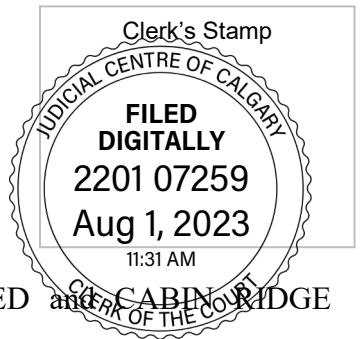


COURT FILE NUMBER 2201-07259
COURT COURT OF ^ KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



PLAINTIFF CABIN RIDGE PROJECT LIMITED and CABIN RIDGE HOLDINGS LIMITED

DEFENDANT ^ HIS MAJESTY THE ^ KING IN RIGHT OF ALBERTA and ^ HIS MAJESTY THE ^ KING IN RIGHT OF ALBERTA as represented by the Minister of Energy

AMENDED *E. Wheaton*
by order dated July 31, 2023

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
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NOTICE TO DEFENDANT

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

STATEMENT OF FACTS RELIED ON:

Introduction

1. Cabin Ridge Project Limited (“**Cabin Ridge**”) and Cabin Ridge Holdings Limited (“**CRHL**”) bring this claim for damages against [^] His Majesty the [^] King in right of Alberta (“**Alberta**”) for a constructive taking (also known as de facto [^] expropriation) of their freehold mineral rights and coal leases (collectively, the “**Cabin Ridge Property**”). Cabin Ridge also seeks monetary compensation pursuant to the doctrines of private nuisance and unjust enrichment.

2. Cabin Ridge and CRHL acquired the Cabin Ridge Property and additional property interests (including a pipeline and right of way leading to a railway) (the “**Project Assets**”) for the purpose of developing one of the world’s leading metallurgical (steel-making) coal projects, known as the “**Cabin Ridge Project**”. The Cabin Ridge Project would have created around [^] 875 jobs, provided \$ [^] 4.5 billion or more in taxes and other revenue for the provincial and federal governments, and generated approximately \$19 billion in pre-tax profits.

3. To date, Cabin Ridge and CRHL have incurred approximately \$56 million to acquire, invest in and take steps to explore and develop the Cabin Ridge Property, Cabin Ridge Project and Project Assets.

4. In February 2021, Alberta announced an immediate ban on mountain top mining on lands that include the Cabin Ridge Property (the “**Prohibition**”); however, Alberta did not, and has not, defined mountain top mining.

5. In March 2022, Alberta imposed an indefinite moratorium on coal exploration and development on lands that include the Cabin Ridge Property (the “**Indefinite Moratorium**”).

6. As a result of the Indefinite Moratorium—and, possibly, as a result of the Prohibition—Cabin Ridge and CRHL cannot proceed with the Cabin Ridge Project. More fundamentally, Alberta has eliminated all reasonable uses of the Cabin Ridge Property for purposes of further developing a metallurgical (steel-making) coal project and otherwise. The effect of Alberta’s actions has been to deprive Cabin Ridge and CRHL of the value, and all reasonable uses, of the Cabin Ridge Property, Project Assets and Cabin Ridge Project. As such, Alberta is liable to Cabin Ridge and CRHL for damages in the amount of approximately \$ [^] 6.776 billion, representing the

loss of the pre-tax net present value of the Cabin Ridge Property, Project Assets, and Cabin Ridge Project.

7. Notwithstanding Alberta's immediate, indefinite and complete ban on coal exploration and development on the Cabin Ridge Property, Alberta has not compensated nor offered to compensate Cabin Ridge or CRHL. As a result, Cabin Ridge and CRHL seek damages against Alberta for its constructive taking (de facto expropriation) or, further or in the alternative, private nuisance and/or unjust enrichment.

Cabin Ridge

8. Cabin Ridge is a privately held steel-making coal mining company located in Calgary, Alberta, registered under the Alberta *Business Corporations Act*. Cabin Ridge holds the rights to coal resources in about 4,700 hectares of land located approximately 50 kilometres north of Coleman, Alberta. Approximately 95 percent of Cabin Ridge's mineral rights in Alberta are freehold mineral rights.

9. CRHL is a privately held Alberta holding corporation. It is the parent company of Cabin Ridge and affiliate companies, Cabin Ridge Investments Limited ("CRIL") and Discovery Resource Management Limited ("Discovery"). CRHL holds all of the shares in Cabin Ridge, CRIL and Discovery, which together own all of the assets that comprise the Cabin Ridge Project. CRHL is registered under the Alberta *Business Corporations Act* with a registered office located in Calgary, Alberta.

The Cabin Ridge Property and the Project Assets

10. Cabin Ridge holds title to the following assets comprising the Cabin Ridge Property:

- (a) Cabin Ridge holds a 100% fee simple interest¹ in either: (i) all mines and minerals and the right to work the same; or, (ii) all coal and the right to work the same (together, the "**Freehold Mineral Rights**").

¹ Specifically, Cabin Ridge holds legal title to Title Nos. 112Y162, 112Y162A, 112Y163, 112Y164, 1 12Y164A, 112Y165, 112Y166, 112Y167, 112Y168, 112Y169, 112Y170, 112Y171, 1 12Y172, 112Y173, 112Y174, 112Y175, 112Y176, 112Y177, 112Y178, 112Y179, 112Y180, and 112Y180A.

- (b) Further, Cabin Ridge holds four coal leases relating to five quarter sections of land to be used for the Cabin Ridge Project (the “**Coal Leases**”). The Coal Leases commenced on August 31, 2020 for a term of 15 years and granted Cabin Ridge “the exclusive right to win, work and recover coal...together with the right to remove...any coal recovered.”

11. Additionally, Cabin Ridge and CRHL hold title to the following assets comprising the Project Assets:

- (a) CRHL holds all of the shares in Discovery, which holds a pipeline and right of way spanning from the lands over which Cabin Ridge holds Freehold Mineral Rights and Coal Leases to the rail line.
- (b) Cabin Ridge holds three freehold land parcels located at the same rail line (the “**Railhead Lands**”).
- (c) Cabin Ridge holds all mining and exploration data for the above-noted lands (the “**Coal Data**”).
- (d) Cabin Ridge holds three additional coal lease applications to be used to support the Cabin Ridge Project.

The 1976 Coal Policy

12. The Cabin Ridge Property is on lands known as the “**Eastern Slopes**” (a map of which is appended hereto). The Eastern Slopes are an area in western Alberta described in the Alberta Ministry of Energy’s 1976 policy document “A Coal Development Policy for Alberta” (the “**1976 Coal Policy**”), which became effective on June 15, 1976. Alberta adopted the 1976 Coal Policy to encourage and describe Alberta’s then policy on coal exploration and development. However, it was not enacted as a legislative tool and did not have the force of law or create legally binding restrictions.

13. Among other things, the 1976 Coal Policy classified lands in Alberta into categories 1 through 4 (the “**Land Categories**”), with a distinct level of restriction on coal exploration and development applying to each category as a matter of then government policy.

14. Pursuant to the 1976 Coal Policy, the Cabin Ridge Property falls entirely within category 2: lands in the Rocky Mountains and Foothills “in which limited exploration is desirable and may be permitted under strict control but in which commercial development by surface mining will not normally be considered at the present time”. Accordingly, as a matter of policy, the 1976 Coal Policy permitted exploration and development on category 2 lands (as at 1976).

15. The 1976 Coal Policy also describes government policy with respect to purchasing rights affected by the Land Categories, stating that, among other things, where freehold rights and leases of those rights are affected by the restrictions imposed by category 2, Alberta is prepared to purchase the lessor rights at fair value determined by agreement or arbitration, and to acquire any lessee rights on the same basis as for lessees of Crown rights (the “**Fair Value Commitment**”).

Alberta Represented that Development was Available on Category 2 lands

16. Notwithstanding the policy-based limitations on commercial development of category 2 lands in the 1976 Coal Policy, Alberta, its representatives and statutory decision-makers have represented since at least 1983 that each application for the right to explore, lease, or develop coal on category 2 lands will be considered on its own merits.

17. Further, since at least May 2016, Alberta, its representatives, and statutory decision-makers have represented that exploration and commercial development on category 2 lands was available and any application for coal exploration and development on category 2 lands would follow the normal regulatory assessment processes.

18. Moreover, since at least May 2016, Alberta and its representatives have actively encouraged coal mining companies to invest in Alberta’s metallurgical coal resources, much of which are on category 2 lands.

19. Based on their understanding that metallurgical coal development was permitted on category 2 lands, Cabin Ridge and CRHL took steps and incurred significant costs to acquire the Cabin Ridge Property and Project Assets and to advance the Cabin Ridge Project.

Alberta Rescinded the 1976 Coal Policy

20. In 1976, the Province of Alberta lacked many of the regulatory tools to assess the economic, environmental and social impacts of coal development that are in force today. Since

then, Alberta has adopted a robust regulatory framework that has codified, modified, or superseded most or all of the 1976 Coal Policy, aside from the Land Categories. These legislative developments include the enactment of land use planning statutes and land use plans thereunder, which contemplate the development of metallurgical coal in the Eastern Slopes.

21. By at least March 2018, Alberta began to consider rescinding or modifying the 1976 Coal Policy and notified coal lease applicants that coal leases would not be issued on category 2 lands until Alberta made a decision on the 1976 Coal Policy.

22. On February 18, 2020, Alberta confirmed that all project applications in category 2 are to be reviewed in accordance with normal regulatory processes.

23. On March 31, 2020, Alberta, through the Minister of Energy, decided to rescind the 1976 Coal Policy and undertake a 120 day process to resolve existing coal lease applications.

24. On May 15, 2020, Alberta advised the public that it had rescinded the 1976 Coal Policy, which came into effect on June 1, 2020.

25. By way of explanation, Alberta advised that the Land Categories were the only remaining mechanisms from the 1976 Coal Policy and were no longer required to effectively manage Crown coal leases or the location of exploration and development activities. Alberta cited decades of improved policy, planning, and regulatory processes which made the 1976 Coal Policy unnecessary.

26. The rescission of the 1976 Coal Policy removed all policy-based limitations on coal exploration and development on category 2 lands.

27. Following its decision to rescind the 1976 Coal Policy, Alberta offered a right of first refusal to all existing coal lease applicants to acquire leases on category 2 lands for which they had outstanding applications.

Cabin Ridge's Exploration and Development of the Cabin Ridge Property

28. Following Alberta's rescission of the 1976 Coal Policy, Cabin Ridge and CRHL took further steps and incurred costs to acquire the Cabin Ridge Property and Project Assets, and to further explore and develop the Cabin Ridge Project. In doing so, Cabin Ridge relied on Alberta's

rescission of the 1976 Coal Policy and proceeded on the understanding that there were no unique restrictions to developing a metallurgical (steel-making) coal project aside from the restrictions that applied to other industrial users, including regulatory approval requirements.

29. In particular, Cabin Ridge and CRHL invested significant resources and took the following steps to advance the Cabin Ridge Project:

- (a) Two days after Alberta's rescission of the 1976 Coal Policy came into effect, Cabin Ridge applied to the Alberta Energy Regulator ("**AER**") for: (i) a Coal Exploration Permit (the "**CEP Application**") to conduct coal exploration activities on the Cabin Ridge Property; and, (ii) a Deep Drilling Permit (the "**DDP Application**") to conduct an exploratory coal deep drilling program.
- (b) In support of the CEP Application and DDP Application, Cabin Ridge engaged in extensive consultation and entered into several agreements with stakeholders and Indigenous communities and groups, making payments pursuant to those agreements in the cumulative amount of approximately \$866,000.
- (c) Cabin Ridge and CRHL closed transactions to acquire the Cabin Ridge Property and Project Assets and made payments or incurred liabilities pursuant thereto that, to date, total approximately \$41 million.
- (d) On or about June 8, 2020, Cabin Ridge exercised its right of first refusal in respect of its coal lease applications and, on or about September 1, 2020, Alberta granted Cabin Ridge the Coal Leases with commencement dates of August 31, 2020.
- (e) On September 25, 2020, the AER granted the CEP Application and issued Coal Exploration Permit 200001 (the "**CEP Permit**"). Also on September 25, 2020, the AER granted the DDP Application and issued Permit No. C2020-6 (the "**DDP Permit**").
- (f) Following receipt of the Coal Leases, CEP Permit and DDP Permit, Cabin Ridge began the first phase of a drilling campaign that was completed by the end of 2020.
- (g) In addition to the amount referenced at paragraph (b), Cabin Ridge expended approximately \$14 million to obtain the CEP and DDP Permits and conduct exploration and drilling.

- (h) Cabin Ridge completed a preliminary economic assessment of the Cabin Ridge Property that confirmed, among other things, the economic viability of the Cabin Ridge Project and assessed the resource as among the highest quality steel-making coal globally.

Alberta Changed its Position by Reinstating the 1976 Coal Policy and Imposing the Prohibition

30. On February 8, 2021 (8 months after it rescinded the 1976 Coal Policy), Alberta changed its position and reinstated the 1976 Coal Policy in its entirety (including the Land Categories and the Fair Value Commitment). Additionally, Alberta imposed the Prohibition as a new, legally-binding ban on development on category 2 lands that was not part of the 1976 Coal Policy.

31. In conjunction with the reinstatement, the Minister of Energy issued Ministerial Order 054-2021, making the “Coal Policy Direction” that required the AER to, among other things: (i) consider the Land Categories when considering an application for an approval in respect of coal exploration or development; (ii) confirm that any proposed exploration for, or development of, coal on category 2 lands does not involve mountain top removal; and, (iii) not issue any new approvals for coal exploration on category 2 lands.

32. On the same date (February 8, 2021), Alberta advised the public that: (i) it had made a mistake in rescinding the 1976 Coal Policy; (ii) all future coal development and coal lease sales on category 2 lands would be halted indefinitely pending consultations on a new modern coal policy; and, (iii) it did not intend to remove approvals already granted by the AER.

33. Alberta also announced an immediate ban on mountain top mining and stated that mountain top mining will never be allowed in Alberta (the Prohibition). In announcing the Prohibition, Alberta did not define mountain top mining; however, several interpretations of the term would preclude metallurgical coal development on the Cabin Ridge Property.

Alberta Established the Coal Policy Committee

34. On February 23, 2021, the Minister of Energy announced forthcoming public consultations with Albertans on a modern coal policy.

35. Terms of Reference for a Coal Policy Committee were introduced six weeks later, on March 29, 2021. The Coal Policy Committee's mandate was to conduct public engagement and prepare a report for the Minister that addressed the management of coal resources and provided recommendations to clarify the nature, scope, and intent of the restrictions under the 1976 Coal Policy.

Alberta issued the Coal Exploration Direction

36. On April 23, 2021, while public engagement remained ongoing, the Minister of Energy issued Ministerial Order 093/2021, making the "Coal Exploration Direction" directing the AER to suspend or pause all approvals for coal exploration on category 2 lands until December 31, 2021 or such other date as the Minister may specify in writing to the AER.

37. On the same date, the Minister announced that all coal exploration projects on category 2 lands will be halted effective immediately with the suspension to stay in place at a minimum until public engagement is completed, at which point the results of public engagement will dictate the next steps.

The AER Suspended Cabin Ridge's Exploration and Development Approvals

38. On April 30, 2021, the AER informed Cabin Ridge that it had: (i) reconsidered its earlier decisions to issue the CEP Permit, DDP Permit, and 52 regulatory temporary field authorizations for the Cabin Ridge Property (the "**Approvals**"); and, (ii) decided to suspend the Approvals, effective immediately, until December 31, 2021.

39. In and around June 2021 Cabin Ridge exchanged correspondence with the AER regarding activities that could be conducted during the suspension period. In particular, Cabin Ridge sought clarity as to whether it could undertake activities to maintain the safety and security of the Cabin Ridge Property during the suspension.

40. On June 18, 2021, the AER advised Cabin Ridge that it could conduct limited routine environmental monitoring and maintenance activities during the suspension.

Alberta continued its Indefinite Suspension of Exploration and Development

41. On November 10, 2021, the Minister of Energy further directed the AER to suspend all approvals for coal exploration on category 2 lands until further notice.

42. On November 25, 2021, Cabin Ridge sought clarification from Alberta as to whether the indefinite suspension applied to Cabin Ridge's Approvals.

43. On the same date, the AER advised Cabin Ridge that suspension of its Approvals would remain in place until further notice.

Alberta imposed an Indefinite Moratorium

44. On December 29, 2021, the Minister of Energy announced that Alberta had received the Coal Policy Committee's reports. Initially, the reports were not released publicly.

45. On March 2, 2022, the Minister of Energy issued Ministerial Order 002-202[^]2, making the "Coal Development Direction" directing the AER to continue to suspend all approvals for coal exploration on category 2 lands in the Eastern Slopes and to refuse new applications for coal exploration until further notice by the Minister of Energy and/or Minister of Environment and Parks.

46. On March 4, 2022, Alberta announced that:

- (a) effective immediately, it was extending restrictions on coal exploration and development by suspending all coal-related exploration and development activity in the Eastern Slopes (including category 2 lands);
- (b) the Coal Development Direction (and the reinstated 1976 Coal Policy) would remain legally enforceable and in place until direction on coal activity and the Land Categories are embedded into updated land use plans; and,
- (c) coal-related exploration and development in the Eastern Slopes would remain prohibited unless Alberta's updated land use plans said otherwise.

47. Accordingly, the Coal Development Direction imposed a legally enforceable, Indefinite Moratorium on coal exploration and development on category 2 lands in the Eastern Slopes, including the lands necessary to develop the Cabin Ridge Project.

The AER and Alberta Confirmed the Indefinite Moratorium

48. On March 7, 2022, the AER confirmed that the Approvals remain suspended.

49. On March 8, 2022, Alberta provided policy guidance on coal tenure, advising that: (i) Alberta will not accept any new coal lease applications in category 2 lands; and, (ii) existing coal leases will remain in place and lessees are required to continue paying annual rentals, regardless of the new ban on coal exploration and development in category 2 lands.

Alberta is Liable to Cabin Ridge for Damages

50. Cabin Ridge seeks damages against Alberta for imposing the Prohibition and Indefinite Moratorium on all coal exploration and development activity at the Cabin Ridge Property and thereby precluding the commercial development of the Cabin Ridge Project or any reasonable use of the Cabin Ridge Property. In particular, Alberta is liable to pay Cabin Ridge damages and compensation for its losses pursuant to the doctrines of constructive taking (de facto expropriation), private nuisance and unjust enrichment.

Constructive Taking (De Facto Expropriation)

51. Through the issuance of the Coal Policy Direction, the Coal Exploration Direction, and the Coal Development Direction (the “**Ministerial Directions**”), and the implementation of same, Alberta has imposed the Prohibition and the Indefinite Moratorium and prevented Cabin Ridge from exploring and further developing the Cabin Ridge Property. In doing so, Alberta has constructively taken (de facto expropriated) the Cabin Ridge Property by depriving Cabin Ridge of all reasonable uses of that property, including proceeding with the Cabin Ridge Project, and rendered both the Cabin Ridge Property and the Project Assets valueless.

52. Accordingly, Alberta has: (i) acquired an advantage or beneficial interest in or flowing from the Freehold Mineral Rights and Coal Leases; and, (ii) removed all reasonable uses of the Freehold Mineral Rights and Coal Leases by denying Cabin Ridge the opportunity to continue the development of the Cabin Ridge Project and realize on its property rights.

53. If not for the Prohibition and Indefinite Moratorium, Cabin Ridge estimates that the pre-tax net present value of the Cabin Ridge Property, Project Assets and Cabin Ridge Project would be approximately \$ ^ 6.776 billion.

54. Alberta has confirmed its Fair Value Commitment in section 3.15 of the reinstated 1976 Coal Policy. However, Alberta has not offered to acquire the Cabin Ridge Property or provide fair value (or any amount) in compensation to Cabin Ridge or CRHL.

55. At common law, Cabin Ridge and CRHL are entitled to compensation for the loss of value of the Cabin Ridge Property and Project Assets as a result of Alberta's constructive taking (*de facto* expropriated), or such other amount of damages or compensation, as the Court deems just and appropriate in the circumstances.

Private Nuisance

56. Further, or in the alternative, Alberta's Ministerial Directions, the Prohibition and the Indefinite Moratorium constitute a private nuisance. Alberta's actions substantially and unreasonably interfere with Cabin Ridge's and CRHL's use, enjoyment of, access to, and exercise of their proprietary rights by preventing them from exploring and developing the Cabin Ridge Property, using and benefiting from the Project Assets, and developing the Cabin Ridge Project.

57. This interference is non-trivial as it removes Cabin Ridge's and CRHL's ability to obtain approvals necessary to carry out mining activities and has caused Cabin Ridge and CRHL to suffer and continue to suffer significant harm for which Alberta is liable to compensate Cabin Ridge and CRHL.

Unjust Enrichment

58. In the alternative, Alberta has been unjustly enriched by receiving the benefit of, among other things, payments by Cabin Ridge to acquire the Coal Leases, lease rental payments, timber and removal charges, data Cabin Ridge acquired through its acquisition and exploration activities, and environmental monitoring and maintenance activities on the Cabin Ridge Property. Cabin Ridge, as payor and proponent of the Cabin Ridge Project, has suffered a corresponding deprivation.

59. The benefits Alberta received from Cabin Ridge were premised on Cabin Ridge's continued ability to develop the Cabin Ridge Property which was removed by the Ministerial Directions, Prohibition and Indefinite Moratorium.

60. Cabin Ridge submits that there is no juristic reason for Alberta's prior or continued enrichment in retaining these benefits.

Damages

61. As a result of Alberta's conduct as described above, Cabin Ridge and CRHL have suffered, and continue to suffer, losses and damages, including:

- (a) the costs incurred to acquire the Cabin Ridge Property and Project Assets in the amount of \$41 million or such other amounts to be proved at the trial of this action;
- (b) the costs incurred to explore and develop the Cabin Ridge Property in the amount of \$12 million, or such other amounts to be proved at the trial of this action;
- (c) costs incurred to support the acquisition, exploration and development of the Cabin Ridge Property and Project Assets in the amount of approximately \$3.2 million or such further and other amounts as to be proved at the trial of this action;
- (d) loss of net present value of the Cabin Ridge Property in the sum of \$ ^ 6.776 billion, or such other amounts to be proved at the trial of this action; and
- (e) such further and other amounts to be proved at the trial of this action.

Place of Trial

62. Cabin Ridge proposes that the trial of this action be held at the Calgary Courts Centre in the City of Calgary, in the Province of Alberta.

63. The trial of this action will take less than 25 days.

REMEDY SOUGHT:

64. Cabin Ridge and CRHL claim against Alberta as follows:

- (a) damages in the amount of \$ ^ 6.776 billion, or such other amount to be proved at trial;
- (b) alternatively, restitution in the amount of approximately \$56 million plus future and contingent remediation costs to be proved at trial;

- (c) in the further alternative, damages to Cabin Ridge and CRHL for delaying their ability to develop the Cabin Ridge Property and Cabin Ridge Project;
- (d) pre- and post-judgment interest at a rate ordered by the Court or pursuant to the *Judgment Interest Act*, RSA 2000, c J-1, as amended, and its regulations;
- (e) the costs of this claim; and,
- (f) such further and other relief as Cabin Ridge and CRHL may request and this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

APPENDIX

