

Mining and Lands Tribunal
Tribunal des Mines et des Terres



ISSUE DATE: March 18, 2019

CASE NO.: MA 010-18

PROCEEDING COMMENCED UNDER section 175 of the *Mining Act*, R.S.O. 1990, c. M. 14, as amended

Applicants: Goldcorp Canada Ltd. and Goldcorp Inc.
Respondents: The Estate of Leopold Mascioli, Loretta Stirling, Anthony Mascioli, Daniel J. Mascioli, Elio Mascioli, T. Rutherford Langdon, Charles Bardessono, Douglas Haig Pillsworth, Eva Cameron Girardot, Harrison T. Watson, Chester Palmer O'Hara, and each of their Executors, Heirs, Successors or Assigns

Subject: Grant of Rights Over Lands in Connection With the Proper Working of a Mine

Property Address/Description: All surface rights relating to PCL 2423 SEC SEC, bearing PIN No. 65442-0241 (LT) and PCL 11677 SEC SEC SRO bearing PIN No. 65442-0240 (LT)

Municipality: Township of Deloro
MLT Case No.: MA 010-18
MLT Case Name: Goldcorp Canada Inc. v. Bardessono et al.

Heard: In writing

APPEARANCES:

Parties

Goldcorp Canada Ltd. and
Goldcorp Inc.

Michael Millis, Patricia Helmke
and Richard O'Hara, potential
heirs to the Estate of Chester
Palmer O'Hara

Counsel*/Representative

Timothy Pinos*
Tegan O'Brien*

Michael Millis

ORDER OF THE TRIBUNAL DELIVERED BY MAUREEN CARTER-WHITNEY

REASONS

Background

[1] Goldcorp Canada Ltd. and Goldcorp Inc. (“Goldcorp”) filed an application with the Mining and Lands Tribunal (“Tribunal”) on November 13, 2018, pursuant to s.175(1) of the *Mining Act* (“Act”) for a grant of rights over lands in connection with the proper working of a mine (“Application”).

[2] As set out in the Tribunal’s November 22, 2018 Order in this matter, Goldcorp owns and operates the Porcupine Mines Joint Venture, which consists of operating and non-operating mining properties in and around Timmins, Ontario. Two of the non-operating properties owned by Goldcorp in this area are the Dome Underground mine and the Dome Open Pit mine, and Goldcorp now seeks to redevelop them into a new operating mine, which will require an expanded open pit mine, processing facilities, new waste rock storage areas and a new tailings management area located in close proximity to the open pit and existing tailings pond of the closed Dome mines.

[3] While Goldcorp owns almost all of the land that it requires for this redevelopment, it does not own the surface rights for the following lands, located in the Township of Deloro, which are the subject of this Application: PCL 11677 SEC SEC SRO (PIN No. 65442-0240 (LT)), consisting of 21.79 acres; and PCL 2423 SEC SEC (PIN No. 65442-0241 (LT)), consisting of 45.83 acres (“subject lands”). Goldcorp is the recorded holder of the unpatented mining rights underlying the subject lands; the only outstanding issue is the use of the surface rights of the subject lands.

[4] Title to each parcel of the subject lands is held by the same registered co-owners as tenants in common, with the following fractional ownership interests:

- a. Estate of Leopold Mascioli
(Loretta Stirling, Anthony Mascioli,
Daniel J. Mascioli and Elio Mascioli,

executors)("Mascioli"):	3/24 th
b. Douglas Haig Pillsworth ("Pillsworth"):	6/24 th
c. Charles Bardessono ("Bardessono"):	3/24 th
d. Chester Palmer O'Hara ("O'Hara"):	4/24 th
e. T. Rutherford Langdon ("Langdon"):	4/24 th
f. Eva Cameron Girardot ("Girardot"):	2/24 th
g. Harrison T. Watson ("Watson"):	2/24 th

The Parcel Registers indicate that these interests were acquired between 1948 and 1963 and there have been no dealings with the subject lands since 1963. The owners of each of the interests were either confirmed to be deceased, or assumed to be deceased given the passage of time.

[5] Goldcorp seeks the following orders from the Tribunal under s. 175 of the Act:

- (a) an order specifying to whom and the manner in which notice of this Application is to be given;
- (b) an order vesting the following rights in Goldcorp over and with respect to the subject lands:
 - the right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or upon any land for the drainage, conveyance or passage of water (pursuant to s. 175(1)(a));
 - the right to discharge water upon any land or by, through or into any existing means of drainage whether natural or artificial (pursuant to s. 175(1)(b));
 - rights of way or passage through or over any land or water, and the right to construct, improve, maintain and use suitable roads, tramways, aerial tramways, channels, waterways, passages and other means of transit and

transportation upon, through or over any land or water, together with such rights of entry upon and use of land and water as may be necessary or convenient therefor (pursuant to s. 175(1)(f));

- the right to transmit electricity or any other kind of power, or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor (pursuant to s. 175(1)(g)); and
- the right to deposit tailings, slimes or other waste products upon any land, or to discharge the same into any water, the effects of such deposit or discharge not being injurious to life or health (pursuant to s. 175(1)(i));

(c) an order fixing the compensation for the rights granted in (b), above, and determining the manner of their payment; and

(d) in the event that this Application is opposed by any party, the costs of this Application.

[6] Following inquiries, Goldcorp was able to locate representatives of the Mascioli interests, and descendants or possible representatives of the Pillsworth, Langdon, O'Hara and Watson interests. Goldcorp was unable to identify any descendants or representatives of the Bardessono or Girardot interests.

[7] The Tribunal issued an Order on November 22, 2018 specifying to whom and the manner in which notice of this Application was to be given. The Respondents were to be notified that if they wished to participate in this Application, they were to inform the Tribunal by no later than December 31, 2018.

[8] Goldcorp notified the executors, heirs, successors, assigns or legal representatives of the Mascioli, Pillsworth, O'Hara, Langdon and Watson interests, respectively, of this Application, all by electronic mail, with proof of notice provided to the Tribunal.

[9] The O'Hara and Watson interests were given notice of this Application on November 28, 2018.

[10] The Mascioli, Pillsworth, and Langdon interests were given notice of this Application on December 4, 2018.

[11] The Tribunal ordered that the Bardessono and Girardot interests were to be notified of this Application by way of publication in the *Northern Miner* and in a newspaper in the city or town where each of the respondents last resided. For Mr. Bardessono, this was the *Hibbing Daily Tribune* in Hibbing, Minnesota, on December 2, 2018 and for Ms. Girardot, this was the *Malden Observer* in Malden, Massachusetts on December 14, 2018, with proof of publication for each filed with the Tribunal. The notices in the *Northern Miner* were published in the December 10 – 23, 2018 edition.

[12] Notice of this Application was provided by electronic mail to Scott Cousineau, Manager, Data Management Unit, Ministry of Energy, Northern Development and Mines at scott.cousineau@ontario.ca, on behalf of the Minister pursuant to s. 175(8) of the Act, on November 22, 2018. Mr. Cousineau did not respond with any concerns or objections.

[13] Proof of service as ordered and outlined above was filed with the Tribunal on January 8 and 9, 2019.

[14] No Respondents and no respective executors, heirs, successors, assigns or legal representatives of any interest in the subject lands notified the Tribunal of their intention to appear by December 31, 2018 or at all, with the exception of Michael Millis, Patricia Helmke and Richard O'Hara, who are the grandchildren and potential heirs to the Estate of Chester Palmer O'Hara ("O'Hara Descendants"), on December 21, 2018.

[15] Goldcorp informed the Tribunal that on January 4, 2019, they reached an agreement with the O'Hara Descendants whereby Goldcorp would acquire a transfer and release of any and all interest which the O'Hara Descendants might have in the subject lands.

[16] Goldcorp informed the Tribunal that it has entered into an agreement of purchase and sale to acquire the Mascioli interest.

[17] Goldcorp further informed the Tribunal that it has entered into an agreement of purchase and sale to acquire the Pillsworth interest.

[18] No persons with an interest in the subject lands have appeared in response to this Application with the exception of the O'Hara Descendants, whose possible interest has since been acquired by Goldcorp. Goldcorp has also acquired the interests of other known executors, heirs, successors, assigns or legal representatives of the co-owners of the subject lands. On this basis the Tribunal has determined, pursuant to s. 4.1 of the *Statutory Powers Procedures Act*, that a hearing is not required and the parties have agreed.

[19] Goldcorp submitted that while it owns almost all of the land that it requires for the new waste rock storage areas and a new tailings management area, it does not own the surface rights for the subject lands, which are essential for the operation of the proposed new operating mine. The Tribunal is satisfied based on Goldcorp's submissions that the subject lands are required for or in connection with the proper working of a mine and that an order under s. 175(1) of the Act should be issued.

[20] The Tribunal is further satisfied that the parties have agreed on compensation and will not interfere with those agreements. Accordingly, an order fixing the compensation for the rights granted and determining the manner of their payment, pursuant to s. 175(2) and (3), will not be required from the Tribunal, nor will an order concerning the costs of this Application. The only order now sought from the Tribunal will be an order vesting rights over and with respect to the subject lands.

[21] Regarding this order, the Tribunal notes the following provision at s. 175(6) of the Act:

Subject to any change therein or rescission thereof by subsequent order of the Tribunal, all rights and benefits created by any order of the Tribunal heretofore or hereafter made under this section run with and are appurtenant and incident to the lands thereby benefited and all burdens

and obligations created or imposed by any such order run with and are binding on all lands in respect of which they were created or imposed and such order continues valid and binding in respect of all lands thereby affected despite forfeiture thereof by the Crown or sale thereof because of unpaid taxes, it being expressly declared that the Crown or any municipality or any person acquiring such land is bound by such order in the same manner and to the same extent as the owner thereof at the time such order was made.

ORDER

[22] The Tribunal orders, pursuant to s. 175(1) of the Act, that the following surface rights requested by Goldcorp over and with respect to PCL 2423 SEC SEC, bearing PIN No. 65442-0241 (LT) and PCL 11677 SEC SEC SRO, bearing PIN No. 65442-0240 (LT) in the Township of Deloro, are granted to and vested in Goldcorp Canada Ltd. and Goldcorp Inc.:

- i. the right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or upon any land for the drainage, conveyance or passage of water;
- ii. the right to discharge water upon any land or by, through or into any existing means of drainage whether natural or artificial;
- iii. rights of way or passage through or over any land or water, and the right to construct, improve, maintain and use suitable roads, tramways, aerial tramways, channels, waterways, passages and other means of transit and transportation upon, through or over any land or water, together with such rights of entry upon and use of land and water as may be necessary or convenient therefor;
- iv. the right to transmit electricity or any other kind of power, or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor; and
- v. the right to deposit tailings, slimes or other waste products upon any land, or to discharge the same into any water, the effects of such deposit or discharge

not being injurious to life or health.

[23] This Order benefits the lands of Goldcorp listed on Schedule A and shown on the map at Schedule B, both attached to this Order, pursuant to s. 175(7) of the Act.

[24] The Tribunal directs the Applicant to file this Order in Land Registry Office No. 6 in Cochrane, Ontario and in the Mining Lands Dispositions Office of the Ministry of Energy, Northern Development and Mines in Sudbury, Ontario.

“Maureen Carter-Whitney”

MAUREEN CARTER-WHITNEY
VICE-CHAIR

Schedule A – Surface Rights Benefited and Mining Rights Benefited
Schedule B – Map

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Mining and Lands Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Schedule A**(A) Surface Rights Benefited:**

Pin Number	Parcel	Township
65394-0001	13768WT	WHITNEY
65394-0015	7290WT	WHITNEY
65394-0016	7068WT	WHITNEY
65394-0017	1017WT	WHITNEY
65394-0071	6608WT	WHITNEY
65394-0075	13923WT	WHITNEY
65398-0039	14178WT	TISDALE
65398-0040	10990WT	TISDALE
65398-0041	10946WT	TISDALE
65398-0042	14076WT	TISDALE
65398-0043	10940WT	TISDALE
65398-0044	11974WT	TISDALE
65398-0045	11454WT	TISDALE
65398-0046	12880WT	TISDALE
65398-0047	12880WT	TISDALE
65398-0048	12880WT	TISDALE
65398-0049	12880WT	TISDALE
65398-0050	10971WT	TISDALE
65398-0051	10942WT	TISDALE
65398-0052	11874WT	TISDALE
65398-0053	10949WT	TISDALE
65398-0054	12162WT	TISDALE
65398-0055	12163WT	TISDALE
65398-0056	10928WT	TISDALE
65398-0058	10943WT	TISDALE
65398-0059	10952WT	TISDALE
65398-0060	10976WT	TISDALE
65398-0061	10948WT	TISDALE
65398-0062	10963WT	TISDALE
65398-0063	10941WT	TISDALE
65398-0064	10947WT	TISDALE
65398-0065	10964WT	TISDALE
65398-0066	14067WT	TISDALE
65398-0068	14182WT	TISDALE
65398-0070	14185WT	TISDALE
65398-0071	7913WT	TISDALE
65398-0072	3230SWS	TISDALE
65398-0099	10929WT	TISDALE

65398-0108	14036WT	TISDALE
65398-0112	1589WT	TISDALE
65398-0114	1893SND	TISDALE
65398-0118	14184WT	TISDALE
65398-0120	14180WT	TISDALE
65398-0122	14179WT	TISDALE
65398-0123	7915WT	TISDALE
65398-0124	7914WT	TISDALE
65398-0126	4141SWS	TISDALE
65398-0127	4140SWS	TISDALE
65398-0128	3229SWS	TISDALE
65398-0129	3231SWS	TISDALE
65398-0130	3327SWS	TISDALE
65398-0135	14186WT	TISDALE
65398-0140	4622WT	TISDALE
65398-0153	1831WT	TISDALE
65398-0161	4675WT	TISDALE
65398-0162	3183SWS	TISDALE
65398-0163	3182SWS	TISDALE
65398-0164	3181SWS	TISDALE
65398-0165	4202SWS	TISDALE
65398-0167	1524SND	TISDALE
65398-0168	1523SND	TISDALE
65398-0169	4139SWS	TISDALE
65398-0170	4138SWS	TISDALE
65398-0171	4137SWS	TISDALE
65398-0172	8248WT	TISDALE
65398-0173	3367WT	TISDALE
65398-0174	4393WT	TISDALE
65398-0176	9201WT	TISDALE
65398-0258	14181WT	TISDALE
65398-0288	65398-0288	TISDALE
65398-0289	962SND	TISDALE
65442-0190	2481SEC	DELOORO
65442-0199	16767SEC	DELOORO
65442-0200	7504SEC	DELOORO
65442-0201	23757SEC	DELOORO
65442-0209	24247SEC	DELOORO
65442-0211	24241SEC	DELOORO
65442-0217	24245SEC	DELOORO
65442-0220	24003SEC	DELOORO
65442-0222	24246SEC	DELOORO
65442-0224	24244SEC	DELOORO

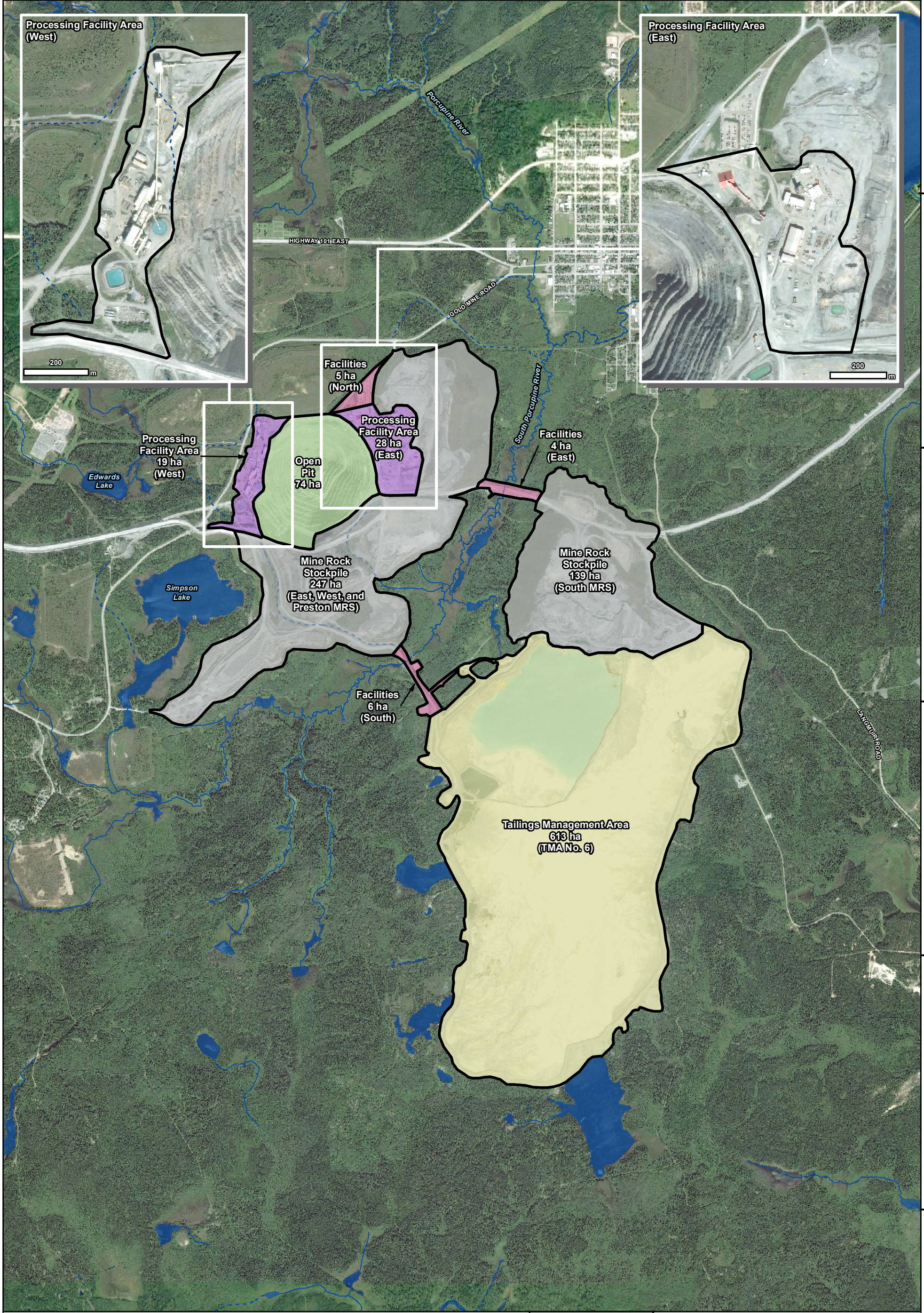
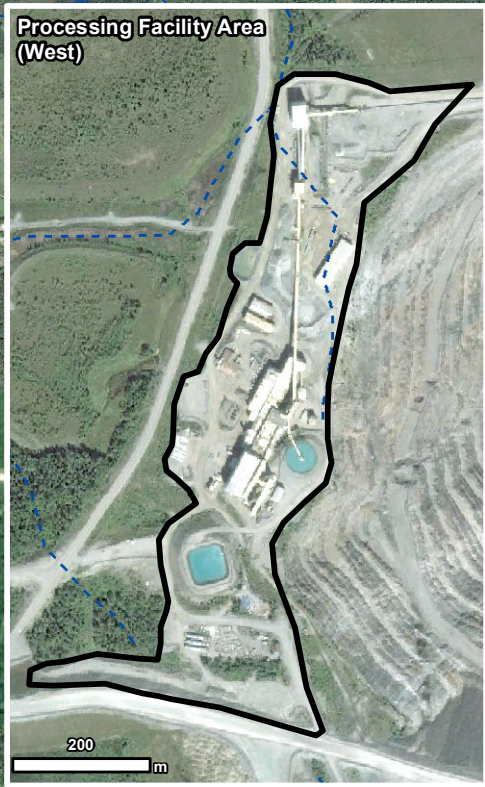
65442-0226	24242SEC	DELORO
65442-0232	18744SEC	DELORO
65442-0233	1254SEC	DELORO
65442-0234	6472SEC	DELORO
65442-0235	23498SEC	DELORO
65442-0238	24243SEC	DELORO
65442-0243	21989SEC	DELORO
65442-0244	1343LC	DELORO
65442-0245	1343LC	DELORO
65442-0246	1343LC	DELORO
65442-0247	1343LC	DELORO
65442-0248	16760SEC	DELORO
65442-0249	21227SEC	DELORO
65442-0250	21228SEC	DELORO
65442-0251	18730SEC	DELORO
65442-0252	21490SEC	DELORO
65442-0253	21269SEC	DELORO
65442-0254	6813SEC	DELORO
65442-0255	8282SEC	DELORO
65442-0256	18695SEC	DELORO
65442-0257	21226SEC	DELORO
65442-0258	21325SEC	DELORO
65442-0259	21323SEC	DELORO
65442-0260	23743SEC	DELORO
65442-0261	21324SEC	DELORO
65442-0262	23744SEC	DELORO
65442-0263	21494SEC	DELORO
65442-0264	21495SEC	DELORO
65442-0265	21496SEC	DELORO
65442-0266	18696SEC	DELORO
65442-0267	10281SEC	DELORO
65442-0269	18710SEC	DELORO
65442-0270	18717Sec	DELORO
65442-0271	18731SEC	DELORO
65442-0272	2483SEC	DELORO
65442-0273	18714SEC	DELORO
65442-0275	18715SEC	DELORO
65442-0276	2482SEC	DELORO
65442-0279	18713SEC	DELORO
65442-0280	18712SEC	DELORO
65442-0281	6532SEC	DELORO
65442-0282	21987SEC	DELORO
65442-0283	21988SEC	DELORO

65442-0287	8336SEC	DELORO
65442-0315	21742SEC	DELORO
65442-0487	21743SEC	DELORO
65442-0488	21739SEC	DELORO
65442-0489	21740SEC	DELORO
65442-0581	11451SEC	DELORO
65442-0736	24260SEC	DELORO
65442-0768	2638SEC	DELORO
65442-0770	4491SEC	DELORO
65442-0772	2639SEC	DELORO
65442-0774	4193SEC	DELORO
65442-0776	2640SEC	DELORO
65442-0794	275SEC	DELORO
65442-0796	12SEC	DELORO
65442-0806	2512SEC	DELORO
65442-0808	15188SEC	DELORO
65442-0810	15187SEC	DELORO
65442-0812	15189SEC	DELORO
65442-0814	3877SEC	DELORO
65443-0001	1785SND	SHAW
65443-0002	1663SND	SHAW
65443-0003	1343LC	SHAW
65443-0004	23247SEC	SHAW
65443-0006	1857LC	SHAW
65443-0009	10001SEC	SHAW
65443-0010	9800SEC	SHAW
65443-0011	311SEC	SHAW
65443-0016	21427SEC	SHAW
65443-0025	21425SEC	SHAW
65443-0028	6813SEC	SHAW
65443-0029	18722SEC	SHAW
65443-0030	21428SEC	SHAW
65443-0032	21426SEC	SHAW
65443-0034	7443SEC	SHAW
65443-0035	8349SEC	SHAW
65443-0036	7471SEC	SHAW
65443-0037	7480SEC	SHAW
65443-0049	18693SEC	SHAW
65443-0147	21424SEC	SHAW
65443-0201	12959SEC	SHAW
65443-0203	11884SEC	SHAW

(B) Mining Rights Benefited:

PIN	PARCEL	TOWNSHIP
65394-0017	1017WT	WHITNEY
65394-0108	7737WT	WHITNEY
65394-0114	7286SEC	WHITNEY
65398-0067	11382WT	TISDALE
65398-0069	4765WT	TISDALE
65398-0072	3230SWS	TISDALE
65398-0117	11380WT	TISDALE
65398-0119	3587WT	TISDALE
65398-0121	11383WT	TISDALE
65398-0125	427WT	TISDALE
65398-0126	4141SWS	TISDALE
65398-0127	4140SWS	TISDALE
65398-0128	3229SWS	TISDALE
65398-0129	3231SWS	TISDALE
65398-0130	3327SWS	TISDALE
65398-0133	3217WT	TISDALE
65398-0134	13429WT	TISDALE
65398-0138	4531WT	TISDALE
65398-0139	13431WT	TISDALE
65398-0153	1831WT	TISDALE
65398-0162	3183SWS	TISDALE
65398-0163	3182SWS	TISDALE
65398-0164	3181SWS	TISDALE
65398-0165	4202SWS	TISDALE
65398-0167	1524SND	TISDALE
65398-0168	1523SND	TISDALE
65398-0169	4139SWS	TISDALE
65398-0170	4138SWS	TISDALE
65398-0171	4137SWS	TISDALE
65398-0172	8248WT	TISDALE
65398-0174	4393WT	TISDALE
65398-0176	9201WT	TISDALE
65398-0257	11381WT	TISDALE
65442-0190	2481SEC	DELORO
65442-0200	65442-0200	DELORO
65442-0208	3354SEC	DELORO
65442-0210	9729SEC	DELORO
65442-0216	2243SEC	DELORO
65442-0221	3298SEC	DELORO
65442-0223	2242SEC	DELORO

65442-0225	3299SEC	DELORO
65442-0234	6472SEC	DELORO
65442-0237	3300SEC	DELORO
65442-0255	8282SEC	DELORO
65442-0267	65442-0267	DELORO
65442-0272	2483SEC	DELORO
65442-0276	2482SEC	DELORO
65442-0281	6532SEC	DELORO
65442-0574	12410SEC	DELORO
65442-0575	12411SEC	DELORO
65442-0576	12412SEC	DELORO
65442-0580	13257SEC	DELORO
65442-0672	1248SEC	DELORO
65442-0685	65442-0685	DELORO
65442-0793	275SEC	DELORO
65442-0805	2512SEC	DELORO
65442-0807	15188SEC	DELORO
65442-0809	15187SEC	DELORO
65442-0811	15189SEC	DELORO
65442-0813	3877SEC	DELORO
65443-0001	1785SND	SHAW
65443-0002	1663SND	SHAW
65443-0009	10001SEC	SHAW
65443-0010	9800SEC	SHAW
65443-0011	65443-0011	SHAW
65443-0034	7443SEC	SHAW
65443-0036	7471SEC	SHAW
65443-0037	7480SEC	SHAW



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LEGEND

- Dome Mine Facilities**
- Open Pit
 - Processing Facility Area
 - Tailings Management Area / Reclaim Water Pond
 - Mine Rock Stockpiles
 - Facilities - Roads

NOTES:
 - Aerial image extracted from Google Earth, 2016.
 - Watercourses and waterbodies have been edited to reflect conditions in the aerial imagery.



CENTURY PROJECT

Dome Mine Site Schematic

Datum: NAD83
 Projection: UTM Zone 17N



PROJECT N^o: TC170506A

FIGURE: 1

SCALE: 1:28,000

DATE: June 2018



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