

File No.: 2209

Board Order No.: 2209-1

February 20, 2025

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

THE SOUTH EAST $\frac{1}{4}$ SECTION 13 TOWNSHIP 19 RANGE 18 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT; THE NORTH EAST $\frac{1}{4}$ SECTION 12 TOWNSHIP 19 RANGE WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT; THAT PART SOUTH $\frac{1}{2}$ OF THE SOUTH WEST $\frac{1}{4}$ SECTION 13 WHICH IS NOT INCLUDED WITHIN THE LIMIT OF MINING LOT 1496 KAMLOOPS DIVISION YALE DISTRICT TOWNSHIP 19 RANGE 18 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT EXCEPT PLAN 41962; THE NORTH WEST $\frac{1}{4}$ SECTION 7 TOWNSHIP 19 RANGE 17 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT; LOT 4 SECTION 18 TOWNSHIP 19 RANGE 17 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT PLAN EPP73338; THE NORTHWEST $\frac{1}{4}$ SECTION 12 TOWNSHIP 19 RANGE 18 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT; THE EAST $\frac{1}{2}$ OF THE SOUTH WEST $\frac{1}{4}$ SECTION 12 TOWNSHIP 19 RANGE 18 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT; THE SOUTH EAST $\frac{1}{4}$ SECTION 12 TOWNSHIP 19 RANGE 18 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT; THE SOUTH WEST $\frac{1}{4}$ OF SECTION 7 TOWNSHIP 19 RANGE 17 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT EXCEPT PARCEL A (DD243863F) OF LEGAL SUBDIVISION 3; THE NORTH $\frac{1}{2}$ OF SECTION 1 TOWNSHIP 19 RANGE 18 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT (The "Lands")

BETWEEN:

TYMBAL RESOURCES LTD

(APPLICANT)

AND:

KGHM AJAX MINING INC. and SUGARLOAF RANCHES LIMITED

(RESPONDENTS)

BOARD ORDER

Heard: by written submissions closing December 20, 2024

Appearances: Sammy Cheng, for the Applicant
Sharon Singh, for the Respondents

I. INTRODUCTION

1. The dispute arises under British Columbia's legislative framework governing subsurface resource extraction, specifically the *Petroleum and Natural Gas Act*, RSBC 1996, Ch, 361 (**PNGA**) and the *Mineral Tenure Act*, R.S.B.C. 1996, c. 292 (**MTA**).
2. KGHM Ajax Mining Inc. and Sugarloaf Ranches Limited (together here referred to as **KGHM**) are the registered owners of the Lands as legally described on the cover page of this Board Order.
3. Tymbal Resources provided notice to KGHM, as required under section 19(1) of the *MTA*, of its intention to enter the Lands to conduct various exploratory mining activities including:
 - a. Locate reported MINFILE occurrences,
 - b. Undertake preliminary mapping,
 - c. Undertake soil sampling,
 - d. Undertake a self potential (SP) survey, and/or,
 - e. Undertake a Very Low Frequency (VLF) survey.
4. The Parties have been unable to come to an agreement on the terms of such access to the Lands by Tymbal Resources. The Chief Gold Commissioner was unable to resolve the dispute.
5. Tymbal Resources has now applied to the Surface Rights Board (the **Board**) pursuant to section 19 of the *MTA* for a right of entry order for access to the Lands to conduct an IP Survey and soil sampling surveys.
6. The Board requested and has received submissions from the parties as to the jurisdiction of the Board to make a right of entry order for Tymbal Resources to carry out an IP Survey on the Lands. Tymbal Resources submits the Board has jurisdiction, while KGHM submits the Board does not have jurisdiction.

II. ISSUE

7. The sole issue for determination is whether the Board has jurisdiction to adjudicate a dispute involving the right of entry to land by a recorded holder and free miner to conduct an IP Survey.

III. STATUTORY FRAMEWORK

8. The *MTA* governs the acquisition and management of mineral claims and leases. The *MTA* governs the respective rights of recorded holders of mineral tenures and landowners with

respect to surface access for mining activities and provides a process for the resolution of disputes respecting surface access to privately owned land.

9. Section 14 of the *MTA* provides that a recorded holder may use, enter and occupy the surface of a claim or lease for the exploration and development or production of minerals or placer minerals, including the treatment of ore and concentrates, and all operations related to the exploration and development or production of minerals or placer minerals and the business of mining.
10. Section 19(1) of the *MTA* requires notice in a prescribed form be served on private landowners prior to beginning any mining activity on private land and section 19(2) makes a recorded holder liable to compensate the owner of the surface area for loss or damage caused by the entry, occupation or use of the area by the recorded holder for mining activities.
11. Section 19(3) of the *MTA* provides that a person with a material interest in the surface may apply to the Chief Gold Commissioner under section 19(3) and the Chief Gold Commissioner must use his or her best efforts to settle issue in dispute arising from rights acquired under the Act. If the Chief Gold Commissioner is unable to settle the dispute, section 19(4) of the *MTA* gives the Board the authority to do so and makes Part 17 of the *PNGA* applicable to the resolution of disputes under the *MTA*.
12. Section 144 of the *PNGA* provides that a person may not enter, occupy or use land to carry out geophysical exploration unless the person has entered into an agreement with the owner of the land authorizing the entry, occupation or use.

IV. ANALYSIS

13. The Board's jurisdiction is statutory, meaning it must be derived from explicit legislative authority. Under the *MTA*, subject to conditions, mineral rights holders are granted certain rights to access land for all operations related to the exploration and development or production of minerals or placer minerals and the business of mining. Accordingly, I find that the Board has jurisdiction to make a right of entry order for the purpose of conducting soil sampling.
14. Section 144, which is within Part 17 of the *PNGA*, expressly requires that “geophysical exploration” requires landowner agreement for access to a landowner’s property. In their submissions to the Board, neither party provided a definition of an “IP Survey.” An “IP survey,” otherwise referred to as an “Induced Polarization survey,” is a geophysical method used in mineral exploration and mine operations for mapping of disseminated sulfide bodies and other ore explorations.¹ Based on this definition, I find that an IP Survey is a type of geophysical exploration.

¹ *An Introduction To Induced Polarization (IP) Surveying*, <https://www.agiusa.com/>; *Induced Polarization (IP) What Is It? - Surface Search*: <https://surfacesearch-polarization-ip>

15. Tymbal Resources relies upon the BC Court of Appeal decision, *Christmann v. New Nandina Explorations Limited*, 2015 BCCA 243 in support of its submission that the Board has jurisdiction to adjudicate this dispute. However, in *Christmann*, the Court considered whether a surface owner has a right to insist on its consent to entry to cultivated land for the purpose of conducting exploration, development and production of minerals. The Court did not consider whether a landowner's consent was required for geophysical exploration.
16. Tymbal Resources submits that the combined workings of the *PNGA* and the *MTA* provide the Board with the jurisdiction to adjudicate this dispute. I disagree. While the *MTA* provides for access by a recorded holder to enter and occupy the surface of a claim or lease for the exploration and development or production of minerals, I find that section 144 of the *PNGA* specifically requires that in the circumstances of a geophysical exploration, the consent of a landowner is required.
17. I find that the *PNGA and MTA*, when read together, does not give the Board jurisdiction to resolve this dispute between the Tymbal Resources and KGHM with respect to Tymbal Resources' use of the surface of the Lands for conducting the IP Survey. I find that the Board cannot make a right of entry order onto lands to conduct an IP Survey absent a landowner's consent.

V. CONCLUSION

18. The Board does not have jurisdiction in regard to Tymbal Resources' application for a right of entry order to the Lands for the purpose of conducting an IP Survey.
19. The Board has jurisdiction in regard to Tymbal Resources' application for a right of entry order to the Lands for the purpose of conducting soil sampling and other proposed exploratory activities on the Lands that do not constitute geophysical exploration.
20. The Board will close its file if Tymbal Resources advises that it does not require the Board's services in regard to its application for the right of entry order for the purpose of conducting soil sampling and other proposed exploratory activities on the Lands.

DATED: February 20, 2025

FOR THE BOARD

Jacqueline Beltgens, Chair