



British Columbia Securities Commission

Citation: 2017 BCSECCOM 218

## Notice of Hearing

### Mountainstar Gold Inc. and Brent Hugo Johnson (the Respondents)

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

¶ 1 The British Columbia Securities Commission (Commission) will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against the Respondents under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

#### Summary

1. In June 2011, Mountainstar Gold Inc. (Mountainstar) announced that it was acquiring the right to purchase an interest in certain Chilean mining claims owned by Jorge Rodrigo Lopehandia (Lopehandia).
2. Over the following years, Mountainstar made false or misleading statements in its required public filings concerning those mining claims and related Chilean legal proceedings, or omitted facts that were necessary to make the statements not false or misleading, contrary to section 168.1(1)(b) of the Act.
3. As an officer and director of Mountainstar, Brent Hugo Johnson (Johnson), authorized, permitted or acquiesced in Mountainstar's contraventions, and he therefore contravened the same provision under section 168.2 of the Act.

#### Background

##### *Respondents*

4. Mountainstar, previously Mountain-West Resources Inc., is a reporting issuer under the Act. Its shares were listed on the TSX Venture Exchange until September 2011, and on the Canadian Securities Exchange until September 2016.
5. Johnson was at all relevant times the president, CEO and a director of Mountainstar.

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***Mountainstar's agreement with Lopehandia***

6. In June 2011, Mountainstar issued a news release announcing that it had entered into a written agreement with Lopehandia, under which it would pay several million dollars to Lopehandia for an option to purchase a 50% interest in his Chilean mining claims.
7. Until at least December 2015, Mountainstar stated in its public filings that:
  - a) Lopehandia's Chilean mining claims are named Amarillo North and Amarillo South.
  - b) The Amarillo North and Amarillo South mining claims cover the Chilean portion of a mining deposit named Pascua Lama, which lies in both Chile and Argentina. The Chilean portion of that deposit is known as Mina Pascua.
  - c) The Amarillo North and Amarillo South mining claims are superimposed over other competing mining claims covering the same area, namely the Amarillos 1–3000 concessions and the Tesoro concessions.
  - d) Lopehandia is involved in an ongoing legal dispute with Barrick Gold Corporation (Barrick), which commenced in 2001, over ownership of the Mina Pascua deposit.
  - e) Mountainstar is continuing to make payments to Lopehandia under the agreement.
8. By December 2015, Mountainstar had paid over US\$4.6 million to Lopehandia to maintain its right to acquire the option from him.
9. Under the agreement, after Mountainstar acquired the option, it would have the right to purchase the mining claims for the price of 1.26 million troy ounces of gold. As of December 2015, that price was over US\$1.3 billion.

**Misconduct**

***False Disclosure Regarding Lopehandia's Mining Claims***

10. Mountainstar made false or misleading statements regarding Lopehandia's Amarillo North and Amarillo South mining claims.
11. In every Management Discussion and Analysis (MD&A) filed between December 2012 and December 2015, Mountainstar stated that title to the Amarillo North and Amarillo South mining claims, which cover a portion of



the Mina Pascua deposit, is in the name of Lopehandia. This was false or misleading given that:

- a) Lopehandia filed 34 petitions, or applications, with a civil court in Chile in March 2011 to acquire the “Amarillo North” and “Amarillo South” mining concessions. However, he was not granted any of these concessions.
- b) The mere filing of these petitions did not confer any exploration or mining rights to Lopehandia over Mina Pascua or any other mining property.
- c) Seven petitions stalled after the holders of pre-existing mining claims opposed them in December 2011. Lopehandia took no steps to advance these petitions any further.
- d) The Chilean civil court cancelled each of the other 27 petitions by April 2013.
- e) Mountainstar’s MD&A did not disclose the facts set out above in paragraphs 11(a) – (d).

12. In every MD&A filed between April 2013 and December 2015, Mountainstar stated that Lopehandia is the “registered title holder” of the mining claims covering the Mina Pascua deposit, including the Amarillo North and Amarillo South mining claims. In several of these MD&A, Mountainstar also stated that its lawyer “had received clean titles to the Mina Pascua, Chile, mining concessions issued by the Mines Registrar”. This was false or misleading given the facts set out in paragraphs 11(a) – (e).

***False Disclosure Regarding Competing Mining Concessions***

13. Mountainstar made false or misleading statements regarding the Amarillos 1–3000 concessions and the Tesoro concessions.

14. In every MD&A filed between December 2012 and December 2015, Mountainstar stated that the Amarillos 1 – 3000 concessions are “now in process of cancellation – Chilean Mining Code process”. This was false or misleading given that:

- a) Lopehandia had merely filed a claim with a civil court in Chile for an order cancelling the Amarillos 1 – 3000 mining concessions. The civil court fully dismissed the claim on October 11, 2013.
- b) The civil court’s decision was upheld by the Court of Appeals on July 25, 2014 and by the Supreme Court of Chile on January 30, 2015.



- c) Lopehandia's brother filed substantially the same claim, and also sought an order cancelling the Amarillos 1– 3000 mining concessions.
  - d) The Chilean civil court fully dismissed the claim filed by Lopehandia's brother on November 18, 2015 (and that decision was also upheld by the Court of Appeals and the Supreme Court of Chile).
  - e) Mountainstar's MD&A did not disclose the facts set out above in paragraphs 14(a) – (d).
15. In every MD&A filed between December 2012 and December 2015, Mountainstar stated that the Tesoro concessions are also “now in process of cancellation – Chilean Mining Code process”. This was false or misleading given that there were no proceedings outstanding before the Chilean civil courts seeking cancellation of the Tesoro concessions, and they have not been cancelled.
16. In every MD&A filed between April 2013 and December 2015, Mountainstar stated that Lopehandia is the “registered title holder” of the mining claims covering the Mina Pascua deposit, including the Tesoro concessions. In several of these MD&A, Mountainstar also stated that its lawyer “had received clean titles to the Mina Pascua, Chile, mining concessions issued by the Mines Registrar”. This was false or misleading given that the mining agent for Barrick's Chilean subsidiary was the registered owner of the Tesoro concessions. Lopehandia was not the owner or titleholder of these concessions.

***False Disclosure Regarding Villar Court Proceedings***

17. Mountainstar made false or misleading statements regarding the status of Chilean legal proceedings that Lopehandia had commenced in 2001 in the name of his mining agent, Rodolfo Villar (the Villar Proceedings). These proceedings purportedly involved an ongoing dispute with Barrick over ownership of the Mina Pascua deposit.
18. Even after the civil court issued a decision fully dismissing the claim, and that decision was upheld on appeal, Mountainstar continued to report that the Villar Proceedings were ongoing and the outcome was unknown.
19. In every MD&A filed between April 2013 and December 2015, Mountainstar described the Villar Proceedings as follows:

The outcome of the dispute and accordingly the ability of the Optioner to convey the property rights to the Company are not determinable at this time.



...

Each of Barrick and Jorge Lopehandia allege to own the Mina Pascua Property and that alleged ownership is the subject of litigation which commenced in Santiago, Chile on March 4, 2001.

20. In MD&A filed in March 2015, November 2015 and December 2015, Mountainstar described the Villar Proceedings as follows:

On January 7, 2015, the Company and Minera Nevada SpA, the Chile subsidiary for Barrick presented written submissions to the Chile Supreme Court which was hearing an appeal in the main litigation that was commenced in March 2001. The main litigation is concerned with who properly owns the mining claims located in Chile forming the Pascua Lama Project. On January 14, 2015, the Company and Minera Nevada SpA presented final oral submissions to the Chile Supreme Court. A written decision of the Chile Supreme Court has not been issued as of the date of this report.

21. Mountainstar's description of the Villar Proceedings in its MD&A was false or misleading given that:

- a) The Chilean civil court initially issued a decision in Mr. Villar's favour in June 2006. However, in October 2007, the Court of Appeals annulled that decision, based on serious procedural irregularities, and remitted the proceeding back to the civil court.
- b) The Chilean civil court fully dismissed the claim in the Villar Proceedings on August 27, 2010.
- c) The civil court's August 2010 decision was upheld by the Court of Appeals in December 2013 and by the Supreme Court of Chile in October 2014.
- d) Mountainstar's MD&A did not disclose the facts set out above in paragraphs 21(a) – (c).

### Hearing Process

- ¶ 2 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **Tuesday, August 22, 2017, at 9:00 a.m.** if they wish to be heard before the Commission sets a date for the Hearing. **Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.**



- ¶ 3 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Secretary to the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: [commsec@bcsbc.ca](mailto:commsec@bcsbc.ca).
- ¶ 4 If the Respondents or their counsel do not appear at the Hearing, the Executive Director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.

*Peter J Brady*  
*June 28 2017 4:18 PM -07:00*

- ¶ 5 Peter J. Brady  
Executive Director