



The helicopter protocol: northern claim staking

BY RICHARD BUTLER

Crown lands located near Koper Lake in Ontario's Ring of Fire opened for staking on June 17, 2011. Noront Resources hired two men to stake the Crown land on foot.

In contrast, KWG Resources employed one recording licensee, two helicopters and more than a dozen mining claim blazers.

The "24-Hour Rule" applied, meaning staking (on land open less than 24 hours) had to start at the northeast claim post, the recording licensee had to take down the start and stop times, and he or she had to inscribe and erect all posts. At 9 a.m., KWG's recording licensee, Ken Pye, inscribed the start time on the first claim post, erected the post in the ground, and proceeded to a waiting helicopter. Pye strapped himself to the side of the helicopter, which lifted off and headed clockwise along the mining claim boundary. The helicopter hovered at predetermined locations while Pye dropped claim posts from a height of 10 to 30 metres, depending on surrounding tree tops, with the sharpened posts impaling the muskeg and sticking upright.

On the ground, KWG's team began "blazing" the claim boundaries (marking trees and attaching flagging tape) after the 9 a.m. start time. Each blazer started from a different point on the claim boundary and blazed a section of the claim. The entire KWG team travelled in a clockwise direction on foot. Pye completed the claim where he started, the first post, inscribing the finish time.

Two helicopters picked up the KWG team and repositioned it around the next mining claim. KWG completed three 16-unit mining claims using the "Helicopter Protocol" before the grounded Noront team was able to complete its first two-unit claim.

Noront launched a dispute of KWG's mining claims, heard before Dale Messenger, the Ontario mining recorder, in Sudbury on April 24 and 25, 2014. Noront argued that the mining claims should be disqualified on the basis that the "Helicopter Protocol" did not comply with the *Mining Act*.

The setting: Koper Lake, Ring of Fire, northern Ontario

The Ring of Fire is a region of significant chromite, copper and nickel deposits worth an estimated \$60 billion or more in central and northern Ontario, around 400 kilometres north-east of Thunder Bay.

Koper Lake rests within the most active region of the Ring of Fire, meaning that the mining claims at issue are important both for their mineral content and strategic placement of infrastructure (future road or rail links).

KWG was one of the earliest participants in Ring of Fire exploration, currently delineating the Black Horse and Big Daddy chromite deposits.

Noront is one of the larger mining companies active in the Ring of Fire, pursuing the Eagle's Nest and Black Bird chromite projects.

The Koper Lake claims at issue lie between the Eagle's Nest and Blackbird chromite deposits to the west, and the Big Daddy deposit to the northeast. The Koper Lake claims sit near the terminus of the proposed road and rail lines into the Ring of Fire, and provide immediate float plane access.


The hearing: Noront alleges defects in staking

When Noront brought forth its dispute, the company argued that KWG's staking was illegal because Pye was not present "on the ground" during staking, and because KWG blazed the claim boundary in many places at the same time.

Messenger dismissed both arguments in his decision, *Noront Resources Ltd. vs. KWG Resources Inc.*, released on June 24, 2014. He held that having feet "on the ground" was a literal requirement of the previous version of the *Mining Act's* staking regulation. The current version, updated in August 2006, requires that the recording licensee be "in the area" at the time of staking. The mining recorder ruled that the requirement of being "in the area" is met even when hovering above the muskeg in a helicopter. The posts were properly erected when they landed upright in the muskeg.

Messenger also found that it was not fatal to KWG's claim staking to have a team simultaneously blaze the claim boundary. All team members proceeded in a clockwise direction, starting only after Pye erected the first post.

Conclusion: the challenges of claim staking in the North

It is clear that those engaged in competitive staking are now using every available means by which to save precious seconds. In remote and inaccessible environments, helicopter staking has become more and more common. The decision will help advance mineral development in remote regions, including the Ring of Fire and the Far North. 

Richard Butler and Nicole Petersen of Willms & Shier Environmental Lawyers LLP acted for the respondent and successful party KWG. The matter is currently under appeal to the Office of the Mining and Lands Commissioner. Richard Butler is an associate at Willms & Shier Environmental Lawyers LLP where he practises mining and environmental litigation and dispute resolution. He advises clients from the natural resources, mining and exploration, waste management and electricity sectors. rbutler@willmsshier.com