

## 2009 BCSECCOM 585

### Sungro Minerals Inc.

#### Section 161 of the *Securities Act*, RSBC 1996, c. 418

#### Reasons for Decision

<b>Panel</b>	Bradley Doney, Commission Suzanne K. Wiltshire, Commissioner Don Rowlatt, Commissioner
<b>Date of hearing</b>	September 25, 2009
<b>Date of decision</b>	September 25, 2009
<b>Date reasons issued</b>	October 15, 2009
<b>Appearing</b>	
Derek J. Chapman	For the Executive Director
Thomas Manson and Bronson Toy	For Sungro Minerals Inc.

#### I Introduction

- ¶ 1 On July 29, 2009, the executive director issued a temporary order to cease trading in the securities of Sungro Minerals Inc. and a notice of hearing under section 161 of the *Securities Act*, RSBC 1996, c. 418 (2009 BCSECCOM 413).
- ¶ 2 In the notice of hearing Commission staff allege that persons may have engaged in conduct that resulted in or contributed to an artificial price for Sungro shares, contrary to section 57 of the Act and that it would be prejudicial to the public interest to permit trading in Sungro shares in British Columbia until Commission staff makes further inquiries relating to the dramatic increase in the share price.
- ¶ 3 On August 11, 2009, the Commission extended the temporary order and adjourned the hearing to September 4, 2009 with the consent of the parties (2009 BCSECCOM 436).
- ¶ 4 On September 3, 2009, the Commission further extended the temporary order and adjourned the hearing to September 25, 2009, with the consent of the parties (2009 BCSCCOM 492).

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¶ 5 On September 25, the executive director applied under section 161(3) of the Act to extend the temporary order until a hearing is held and a decision is rendered. The executive director and Sungro submitted affidavits and statutory declarations and made submissions. The Commission placed no reliance on the affidavit of Wade Cox submitted by the executive director.

¶ 6 At the hearing, we extended the order under section 161(3) of the Act (2009 BCSECCOM 543). These are our reasons.

### **II Background**

¶ 7 Sungro was incorporated in Nevada on August 10, 2007. Its head office is in Surrey, British Columbia.

¶ 8 On August 15, 2007, Sungro issued 5 million shares to its sole director and officer, Malkeet Bains at US \$.001 per share for proceeds of US \$5000.

¶ 9 On September 18, 2007, Sungro issued 4,750,000 shares to 40 seed shareholders at US \$.02 per share for proceeds of US \$95,000.

¶ 10 Bains and the seed shareholders are all British Columbia residents.

¶ 11 In February 2008 Sungro filed a Registration Statement under US securities legislation that was effective April 7, 2008. Sungro was defined as a “shell company” under US legislation, because it had nominal operations and assets.

¶ 12 Sungro’s shares have been quoted on the OTC Bulletin Board in the US since September 10, 2008.

¶ 13 Sungro is an OTC reporting issuer under BC Instrument 51-509, *Issuers Quoted on the U.S. Over the Counter Markets*.

¶ 14 The first public trade in Sungro shares took place on February 19, 2009, when 30,000 shares were traded for US \$.35.

¶ 15 According to Sungro’s Form 10Q quarterly report, at May 31, 2009, Sungro had current assets of US \$299 and current liabilities of US \$18,864. It had no other assets or revenue.

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- ¶ 16 The second public trade took place June 15, 2009. Between June 15, 2009 and July 6, 2009, 212,071 shares traded at prices beginning at US \$.45 and increasing to US \$ 4.95.
- ¶ 17 One seed shareholder, Narvinder Virk, is a good friend and business associate of Bains. When Virk deposited his shares he asked his broker to give Bains trading authority over his account. The broker declined because Bains was Sungro's principal shareholder.
- ¶ 18 At the time Virk placed a sell order for 5,000 shares of Sungro on June 15, 2009, Virk requested the broker to "show the trade" through Pennaluna and Company, the original market maker for Sungro in the US. The broker declined because the brokerage firm does not permit clients to direct trades.
- ¶ 19 Virk sold 88,750 shares of Sungro between June 15 and June 22, for proceeds of US \$79,885.16. On Virk's instructions, the brokerage firm issued a cheque for the sale proceeds to a third party, Custom House Ltd., who disbursed US \$19,885.16 to Bains and US \$60,000 to Mark McLeary, a close friend and business associate of Bains. In June 2009, McLeary was considering a mineral property for Sungro.
- ¶ 20 On June 19, 2009, another seed shareholder, Karn Bahd, accompanied by Bains, deposited his share certificate for 118,750 shares with Virk's broker. Bahd said that he did not know Virk and it was a coincidence they had the same broker and that he did not talk to Bains about Sungro or selling his shares. That same day, Bahd also sought to deposit share certificates representing 356,250 Sungro shares held by three other seed shareholders; however, the brokerage firm refused to accept third party share certificates. Bahd's response was "That's too bad. I have a lot of shares to sell."
- ¶ 21 On June 23, 2009, Sungro announced that it was in the preliminary stages of negotiating the purchase of an oil and gas property. Bains does not have any business experience with exploration companies.
- ¶ 22 Between June 24 and July 6, 2009, Bahd sold 6,800 Sungro shares at prices beginning at \$3.75 and increasing to \$4.95 for proceeds of US \$29,543.12.
- ¶ 23 During this trading period, on June 26, Sungro announced a one for five forward stock split with a July 6 record date. That same day, Commission staff met with Bains and his counsel and Bains said he had not conducted any trading in Sungro shares and had no idea where the market activity was coming from.

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- ¶ 24 The trading by Virk and Bahd between June 15 and July 6, 2009, represented approximately 45% of the trading volume in Sungro shares.
- ¶ 25 On July 7, 2009, Commission staff issued a Halt Trade Order under section 89 of the *Act*. On July 10, Commission staff issued a second halt trade order.
- ¶ 26 That same day, July 10, Commission staff spoke to four other seed shareholders. Two said they did not know about Sungro and did not know they had invested in the company. One of the two referred staff to her husband. He claimed he had invested in the shares more than two years previously and did not recall the details. He is not shown as a seed shareholder. A third seed shareholder acknowledged purchasing the Sungro shares but claimed he did not know where they were. A fourth seed shareholder acknowledged investing in the shares and claimed they were “in a locker” separate from his other investments.
- ¶ 27 Virk agreed to meet with Commission staff on July 13, 2009 but did not show up for the meeting. Virk said that he did not come to the meeting because he was consulting legal counsel. Virk has not subsequently contacted Commission staff.

### III Discussion and Analysis

- ¶ 28 To extend a temporary order the Commission must find that it is necessary and in the public interest to do so.
- ¶ 29 Generally, there are two standards for establishing that an extension of a temporary order is necessary and in the public interest. Depending on the circumstances one or the other may apply.
- ¶ 30 The first standard requires staff to produce evidence for the Commission to assess whether there is prima facie evidence of the misconduct alleged – *Fairtide Capital Corp.* 2002 BCSECCOM 993, *Terry James Minnie and Raymond Patrick Shaw* 2004 BCSECCOM 677.
- ¶ 31 In *Hypo Alpe-Adria-Bank (Lichtenstein) AG*, 2007 BCSECCOM 622, para. 18, the Commission identified a second standard that applies to cases, “involving conduct that appears could be in contravention of the Act or otherwise be contrary to the public interest by persons unknown and, because they are unknown, it is not possible to gather the information necessary to meet the ‘prima facie’ evidence test described by ‘Fairtide’ and ‘Minnie’”.

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- ¶ 32 The Commission extended a temporary order against Hypo where unknown persons were using Hypo as a conduit to conduct suspicious trading activity. There was no suggestion made that Hypo was involved in any improper conduct.
- ¶ 33 The executive director argues that the dramatic increase in the trading price of Sungro shares in the absence of any disclosure that would account for the increase is highly suspicious and strongly suggests market manipulation is involved.
- ¶ 34 The executive director says that the extension of the temporary order is necessary and in the public interest while staff continues its investigation to determine the source and nature of the wrongdoing evidenced by the suspicious trading.
- ¶ 35 We agree with Commission staff.
- ¶ 36 The Commission has a broad public interest mandate to protect investors and maintain confidence in our capital markets. It has stated that trading abuses in the US over-the-counter markets conducted through British Columbia securities dealers damages the reputation of our capital markets (BC Notice 2007/24 BCSC *Response to Abusive Practices in British Columbia Involving US Over-the Counter Markets* published June 25, 2007).
- ¶ 37 We consider it necessary and in the public interest to extend the temporary order under section 161(3) of the Act until a hearing is held and a decision rendered.
- ¶ 38 October 15, 2009

### **For the Commission**

Bradley Doney  
Commissioner

Suzanne K. Wiltshire  
Commissioner

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Don Rowlatt  
Commissioner