

## **Duncan, Kate EMPR:EX**

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**From:** Messmer, Mark J EMPR:EX  
**Sent:** November 24, 2018 3:26 PM  
**To:** s.17  
**Cc:** Duncan, Kate EMPR:EX; Andrews, Scott EMPR:EX; Robb, Peter L. EMPR:EX; Harvey, James AG:EX; King, Wendy LASS:EX  
**Subject:** RE: Davidson Deposit briefing request and mining leases 243455, 243475, 243476, 243477, 243478, and 243479  
**Attachments:** CGC RFD 13880-02-282 Sept 20 2017.pdf

Dear Mr. Shypitka:

Attached is a copy of my reasons for decision with respect to the renewal of the terms of mining leases 243455, 243475, 243476, 243477, 243478, and 243479.

All further correspondence or submissions that you or Mr. Davidson may wish to make regarding this decision should be in writing and sent to the attention of Mr. James Harvey, Assistant Deputy Attorney General, Legal Services Branch, who I have copied on this reply.

Sincerely,

Mark Messmer  
Chief Gold Commissioner  
Ministry of Energy, Mines and Petroleum Resources  
300 – 865 Hornby Street  
Vancouver BC V6Z 2G3  
Ph. 604-660-2814

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**From:** Duncan, Kate EMPR:EX  
**Sent:** Wednesday, November 21, 2018 9:34 AM  
**To:** Andrews, Scott EMPR:EX; Messmer, Mark J EMPR:EX  
**Subject:** FW: Davidson Deposit briefing request

Hello,

Please see below in regards to participants.

Thanks

**Kate Duncan**  
Administrative Coordinator to the Honourable Michelle Mungall  
Minister of Energy Mines and Petroleum Resources  
T: 250-387-2201  
E: [kate.duncan@gov.bc.ca](mailto:kate.duncan@gov.bc.ca)

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**From:** King, Wendy <Wendy.King@leg.bc.ca>  
**Sent:** November 21, 2018 9:31 AM  
**To:** Duncan, Kate EMPR:EX <Kate.Duncan@gov.bc.ca>  
**Subject:** RE: Davidson Deposit briefing request

Hi Kate,

Attendees: MLAs Shypitka and Rustad, Dylan Kelso, Trish Jacques and Don Davidson will also call in. Thank you again for your assistant in pulling this together so quickly.

Wendy

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**From:** Duncan, Kate EMPR:EX [<mailto:Kate.Duncan@gov.bc.ca>]  
**Sent:** Wednesday, November 21, 2018 9:17 AM  
**To:** King, Wendy <Wendy.King@leg.bc.ca>  
**Subject:** RE: Davidson Deposit briefing request

Good Morning Wendy,

We are fine with the daughter calling in as well.

From our side it will be Mark Messmer from the Ministry and Scott Andrews are MA. If you could please confirm who will be participating from your side, I would greatly appreciate it.

Thanks

**Kate Duncan**

Administrative Coordinator to the Honourable Michelle Mungall  
Minister of Energy Mines and Petroleum Resources  
T: 250-387-2201  
E: [kate.duncan@gov.bc.ca](mailto:kate.duncan@gov.bc.ca)

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**From:** King, Wendy <Wendy.King@leg.bc.ca>  
**Sent:** November 20, 2018 4:46 PM  
**To:** Duncan, Kate EMPR:EX <Kate.Duncan@gov.bc.ca>  
**Subject:** RE: Davidson Deposit briefing request

Hi Kate,

Here is the number to call into:

- 1-877-353-9184
- 604-681-0260
- Participant conference ID – s.15

Please advise if anyone else will be in the call from your end. Thanks.

Wendy

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**From:** Duncan, Kate EMPR:EX [<mailto:Kate.Duncan@gov.bc.ca>]

**Sent:** Tuesday, November 20, 2018 4:28 PM

**To:** King, Wendy <[Wendy.King@leg.bc.ca](mailto:Wendy.King@leg.bc.ca)>

**Subject:** RE: Davidson Deposit briefing request

Hi Wendy,

At this point I can not confirm if the daughter can attend the call or not but I believe it would be safe to set up a conference call line. I will know for sure in the morning.

Sorry!

**Kate Duncan**

Administrative Coordinator to the Honourable Michelle Mungall

Minister of Energy Mines and Petroleum Resources

T: 250-387-2201

E: [kate.duncan@gov.bc.ca](mailto:kate.duncan@gov.bc.ca)

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**From:** King, Wendy <[Wendy.King@leg.bc.ca](mailto:Wendy.King@leg.bc.ca)>

**Sent:** November 20, 2018 4:17 PM

**To:** Duncan, Kate EMPR:EX <[Kate.Duncan@gov.bc.ca](mailto:Kate.Duncan@gov.bc.ca)>

**Subject:** RE: Davidson Deposit briefing request

Hi Kate,

Can you give me a quick call, just left a message just a quick question. Thanks.

Wendy

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**From:** Duncan, Kate EMPR:EX [<mailto:Kate.Duncan@gov.bc.ca>]  
**Sent:** Tuesday, November 20, 2018 4:07 PM  
**To:** King, Wendy <[Wendy.King@leg.bc.ca](mailto:Wendy.King@leg.bc.ca)>  
**Cc:** Shypitka, Tom <s.17>; Andrews, Scott EMPR:EX <[Scott.Andrews@gov.bc.ca](mailto:Scott.Andrews@gov.bc.ca)>; Smith, Heather <[Heather.Smith@leg.bc.ca](mailto:Heather.Smith@leg.bc.ca)>; Sproule, Spencer <[Spencer.Sproule@leg.bc.ca](mailto:Spencer.Sproule@leg.bc.ca)>  
**Subject:** RE: Davidson Deposit briefing request

Hi Wendy,

Mark Messmer with our Mineral Resources Division will be doing the briefing but unfortunately he is on the road and will have to do the briefing over the phone. Is there a best number he can call?

Let me know

Thanks

**Kate Duncan**

Administrative Coordinator to the Honourable Michelle Mungall  
Minister of Energy Mines and Petroleum Resources  
T: 250-387-2201  
E: [kate.duncan@gov.bc.ca](mailto:kate.duncan@gov.bc.ca)

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**From:** King, Wendy <[Wendy.King@leg.bc.ca](mailto:Wendy.King@leg.bc.ca)>  
**Sent:** November 20, 2018 3:57 PM  
**To:** Duncan, Kate EMPR:EX <[Kate.Duncan@gov.bc.ca](mailto:Kate.Duncan@gov.bc.ca)>  
**Cc:** Shypitka, Tom <s.17>; Andrews, Scott EMPR:EX <[Scott.Andrews@gov.bc.ca](mailto:Scott.Andrews@gov.bc.ca)>; Smith, Heather LASS:EX <[Heather.Smith@leg.bc.ca](mailto:Heather.Smith@leg.bc.ca)>; Sproule, Spencer LASS:EX <[Spencer.Sproule@leg.bc.ca](mailto:Spencer.Sproule@leg.bc.ca)>  
**Subject:** RE: Davidson Deposit briefing request

Hi Kate,

Thank you for your prompt response. We will make that work. Please let me know where the meeting will be held and who will be there. I will send a list as well shortly.

Wendy

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**From:** Duncan, Kate EMPR:EX [<mailto:Kate.Duncan@gov.bc.ca>]  
**Sent:** Tuesday, November 20, 2018 3:51 PM  
**To:** King, Wendy <[Wendy.King@leg.bc.ca](mailto:Wendy.King@leg.bc.ca)>  
**Cc:** Shypitka, Tom <s.17>; Andrews, Scott EMPR:EX <[Scott.Andrews@gov.bc.ca](mailto:Scott.Andrews@gov.bc.ca)>; Smith, Heather

<Heather.Smith@leg.bc.ca>; Sproule, Spencer <Spencer.Sproule@leg.bc.ca>

**Subject:** RE: Davidson Deposit briefing request

Hello Wendy,

We have been working on this here and I am able to aide in setting up this briefing.

Does MLA Shypitka have time tomorrow to be briefed? We have a Ministry staff member available after 10:30 tomorrow if this might work.

Please let me know

Thanks

**Kate Duncan**

Administrative Coordinator to the Honourable Michelle Mungall

Minister of Energy Mines and Petroleum Resources

T: 250-387-2201

E: [kate.duncan@gov.bc.ca](mailto:kate.duncan@gov.bc.ca)

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**From:** King, Wendy <[Wendy.King@leg.bc.ca](mailto:Wendy.King@leg.bc.ca)>

**Sent:** November 20, 2018 3:45 PM

**To:** Duncan, Kate EMPR:EX <[Kate.Duncan@gov.bc.ca](mailto:Kate.Duncan@gov.bc.ca)>

**Cc:** Shypitka, Tom <[s.17@leg.bc.ca](mailto:s.17@leg.bc.ca)>; Andrews, Scott EMPR:EX <[Scott.Andrews@gov.bc.ca](mailto:Scott.Andrews@gov.bc.ca)>; Smith, Heather LASS:EX <[Heather.Smith@leg.bc.ca](mailto:Heather.Smith@leg.bc.ca)>; Sproule, Spencer LASS:EX <[Spencer.Sproule@leg.bc.ca](mailto:Spencer.Sproule@leg.bc.ca)>

**Subject:** FW: Davidson Deposit briefing request

Hi Kate,

Tom would really like a briefing on this matter this week. Can you help facilitate that? This been ongoing since estimates in May, and s.22

Any help would be appreciated.

Wendy



**Wendy King**

Legislative Assistant

BC Liberal Caucus

T: (250) 387-8396

E:mail: [wendy.king@leg.bc.ca](mailto:wendy.king@leg.bc.ca)

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**From:** Shypitka, Tom

**Sent:** Monday, November 19, 2018 10:26 AM

**To:** Mungall, Michelle I EMPR:EX <[Michelle.J.Mungall@gov.bc.ca](mailto:Michelle.J.Mungall@gov.bc.ca)>; Duncan, Kate EMPR:EX <[Kate.Duncan@gov.bc.ca](mailto:Kate.Duncan@gov.bc.ca)>

**Cc:** Mungall, Michelle <s.17>; Horgan, John <s.17>; Polak, Mary <s.17>;

Sproule, Spencer <[Spencer.Sproule@leg.bc.ca](mailto:Spencer.Sproule@leg.bc.ca)>; Sultan, Ralph <s.17>; Wheeldon, Christy

<[Christy.Wheeldon@leg.bc.ca](mailto:Christy.Wheeldon@leg.bc.ca)>; Smith, Heather <[Heather.Smith@leg.bc.ca](mailto:Heather.Smith@leg.bc.ca)>; King, Wendy <[Wendy.King@leg.bc.ca](mailto:Wendy.King@leg.bc.ca)>

**Subject:** Davidson Deposit briefing request

Minister Mungall,

I am following up once again on a file I brought to your attention in estimates back in May of 2018. At that moment you and your staff assured me that you would make all efforts to look into it and report back. I have given you the courtesy of providing you with all the background information via a thumb drive that was hand delivered to your office last summer.

As we approach the end of the fall session, I have made it clear in previous emails that we need some clarification on this issue before the session ends. s.22

s.22 and all we are asking is clarification and the reinstatement of their mine extension to the original 21 years that would expire in 2040.

I urgently request a briefing with your staff to bring me up to speed to what is happening with this. Please contact me as soon as possible to meet.

Thank you

Tom Shypitka, MLA  
Kootenay East  
Critic – Energy and Mines

P.S. Here is some background information

1. On October 11, 2017 the Chief Gold Commissioner had manually altered the electronic MTO Registry request filed in November 14, 2013 for a 21 year extension that had appeared to have been accepted, to 6 years which negatively affects the advanced stage Davidson Deposit.
2. No criteria or explanations provided for the arbitrary decisions being made; furthermore, the Chief Gold Commissioner (as per the MTA) has the option of extending up to and not to exceed 30 years.

3. Extension duration that Chief Gold Commissioner has allowed (6 years) is grossly insufficient to provide investment certainty and acceptable assumption of risk on Davidson Deposit which is an advanced stage mining project.

4. There is an inability to gain term extensions on mining leases that match past historical extension durations. These ranged from 20 – 30 years.

5. Davidson Deposit was optioned in April 2016 when the electronic MTO indicated 2040 term expiry date. The “new”, grossly reduced date of 2025 may impact option agreement and most certainly will impact any further investment decisions.

6. The purge of the alteration of the electronic MTO in October 13, 2017 (TAME Amendment) has resulted in now missing details about historical events and actions on leases held by Mr. Davidson back to November 2013.

Please, advise when we can have a discussion with the proponent to resolve this extreme oversight.

**In the matter of the  
*MINERAL TENURE ACT*  
R.S.B.C. 1996, c.292**

**and**

**In the matter of  
Mining Lease Term Extension Applications**

**Donald Davidson  
FMC Number 106196**

**Event Numbers 5557153, 5477144, 5477145, 5477147, 5477149 and 5477152**

**File Numbers 13880-02-282 and 302 - 306**

**September 20, 2017**

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***Reasons for the Chief Gold Commissioner's Decision***

Section 4(6) of the *Mineral Tenure Act* delegates to the Chief Gold Commissioner the authority under section 42(5) of the *Mineral Tenure Act* to extend the term of existing mining leases. Donald Davidson has applied to renew the terms of the 6 mining leases noted above.



## **I. Nature and Scope of the Decision**

The decision to renew the term of a mining lease is made under section 42(5) of the *Mineral Tenure Act*, R.S.B.C. 1996, c. 292 (the Act).

If the term of a mining lease expires, the lease no longer exists and the right to minerals and the interest in land cease to exist. A mining lease does not revert to a mineral claim. Mining leases are created by a conversion of an existing mineral claim which is extinguished when the lease is created. Once an area has been converted from a mineral claim to a mining lease, the only way the recorded holder can maintain the right to minerals is to apply for a renewal to the term of the lease before the lease term expires. Once a mining lease expires, any free miner may acquire a mineral claim over the former lease area once it is made available for acquisition in the Mineral Titles registry.

With respect to an existing mining lease, if the lessee complies with the Act and regulations and any conditions of the mining lease, the lessee is entitled to a renewal of the mining lease for one or more further terms not exceeding 30 years each, subject to the approval of the Chief Gold Commissioner that the leases are required for a mining activity.

Mr. Davidson applied to the Chief Gold Commissioner to have the terms of the mining leases extended under section 42(5) of the *Mineral Tenure Act*, by registering the application in Mineral Titles Online and providing information pertaining to the work activity performed on the leases

The Province has a duty to consult and, if appropriate, accommodate First Nations with respect to decisions that could impact asserted or established Aboriginal or treaty rights and title. The mining lease application is located within the consultation area of the Wet'suwet'en First Nation.

I have considered relevant information, including information received from local governments, and Provincial agencies, and the content and adequacy of consultation with the Office of the Wet'suwet'en.

### **a) Description of the Application Area**

The application area is located on the northeast face of Hudson Bay Mountain, and within 10 km inland from the western shore of Kathlyn Lake.

The application area is comprised of:

- 6 mining leases encompassing approximately 1,632 ha. Mining leases 243455 and 243475-243479 were issued between 1962 and 1968 and have current "good to" dates of June 27, 2018 and January 10, 2018, respectively.
- The leases were acquired by Mr. Davidson briefly in the mid 1990's and then again from January 24, 2000 onward.

On June 8, 2015, Mr. Davidson applied to extend the term of mining lease 243455 from June 27, 2023 for a further 17 years. On November 14, 2013, Mr. Davidson applied to extend the terms of mining leases 243475 – 243479 from January 10, 2019 for a further 21 years.

## **II. Referrals to Agencies**

Referrals on these applications were distributed from FrontCounter BC through the automated referral (E-referral) system. FrontCounter BC maintains current contacts for the provincial agencies and local government for E-referrals. The referrals were sent to the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) and Ministry of Transportation and Infrastructure (MoTI), as well as the Regional District of Bulkley-Nechako.

Responses to the E-referral received by FLNRO and the Regional District of Bulkley-Nechako were of a nature that could be impacted by exploration and/or production work. Specifically that the awareness of recreation sites and trails be made to the owner for safety purposes, and that the area includes unique mountain goat habitat.

MoTI responded that they have no objections to the proposal and that any access to Glacier Gulch Road be permitted.

The referral process also included discussion with the Health and Safety and Permitting Branch of the Ministry of Energy and Mines. The District Inspector has no concerns regarding the proposed lease extensions. It was noted that road deactivation and portal closure occurred in 2015 and that final gating of the access road was to follow.

## **III. First Nations Consultation**

The Province has a duty to consult and, if appropriate, accommodate First Nations with respect to decisions that could impact asserted or established Aboriginal or treaty rights and title. The content of the duty to consult varies with the circumstances. The future potential impacts of a decision will not be within the scope of consultation where the decision does not limit the ability of the Crown to respond appropriately in the future and does not authorize the activities from which future impacts are said to potentially flow.

FLNRO is responsible for leading provincial First Nation consultation efforts on behalf of the Ministry of Energy and Mines. For this mining lease application, FLNRO consulted with the Office of the Wet'suwet'en.

Consultation with the Office of the Wet'suwet'en was initiated at the "normal" level of engagement. A "normal" level of engagement is the notification of an application and the invitation for input on how the proposal may impact any aboriginal interests in the area.

On October 31, 2016, the Office of the Wet'suwet'en indicated that they had initiated contact with a company that the lease holder has optioned the rights to and was expecting to meet in the

near future. FLNRO did not receive any further information or requests from the Office of the Wet'suwet'en as of that date.

#### **IV. Consideration and Comments**

I have reviewed the province's consultation record for these mining lease term extension applications, as well as comments received through the agency and local government referrals and the First Nation consultation process. While the Chief Gold Commissioner is the statutory decision maker for a mining lease application under the Act, any proposed mining activity or reclamation would be addressed through different legislation and would therefore have a different statutory decision maker. A mining lease conveys the exclusive right to all minerals on the lease area to the recorded holder and does not authorize any mining activity.

The comments received from FLNRO, MoTI and the Regional District of Bulkley-Nechako would be appropriately considered as part of an application and review of a *Mines Act* permit authorization proposed for the lease area upon the Health and Safety and Permitting Branch receiving such an application.

#### **V. Conclusion**

Donald Davidson has applied to have the term extended for mining lease 243455 for a further term of seventeen (17) years and the terms extended for mining leases 243475, 243476, 243477, 243478 and 243479 for further terms of twenty (21) years each.

I am satisfied that the consultation process has been reasonable and appropriate. With respect to any future proposed mining activity on the application area, there will be further opportunities to engage in consultation and, if appropriate, provide accommodation. Those opportunities to engage will have the benefit of the consultation record created to date; however, they will also require assessment of new information as it becomes available, and new assessment of the level of potential impacts to Aboriginal rights and other interests, in the context of comprehensive legislative requirements, regulations and policies.

I have carefully considered all the relevant facts and submissions, even if they are not specifically identified in this document, and I am of the view that a decision to issue the requested extensions of mining leases 243455, 243475, 243476, 243477, 243478 and 243479 will not significantly impact the Aboriginal rights and interests of the Wet'suwet'en First Nation.

For these reasons, I am satisfied that it is reasonable to extend mining lease 243455 for a further term of 1 year and 197 days and to extend mining leases 243475, 243476, 243477, 243478 and 243479 for further terms of 6 years each. There is a great deal of history on these leases but I am not aware of any concrete plans for future workings. The decision to extend the mining leases for these amounts of time will result in new term expiry dates of January 10, 2025, and will also allow for securing capital for the purposes of permitting, pre-production underground

development and start-up costs until such time that a future developer will have a mine plan in place.



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**Mark Messmer**  
**Chief Gold Commissioner**

Dated at Vancouver, British Columbia  
this 21<sup>st</sup> day of September, 2017.