

File No. MA 013-98

L. Kamerman  
Mining and Lands Commissioner

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Wednesday, the 25th day  
of November, 1998.

## THE MINING ACT

### IN THE MATTER OF

Mining Lands Patents KRL-13521 to 13526, both inclusive, 14115 to 14127, both inclusive, 14109, 14110, 14534 to 14543, both inclusive and 15908, located on Parcels 5976 and 5977, respectively, in the District of Kenora (Patricia Mining Division) comprising surveyed Mining Claims KRL-19096, 19097, 19107 to 19112, both inclusive, 29054, 29055, 29059 to 29076, both inclusive, 30055 to 30058, both inclusive, 31823 to 31832, both inclusive and 33200, situate in the District of Kenora (Patricia Mining Division) hereinafter referred to as the "Mining Lands";

### AND IN THE MATTER OF

An application under section 79 of the **Mining Act** in respect of the surface rights located on Werner Lake Property (hereinafter referred to as the "Surface Rights").

### B E T W E E N:

WERNER LAKE DEVELOPMENTS LTD. AND ROBERT W. HOPLEY  
Applicants

- and -

AEC WEST LTD.  
AQUAFOR BEECH LIMITED  
Respondents

(Amended November 25, 1998)

## DECLARATORY ORDER

**WHEREAS** this application was received by this tribunal on the 22nd day of April, 1998, whereupon an Order To File Documentation was issued by this tribunal on the 29th day of April, 1998;

**AND WHEREAS** the Applicants filed their documentation on the 11th day of June, 1998; the Respondents of the First Part, AEC West Ltd and Aquafor Beech Limited filed their documentation on the 20th day of July, 1998; and the Respondent of the Second Part, the Minister of Natural Resources ("MNR") filed their documentation on the 14th day of August, 1998;

**AND WHEREAS** on the 22nd and 23rd days of October, 1998, respectively, Ms. Krystine Lintell, Counsel for MNR, Mr. Rick F. Coburn, Counsel for AEC West Ltd., and Mr. James M. O'Brien, Counsel for Aquafor Beech Limited, Respondents in this matter, all filed separate Notices of Motion concerning the jurisdiction of the Commissioner to hear and determine the application, whereupon the tribunal determined that it should hear and determine the aforementioned motions prior to the actual hearing of this matter and scheduled Thursday, the 26th day of November, 1998 for such purpose;

**AND WHEREAS** on the 20th day of November, 1998, the tribunal was notified that the Applicants and the Respondent, MNR had mutually agreed that the tribunal has no jurisdiction under section 79 of the **Mining Act** with respect to MNR requested a declaratory order from the tribunal to that effect on condition that such order be made without prejudice to the rights of the Applicants to commence a proceeding for damages and/or any other relief with respect to the surface rights of the Applications against MNR in the Ontario Court (General Division), that no costs be awarded to either party with respect to the motion or application, to remove MNR as a party to this proceeding;

**AND WHEREAS** on the 24th day of November, 1998, the tribunal was notified that the Applicants and Aquafor Beech Limited had mutually agreed upon and requested a declaratory order from the tribunal to that effect that it has no jurisdiction with respect to the application as against Aquafor Beech Limited, such declaration being without prejudice to the rights of the Applicants to commence a proceeding for damages and/or any other relief with respect to the surface rights of the Applicants against Aquafor Beech Limited in the Ontario Court (General Division) and that costs be awarded to the aforementioned Respondent in the amount of \$750.00;

**AND WHEREAS** on the 25th day of November, 1998, Mr. Howard J. Alpert, Counsel for the Applicants, informed the tribunal that Holgo Limited was an insolvent company and could therefore be removed from the Style of Cause of these Proceedings;

**UPON** consideration of the various filings in this matter and after consideration of the issues raised, and upon consent of Counsel for the parties;

**1. THIS TRIBUNAL DECLARES** that it has no jurisdiction with respect to the Application of Werner Lake Developments Ltd. and Robert W. Hopley against the Respondent of the Second Part, the Minister of Natural Resources, pursuant to subsection 79(2) of the **Mining Act**, in that the Minister of Natural Resources is not a person from whom compensation for damage to surface rights can be claimed under the aforementioned subsection, not having done or performed any of the activities set out in clauses 79(2)(a) through (d) inclusive, and in particular is not an owner of the mining lands within the meaning of clause 79(1)(d), rather being arm of government empowered to issue permits for certain activities on the Mining Lands;

**2. THIS TRIBUNAL FURTHER DECLARES** that its first declaration, above, is made without prejudice to the rights of Werner Lake Developments Ltd. and Robert W. Hopley to commence a proceeding claiming damages and/or any other relief with respect to the Surface Rights of Werner Lake Developments Ltd. and Robert W. Hopley against the Respondent of the Second Part, the Minister of Natural Resources, in Ontario Court (General Division).

**3. THIS TRIBUNAL ORDERS** that its' Style of Cause in these proceedings be amended by deleting the Minister Of Natural Resources as the Respondent of the Second Part.

**4. THIS TRIBUNAL FURTHER ORDERS** that no costs shall be payable by either Werner Lake Developments Ltd. and Robert W. Hopley or the Minister of Natural Resources with respect to either the motion of the 26th day of November, 1998 or this application.

**5. THIS TRIBUNAL FURTHER ORDERS** that its' Style of Cause in these proceedings be amended by deleting Holgo Limited as one of the Respondents of the First Part.

**AND WHEREAS** the tribunal has considered the consent for a declaration with respect to its jurisdiction under subsection 79(2) concerning Aquafor Beech Limited and has determined that it cannot issue a consent declaratory order as to its jurisdiction without a hearing on the merits as to whether Aquafor Beech Limited was or was not, at the relevant dates, an agent for AEC West Ltd., whose status relative to the jurisdictional parameters set out in clauses 79(1)(a) through (d) has yet to be determined;

**6. THIS TRIBUNAL FURTHER ORDERS** that its decision concerning the declaration of its jurisdiction with respect to Aquafor Beech Limited is hereby reserved pending the hearing of the merits of the motion scheduled for November 26, 1998.

**DATED** this 25th day of November, 1998.

Original signed by

Linda Kamerman  
MINING AND LANDS COMMISSIONER