

File No. MA 031-00

M. Orr )  
Deputy Mining and Lands Commissioner )

Friday, the 4th day  
of May, 2001.

**THE MINING ACT**

**IN THE MATTER OF**

Mining Claim S-1229840, recorded in the name of T.R.C. Management & Consulting Inc., situate in the Township of Dana, in the Sudbury Mining Division, (hereinafter referred to as the "Mining Claim");

**IN THE MATTER OF**

A Preliminary Exploration Agreement, dated the 28th day of March, 2000, between the Respondent and the Applicant;

**AND IN THE MATTER OF**

An application for the issuance of a Notice of Interest with respect to the Mining Claim, pursuant to section 105 of the **Mining Act**;

**AND IN THE MATTER OF**

Section 60 of the **Mining Act**.

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

PACIFIC NORTH WEST CAPITAL CORP.  
Applicant

- and -

T. R. C. MANAGEMENT & CONSULTING INC.  
Respondent

**ORDER**

**WHEREAS** this application was received by this tribunal on the 18th day of August, 2000;

**AND WHEREAS** this application was heard in the courtroom of this tribunal on the 13th and 14th days of March, 2001, respectively;

**UPON** hearing from the parties and reading the documentation filed;

**1. THIS TRIBUNAL ORDERS** that this application be and is hereby granted and declares that the Agreement dated March 28, 2000, is in full force and effect, despite not having an affidavit of subscribing witness attached to it.

**2. THIS TRIBUNAL FURTHER DIRECTS** the Provincial Mining Recorder to enter the Agreement on the Record, pursuant to s. 105 of the **Mining Act**, such recording to constitute notice under s. 62 of the **Mining Act**.

**3. THIS TRIBUNAL FURTHER ORDERS** that the notation "Pending Proceedings", which is recorded on the abstract of Mining Claim S-1229840, to be effective from the 18th day of August, 2000, be removed from the abstract of Mining Claim S-1229840.

**4. THIS TRIBUNAL FURTHER ORDERS** that the time during which Mining Claim S-1229840 was under pending proceedings, being the 18th day of August, 2000 to the 4th day of May 2001, a total of 260 days, be excluded in computing time within which work upon the Mining Claim is to be performed and filed.

**5. THIS TRIBUNAL FURTHER ORDERS** that the 12th day of February, 2003, be fixed as the due date for the performance and filing of prescribed assessment work on Mining Claim S-1229840, as set out in Schedule "A" attached to this Order, pursuant to subsection 67(3) of the **Mining Act** and subsequent anniversary dates are deemed to be February 12 pursuant to subsection 67(4).

**THIS TRIBUNAL FURTHER ADVISES** that pursuant to subsection 129(4) of the **Mining Act** as amended, a copy of this Order shall be forwarded by this tribunal to the Provincial Mining Recorder **WHO IS HEREBY DIRECTED** to amend the records in the Provincial Recording Office as necessary and in accordance with the aforementioned subsection 129(4).

Reasons for this Order are attached.

**DATED** this 4th day of May, 2001.

Original signed by  
M. Orr

M. Orr  
DEPUTY MINING AND LANDS COMMISSIONER



## SCHEDULE "A"

<b>Mining Claim</b>	<b>Due Date</b>	<b>New Due Date</b>
S-1229840	May 28, 2002	February 12, 2003

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Deputy Mining and Lands Commissioner )

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**AND IN THE MATTER OF**

Section 60 of the **Mining Act**.

**BETWEEN:**

PACIFIC NORTH WEST CAPITAL CORP.  
Applicant

- and -

T. R. C. MANAGEMENT & CONSULTING INC.  
Respondent

**REASONS**

**Appearances:**

Burton Tait, Counsel for the Applicant  
John Royall, Appearing on behalf of the Applicant

William Tang, Agent, on behalf of the Respondent  
Dougals Boddy, Appearing on behalf of the Respondent

## **Background**

The lands covered by Mining Claim S-1229840 (hereinafter called the "Mining Claim"), are situated in Dana Township in the Sudbury Division. The Mining Claim is 8 units or 144 hectares in size. It was recorded on May 28, 1998 in the name of T. R. C. Management & Consulting Inc. (hereinafter called "TRC"), a privately owned corporation with its office in Toronto. Mr. William Tang is the President of TRC.

Pacific North West Capital Corp. (hereinafter called "Pacific") is a mining exploration and development company with shares listed on The Canadian Venture Exchange. It is incorporated in Alberta.

TRC and Pacific entered into an agreement with respect to the Mining Claim. The agreement was not witnessed. Under subsection 60(2) of the **Mining Act**, an affidavit of a subscribing witness is required before the agreement can be entered on the record of the Mining Claim or received by a Mining Recorder. Pacific wishes to give notice of its interest in the Mining Claim by having the agreement recorded, pursuant to s.62, of the **Mining Act** which states:

*"The recording under the Act of an instrument relating to a mining claim constitutes notice of the instrument to all persons claiming an interest in the claim after the instrument is recorded even if there is a defect in the requirements of recording."*

Pacific argued that it has met its obligations under the agreement and has exercised the option thereby securing its interest. TRC argued that the obligations had not been met and that as a result, Pacific had no interest in the Mining Claim.

## **Evidence**

### **Pacific North West Capital Corp.**

On March 28, 2000, after some negotiations, TRC's agent, Mr. Douglas Boddy, was authorized to sign an agreement with Pacific. The agreement and its signing were the end product of a number of telephone conversations and faxes between TRC's agent, Boddy, and Pacific's representative, Mr. John Royall. It was Mr. Boddy who first sent a draft agreement to Mr. Royall. Mr. Royall found some of the proposed terms acceptable; others were not acceptable and he made changes accordingly. Mr. Royall faxed his version of the agreement to Mr. Boddy who executed it and sent it back to Mr. Royall. Mr. Boddy questioned the liability of TRC with respect to Pacific coming on to the property and Mr. Royall wrote an additional phrase into the agreement dealing with this issue.

The negotiations and faxing back and forth of draft agreements took place on the same day – March 28, 2000.

While Mr. Boddy kept Mr. Tang (who was located in Toronto) apprised of his talks with Pacific and with the proposed draft agreements, it was only Mr. Boddy who actually spoke to Mr. Royall. Mr. Royall executed the agreement for Pacific in Vancouver, Mr. Broddy executed the agreement for TRC while in Nova Scotia.

There are a number of terms to the agreement. Some form a basis for contention between the parties. Others do not. Also, while the agreement is headed up with the words “Preliminary Exploration Agreement”, the terminology in the document itself refers to both “Optionor” and “Optionee”. The tribunal refers to the document as the "agreement".

The first paragraph, which refers to the agreement as a “preliminary” agreement, requires a \$2000.00 non-refundable deposit from the Optionee (Pacific) upon execution of the agreement. This deposit was paid by Pacific to TRC, and this fact is not disputed by TRC. The cheque was sent to TRC at its address in Toronto. This cheque was cashed by TRC. Mr. Royall saw this action as ratification of the agreement.

The second paragraph is one wherein, among other things, the Optionor warrants that it has a 100% interest in the mining claim.

The third paragraph is disputed and reads:

*The Optionee shall have the exclusive right to make a geological and economic assessment of the potential of the Property until and including April 30, 2000.*

Through Mr. Royall, Pacific contends that this paragraph gave it the right to evaluate the claim on a geological and economic basis over a thirty day period. Pacific was exploring property in the area and saw the TRC mining claim as having some potential in terms of palladium. Mr. Royall testified that he was aware of TRC’s interest in garnets on the property through his discussions with Mr. Boddy. It was also Mr. Royall’s testimony that while he and Mr. Boddy discussed assessment work, Pacific was not interested in doing it but was interested in evaluating the property on a geological and economic basis. While Mr. Royall anticipated that only a small amount of time would be needed to make the aforementioned evaluation, it was also his evidence that despite attempts to enter the property, the boggy conditions prevented any evaluation from happening. Consequently, no geological evaluation was carried out by Pacific within the time frame of paragraph 3.

Contrary to Mr. Royall's interpretation, Mr. Tang interpreted this paragraph to mean that Pacific would carry out work for purposes of meeting the prescribed assessment work requirements under the **Mining Act**.

Pacific then decided to exercise its obligations under paragraph 4 of the agreement. Paragraph 4 says:

*The optionee may earn 100% interest in the Property subject to a 2% Net Smelter Royalty retained by the Optionor following commercial production by giving notice on or before April 30, 2000 that it intends to earn the interest by making the following payments:*

- (a) the Optionee shall pay the Optionor an additional \$3,000 on or before April 30, 2000.*
- (b) the Optionee shall pay the Optionor an additional \$10,000 on or before April 30, 2001.*
- (c) the Optionee shall pay the Optionor an additional \$15,000 on or before April 30, 2002.*

Mr. Royall notified Mr. Boddy on April 27, 2000, that Pacific would be sending the additional \$3000.00 in the form of a cheque. This cheque was sent to TRC at the same address as the aforementioned \$2000.00 cheque. It was after this cheque was sent that Mr. Royall was contacted by TRC (Mr. Tang) on May 1, 2000. Based on the telephone conversation, Mr. Royall understood that TRC was interested in garnets on the property. Mr. Royall did not consider this to be a problem as Pacific was interested in platinum gold metals and these occurred in different rock types to garnets. It was evident through subsequent telephone conversations and faxes that while Mr. Royall thought he could address some of TRC's requests (for example, TRC's interest in garnets and its ability to make use of any work done by Pacific for assessment work credit purposes), he could not address all of them. Mr. Royall even went to the extent of writing a letter to Mr. Tang, allowing TRC to mine for garnets (without precluding Pacific's interests) and offering to TRC any work done by Pacific that could be used for assessment purposes.

With the receipt of proposed amendments to the agreement (having been sent by Mr. Tang), it became evident to Mr. Royall that Mr. Tang was attempting to renegotiate the agreement. Also, based on the conversation he had with Mr. Tang regarding "assessments" and "assessment work", he felt that Mr. Tang did not understand the agreement. He also informed TRC through letters and telephone calls that responsibility for doing the prescribed assessment work lay with TRC, but that if Pacific did any work that could be applied, then TRC was welcome to use it. He insisted that Pacific never agreed to do any assessment work by the end of April, 2000.

### **Evidence of TRC**

**Mr. Douglas Boddy** is a prospector and geologist as well as a mining engineer. He works mainly in Nova Scotia. In early March, 2000, Mr. Boddy attended the Prospector's

and Developers Convention in Toronto. This put him in touch with someone from “Canalaska Ventures Limited” – a Vancouver company. He relayed information with respect to certain mining properties, the subject property being among them. He was contacted by fax on March 27, 2000, by Mr. Royall, who was acting for Pacific. In his fax, Mr. Royall described Pacific as “an associated Company of Canalaska Ventures”. Mr. Royall asked Mr. Boddy to call him in order to discuss the “Dana Twp. Property” (the subject property).

Mr. Boddy and Mr. Royall never met personally. They discussed and negotiated terms either by telephone or fax machine.

Mr. Boddy testified that Mr. Tang had asked him to carry out the prescribed assessment work for the subject property and in his discussion with Mr. Royall, Mr. Boddy indicated that the property needed assessment work performed and filed by May in order to keep it in good standing. He was later told by Mr. Royall that Pacific could not get on to the property. Knowing that the assessment work had to get done and knowing that Pacific would not be supplying any data, Mr. Boddy hired someone to do it. The tribunal notes that Mr. Tang’s documentary evidence refers to Mr. Boddy as being “engaged by the Respondent to carry out the prescribed assessment work scheduled in late April and early May.”<sup>1</sup> A reference to Mr. Boddy doing work for Mr. Tang is also found in Pacific’s documentation.<sup>2</sup> In that documentation, Mr. Tang is the recipient of electronic mail from Mr. Boddy wherein Mr. Boddy indicated that he was “prepared to do the VLF survey as soon as site conditions and weather get better.” Mr. Tang also asked Mr. Boddy at the hearing if he was “commissioned or told to do certain assessment work on the subject property....” Mr. Boddy answered “yes”. Apparently Mr. Boddy came up with the suggestion of striking a deal with a company to do the physical work and he would be able to use the data later. Mr. Boddy actually ended up going to the property later and doing the assessment work in time for filing.

Mr. Boddy’s testimony regarding his dealings with Mr. Royall did not contradict Mr. Royall’s testimony. Mr. Boddy indicated that he had no further input after the agreement was executed - aside from looking after the assessment work.

**Mr. Tang** gave evidence as an agent of TRC. He described himself as president of the company and sole proprietor. He indicated that he had authorized Mr. Boddy to “make deals” with respect to the claim. In Mr. Tang’s words, Mr. Boddy “could do anything he wanted”, with respect to dealing with the claim. He also indicated that Mr. Boddy had kept him informed of the negotiations with Pacific but that it had happened very quickly. He acknowledged receipt of Pacific’s \$2000.00 deposit and indicated that it was put into TRC’s account. As for the \$3000.00 installment, he testified that Mr. Boddy gave him notice on April 27, 2000, that the payment was coming. However, Mr. Tang testified that on April 28, 2000, he was not home, as it was Good Friday. The address for TRC is Mr. Tang’s home. Also, no one was home to receive the cheque.

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<sup>1</sup> Exhibit 3, page 4, paragraph 5

<sup>2</sup> Exhibit 4, Tab 2, page 4

Mr. Tang's evidence focused on the importance of assessment work for the claim. He was concerned that no assessment work had been done by the end of April, 2000, and made his concerns known to both Mr. Royall and Mr. Boddy.

Mr. Tang also described his efforts to have the agreement changed to show that TRC had an interest in the surface minerals on the property to a depth of 10 metres from the underside of the overburden. Mr. Tang faxed his proposed changes on May 2, 2000, to Mr. Royall. He had taken the agreement originally executed by Mr. Boddy and Mr. Royall and had written the changes on it. Paragraphs 3 and 4 were not amended. When after a number of attempts to change the document were unsuccessful, Mr. Tang threatened to return the \$3000.00 cheque, which he claimed to have received on May 2, 2000. He also indicated in subsequent correspondence that TRC would have to do the assessment work needed to keep the claim in good standing and that this was a result of Pacific having failed to comply with the agreement. Mr. Tang had a number of complaints as far as Pacific was concerned, ranging from the incomplete name for TRC used in the agreement, to the fact that the \$3000.00 cheque had been sent in an envelope with the name of Canalaska on the outside. His reasons for not having been available to receive the aforementioned cheque ranged from the fact that it had been delivered on Good Friday to the fact that his business was located in his home and no one had been around to receive it.

In cross-examination by Pacific's counsel, Mr. Tang admitted that he had not made any complaints with respect to corporate names when he authorized Mr. Boddy to sign the agreement. Nor did he have any concerns with the terms of the agreement when Mr. Boddy had contacted him for his approval on March 28th. He also admitted to being wrong when he said that April 28th was an Easter holiday – the holiday for 2000 actually falling on the April 21st. He knew the cheque was on its way and had not arranged for anyone to be available to take delivery. In response, he said it was his practice to pick up courier deliveries the next day.

## **Findings**

On the issue of whether Pacific was obligated to do assessment work for TRC's benefit, the tribunal finds that it was not so obligated. The tribunal finds that the paragraph in question reflects an intention to simply allow access to Pacific to check out the property if it so wished. No issue was made of the authority of Boddy to act as TRC's agent in the discussions and execution of the agreement. Likewise, no issue was made of the validity of the agreement itself. The evidence shows that the agents for Pacific and TRC (Messrs. Royall and Boddy) spoke about the assessment work needed to keep the claim in good standing. The tribunal finds that neither agent treated paragraph 3 as meaning that Pacific was obligated to perform prescribed assessment work. It is also a matter of evidence that Pacific was prepared to let TRC benefit from the results of any of Pacific's investigative work on the property. The tribunal finds that Pacific abided by paragraph 1 of the agreement and paid a deposit of \$2000.00 to TRC.

The tribunal also finds that paragraph 3 of the agreement should be interpreted to permit Pacific access to the property in order to investigate its geological and economic potential. Pacific decided to not access the property, but decided to give notice to TRC of its intention to earn interest in the property.

As for Mr. Tang's contention that the agreement had not been fulfilled with respect to assessment work, the tribunal is of the view that the evidence fails to support his position. Pacific's counsel objected to Mr. Tang's attempts to re-open the agreement through evidence and rightly so. The evidence is that an agreement was drawn up between Pacific and TRC and executed by both companies through their agents. TRC is obligated to abide by the bargain struck by its agent, Boddy. Mr. Tang made many references to the phrase "good faith". Good faith as the tribunal sees it means abiding by deals struck on one's behalf (especially with one's knowledge and approval), even when one later decides that the terms are not as beneficial as one expected. Mr. Tang must now hold up his end of the bargain.

As for the \$3,000.00 payment made by Pacific under paragraph 4(a) of the agreement, the tribunal accepts the evidence of Pacific's witness that the payment was made on or before the deadline of April 30, 2000. The tribunal does not accept Mr. Tang's conflicting reasons as to why no one from TRC was available to receive the payment. The tribunal is of the view that Mr. Tang was so unhappy with the discussions he had been having with Mr. Royall that he chose to make it difficult, if not impossible for Pacific to carry out its side of the bargain. He was hoping to use a situation he created to terminate the agreement. The tribunal finds that Pacific did in fact carry out its obligation under paragraph 4(a) of the agreement thereby giving the required notice and signifying its intention to acquire interest in the property.

### **Exclusion of Time**

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claim S-1229840 was pending before the tribunal, being the 18th day of August, 2000 to the 4th day of May, 2001, a total of 260 days, will be excluded in computing time within which work upon the Mining Claim is to be performed and filed.

Pursuant to subsection 67(3) of the **Mining Act**, as amended by S.O. 196, c.1, Sched.O, s. 18, February 12, 2003, is deemed to be the date for the performance and filing of the next unit of assessment work on Mining Claim S-1229840.

Pursuant to subsection 67(4) of the **Mining Act**, all subsequent anniversary dates for the Mining Claim are deemed to be February 12.

**Conclusions**

The tribunal hereby declares that the Agreement dated March 28, 2000 and executed by Pacific and TRC on the same day, is in full force and effect and that Pacific has given the notice required by paragraph 4 of the agreement of its intention to earn a 100% interest in the property by making its payment of \$3,000.00 on or before April 30, 2000.

The tribunal hereby directs TRC to accept the aforementioned payment from Pacific forthwith.

The tribunal hereby directs Pacific to pay (and TRC to accept) \$10,000.00 on or before May 21, 2001, being the second payment required under paragraph 4 of the Agreement and payable on April 30, 2001. The tribunal hereby further directs TRC to accept the third payment of \$15,000.00 due and payable on or before April 30, 2002 and upon payment of this sum, to transfer title to 100% interest in the property as required by the Agreement, subject to a 2% Net Smelter Royalty following commercial production to be retained by Pacific or its assigns.

The tribunal also declares that TRC shall have the exclusive right to mine garnet from the property, providing that Pacific is not precluded from proceeding to mine any other minerals from the property as recommended in any bankable feasibility study produced after March 28, 2000.

The tribunal also declares that Pacific is to submit any details of any work it carries out on the property and associated costs to TRC for use as assessment.

The parties may speak to the tribunal on the subject of costs.