, in the opinion of the chief gold commissioner, has a material interest in the surface, the chief gold commissioner must use his or her best efforts to settle issues in dispute between them arising from rights acquired under this Act in respect of entry, taking of right of way, use or occupation, security, rent or compensation.

[18] The Landowners applied to the Chief Gold Commissioner pursuant to section 19(3) of the *MTA* to settle issues in dispute relating to Bralorne's proposed entry to the Lands.

[19] Upon the Chief Gold Commissioner being unable to resolve the dispute, the Landowners applied to the Board pursuant to section 19(4) of the *MTA* which provides:

> (4) If the chief gold commissioner is unable to settle the dispute to the satisfaction of the parties to the dispute, the Surface Rights Board under the *Petroleum and Natural Gas Act* has, on application by a party to the dispute, authority to settle the issues in dispute and, for this purpose, Part 17 of the *Petroleum and Natural Gas Act* applies.

[20] The complete text of section 19 of the *MTA* is set out at Appendix "A".

SUBMISSIONS

[21] The Respondents submit the dispute resolution provisions of the *MTA* do not apply to disputes between surface landowners and the owners of Crown granted minerals, and that consequently, the Board does not have jurisdiction to deal with the Landowners application. Bralorne submits its right to use the surface of the Lands for mining activities stems from the Crown grant and that any claim for compensation arising from its use of the surface of the Lands is governed by the common law of nuisance and must be advanced in court.

[22] The Respondents rely on B.C. Supreme Court decisions in *Falkowski v. Osoyoos (Town)* [1995] B.C.J. No. 857 (*Falkowski #1*), wherein Newbury J. expressed doubt that the dispute resolution provisions of the then in force *Mineral Tenure Act* applied to Crown granted minerals, and *Falkowski v. Town of Osoyoos*, 1998 CanLII 2817 (*Falkowski #2*), wherein MacDonald J. said the dispute resolution provisions in the then in force *Mineral Tenure Act* did not apply to Crown granted minerals.

[23] The Landowners submit that the decisions in *Falkowski #1* and *Falkowski #2* cannot be relied on statements of the law and are not binding on the Board.

[24] The Landowners submit that the proviso to the 1901 Crown grant that the grant "shall be subject to the laws for the time being in force respecting mineral claims", and incorporated into the 1926 Crown grant, makes it clear that the dispute resolution provisions of the *MTA* apply.

[25] The Landowners submit further that section 19 of the *MTA* applies because Bralorne is a "person", it is carrying out "mining activity", it is a free miner or recorded holder, and it has a permit issued under section 10 of the *Mines Act* in accordance with section 14(2) of the *MTA*. The Landowners say Bralorne has submitted to the jurisdiction of the provisions of section 19 and attorned to the jurisdiction of the Board

because it provided notice to them under section 19(1) of the *MTA*. They note that Bralorne is named as the free miner or recorder holder on the Notice.

[26] The Landowners refer to the definition in the *MTA* of "mineral lands" which includes Crown granted claims. They refer to the definition of "mineral claim" which includes a claim under one of the former Acts, arguing the Crown grant falls within this definition and noting the 1901 grant refers to the mineral Crown grant as a "mineral claim".

ANALYSIS

The *Falkowski* Decisions

[27] In *Falkowski #1*, Mr. Falkowski was the registered owner of a Crown granted mineral claim covering an area near Osoyoos. The Town of Osoyoos expanded its boundaries to include part of the mineral claim area, changed the zoning to only permit uses of the land associated with a residential suburb, and transferred land overlapping part of the mineral claim to a real estate developer, who in accordance with an agreement with the town, began to construct roads, sewer pipes and other underground facilities for the servicing of a new residential development. Mr. Falkowski commenced an action against the town and developer for the injurious affection or expropriation of his interest. The developer applied to have the action against it dismissed on a summary trial basis.

[28] The grant contained the proviso "that the grant hereby made of the said minerals shall be subject to the laws for the time being in force respecting mineral lands held in fee simple".

[29] Newbury, J. dismissed the application for summary dismissal on the basis that it would not be appropriate, either as a matter of fact or law, due to the complexity of the matter.

[30] One of the defences advanced by the developer was that in order to be entitled to enter his mineral claim, Mr. Falkowski had to satisfy the requirements of what was then section 16 of the *Mineral Tenure Act*, which using similar language to the current sections 19(3) and 19(4) of the *MTA* gave the Chief Gold Commissioner and the predecessor to the Board the authority to resolve disputes. Justice Newbury expressed doubt that section 16 of the then *Mineral Tenure Act* applied to the holder of Crown granted mineral claims. She said:

> On the law before me, I am doubtful that section 16 applies to the holder of a Crown-granted mineral claim in any event. Rather, it applies to free miners (which must mean *qua* free miners) and to "recorded holders". The term "recorded holder" is defined to mean "a person whose name appears as the owner of the mineral title in the record of that title in the Gold Commissioner's office of the mining division in which the title is located". The section is silent about *Crown grants* made under the previous legislation and registered in the Land Titles registration system. Further, s-s. 24(2) of the *Mineral Tenure Act* states that the interest of a recorded holder of a claim is a chattel interest – a provision that is not apt to apply to Crown mineral grants, which have always been interests in land and registered as such. Thus even if an application had been made under s-s. 16(3) by one of the defendants as a person having a material interest in the surface, the section would not in my view "catch" Mr. Falkowski because he is not a "recorded holder". [italics in original]

[31] At the trial of Mr. Falkowski's claims (*Falkowski #2*), Macdonald J. found that both the town and developer were liable to Mr. Falkowski in nuisance for the loss incurred by him as a result of his inability to access and develop his mineral rights. Macdonald J. accepted that the dispute resolution provisions of the then in force *Mineral Tenure Act* did not apply, saying at para. 28:

> There is an important distinction between crown granted mineral claims and mining leases on the one hand and mineral claims on the other. Crown grants and leases of mineral rights are an interest in land. A mineral claim is a chattel interest only. In addition, the current *Mineral Tenure Act*, S.B.C. 1988, c. 5, and in particular the dispute resolution procedures therein, does not apply to crown grants as the definition of "mineral title" therein includes only a "(staked) claim or lease".

[32] I accept that the statements quoted above from *Falkowski #1* and *Falkowski #2* respecting the application of the dispute resolution provisions in the then in force *Mineral Tenure Act* to Crown granted minerals are not binding upon me or conclusive as to the applicability of the dispute resolution provisions in the *MTA*. The provisions of the current section 19 have been amended since the then in force section 16. I agree with the Landowners that Newbury, J's statement was *obiter* and consequently cannot be treated as a binding statement of the law. Macdonald, J. accepted without analysis that the dispute resolution provisions of the then in force *Mineral Tenure Act* did not apply to Crown granted minerals, however, the applicability of those provisions was not in issue before him, both parties accepting the action was properly brought in nuisance. *Falkowski #2*, likewise, therefore, does not provide a binding statement of the law on this issue.

[33] The more recent decision of the British Columbia Court of Appeal in *Forty Ninth Ventures Ltd. v. British Columbia*, 2005 BCCA 213 (*Forty Ninth Ventures*) describes the application of the *MTA* to Crown granted claims as "unclear".

[34] Although I find the *Falkowski* decisions are not binding upon me, my analysis of the *MTA* leads me to the same conclusion. For the reasons that follow, I find the Board does not have jurisdiction to settle matters in dispute between landowners and the owners of Crown granted minerals arising from the mineral owner's use of the land for mining purposes.

The Crown grant provides surface rights to the Lands

[35] I accept that Bralorne's right to use and occupy the surface of the Lands for mining activity comes from the grant itself and not from the *MTA*. The express words of the grant include: "the right to the use and possession of the surface of such mineral claim, including the use of all the timber thereon for the purpose of winning and getting from and out of such claim the minerals contained therein, including all operations connected therewith or with the business of mining."

[36] The *Mineral Act* in force at the time of the 1926 grant also expressly included the conveyance of surface rights for mining purposes in every Crown grant since April 12, 1893 (*Mineral Act*, R.S.B.C. 1924, c. 167, s. 23).

[37] The *MTA* grants surface rights for mining purposes to free miners (section 10), and to recorded holders subject to obtaining a permit under the *Mines Act* (section 14). The Landowners say Bralorne is a recorded holder and a free miner, and has a permit under the *Mines Act*. The permit under the *Mines Act* must be obtained by the owner, agent or manager of the mine, or any other person, before starting mining activity. However, the permit would be required to conduct mining activity with respect to the Mineral Rights regardless of whether Bralorne was also a free miner or a recorded holder of other mineral claims. Bralorne's rights to the surface of the Lands for the purpose of winning and getting the minerals out of the Mineral Rights comes from the grant, not section 14 of the *MTA*. Bralorne is not exercising rights as a free miner or a recorded holder in exploring for or developing the minerals it owns under the Lands. It is exercising the surface rights conveyed with the grant of minerals. If Bralorne was not a free miner or a recorded holder of other mineral claims, it would still have surface rights to the Lands for the purpose of exploring for, developing and producing the granted minerals.

Liability to compensate

[38] The liability to compensate surface owners for loss or damage in section 19(2) of the *MTA* extends to free miners and recorded holders, or any person acting under the authority of a free miner or recorded holder and applies to loss or damage caused by the entry, occupation or use of the area by or on behalf of the free miner or recorded holder for location, exploration and development, or production of minerals. If Bralorne causes loss or damage in its use or occupation of the Lands for mining activity, however, it will not be as a free miner or recorded holder or on behalf of a free miner or recorded holder of a mineral claim under the Lands. It is not exercising rights as a free

miner or recorded holder in entering the Lands for mining purposes, and any loss or damage it may cause in doing so, will not be as a free miner or recorded holder, but as the owner of the minerals. That is not to say Bralorne may not have liability to the Landowners for loss or damage caused by its mining activities, only that such liability does not come from the *MTA* and its activity as a free miner or recorded holder but must be found in the common law. Again, if Bralorne was not also a free miner and not also a recorded holder with respect to other mineral claims and caused loss or damage to the Lands through its exercise of rights conveyed in the Crown grant, any liability for such loss or damage would have to be found in the common law.

Definitions in the *MTA*

[39] The definition of “mineral lands” in the MTA includes Crown granted claims:

> **"mineral lands"** means lands in which minerals or placer minerals or the right to explore for, develop and produce minerals or placer minerals is vested in or reserved to the government, and includes Crown granted 2 post claims

[40] The MTA also provides definitions of “mineral claim”, “mineral title”, and “claim” as follows:

> **"mineral claim"** means a claim to the minerals within an area which has been located or acquired by a method set out in the regulations and includes a claim to minerals recorded under one of the former Acts
>
> **"mineral title"** means a claim or a lease
>
> **"claim"** means a mineral claim or a placer claim and includes a legacy claim

[41] The Landowners submit that reading these definitions together, the legislation applies to Crown grants. A mineral title includes a claim; a claim is a claim to minerals and includes a claim under a former Act, which includes Crown grants. They note that both the 1901 and 1926 Crown grants describe the Crown grant as a “mineral claim”.

[42] I agree with the Respondents that the definition of “mineral claim” does not include the owner of a Crown granted mineral claim because a Crown granted mineral claim

has not been "located or acquired by a method set out in the regulations" and is not "a claim to minerals recorded under one of the former Acts." Granted minerals are not, and never have, been recorded in the mineral titles online registry established and maintained by the Chief Gold Commissioner.

[43] The Respondents provided me with a copy of the *Mineral Act*, R.S.B.C. 1924, c. 167 in force at the time of the 1926 Crown grant. Part III of that Act provides for the recording of mineral claims. Part IV sets out the procedure for obtaining Crown grants of mineral claims. Part V deals with conveyances and transfers. Section 74 distinguishes the recording requirements for recorded mineral claims and Crown granted mineral claims. Section 74(1) provides that "every conveyance, bill of sale, mortgage or other document of title relating to any mineral claim other than a mineral claim in respect of which a Crown grant has issued, shall be recorded with the Mining Recorder of the mining division in which the claim is situate…" (emphasis added). Section 74(3) requires that transfers of Crown granted mineral claims be "registered in the same manner as are other documents of title relating to the transfer of real estate, and all provisions of the "Land Registry Act" shall apply to such registration."

[44] I accept the Respondents' submission that the term "recorded under the former Acts" in the definition of "mineral claim" in the *MTA* refers to making an entry in the official books kept by the regional mining recorders for administering claims and leases of the minerals that were vested in the Crown under legislation from time to time in force respecting the recording of claims. It does not refer to Crown granted minerals which historically have not been recorded in the same manner but have been registered as interests in land under the land registry legislation from time to time in force.

[45] While the definition of "mineral lands" includes Crown granted claims, that definition does not have relevance to the application of the dispute resolution provisions. If it was the legislature's intent that the Board should have jurisdiction over disputes

respecting “mineral lands”, I can see nothing in the language of section 19 of the *MTA* to give effect to that intention.

The proviso in the Crown grants

[46] The 1901 Crown grant contains the proviso “that the grant hereby made shall be subject to the laws for the time being in force respecting mineral claims”. The 1926 grant is subject to the same proviso. The Landowners submit this proviso makes it clear the *MTA* applies.

[47] In *Forty Ninth Ventures* the Court was dealing with six Crown grants of minerals. One of the Crown grants contained the same proviso as the grant in this case, namely “that the grant hereby made shall be subject to the laws for the time being in force respecting mineral claims”. Five of the Crown grants contained the proviso that “the grants hereby made of the said minerals shall be subject to the laws for the time being in force respecting mineral lands held in fee simple”. The Court said nothing turned on this difference in wording. I find that the proviso that the grant “shall be subject to the laws for the time being in force respecting mineral claims” refers to laws for the time being in force respecting Crown granted mineral claims. It does not refer to laws that may be in force respecting mineral claims held other than in fee simple. The laws in force from time to time have historically treated Crown granted minerals differently from rights to Crown owned minerals.

[48] The use of the term “mineral claim” in the proviso does not assist as the current definition of “mineral claim” does not include crown granted minerals.

The dispute resolution provisions in the MTA

[49] Section 19(3) of the *MTA* provides that on receipt of an application from a free miner, recorded holder, landowner or other person with a material interest in the surface, the chief gold commissioner must use best efforts “to settle disputes between them arising from rights acquired under this Act in respect of entry, taking of right of

way, use of occupation, security rent or compensation." (emphasis added). I have found, however, that Bralorne's right of entry to the Lands comes from the Crown grant, not the *MTA*, and any rights the Landowners have to compensation for loss or damage as a result of Bralorne's activity is not grounded in the *MTA* but must be found in the common law.

[50] The Board's jurisdiction for dispute resolution is set out in section 19(4) of the *MTA*. I set out section 19(4) again for convenience:

> (4) If the chief gold commissioner is unable to settle the dispute to the satisfaction of the parties to the dispute, the Surface Rights Board under the *Petroleum and Natural Gas Act* has, on application by a party to the dispute, authority to settle the issues in dispute and, for this purpose, Part 17 of the *Petroleum and Natural Gas Act* applies.

[51] The Board's authority to settle issues in dispute is with respect to those disputes that the Chief Gold Commissioner was not able to settle. The Chief Gold Commissioner's authority extends to disputes arising from rights acquired under the *MTA*, therefore, likewise, the Board's authority is similarly restricted. As indicated, Bralorne's surface rights come from the Crown grant and any rights the Landowners may have to compensation as a result of Bralorne's exercise of those rights does not come from the *MTA*. The Board, therefore, does not have jurisdiction to resolve any dispute respecting access by Bralorne to the Lands for mining activity or claim by the Landowners for loss or damage as a result.

[52] The same analysis applies with respect to any dispute with Talikser as the owner of Bralorne. Talikser is a free miner and recorded holder in its own right of mineral claims, but it is not exercising those rights with respect to the Lands.

Has Bralorne attorned to the jurisdiction of the Board?

[53] The Landowners submit that in providing the Notice under section 19(1) of the *MTA* the Respondents attorned to the dispute resolution provisions in the rest of section

19. The Respondents question whether they needed to give notice under section 19(1) but submit it is a good idea in any event. I reproduce the relevant portions of section 19(1) for convenience:

> 19 (1) A person must not begin a mining activity unless
> (a) the person first serves notice, in the prescribed form and manner, on
> (i) the owner, other than the government, of every surface area,
> …, and
> b) the prescribed period has elapsed from the date that notice was served under paragraph (a).

[54] The requirement to give notice to a surface owner of land of proposed mining activity extends to "persons". "Person" is defined in the *Interpretation Act* to include corporations. Bralorne is, therefore, a "person" and may not begin mining activity without first giving notice under section 19(1). I do not accept, however, that in providing the notice required under section 19(1) that Bralorne has attorned to the dispute resolution provisions that follow.

[55] The word "persons" is not used anywhere else in section 19 to describe those who may apply either to the Chief Gold Commissioner or the Board, or to whom liability for loss or damage attaches, or with respect to any other rights and obligations respecting access to land for mining activity. Those rights and obligations are limited to free miners and recorded holders, and those acting under or with their authority, and to landowners and others with a material interest in the surface. The use of the word "person" in section 19(1), and its lack of use in the remaining subsections of section 19 must be considered deliberate. The remaining subsections do not refer back in any way to the "person" who gave notice in subsection 19(1). I see no intent in the clear words of the legislation to impose the dispute resolution provisions in the rest of section 19 on the "person" who gave notice in section 19(1). Rather the requirement of a "person" to give notice is separate and distinct from the dispute resolution provisions that apply to disputes between landowners and free miners and recorded holders.

[56] The Landowners refer to the fact that on the Notice under the heading Free Miner or Mineral Title Holder Contact Information Bralorne named itself as the Free Miner or Mineral Title Holder and named Talikser as the Company, to the signatory's certification that the information is "true and complete", and to the statement of rights and obligations in the Notice.

[57] The Notice is a prescribed form. It apparently does not contemplate that it might be given by the owner of a Crown granted claim as it includes no way for the giver of the notice to so identify. The fact that it does not so contemplate, could mean the requirement to give notice does not extend to the owner of a Crown granted claim, despite the clear language of the *MTA.* The *MTA* requires that a "person" cannot conduct mining activity without first serving notice. That requirement is clear. The fact that the prescribed form does not make provision for the identification of a "person" as the owner of a Crown granted claim but forces identification as a recorded holder, cannot take away from the clear legislative requirement to provide notice.

[58] As a "person", Bralorne was required to give notice to the Landowners before beginning mining activity on the Lands. It was required to use the prescribed form. The prescribed form does not contemplate identification of the person proposing to do the mining activity as an owner of a Crown granted claim and contains pre-printed information respecting rights and liabilities under the *MTA*, that I have found on the language of the *MTA* do not apply to the owners of Crown granted minerals. Using the prescribed form containing inaccurate information for the situation cannot attorn the notice provider to legislative requirements that do not in their own words apply.

CONCLUSION

[59] I find that the *MTA* does not give the Board jurisdiction to resolve this dispute between the surface owners of land and the owners of a Crown granted mineral claim

with respect to the mineral owner's use of the surface for the exploration, development or production of the minerals owned. If it was the legislature's intent that the owners of Crown granted mineral claims be brought under the auspices of the dispute resolution provisions of the *MTA*, I find that the language of the *MTA* simply does not support that intent.

[60] The Board does not have jurisdiction to deal with the Landowners' application and will close its file.

DATED: May 4, 2022

FOR THE BOARD

_____
Cheryl Vickers, Member

APPENDIX "A"

Excerpt from *Mineral Tenure Act*, R.S.B.C 1979, c. 292

Right of entry on private land and compensation

19 (1) A person must not begin a mining activity unless

(a) the person first serves notice, in the prescribed form and manner, on

(i) the owner, other than the government, of every surface area,

(ii) the holder of a lease of Crown land under section 11 of the *Land Act* granting the holder exclusive surface rights to the leased land, and

(iii) the holder, under Part 5 of the *Land Act*, of a disposition of Crown land,on which the person intends to work or intends to utilize a right of entry for that purpose, and

(b) the prescribed period has elapsed from the date that notice was served under paragraph (a).

(1.1) The chief gold commissioner, in the prescribed circumstances, may exempt a person from the requirements of subsection (1).

(2) A free miner or recorded holder, or any person acting under or with the authority of a free miner or recorded holder, is liable to compensate the owner of a surface area for loss or damage caused by the entry, occupation or use of that area or right of way by or on behalf of the free miner or recorded holder for location, exploration and development, or production of minerals or placer minerals.

(3) On receipt by the chief gold commissioner of an application from a free miner, recorded holder, owner or other person who, in the opinion of the chief gold commissioner, has a material interest in the surface, the chief gold commissioner must use his or her best efforts to settle issues in dispute between them arising from rights acquired under this Act in respect of entry, taking of right of way, use or occupation, security, rent or compensation.

(4) If the chief gold commissioner is unable to settle the dispute to the satisfaction of the parties to the dispute, the Surface Rights Board under the *Petroleum and Natural Gas Act* has, on application by a party to the dispute, authority to settle the issues in dispute and, for this purpose, Part 17 of the *Petroleum and Natural Gas Act* applies.

(5) In an arbitration under subsection (4) involving a conflict between rights acquired under this Act and rights acquired under the *Land Act*, the Surface Rights Board must take into account which of the rights was applied for first and, unless injustice would result, must give the holder of those rights due priority in its consideration of the dispute between the parties.

(6) A copy of an order made by the Surface Rights Board under subsection (4) may be filed at any time in a Supreme Court registry and enforced as if it were an order of the court.
(7) If an owner of private land opposes entry on the land by a recorded holder on the grounds that the intended activity would obstruct or interfere with an existing operation or activity on the land or with the construction or maintenance of a building, structure, improvement or work on the land, the Surface Rights Board must determine the impact of the intended entry and must determine which parts of the land would be affected by that entry.

(8) If, under subsection (7), the Surface Rights Board determines that it is not possible to enter the land or a part of it without obstruction or interference, in addition to any other order it makes, the board must make an order

(a)specifying conditions of entry that will minimize the obstruction to or interference with the existing circumstances of the land, and
(b)specifying compensation for obstruction to or interference with enjoyment of the land.

(9) Without limiting the factors that the board may consider in making a decision under this section, in making a determination under subsections (7) and (8) the board must take into account the extent of the obstruction or interference with respect to the following:

(a)land occupied by a building;
(b)the curtilage of a dwelling house;
(c)orchard land;
(d)land under cultivation.