



No. S E 237007
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*,
RSBC 1996, c 241**

BETWEEN:

TARANIS RESOURCES INC.

PETITIONER

AND:

**LOWELL CONSTABLE, CHIEF PERMITTING OFFICER,
MINISTRY OF ENERGY, MINES AND LOW CARBON
INNOVATION and THE HONOURABLE JOSIE OSBORNE,
MINISTER OF ENERGY, MINES AND LOW CARBON
INNOVATION**

RESPONDENTS

PETITION

ON NOTICE TO:

**Lowell Constable, Chief Permitting Officer
Ministry of Energy, Mines and Low Carbon Innovation
PO Box 9380 Stn Prov Govt
Victoria, BC V8W 9M6**

**The Honourable Josie Osborne
Minister of Energy, Mines and Low Carbon Innovation
PO Box 9380 Stn Prov Govt
Victoria, BC V8W 9M6**

**Attorney General of British Columbia
c/o Deputy Attorney General
PO Box 9282 Stn Prov Govt
Victoria, BC V8W 9J7**

This proceeding is brought for the relief set out in Part 1 below by

Taranis Resources Inc.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or,
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	The Law Courts 800 Smithe Street Vancouver, BC V6Z 2E1
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(2)	<p>The ADDRESS FOR SERVICE of the petitioner is:</p> <p>Fax number address for service (if any) of the petitioner:</p> <p>E-mail address for service (if any) of the petitioner:</p>	<p>McMillan LLP</p> <p>Barristers and Solicitors 1500 – 1055 West Georgia Street Vancouver, British Columbia V6E 4N7 Telephone: (604) 893-7639 Attention: Joan Young and Robin Junger</p> <p>N/A</p> <p><u>Joan.young@mcmillan.ca</u> and <u>robin.junger@mcmillan.ca</u></p>
(3)	<p>The name and office address of the petitioner’s lawyer is:</p>	<p>Same as above</p>

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. An Order in the nature of *mandamus* directing the Respondent Chief Permitting Officer, or his delegate, to make a decision, without further delay, regarding Taranis Resources Inc.’s (“**Taranis**”) exploration permit application¹ (the “**Application**”) submitted under the *Mines Act*, RSBC 1996, c 293 on August 30, 2022.
2. A Declaration that the following statements by the Respondent Minister of Energy, Mines and Low Carbon Innovation (the “**Minister**”) are contrary to the laws of British Columbia and Canada:
 - (a) the Minister’s public written statement on May 4, 2023 that First Nations are “the rightful owners of the land”; and
 - (b) the Minister’s written statement to Taranis (copied to the Ministry of Energy, Mines and Low Carbon Innovation (“**EMLI**”) staff) on June 30, 2023 regarding a purported “moratorium” that was declared unilaterally by the Ktunaxa Nation

¹ Also known as a Notice of Work permit application.

Council and the yagan nu?kiy (Lower Kootenay) of the Ktunaxa Nation (the "**Lower Kootenay Band**")

(the "**Minister's Statements**").

3. A Declaration the Chief Permitting Officer or his delegates must not consider the Minister's Statements when making a decision on Taranis' Application.
4. Costs.
5. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

The Parties

1. The Petitioner, Taranis, is a company duly incorporated under the laws of British Columbia with a registered and records office of Suite 1710 – 1177 West Hastings Street, Vancouver, BC, V6E 2L3.
2. Taranis is a publicly listed company that trades on the TSX Venture Exchange under the symbol "TRO" and in the United States on the OTCQB Exchange under the symbol "TNREF".

Affidavit #1 of J. Gardiner at para 4

3. The Respondent, Lowell Constable, Chief Permitting Officer (the "**Chief Permitting Officer**") and his delegates hold statutory decision-making powers respecting the issuance of exploration permits under the *Mines Act*.
4. The Respondent, the Minister, is a member of the Executive Council of British Columbia and is the Minister responsible for the *Mines Act*.

The Thor Project

5. Taranis is engaged in the exploration and development of mineral properties in an area of land in southeast British Columbia, approximately seven kilometers north of Trout Lake (the “Thor Project”).

Affidavit #1 of J. Gardiner at paras 4, 5, 7, Exhibit “C”

6. The Thor Project is made up of 27 contiguous Crown grants (the “Crown Grants”) and 20 contiguous mineral claims (the “Mineral Claims”), all of which Taranis owns a 100% interest in. Taranis has held the Crown Grants for 18 years and began acquiring the Mineral Claims in 2007. The Crown Grants provide Taranis with fee simple ownership of certain minerals and land and the Mineral Claims provide Taranis with the right to access and explore approximately 3,800 hectares of land on the Thor Project, as further explained below:

Crown Grants			
#	Crown Grant #	Date Issued	Description
1	126/79	July 21, 1896	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
2	257/84	May 10, 1897	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
3	258/84	May 10, 1897	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
4	259/84	May 10, 1897	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
5	260/84	May 10, 1897	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
6	261/84	May 10, 1897	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.

7	262/84	May 10, 1897	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
8	263/84	May 10, 1897	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
9	324/87	September 8, 1897	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
10	503/92	April 19, 1898	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
11	554/95	May 9, 1898	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
12	555/95	May 9, 1898	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
13	556/95	May 10, 1898	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
14	557/95	May 10, 1898	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
15	558/95	May 10, 1898	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
16	559/95	May 10, 1898	Granted the land and all minerals, precious and base, (except coal) to the Crown grant holder.
17	2730/146	March 12, 1903	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
18	2731/146	March 12, 1903	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
19	2732/146	March 12, 1903	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and

			possess the mineral claim's surface to the Crown grant holder.
20	3335/159	September 8, 1904	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
21	3683/172	September 16, 1905	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
22	5614/294	May 15, 1912	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
23	5615/294	May 15, 1912	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
24	5616/294	May 15, 1912	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
25	5808/324	February 15, 1913	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
26	5819/331	March 7, 1913	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.

27	5820/331	March 7, 1913	Granted all minerals, precious and base, (except coal and petroleum) and gave the right to use and possess the mineral claim's surface to the Crown grant holder.
Mineral Claims			
#	Mineral Claim #	Date Issued	Name of Mineral Tenure
1	549308	January 14, 2007	GREAT NORTHERN
2	549336	January 14, 2007	TRUE FISSURE#2
3	554832	March 21, 2007	EM GOLD ZONE- T.F.
4	573734	January 14, 2008	ODIN1
5	573737	January 14, 2008	ODIN2
6	573746	January 14, 2008	TRUE FISSURE #1 & #3
7	573781	January 15, 2008	ODIN4
8	574332	January 23, 2008	NORTHERNLIGHT
9	597899	January 23, 2009	TRUE FISSURE EXTRA-EXT
10	854397	May 11, 2011	MJOLNIR1
11	1015600	December 31, 2012	PLAMKA
12	1036110	May 13, 2015	THOR ACCESS
13	1048735	December 30, 2016	SAMBO
14	1058404	February 7, 2018	KATIE CARMACK
15	1097119	August 17, 2022	FERGUSON
16	1104100	May 3, 2023	Westem
17	1104102	May 3, 2023	EZPZ
18	1104133	May 6, 2023	Lefty
19	1105140	June 28, 2023	Snappy
20	1105473	June 29, 2023	taranis

Affidavit #1 of J. Gardiner at para 5, Exhibits "A", "B"

7. There are five historic mines located on the Thor Project that have been amalgamated within the Thor Project. These historic mines operated intermittently between approximately 1898 and 1973. Taranis acquired and amalgamated the land interests over and around these historical mines because they indicate the presence of a larger geologic hydrothermal system responsible for their deposition. John Gardiner, President and Chief Executive Officer of Taranis, assessed that there is a reasonable possibility that these known deposits are underlain by a larger deposit, which is the current focus of Taranis' exploration activity at the Thor Project and the Application.

Affidavit #1 of J. Gardiner at para 6

8. Taranis has applied for and received several exploration permits since 2006. To date, Taranis has drilled approximately 250 exploratory drill holes at the Thor Project, defining a near-surface epithermal deposit that is over two kilometers in length. Taranis has also conducted numerous studies aimed at defining the existence, location, extent and quality of the mineral resource at the Thor Project, including geological, geochemical, geophysical and metallurgical studies.

Affidavit #1 of J. Gardiner at para 8

9. Taranis has also obtained a permit for a bulk sample extraction and processing of up to 10,000 tonnes of material at the Thor Project (the "**Bulk Sample Permit**") and, since receiving its Bulk Sample Permit in 2021, has undertaken certain activities in furtherance of such extraction. Bulk sample processing, as well as the data derived from such processing, is an important exploration activity that defines the existence, location, extent and quality of a mineral resource via collecting and processing a statistically significant amount of material deemed representative of the mineral resource as a whole.

Affidavit #1 of J. Gardiner at para 9

EMLI's Previous Delays Handling Taranis' Applications

10. Much like its present Application for the Notice of Work permit, a previous Taranis' application for Taranis' Bulk Sample Permit was also the subject of delay by EMLI—taking

over two years from the date of application to the date that EMLI issued the Bulk Sample Permit to Taranis. Taranis eventually filed a complaint with the Office of the Ombudsperson. The Office of the Ombudsperson's investigation into EMLI's conduct in that earlier application, among other things, resulted EMLI agreeing to finalize its fact sheet for bulk samples and publish the fact sheet to its website.

Affidavit #1 of J. Gardiner at para 10, Exhibit "D"

The Government of British Columbia Discusses Treaty Negotiation Particulars

11. On March 16, 2022, Taranis wrote a letter to the Honourable Murray Rankin, Minister of Indigenous Relations and Reconciliation, following the signing of an agreement referred to as the *Ktunaxa Nation Rights Recognition & Core Treaty Memorandum of Understanding*.

Affidavit #1 of J. Gardiner at para 11, Exhibits "E", "F"

12. On April 12, 2022, Ms. Ashley Bodnar, Chief Negotiator, on behalf of Minister Rankin, sent Taranis a letter in response to its March 16, 2022 letter. In this letter, among other things, Ms. Bodnar confirmed that:

- (a) the "Ktunaxa Lands", as used in the Ktunaxa Nation Rights Recognition & Core Treaty Memorandum of Understanding, relates to treaty lands that are not located in the "Trout Lake area"; and
- (b) the Province would continue to honour any pre-existing tenures, whether surface or subsurface, or negotiate the transfer of fee-simple rights or Crown tenures held by third parties with a willing vendor.

Affidavit #1 of J. Gardiner at para 12, Exhibit "G"

EMLI Provides Update Regarding Notice of Work Application Processing Times

13. On the British Columbia Government's website, EMLI provided that it was working with the Association of Mineral Exploration ("**AME**") to pilot a new Notice of Work intake

batching process for new mineral exploration applications (the “**EMLI Statement**”). The EMLI Statement provided that this batching process would bring more certainty regarding when Notice of Work applications would be reviewed, when feedback would be provided, and when referral and consultation on such applications would occur.

Affidavit #1 of J. Gardiner at para 13, Exhibit “H”

14. On August 10, 2022, AME issued an announcement reiterating information regarding the batching process provided in the EMLI Statement (the “**AME Announcement**”).

Affidavit #1 of J. Gardiner at para 14, Exhibit “I”

Taranis Submits its Bulk Sample Permit Extension Application

15. On August 27, 2022, Taranis applied to EMLI to extend the term of its Bulk Sample Permit by two years.

Affidavit #1 of J. Gardiner at para 15

Taranis' Application

16. On August 30, 2022, Taranis submitted its Application for a Notice of Work permit, which is the subject of these proceedings.

17. Taranis submitted its Application to EMLI through FrontCounter BC. FrontCounter BC utilizes an online portal for applicants to submit various applications for ministry approval through, including Notice of Work Permit applications. These applications are passed onto the relevant ministry—in this case, EMLI—once FrontCounter BC staff complete an intake and completeness screening of the application and process any applicable fees.

18. The requested permit in the Application would allow Taranis to further delineate and define the mineral resource at the Thor Project by simultaneously adding definition to the existing mineral resource and drilling exploration holes to a significantly greater

depth than previously drilled. The purpose of these deep exploration holes is to test several deep geophysical anomalies that were identified in May 2022, which may relate to the suspected larger deposit that is the current focus of Taranis' exploration activity at the Thor Project, as discussed above. The entire exploration area contemplated in the Application falls within Taranis' Crown Grants and Mineral Claims.

Affidavit #1 of J. Gardiner at para 16, Exhibit "J"

19. The EMLI Statement provided that Notice of Work applications received by FrontCounter BC on or before September 1 would be assessed by September 30. The AME Announcement further provided that the batching periods in 2022 were September 1, 2022, October 1, 2022, November 1, 2022 and December 1, 2022. The Application, submitted on August 30, 2022, was not assessed by EMLI in accordance with the Notice of Work intake batching process period as identified in the EMLI Statement and AME Announcement, which should have been September 30, 2022.

Affidavit #1 of J. Gardiner at para 17

20. On November 17, 2022, Mr. Gardiner discussed, among other things, EMLI's delay in processing the Application with Johnathan Buchanan, Vice President of Policy and Advocacy at AME. After Mr. Gardiner raised EMLI's failure to comply with the AME Announcement's timeline, Mr. Buchanan told Mr. Gardiner that, among other things, he spoke to EMLI about such delay and that Taranis could expect to receive an update concerning the Application later that day.

Affidavit #1 of J. Gardiner at para 18, Exhibit "K"

21. Also on November 17, 2022, Amanda Koshlay, Mines Inspector at EMLI, called Mr. Gardiner and apologized for the delay in assessing the Application. However, Ms. Koshlay did not provide Mr. Gardiner with any reason for EMLI's delay.

Affidavit #1 of J. Gardiner at para 19

22. On November 18, 2022, Ms. Koshlay emailed Mr. Gardiner to, among other things, inform him that EMLI completed an initial technical review of the Application. Ms. Koshlay

included an “Issues Tracker” in this email, which she said needed to be addressed before initiating “Referrals” and “Indigenous Nations Consultation”.

Affidavit #1 of J. Gardiner at para 20, Exhibit “L”

23. On November 21, 2022, Mr. Gardiner replied to Ms. Koshlay’s email to, among other things, question the use of an Issues Tracker in the Application.

Affidavit #1 of J. Gardiner at para 21, Exhibit “M”

24. Also on November 21, 2022, Ms. Koshlay invited Mr. Gardiner to a video call with herself and Kathie Wagar, Regional Director at EMLI, to discuss his concerns with EMLI’s handling of the Application.

Affidavit #1 of J. Gardiner at para 22, Exhibit “M”

25. Also on November 21, 2022, Mr. Gardiner invited Mr. Buchanan to the video call scheduled with EMLI, which Mr. Buchanan replied via email, agreeing to attend. Mr. Buchanan also commented in his email to Mr. Gardiner on the Issues Tracker and EMLI’s failure to adequately notify Taranis of EMLI’s review of the Application.

Affidavit #1 of J. Gardiner at para 23, Exhibit “M”

26. On November 30, 2022, Ms. Koshlay emailed a meeting invitation and agenda to Taranis, Ms. Wagar and Mr. Buchanan. Mr. Gardiner expressed his concerns with the agenda and proposed additional items to be added to it.

Affidavit #1 of J. Gardiner at para 24, Exhibit “N”

27. Also on November 30, 2022, Ms. Koshlay emailed a “more concise” version of the Issues Tracker to Mr. Gardiner, after further consideration and receiving his comments.

Affidavit #1 of J. Gardiner at para 25, Exhibit “O”

28. On December 1, 2022, Mr. Gardiner, Thomas Gardiner, Vice President of Permitting at Taranis, Ms. Wagar, Ms. Koshlay, Michael Daigle, Senior Inspector of Mines

Permitting at EMLI, and Mr. Buchanan participated in the video call scheduled by EMLI to discuss the Application. The matters addressed in the call included:

- (a) Taranis' complaints and Mr. Buchanan's observations regarding EMLI's delays in assessing the Application;
- (b) Taranis' complaints that there were many irrelevant items included in the originally issued Issues Tracker; and
- (c) Mr. Buchanan's observation that EMLI's use of an Issues Tracker for the Application was his only known use of an Issues Tracker for a Notice of Work permit application.

Affidavit #1 of J. Gardiner at para 26

29. Following this video call, Taranis agreed to address the remaining items in the Issues Tracker to ensure EMLI's expedient review of the Application. However, Taranis continued to protest use of an Issues Tracker for a Notice of Work permit application and the lack of any specific policy updates from EMLI that publicly identified the requirement for its use for such an application.

Affidavit #1 of J. Gardiner at para 27

30. Between December 1, 2022, and December 19, 2022, Taranis addressed the items identified in the Issues Tracker.

Affidavit #1 of J. Gardiner at para 28

31. On January 3, 2023, Ms. Koshlay emailed Mr. Gardiner to confirm that the Application's form was finalized, all items in the Issues Tracker and information requirements were fulfilled and her technical review was complete. She also stated that EMLI would send the Application for "Referrals and Consultation".

Affidavit #1 of J. Gardiner at para 29, Exhibit "P"

32. On January 11, 2023, EMLI sent a letter to Taranis that, among other things, acknowledged receipt of the Application and that it was referred to other government resource agencies and Indigenous groups for consultation.

Affidavit #1 of J. Gardiner at para 30, Exhibit "Q"

33. On January 25, 2023, the Office of the Premier announced that a new conservancy located in southeastern British Columbia near Revelstoke had been established (the "**Incomappleux Conservancy**"). The Incomappleux Conservancy spanned more than 58,000 hectares in size and comes within 1.5 kilometers of the Thor Project at its closest point.

Affidavit #1 of J. Gardiner at para 31, Exhibit "R"

34. On March 13, 2023, Mr. Gardiner emailed Ms. Koshlay to ask if EMLI had all comments back on the Application and when it could expect a permit to be issued for the Application. Mr. Gardiner also stated that Taranis needed the permit before closing a company financing.

Affidavit #1 of J. Gardiner at para 32, Exhibit "S"

35. Also on March 13, 2023, Ms. Koshlay responded to Mr. Gardiner's email, stating that, among other things, EMLI had been very busy with a lot of Notice of Work permit applications and consultation on the Thor Project was "a bit quiet". Ms. Koshlay stated that EMLI was expecting more comments from the Ktunaxa Nation Council.

Affidavit #1 of J. Gardiner at para 33, Exhibit "S"

36. Also on March 13, 2023, Mr. Gardiner responded to Ms. Koshlay's email. Among other things, he asked her what the expected timeline was for receiving comments back from the Ktunaxa Nation Council and stated that Taranis could not close a company financing until the Application was approved. Ms. Koshlay never answered this question.

Affidavit #1 of J. Gardiner at para 34, Exhibit "T"

37. On March 17, 2023, the Lower Kootenay Band sent a letter to EMLI, expressing its “non-support” for the Application (the “**Ktunaxa March 2023 Letter**”). Among other things, the Ktunaxa March 2023 Letter included the following statements:

(a) “We write on behalf of yagan nuʔkiy (Lower Kootenay) of the Ktunaxa Nation to inform the Province that we do not support the Thor mineral exploration permit.”

(b) “yagan nuʔkiy does not support a mining operation, or restarting of an existing operation, in this area and feel [sic] it is irresponsible to allow exploration to occur where there is certainty that yagan nuʔkiy will not provide consent to a mine development at this time.

yagan nuʔkiy also has the full support of the Ktunaxa Nation Council (KNC) Lands and Resource Council (LRC) who fully support this letter of non-support from yagan nuʔkiy Chief and Council.”

(c) “Any impacts to the Ktunaxa ʔaqɫsmaknik activities described above is an infringement on Ktunaxa Rights. The UN Declaration on the Rights of Indigenous Peoples, as confirmed and implemented through the Declaration on the Rights of Indigenous Peoples Act, requires the Province to respect Ktunaxa inherent governance authority and rights and seek our free, prior and informed consent prior to the authorization of any use of lands and resources in ʔamakʔis Ktunaxa.

By this letter, we put the Province on notice that yagan nuʔkiy and KNC do not consent to further activities in this area. This is a necessary first step to developing a genuinely Ktunaxa-lead [sic], consent-based land and resource management approach in this vital area. We call on you to uphold the honour of the Crown and fulfill your legal and constitutional duties to our Nation and enforce and support our decision in this crucial area.”

Affidavit #1 of J. Gardiner at para 35, Exhibit “U”

38. EMLI did not provide Taranis a copy of the Ktunaxa March 2023 Letter when EMLI received it.

39. On March 23, 2023, Mr. Gardiner emailed Ms. Koshlay to, among other things, state that he understood that the Ktunaxa Nation was preparing a letter of objection and requested that EMLI forwarded the letter to him as soon as possible so that Taranis could address any objections.

Affidavit #1 of J. Gardiner at para 36, Exhibit "V"

40. Also on March 23, 2023, Ms. Koshlay responded to Mr. Gardiner to inform him that a meeting between the Ktunaxa Nation Council and the Lower Kootenay Band Council (the topic of which was the Thor Project), originally planned for March 23, 2023, had been rescheduled for April 27, 2023. Ms. Koshlay stated that EMLI was working better to understand what the Indigenous groups' concerns were, and that she and Warren Neuvonen, Senior Advisor, Indigenous Relations at EMLI, would keep Mr. Gardiner informed through this process. Ms. Koshlay did not inform Mr. Gardiner of the Ktunaxa March 2023 Letter, nor of any comments made in it.

Affidavit #1 of J. Gardiner at paras 37-38, Exhibit "V"

41. Also on March 23, 2023, Mr. Gardiner emailed Ms. Koshlay and asked if she was going to allow the Ktunaxa Nation to extend the consultation for another month, if such extension was consistent with EMLI's policies and if EMLI was going to enforce a timely response from the Ktunaxa Nation. Mr. Gardiner stated that this delay could be perceived as an intentional obstruction, and asked Ms. Koshlay to tell him how she intended to handle it.

Affidavit #1 of J. Gardiner at para 39, Exhibit "V"

42. On March 27, 2023, Ms. Wagar emailed Mr. Gardiner, stating that EMLI had "just received" the Ktunaxa March 2023 Letter and that she would put a list of the concerns from the Ktunaxa March 2023 Letter together for him. Mr. Gardiner never received such list.

Affidavit #1 of J. Gardiner at paras 40-41, Exhibit "V"

43. On April 1, 2023, Mr. Gardiner emailed Mr. Neuvonen to, among other things:
- (a) request a copy of the Ktunaxa March 2023 Letter;
 - (b) tell Mr. Neuvonen that Taranis needed to respond to the concerns in the Ktunaxa March 2023 Letter immediately;
 - (c) tell Mr. Neuvonen that if EMLI was aware of any significant obstacle to Taranis obtaining the Notice of Work permit in a timely manner, Taranis needed to be informed immediately; and
 - (d) tell Mr. Neuvonen that the delays associated with the Application were material to the ongoing efforts at the Thor Project and of serious concern to Taranis.

Affidavit #1 of J. Gardiner at para 42, Exhibit "W"

44. On April 3, 2023, Mr. Neuvonen called Mr. Gardiner, telling him that the Ktunaxa Nation did not approve of exploration at the Thor Project because the Ktunaxa Nation would never approve of a mine. Mr. Gardiner once again requested a copy of the Ktunaxa March 2023 Letter from Mr. Neuvonen.

Affidavit #1 of J. Gardiner at para 43

45. Also on April 3, 2023, Mr. Gardiner emailed Mr. Neuvonen to, among other things, request for a third time a copy of the Ktunaxa March 2023 Letter.

Affidavit #1 of J. Gardiner at para 44, Exhibit "X"

46. Also on April 3, 2023, Mr. Neuvonen responded, stating that he had asked the Lower Kootenay Band if he could share the Ktunaxa March 2023 Letter. Mr. Neuvonen also stated that he understood that Taranis' ability to address the Ktunaxa March 2023 Letter as soon as possible was critical, as well as to get clarity on next steps for the Thor Project.

Affidavit #1 of J. Gardiner at para 45, Exhibit "Y"

47. On April 6, 2023, Mr. Neuvonen provided a copy of the Ktunaxa March 2023 Letter to Taranis.

Affidavit #1 of J. Gardiner at para 46

48. Also on April 6, 2023, Mr. Gardiner called Mr. Neuvonen. On this phone call, Mr. Gardiner told Mr. Neuvonen that Taranis had already addressed the concerns in the Ktunaxa March 2023 Letter via Taranis' management plans and third-party Qualified Persons consultants' reports previously submitted to EMLI for the Bulk Sample Permit application. Mr. Gardiner explained that these reports had been used in prior exploration permitting and they were still valid for the Thor Project. Mr. Gardiner also voiced his concern that it was not the Ktunaxa Nation's decision as to whether exploration or mining occurs at the Thor Project. Mr. Neuvonen:

- (a) agreed that the Ktunaxa March 2023 Letter would likely delay the Notice of Work permit;
- (b) stated that the best thing Taranis could do would be to get its comments on paper so that Mr. Neuvonen could bring them to Ms. Wagar; and
- (c) stated that Ms. Wagar would have to make the call on this one and that there would likely be communication with and direction from EMLI's executive.

Affidavit #1 of J. Gardiner at para 47

The Minister's Statement on the "Rightful Owners of the Land"

49. On May 4, 2023, the Minister released a statement in celebration of Mining Month (the "**Minister's Statement**").

Affidavit #1 of J. Gardiner at para 48, Exhibit "Z"

50. In the Minister's Statement, the Minister stated that:

“First Nations have a crucial role in British Columbia's mining sector. Our approach to natural-resource development must be done in collaboration and partnership with *the rightful owners of the land*. ...” [emphasis added]

Affidavit #1 of J. Gardiner, Exhibit “Z”

Taranis' Efforts to Engage the Minister and the Premier

51. On May 10, 2023, Taranis sent a letter to the Minister regarding the Ktunaxa March 2023 Letter and EMLI's ongoing delay in processing the Application. In this letter, Taranis stated, among other things:

(a) “[t]he Ktunaxa Nation's opposition to the present Notice of Work Application is not itself a basis upon which the Crown can deny or unduly delay issuing the corresponding notice of work permit.... As the Supreme Court of Canada stated in *Haida Nation v British Columbia*, 2004 SCC 73...:

[48] This process does not give Aboriginal groups a veto over what can be done with land.... Rather, what is required is a process of balancing interests, of give and take.”

(b) “...Taranis filed its Notice of Work Application over seven months ago and it has been subject to numerous delays... [i]t is now time for the Crown to bring an end to this process and issue the Notice of Work Permit. As Justice Binnie stated in the Supreme Court of Canada's decision in *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 '[s]omebody has to bring consultation to an end and to weigh up the respective interests...' [emphasis in original]”

(c) “...we wish to put the Crown on notice that these undue delays have had – and continue to have – adverse financial impacts on Taranis.... In this regard, we encourage you to seek a briefing on the Office of the Ombudsperson's involvement with Taranis' previous 10,000 tonne bulk sample permit application, as this is unfortunately not the first time [Taranis]

has been treated unfairly by [EMLI] in the face of competing Ktunaxa Nation interests.”

Affidavit #1 of J. Gardiner at para 49, Exhibit “AA”

52. In Taranis’ May 10, 2023, letter to the Minister, Taranis also addressed the Minister’s comment regarding the “rightful owners of the land”, stating:

“It is difficult to reconcile the reference to First Nations being ‘the rightful owners of the land’ with the Crown grants held by [Taranis], the *Mineral Tenure Act*, the *Mines Act*, existing Indigenous rights jurisprudence or the Oath taken by you as a member of the Executive Council when assuming your ministerial duties. As you know, in that Oath you affirm that you ‘will be faithful and bear true allegiance to Her Majesty the Queen of Canada, Her Heirs and Successors, according to Law’ and that you will ‘serve Her Majesty duly and faithfully, and to the best of [your] ability fulfill the responsibilities and trust granted to [you] as a Member of the Executive Council of British Columbia.’ Those responsibilities include responsibility for the *Mines Act*, the *Mineral Tenure Act* and two dozen other laws.

Therefore, we respectfully request that you confirm that your statement on May 4, 2023 does not reflect the Crown’s actual position on the ownership of lands and related mineral rights in British Columbia where Aboriginal title has yet to be proven, and that you specify what steps will be taken to ensure none of the staff or statutory decision-makers within your ministry will be improperly influenced by it. If, on the other hand, the Crown stands by that statement, we respectfully ask that you clarify what policy guidance your staff has received or will receive in respect of that view as they complete their statutory decision-making duties.”

Affidavit #1 of J. Gardiner, Exhibit “AA”

53. On May 31, 2023, after the Minister failed to reply to its previous letter, Taranis wrote to the Honourable David Eby, Premier of British Columbia, to advise him that

Taranis had not received a response to its May 10, 2023 letter to the Minister and to request Premier Eby ensure the matter receives due attention.

Affidavit #1 of J. Gardiner at para 50, Exhibit "AB"

54. On June 2, 2023, an official in the Office of the Premier emailed Taranis, stating that the Office of the Premier had been in contact with the Minister's office and confirmed that a response to Taranis' May 10, 2023 letter was being prepared.

Affidavit #1 of J. Gardiner at para 51, Exhibit "AC"

55. On June 7, 2023, Taranis retrieved a document package produced through a Freedom of Information request from the Government of British Columbia's website at <https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information>. This document package identifies various British Columbia Government staff members as members of "Team Incomappleux" and contained various emails involving Ms. Wagar that discussed the Incomappleux Conservancy.

Affidavit #1 of J. Gardiner at para 52, Exhibit "AD"

56. On June 19, 2023, the *Southern Incomappleux Designated Area (No Registration of Mineral or Placer Claims) Order ("OIC 365/2023")* was approved and ordered, which established the Southern Incomappleux Designated Area and prohibited registration of a mineral claim or placer claim within such area. The Southern Incomappleux Designated Area is located approximately 1.5 kilometers northwest of the Thor Project and is immediately adjacent to the Incomappleux Conservancy.

Affidavit #1 of J. Gardiner at para 53, Exhibit "AE"

57. On June 29, 2023, Taranis wrote to Premier Eby, informing him that Taranis had still not received a response to its May 10, 2023 letter. Taranis also noted that:

- (a) [t]his is deeply concerning, particularly in light of recent developments undertaken rather quietly by the provincial government to

establish a conservancy and no staking areas in the immediate vicinity of [Taranis'] mineral claims. In this regard, we note that only ten days ago, your government passed Order in Council No. 365, which provides that '[d]espite section 6.3 of the [*Mineral Tenure*] Act, a person may not register a mineral claim or a placer claim in the designated area.'...

This step, coupled with the rather quiet establishment of the Incomappleux Conservancy in January 2023 ... raises serious questions as to whether government's foot-dragging in processing Taranis' applications (both at the bulk sample stage and now this further exploration permit) is part of a broader agenda to prevent Taranis from advancing its mineral rights without proper compensation for expropriation. This is particularly concerning when the person managing the Thor Project exploration permit application for [EMLI] appears (from records obtain through [a Freedom of Information] request) to be the [M]inistry's key representative in a group of government officials and select environmental and Indigenous representatives that such records indicate is referred to as 'Team Incomappleux'. The same person is also referred to in the government's June 20, 2023 Mineral Titles News, Notices and Announcements as the [M]inistry person to contact on the 'Temporary Moratorium on New Claim Registration in the Southern Incomappleux Area'."

Affidavit #1 of J. Gardiner at para 54, Exhibit "AF"

58. On June 30, 2023, the Minister responded to Taranis' May 10, 2023 letter, stating that "consultation with Indigenous Nations has been complex and ... the Ktunaxa-declared moratorium has added uncertainty for proponents." The Minister stated that "the Thor file was being actively adjudicated by the Statutory Decision Maker", but did not provide further specifics concerning when Taranis could expect a decision on its Application.

Affidavit #1 of J. Gardiner at para 55, Exhibit "AG"

59. In the June 30, 2023 letter, the Minister did not directly answer Taranis' point that the Minister's comment regarding the "rightful owners of the land" was inconsistent with law, and she did not address Taranis' request that she tell EMLI's Statutory Decision Makers that her statement was not a statement that they should apply as a matter of law. Instead, she said the following in respect of this issue:

"...Section 35(1) of the Constitution Act, 1982 recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada. The Supreme Court of Canada has clarified that Section 35 protects rights regardless of whether they have been proven, and that the honour of the Crown requires that these rights be determined, recognized and respected.

Prior to the establishment of title, the Crown continues to manage lands and resources, but the honour of the Crown requires it to respect potential, yet unproven claims. The honour of the Crown also requires that the Province consult with and, where appropriate, accommodate potential impacts to Aboriginal interest. This is the process the Province has been engaged in with respect to the Thor project.

This approach is reflected in the Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples, in particular Principle 1. My statement, which is premised on recognition and respect for the rights of Indigenous Peoples, was intended in this spirit and in a manner consistent with Canada's constitutional framework and with the guidance from the Courts. This is not inconsistent with the rights of any particular third party, such as Taranis.

As outlined in the Draft Principles, the Province is committed to reconciliation of the pre-existence of Indigenous Peoples and their rights with the assertion of Crown sovereignty, which can be achieved in a variety of ways, including the negotiation of treaties, agreements and other constructive arrangements. In such negotiations, substantive engagement will continue to occur with stakeholders, including those with overlapping

surface and subsurface rights. These processes, which are critical to achieving lasting reconciliation and certainty for all, are nonetheless separate from consultation on land and resources decisions, such as Taranis's Notice of Work application. That consultation process is focused on understanding and, where appropriate, accommodating adverse impacts to Indigenous interests, based on applicable legal principles. Consultation is not a rights-determining process."

Affidavit #1 of J. Gardiner at para 56, Exhibits "AG", "AH"

60. On July 7, 2023, Glen Hendrickson, Senior Inspector of Mines Permitting at EMLI, emailed Mr. Gardiner with an approval on Taranis' application to extend the Bulk Sample Permit by a period of two years.

Affidavit #1 of J. Gardiner at para 57, Exhibit "AI"

61. On July 25, 2023, nearly a month since the Minister's last letter to Taranis, Taranis again wrote to the Minister, stating that it had still not heard anything from EMLI regarding the Application. In this letter, Taranis also asked the following questions in relation to the Minister's June 30, 2023 letter:

(a) "[w]hat 'Ktunaxa-declared moratorium' are you referring to, and do you accept that the Ktunaxa Nation has no legal ability whatsoever to declare a moratorium binding on government?"

(b) "[w]ho exactly is the 'Statutory Decision Maker' you refer to? i.e., what official is making the decision in this case?"; and

(c) "[w]hen you say that the decision is being 'actively adjudicated', does that mean Indigenous consultation has concluded and the decision maker is presently in the decision-making phase?"

Affidavit #1 of J. Gardiner at paras 58-59, Exhibit "AJ"

62. Also on July 25, 2023 Taranis wrote to Premier Eby, stating, among other things:

- (a) [i]mportantly, we note that Minister's Osborne's June 30, 2023 letter did not address the concerns we had expressed to you, on behalf of Taranis, regarding Order in Council 365 (which created a mineral reserve near our client's project). ...; and
- (b) ... [w]e therefore respectfully ask that you direct Minister Osborne to address the questions set out in the attached letter, and to advise what, if any, role the establishment of the Incomappleux Conservancy, "Team Incomappleux" and Order in Council 365 have played in respect of the permitting delays that Taranis is experiencing.

Affidavit #1 of J. Gardiner at paras 60-61, Exhibit "AK"

63. As of the date of filing this Petition, Taranis:

- (a) has not received a response to its July 25, 2023 letter to the Minister;
- (b) has not received a response to its July 25, 2023 letter to Premier Eby; and
- (c) has not received a decision from EMLI on its Application, submitted on August 30, 2022.

Affidavit #1 of J. Gardiner at para 62

Part 3: LEGAL BASIS

1. Indigenous groups do not have a veto over governmental decisions that could impact the exercise of asserted but unproven Aboriginal rights—including Aboriginal title—recognized under section 35 of the *Constitution Act, 1982*.

Haida Nation v British Columbia (Minister of Forests), 2004 SCC 73
[*Haida*]; *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54

2. Instead, such rights are subject to the Supreme Court of Canada's "duty to consult" doctrine as established in *Haida*, which requires the government to discuss potential

impacts of a permitting decision on the exercise of an Indigenous group's asserted rights, explore potential accommodation measures to mitigate such impacts and ultimately make decisions that reasonably balance between Indigenous and non-Indigenous interests.

Haida, supra at para 50

3. There is no legal basis under the laws of British Columbia or Canada to hold First Nations as the "rightful owners of the land". It is the government that holds legal title to the land following the Crown's assertion of sovereignty. Even where Aboriginal title can be proven to exist it is considered a burden on the Crown's title and does not undermine the Crown sovereignty or underlying title to land.

Delgamuukw v British Columbia, [1997] 3 SCR 1010, 66 BCLR (3d) 285;

Haida, supra

4. British Columbia's *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples* is not the law of British Columbia or Canada. Further, it cannot and does not modify section 35 jurisprudence on Aboriginal rights developed by the Supreme Court of Canada or courts in British Columbia.

5. While statutory decision makers may take notice of ministerial guidance and statements of policy, they must not do so in cases where such policy or guidance is contrary to law.

Minhas v British Columbia (Superintendent of Motor Vehicles), 2017 BCCA 304 at para 21, citing *Halfway River First Nation v British Columbia (Ministry of Forests)*, 1999 BCCA 470 at para 62, 64 BCLR (3d); *Chandler v British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 300 at para 29; *Intemorth Ltd v Canada (National Revenue)*, 2019 FC 574 at para 37, 2019 CF 574

6. Declarations can be used as a supervisory remedy in administrative law to ensure the legality of legislative or administrative action.

7. The British Columbia Supreme Court has inherent jurisdiction to make declaratory orders.

676083 BC Ltd v Revolution Resource Recovery Inc, 2021 BCCA 85 at
para 65

8. A declaration is appropriate when:

- (a) the court has jurisdiction to hear the issue;
- (b) the dispute before the court is real and not theoretical;
- (c) the party raising the issue has a genuine interest in its resolution;
- (d) responding party has an interest in opposing the declaration being sought;
and
- (e) the declaration will be of practical utility, in that the declaration will settle a live controversy between the parties or clarify the rights of the parties, at least to some extent.

Interfor Corporation v Mackenzie Sawmill Ltd., 2022 BCCA 228 at para
25, citing *SA v Metro Vancouver Housing Corp*, 2019 SCC 4 at para 60;
Daniels v Canada (Minister of Indian Affairs and Northern Development,
2016 SCC 12 at para 11

9. The Respondent, the Chief Permitting Officer, has authority under the *Mines Act* to issue *Mines Act* permits, which includes Notice of Work permits. The Minister has the power to exercise all the powers that the Chief Permitting Officer has under the *Mines Act* with respect to issuing permits if the Minister considers it to be necessary in the public interest.

Mines Act, RSBC 1996, c 293, ss 10(3), 11

10. Where a statutory decision maker refuses to make a decision or unduly delays a decision under applicable law, an aggrieved party has the right to petition the Court for

an order in the nature of *mandamus*, to order the statutory decision maker to make the decision in question.

Wu v Vancouver (City), 2019 BCCA 23 at paras 40-41, 47; *Dass v Canada (Minister of Employment & Immigration)*, [1996] FC 410 at para 17, 193 NR 309; *Representative for Children & Youth v British Columbia (Office of the Premier)*, 2010 BCSC 697 at para 111; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 149

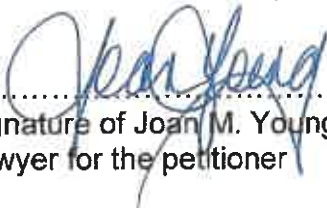
- 11. *Mines Act*, RSBC 1996, c 293.
- 12. *Mineral Tenure Act*, RSBC 1996, c 292.
- 13. *Judicial Review Procedure Act*, RSBC 1996, c 241.
- 14. Rules 14-1, 16-1 and 20-4 of *Supreme Court Civil Rules*,
- 15. The inherent jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of J. Gardiner, sworn October 11, 2023; and
- 2. Such further and other materials as this Honourable Court may permit.

The petitioner estimates that the hearing of the petition will take two days.

Date: October 13, 2023

.....

 Signature of Joan M. Young
 Lawyer for the petitioner

<p><i>To be completed by the court only:</i></p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs of Part 1 of this notice of application</p>
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with the following variations and additional terms:

.....
.....
.....
.....

Date:

Signature of Judge Master