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December 13, 1989

Mr. Glenn Barnes
Mono County Assessor's Office
Courthouse, Annex I
P.O. Box 4565
Bridgeport, CA 93517-0456

Dear Mr. Barnes:

Some time ago, you had delivered various documents to our office concerning a transfer of certain mining properties in Mono County and Nevada County from Homestake Mining Company of California ("Homestake") to Galactic Resources Ltd. ("Galactic"). You requested our opinion whether such transaction constituted a change in ownership for property tax purposes. Please excuse our delay in responding.

FACTS

With respect to the Mono County property, Galactic, through its subsidiary Bodie Consolidated Mining Co., Inc., acquired 50% of Homestake's interest in the Bodie Mining District in August 1988. The agreement between the parties provided that Galactic would acquire half of the remaining 50% (i.e., 25%) in August 1989 upon a payment of \$8.75 million to Homestake and the remaining 25% in August 1990 upon another payment of \$8.75 million to Homestake. Under the agreement, Galactic had the option to prepay and receive the remaining 50% sooner.

The total amount to be paid to Homestake under the agreement is \$39.375 million which includes both the Nevada County and Mono County property. An undivided 50% interest in the property described in the following documents was assigned or transferred to Galactic by Homestake in August 1988:

1. An Option Agreement dated June 1, 1976 between J. S. Cain Company and Homestake covering 64 patented lode claims and 120 unpatented mining claims described in Exhibit A, attached hereto.

Paragraph 5 of the Option Agreement provides:

(a) Until expiration of its option to purchase, Homestake shall have unrestricted access to the Mining Property, and shall have exclusive rights:

(i) to explore and develop the Mining Property and to carry on general exploration and development operations pertaining to other property on the surface of or through shafts, open pits and other workings on the Mining Property;

(ii) to remove air, water, waste and materials from the Mining Property, and to deposit water, waste and materials on or in the Mining Property, by means of underground or open pit mining operations and by means of shafts or open pit mining operations on other property;

(iii) to use any part of the Mining Property for tailings and waste dumps and for any other purposes incident to underground or surface exploration and development operations; and

(iv) to erect, construct, use and maintain on the Mining Property such roads, structures, machinery and equipment as Homestake may require for its exploration and development operations.

(b) Prior to the exercise of the Option, Homestake shall not extract or remove from the Mining Property any ores or minerals except such ores or minerals (i) removed in the normal course of exploration or development and (ii) required by Homestake for bulk sampling and testing, including pilot plant testing.

2. A Mining Lease dated May 26, 1986 between the Lost Carcass and Buzzard Mining Company, Inc., and Homestake covering four unpatented claims, two unpatented millsite claims and five patented claims as described in Exhibit A, attached hereto. The initial lease term is twenty years with a right to extend the lease for an unspecified number of successive additional terms of twenty years each by giving timely notice of extension. Paragraph 6 of the Lease provides:

6. Operations. (a) Homestake shall have unrestricted access to the Mining Property and the exclusive rights (i) to explore, develop, and mine and to extract, remove, and dispose of any and all air, ores, minerals, water, waste, and materials from the Mining Property, and to deposit such materials on or in the Mining property, by means of underground or surface mining operations in or on the Mining Property or other property, (ii) to remove air, ores, water, waste, and materials from other property and

to deposit such materials on or in the Mining Property and to carry on general mining and milling operations pertaining to the Mining Property or other property, on the surface of or through underground or surface workings on the Mining Property, (iii) to use any part of the Mining Property for tailings and waste dumps and for any other purpose incident to underground or surface mining operations on the Mining Property or other property, (iv) to erect, construct, use, and maintain on the Mining Property such roads, buildings, structures, machinery, and equipment as may be required by Homestake for the conduct of operations on the Mining Property or other property, and (v) to sell ores and minerals and other products derived from the Mining Property in such forms, on such terms, at such times and for such prices as Homestake may in its sole discretion determine.

3. A Mining Lease with Option to Purchase dated July 24, 1986 between Leola P. Taylor and Homestake covering Taylor's 50% interest in two patented mining claims. See Exhibit A, attached hereto, for further description. The term of the lease is ten years with the right to extend the lease and option for an unspecified number of additional ten-year terms by giving notice of extension. The lease further provides that the lessee shall have rights to explore, develop and extract which are comparable to those specified in No. 2 above.

4. A Mining Lease with Option to Purchase dated July 24, 1986 between Edward G. Williams, Jr., and Barbara W. Williams, husband and wife, and Homestake covering Williams' 50% interest in the same two patented mining claims described in No. 3 above. The lease terms are identical to those in No. 3 above.

5. A Grant Deed, attached hereto as Exhibit B, conveying nine unpatented mining claims.

6. A Grant Deed, attached hereto as Exhibit C, conveying any buildings or improvements on any of the patented or unpatented mining claims described in documents 1-5 above and any water rights, easements, rights-of-way, extralateral rights and any other rights or interests in real property that are appurtenant to any or all of the properties described in such documents.

7. A Quitclaim Deed, attached hereto as Exhibit D, quitclaiming Homestake's interest in specifically described real property to the extent such interests were not previously transferred or conveyed by documents 1-6 above.

LAW AND ANALYSIS

Change in ownership is defined by Revenue and Taxation Code* section 60 as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Section 61 provides in relevant part that "[e]xcept as otherwise provided in Section 62, change in ownership as defined in Section 60, includes, but is not limited to:

(a) The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the period during which the right may be exercised. The balance of the property, other than the mineral rights, shall not be reappraised pursuant to this section.

(b) The creation, renewal, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term. For purposes of this subdivision, "renewal" does not include the granting of an option to renew an existing agreement pursuant to which the term of possession of the existing agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto."

Property Tax Rule 21 provides in relevant part:

* * *

(a) "Possessory interest" means an interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of land and/or improvements unaccompanied by the ownership of a fee simple or life estate in the property. Such an interest may exist as the result of:

(1) A grant of a leasehold estate, an easement, a profit a prendre, or any other legal or equitable interest of less than freehold, regardless of how the interest is identified in the document by which it was created, provided the grant confers a right of possession or exclusive use which is independent, durable, and exclusive of rights held by others in the property;

(2) Actual possession by one intending to use the property to the exclusion of any other interfering use, irrespective of any semblance of actual title or right.

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

(b) "Taxable possessory interest" means a possessory interest in nontaxable publicly owned real property, as such property is defined in section 104 of the Revenue and Taxation Code, and in taxable publicly owned real property subject to the provisions of sections (3)a, (b) and 11, Article XIII of the Constitution.

Clearly included in the category of taxable possessory interests are unpatented mining claims. State of California v. Moore (1859) 12 Cal. 56; Property Tax Rule 28(e).

Since some mining claims are taxable possessory interests and some are not, a question arises whether section 61(b) provides a separate test from section 61(a) in determining whether there has been a change in ownership of a taxable possessory interest in a mining claim.

Although the question is not entirely free of doubt, we are of the opinion that, since section 61(b) applies generally to possessory interests and section 61(a) applies specifically to mineral rights and since a specific provision relating to a particular subject will usually govern as against a general provision (58 Cal.Jur.3d, Statutes §§ 107, 109), section 61(a) should always be applied to determine whether a change in ownership of a possessory interest in a mining claim has occurred. As a general rule, the application of section 61(b) will produce the same result as the application of section 61(a). However, if it occurred for some reason that the creation, renewal, sublease or assignment of a taxable possessory interest in a mining claim did not result in the creation, renewal, sublease, assignment or other transfer of the right to produce or extract minerals as required by section 61(a), there would be no change in ownership of the possessory interest in the mining claim in our view. Thus, in our opinion, section 61(a) is controlling.

Applying the foregoing principles to the assignments and transfers described above, we conclude as follows:

1. The Option Agreement between J. S. Cain Company and Homestake described in No. 1 above

As to the 64 patented lode claims and the 120 unpatented mining claims, there was no change in ownership under section 61(a) as a result of the grant of the Option in 1976 or on Homestake's assignment in 1988 because no right to produce or extract minerals was created, renewed or otherwise transferred as required by that section.

When and if the option to purchase is exercised, there will be a transfer of the right to produce or extract minerals and a change in ownership of all the claims, both patented and unpatented, under section 61(a).

2. The Mining Lease dated May 26, 1986 described in No. 2 above

With respect to all of the mining claims, both patented and unpatented, there was a change in ownership as to a 100 percent interest as of May 26, 1986 and a change in ownership as to an undivided 50 percent interest in August 1988 under section 61(a).

3. The Mining Lease with Option to Purchase dated July 24, 1986 between Taylor and Homestake described in No. 3 above

There was a change in ownership as to an undivided 50 percent interest in the two patented mining claims as of July 24, 1986 and as to an undivided 25 percent interest in the claims as of August 1988, under section 61(a).

4. The Mining Lease with Option to Purchase dated July 24, 1986 between Williams and Homestake described in No. 4 above

As described in 3, there was a change in ownership as to an undivided 50 percent interest as of July 24, 1986 and as to an undivided 25 percent interest in August 1988 under section 61(a).

5. The Grant Deed conveying nine unpatented mining claims described in No. 5 above

There was a change in ownership as to an undivided 50 percent interest in August 1988 under sections 61(a).

6. Grant Deed described in No. 6 above

There was a change in ownership in August 1988 of an undivided 50 percent interest in any buildings or improvements on any of the patented or unpatented mining claims described in documents 1-5 above as well as any water rights appurtenant to any or all of the properties described in such documents under section 60.

7. The Quitclaim Deed described in No. 7 above

As stated in the document itself, the purpose of the conveyance was to transfer an undivided 50 percent interest in all interests owned by Homestake in the described property to the extent such interests were not previously transferred or conveyed to Galactic in the documents discussed above.

Since a quitclaim deed conveys only such interests as the grantor may own and since we don't know what interests Homestake owned in the described property, if any, we can't tell whether a change in ownership in addition to those discussed above occurred as a result of this transfer.

As mentioned above, the Agreement between Homestake and Galactic provides that Galactic is to acquire Homestake's remaining 50 percent interest in the Mono County property in August 1989 and August 1990 upon payment of \$17.5 million. There will be a change in ownership of the remaining 50 percent interest to the extent described above when those acquisitions are made.

If we can be of further assistance, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

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Attachments: Exhibits

cc: Mr. John W. Hagerty
Mr. Verne Walton