

**Ministry of Northern  
Development, Mines and  
Forestry**

**Ministère du  
Développement du Nord,  
des Mines et des Forêts**

**IN THE MATTER OF THE MINING ACT BEFORE THE  
PROVINCIAL MINING RECORDER**

IN THE MATTER OF:

Mining Claims of record P 4217829-833 incl. located in Base Map Areas 532861 and 531861, Porcupine Mining Division.

AND IN THE MATTER OF:

Filed only application to record mining claims 4226084, 4226085, 4225838 and 04225837 representing staking for more or less the same area of land as the mining claims of record.

AND IN THE MATTER OF:

A Dispute filed by

**MICHAEL W. PEPLINSKI**

**Disputant**

-against the mining claims of record held by-

**MACDONALD MINES EXPLORATION LTD.**

**Respondent**

WHEREAS:

A hearing was held on Tuesday, July 13, 2010 where the parties were provided opportunity to present material and make representations on their behalf. Having given due consideration to the evidence available to me,

I ORDER:

The dispute be dismissed, the filed only applications to record remain refused and that pending proceeding be removed from the record.

I ALSO ORDER:

The time for the performance of assessment work or applying and paying for lease be excluded for 872 days bringing the next due date to March 5<sup>th</sup>, 2012 and all subsequent due dates are to fall on March 5.

**AND PLEASE TAKE NOTICE:**

The parties have a right of appeal to the Mining and Lands Commissioner as provided in Section 112 of the Mining Act. The time for appeal is limited to 30 days from the date of this decision. An appeal is begun by filing the necessary documents in the office of the Mining and Lands Commissioner. Should an appeal be filed please serve the Provincial Recording Office with copies.

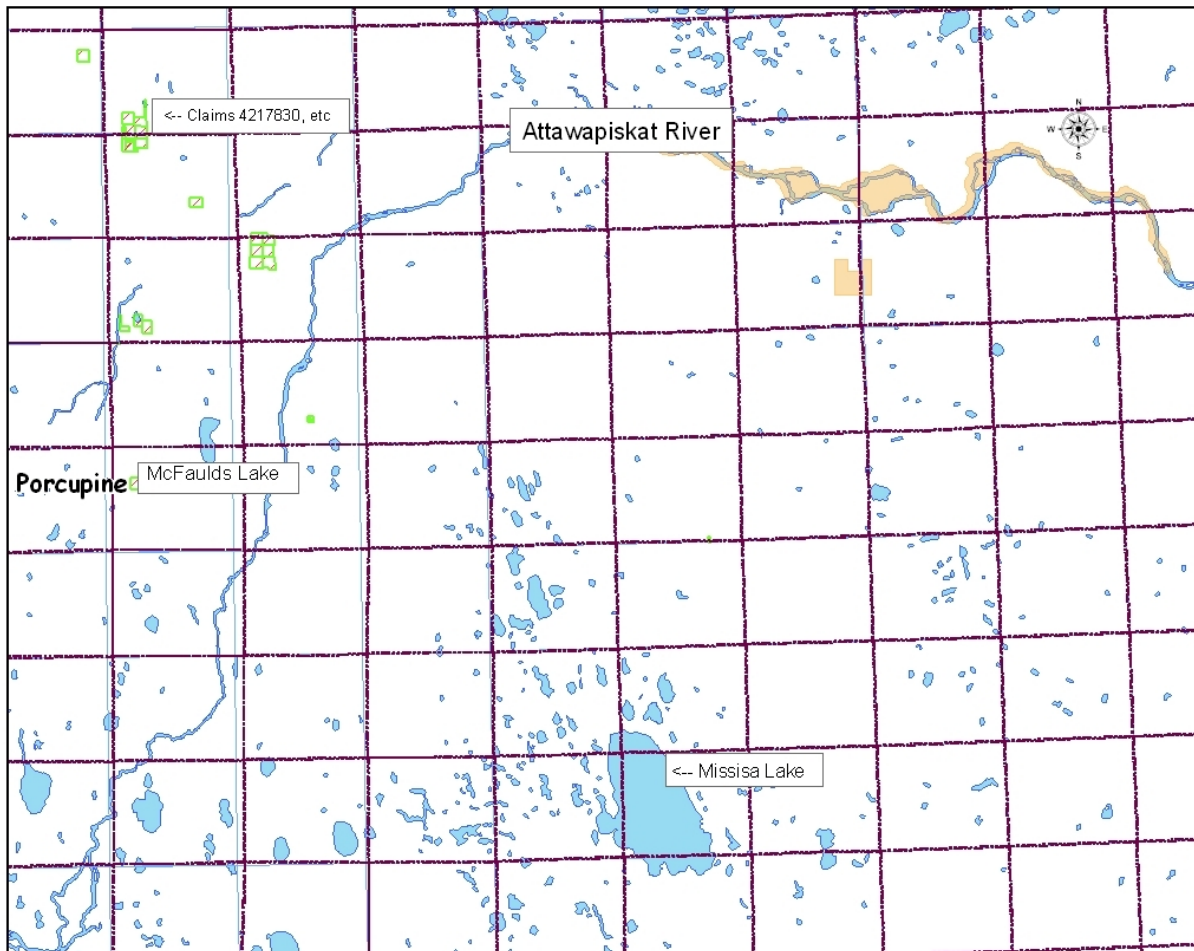
“ORIGINAL SIGNED BY ROY SPOONER”

Dated at the Provincial Recording Office  
this 19th day of July 2010

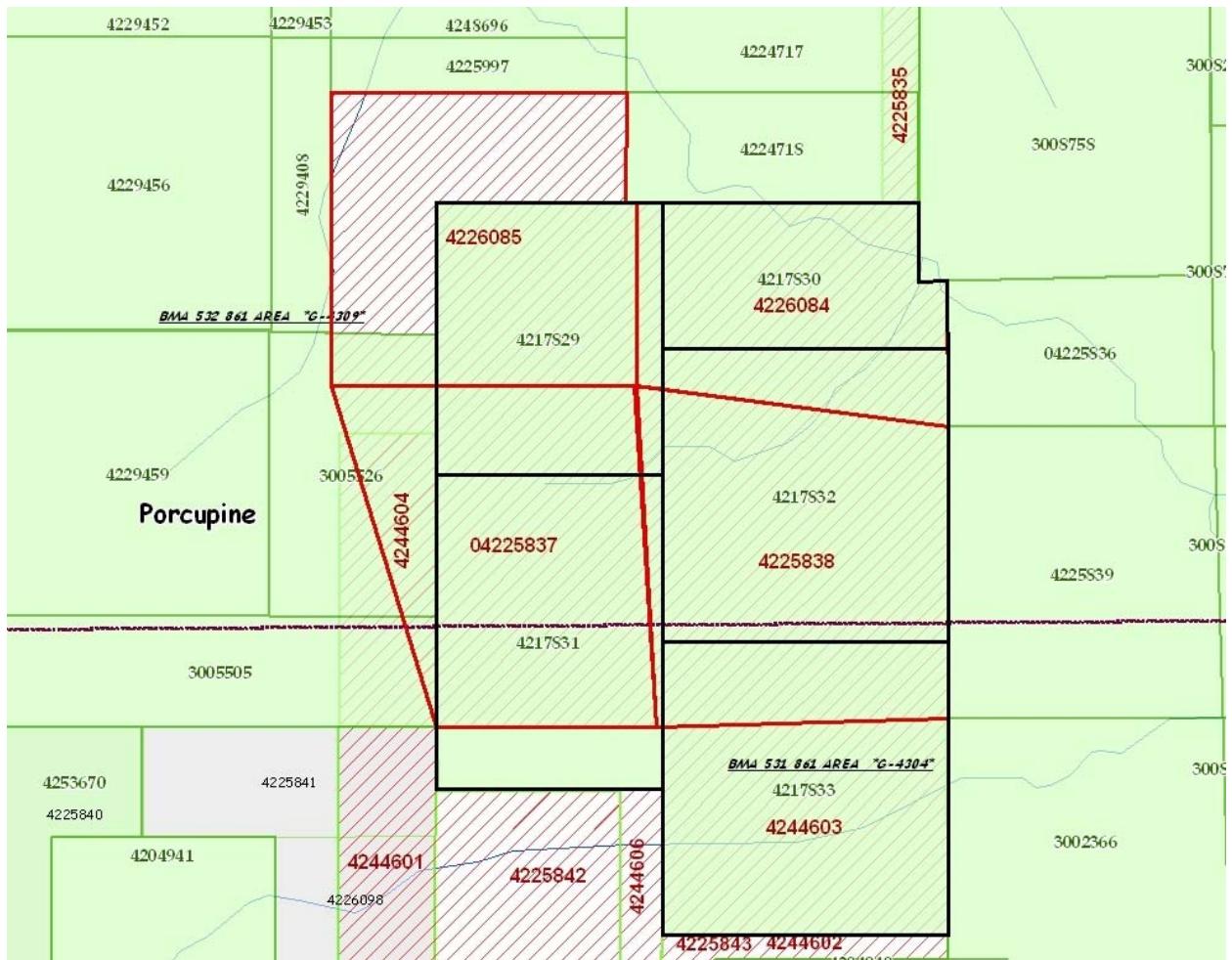
Roy Spooner  
Provincial Mining Recorder

**BACKGROUND**

This dispute issue concerns an area that may be described generally as lying in Ontario’s “far north”. Geographically the area lies approximately 300 air miles due north of the Town of Marathon (Highway 17) very close to the intersection of Latitude 53 north and Longitude 86 west. More specifically the mining claims are located partially in Base Map Areas 532861 and 531861, west of the Attawapiskat River and north of McFaulds Lake as illustrated in the following image:



The mining claims of record were staked in September of 2007 and recorded October, 2007 in the name of Macdonald Mines Exploration Limited. The Disputant's claims were staked for more or less the same area of land in November of 2007. The following image illustrates the lands at issue:



In the year 2007 the Provincial Recording Office (PRO) was experiencing a 400% increase in the number of mining claim units being filed as newly staked mining claims in the far north area of Ontario. A “staking rush” caused some difficulty for PRO to administer the increased volume of business and as a result some errors occurred in the record keeping. In this particular case the Disputant's claims had originally been accepted for recording in November of 2007 although applications for the MacDonal Mines claims (now claims of record) had already been received. The error was not discovered until February of 2008 at which time PRO found it necessary to advise Michael Peplinski that his claims, recorded in the name Noront Resources Ltd., would be removed from the record and considered “filed only”. The MacDonal Mines claims had been staked and filed with PRO before the Noront claims. The MacDonal Mines claims had legal priority according to the Mining Act.

After Mr. Peplinski was made aware of the situation he decided to file a dispute against the mining claims of record now recorded in the name of MacDonal Mines Exploration Ltd. The dispute document was filed in PRO February 29, 2008. At some point Mr. Peplinski had one of his employees inspect the mining claims of record on the ground in

order to gather evidence of alleged failure to comply with the rules for mining claim staking. An inspection report was received by PRO on August 14, 2008. The report included photographs.

## **THE HEARING**

Michael Peplinski in person  
Randall Salo for MacDonald Mines Exploration Ltd.

The Disputant (Mr. Peplinski) indicated he would rely entirely on the inspection report as his evidence in the dispute matter. No further evidence concerning the staking of the mining claims of record was submitted at the hearing. The inspection report was taken as an exhibit.

According to the Disputant, the inspection was carried out by a Brian Etherington who was not present at the hearing. Although there had been some arrangement for Mr. Etherington to participate in the hearing by telephone conference (arranged by Mr. Peplinski), the call was not received and Mr. Peplinski was unable to make contact by his cellular phone. Mr. Etherington was therefore not available in person or by telephone as a witness in the matter.

The Respondent (Mr. Salo) acknowledged that he was acquainted with Brian Etherington who had carried out the inspection. According to Mr. Salo he recognized Mr. Etherington as a good claim staker who had integrity. Mr. Salo suggested, however, that the inspection report should be considered biased since the inspection and the report were done by Mr. Etherington who works for Mr. Peplinski. According Mr. Salo the inspection would have been better evidence had an independent third party been hired to do the inspection.

Mr. Salo also took issue with the inspection report on the basis of elapsed time between the dates when the claims were staked and when the inspection was carried out. Mr. Salo submitted that over time “the bush grows back and flagging disappears”. On questioning Mr. Peplinski about the date of inspection Mr. Peplinski responded that he could not recall the date of the inspection but could provide the date later if necessary.

Mr. Salo then described another unrelated incident in October of 2007 when Mr. Peplinski had warned MacDonald Mines that other claims in the same area had not been properly staked on behalf of MacDonald. According to Mr. Salo a substantial amount of money had been spent by his company (MacDonald) investigating the area where they had been warned of staking problems within their property. Practical access to that latitude is by air only. Fixed wing and helicopter transport is costly. In that instance, the claim staking was found by MacDonald Mines to be properly in place contrary to the warnings. The point submitted by Mr. Salo was that the company operated on public funds and unnecessary trips to the property were a burden for the company treasury. When this particular dispute was filed against MacDonald claims no follow up investigation was carried out by the company. Mr. Salo felt that their previous experience had proven the expenditure was not warranted.

## **MY REASONS**

The hearing was attended by individuals who could not give direct evidence as neither Mr. Peplinski nor Mr. Salo had inspected the claims. The Disputant depended entirely on Mr. Etherington's evidence in the form of a written report submitted as an exhibit however Mr. Etherington was not present at the hearing. The inspection report itself does not indicate the date of the inspection. On the upper right hand corner of Page 1 of the document I can read a name hand written as "Brian Etherington" however one would wonder if that is Mr. Etherington's signature or simply his name that was written on the document by someone else. Without Mr. Etherington present at the hearing there can be very little weight placed on the inspection report as evidence.

The inspection report, as it is presented, cannot provide me with sufficient information to bring me anywhere near a finding of fact in the matter. I would be prepared to make a decision on the validity of the mining claims of record if I knew the facts but I cannot accept the report as factual. The report seems to indicate that the claims of record could be found on the ground but alleges there were many deficiencies including missing posts, missing tags, missing inscriptions, missing boundaries and inscriptions on the wrong face of found posts. Perhaps the deficiencies would warrant a decision by the Recorder however, without credible evidence, the dispute must fail. Although the Mining Act provides the Disputant with a legal right to have the mining claims of record examined by the Recorder, the Disputant carries the burden of proof. There is insufficient evidence therefore the dispute is dismissed.

As a matter of course in any dispute the Recorder would first decide the validity of the claims of record in order to determine if the second claims could be recorded in favour of the Disputant. The Disputant, however, is also required to have mining claims that substantially comply with the requirements of the Claim Staking Regulation. At the hearing in this case the Disputant briefly described his participation in the staking of the Disputant's "filed only" claims. Mr. Peplinski signed the application to record as Recording Licensee thereby indicating he had supervised other licensees who actually did the staking. He recalls that he had flown with the staking crew to the site and then left them to return to camp.

Prior to an amendment in 2006 the staking was required to be supervised by the Recording Licensee only to the extent that he or she could certify on the application to record, "I was personally on the ground during the staking of the lands." In 2006 there was intent to increase the responsibility of the Recording Licensee through an amendment to Section 9 of the Claim Staking Regulation that now states:

**9. (1)** A mining claim must be staked under the direction of a recording licensee. O. Reg. 196/06, s. 3.

**(1.1)** In order to direct the staking of a mining claim under subsection (1), the recording licensee must be present in each area under staking for a mining claim at the time the area is being staked for the purpose of recording the mining claim. O. Reg. 196/06, s. 3.

**(2)** The recording licensee must direct other licensees as well as non-licensees in constructing claim posts and marking the perimeter of a mining claim. O. Reg. 7/96, s. 9 (2).

In addition there was a corresponding change to the application to record a mining claim on “Part C”, the certification page, where the recording licensee signs for several statements including:

“3. I was present in each area under staking for a mining claim at the time the area was being staked for the purposes of recording the mining claim.”

The intent of the amendment to Section 9 of the Claim Staking Regulation was to require more participation by the licensee supervising staking by others. The recording licensee is now required to be somewhere on each and every mining claim during the time that each of those claims is being staked.

Also, there were some general comments at the hearing concerning “GPS coordinates”. The GPS (Global Positioning System) technology available to claim stakers provides an excellent improvement in the task of locating claim corners, etc. The new technology does not, however, change the requirements of the Mining Act, the requirements of Claim Staking Regulations or the rights of a mining claim holder in unsurveyed territory. There is no legal requirement at this time to provide GPS coordinates for claim corners. A claim holder has the legal right to a valid mining claim whose legal boundaries are governed by the physical location of claim corners where they exist on the ground. Mining claims may be plotted on a claim map with the assistance of GPS coordinates however the map is no guarantee that a mining claim will be found on the ground using the map’s inferred coordinates. Any difficulty locating mining claim boundaries with regard to errors in coordinates is irrelevant in an adjudicator’s application of the substantial compliance standard required by the Mining Act. While GPS coordinates may be taken into consideration as additional information utilized to plot mining claims on a claim map, a misrepresentation by GPS coordinates (failure to provide the correct coordinates) does not necessarily signal that a licensee is culpable of some offence or non-compliance according to the Mining Act.

Roy Spooner

Provincial Mining Recorder