



# MiningWatch Canada

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September 8, 2006

***Via Mail and Facsimile***

British Columbia Securities Commission  
701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, B.C. V7Y 1L2

Attention: Intelligence and Assessment Branch

Dear Sirs/Mesdames:

**Re: Misrepresentation by bcMetals Corporation**

I am the National Co-ordinator of MiningWatch Canada (“MiningWatch”). MiningWatch is a national non-profit organization that works with environmental, social justice, Aboriginal and labour organizations from across the country. Our mandate is to protect against threats to water and air quality, fish and wildlife habitat, and community interests posed by irresponsible mining policies and practices in Canada and internationally.

Part of MiningWatch’s mandate is to advocate that mining exploration companies should disclose to investors and to regulators the risks associated with new mine developments, in order that these risks can be internalized in share prices rather than externalized to unsuspecting investors and local communities. Investors are entitled to know whether the mining companies they may chose to invest in are embroiled in legal proceedings under environmental law. Without disclosure from mining companies, regulators like the B.C. Securities Commission are deprived of their ability to protect the integrity of markets.

MiningWatch is therefore concerned with what we believe are misrepresentations by bcMetals Corporation regarding risks of its proposed Red Chris Porphyry Copper-Gold Mine. The facts which give rise to our concerns are detailed at length below.

Please accept this letter as a formal Complaint regarding bcMetals Corporation. We have copied this Complaint to the Toronto Stock Exchange and to the Ontario Securities Commission for their information and for any action they may deem appropriate.

MiningWatch requests that the B.C. Securities Commission investigate whether bcMetals has acted contrary to the British Columbia *Securities Act*, its regulations and national standards on disclosure by:

- making misrepresentations to the investing public,
- failing to report material information or material changes to investors and securities regulators,
- breaching continuous disclosure requirements

If our complaint is substantiated, MiningWatch requests that the B.C. Securities Commission consider making certain orders against bcMetals Corporation, to protect the public interest in having full and equal access to information about the risks of mining investment. At a minimum, we believe bcMetals should be reprimanded, and that it be required to report material information to the public and to regulators.

## **1. Events leading to this complaint**

### ***Environmental law litigation***

The essence of this Complaint is that recent press releases issued by bcMetals regarding the proposed Red Chris Mine mislead the public about litigation brought by MiningWatch against the Federal Government and bcMetals Corporation. These press releases are misleading because they have both included incorrect statements suggesting that all federal environmental approvals for the proposed Red Chris Mine have been received, and moreover have omitted any mention of this litigation when advising the public about risks faced by bcMetals Corporation.

On Friday June 9, 2006, MiningWatch filed a judicial review Application in Federal Court seeking to quash the approval made under s.20 of the *Canadian Environmental Assessment Act* (“CEAA”) for the proposed Red Chris Mine Project in northwestern British Columbia (“CEAA Screening Approval.”). At the core of MiningWatch’s Application is the failure of the Federal Government respondents to conduct public consultation as mandated by s. 21 of CEAA.<sup>1</sup>

The Application also seeks to prohibit the future issuance of federal environmental approvals required under the *Fisheries Act* and *Explosives Act* to bcMetals. Another such mandatory approval which the Application seeks to prohibit is a decision by the federal Cabinet to amend the *Metal Mining Effluent Regulation* (“MMER”) so as to allow bcMetals to turn fish-bearing creek headwaters into the mine’s tailings dump. Recent MMER amendments for other new mine projects have been extremely controversial, due to the environmental implications of turning natural bodies of water into tailings dumps.

MiningWatch has brought this public interest litigation as a test case under the newly amended CEAA, to ensure compliance with environmental law and the

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<sup>1</sup> Tab A: MiningWatch’s original Notice of Application filed on June 9, 2006.

protection of the public's right to be consulted on large mine proposals, and not for any personal or pecuniary gain.

### ***June 12, 2006 Press Release***

On Monday June 12, 2006, the following business day, a short bcMetals press release dated June 9, 2006 was published.<sup>2</sup> It announced that MiningWatch had filed an application for judicial review of the environmental approvals issued for the Red Chris Mine. The June 12, 2006 press release concludes by stating that "the Red Chris mine has received all necessary environmental approvals from federal and provincial authorities."

This statement is incorrect. To date, the Red Chris Project has not received the environmental approvals it requires under the *Fisheries Act*, the *Explosives Act*, or the MMER. MiningWatch's Application seeks to prohibit the federal government from issuing these environmental approvals. It had received one sole federal environmental approval, the CEAA Screening Approval, which the Application seeks to overturn.

On June 12, 2006, the officers of the bcMetals Corporation were well aware of the distinction between the CEAA Screening Approval and the remaining necessary federal environmental approvals. In a May 12, 2006 press release, bcMetals Corporation stated that the Federal Government had not yet issued "authorizations necessary under the Fisheries Act and the Explosives Act for construction and operation of the Red Chris project".<sup>3</sup>

It is inappropriate and misleading for bcMetals Corporation to suggest to the investing public that all federal authorizations are already issued, and all approvals are in place, because these approvals will fundamentally be at issue in the court proceedings.

Following the June 12, 2006 release, MiningWatch's legal counsel e-mailed bcMetals Corporation's legal counsel to seek clarity on this misleading statement. She did not receive any response.

On June 14, 2006, bcMetals Corporation published a press release announcing that it had just closed a private placement of 1.7 million flow-through shares for gross proceeds of \$1,530,000 on June 12, 2006.

### ***June 27, 2006 Press Release***

On June 27, 2006, bcMetals issued another press release.<sup>4</sup> It announced the private placement of 311,111 flow-through shares for gross proceeds of \$280,000.<sup>5</sup> The June 27, 2006 press release revises the language in the June 12, 2006 release, stating that:

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<sup>2</sup> Tab B: June 12, 2006 press release entitled "News Release". The press release is dated June 9, 2006 and we are unclear whether it may have been released on that date.

<sup>3</sup> Tab C: May 12, 2006 press release entitled "Red Chris CEAA Screening Completed".

<sup>4</sup> Tab D: June 27, 2006 press release entitled "Private Placement Completed"

“The Red Chris mine has now received all necessary environmental assessment approvals under both of the federal and provincial jurisdictions. These approvals authorize respective regulatory authorities to proceed with the issuances of permits, licenses, and other authorizations necessary for mine development and operations. Such individual permits, licences and other authorizations will be applied for as information from detailed design and engineering becomes available, and sufficiently in advance of such activity as to allow for timely issuance in support of the project development schedule.”

Despite now addressing the technical difference between “all necessary environmental approvals” and “all necessary environmental *assessment* approvals,” the June 27, 2006 release continues to give investors the misleading and inaccurate impression that all regulatory environmental approvals will shortly be in place. The overall impression is that permit issuance is just a matter of time. Again, this litigation asks the Federal Court to prohibit the issuance of authorizations necessary for this mine. Yet a member of the public would have no idea on reading the June 27, 2006 press release that the referenced authorizations are being challenged in court. Similarly, a member of the public would have no idea that current litigation seeks to overturn the sole existing federal approval.

The June 27, 2006 press release also states that insiders subscribed to 150,000 shares, despite bcMetals’ failure to disclose generally that the proposed Red Chris Mine’s federal approvals are being challenged in litigation. The company also granted stock options to directors and employees on June 29, 2006.<sup>6</sup> We believe this may raise concerns under the B.C. *Securities Act* and in Ontario as well, which may merit regulators’ attention.

#### ***Overall concerns with misrepresentation and lack of disclosure***

MiningWatch believes that, taken separately and together, the June 12 and 27 press releases contain misleading statements and misrepresentation by omission. bcMetals Corporation appears to have acted dishonestly by being aware of, yet not disclosing, the true nature and extent of risks facing its proposed mine. Despite MiningWatch raising these concerns shortly after June 12, 2006 with bcMetals Corporation, its latter press releases continued not to disclose litigation risks. The June 27, 2006 press release superficially corrected an earlier inaccuracy without disclosing the material fact that federal permits may not be lawfully issued as a result of court proceedings.

bcMetals obviously considered the litigation a significant enough change that it reported it (albeit misleadingly) to the public on June 12, 2006. However, we could not find any Material Change Report filed by the company with securities regulators. That this lawsuit may legally prohibit the mine from obtaining federal permits, and overturn the existing approval, appears to be a material change in the operations of this company.

MiningWatch has experience in mining investment and economics, and we believe it is reasonable to expect that investors’ knowledge of this potential legal outcome would likely have a significant effect on the value of the company’s securities. Investment in mining exploration companies is already risky, but even more so given the small size of

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<sup>6</sup> Tab E: June 29, 2006 press release entitled “Director and Employee Options.”

this junior company and the fact that the Red Chris mine is the first copper-gold porphyry mine proposed in British Columbia in 10 years. Another factor in the factual matrix, when considering the significance of this information to investors, would be the co-existence of the litigation with local First Nations opposition to mining in this area.<sup>7</sup>

Indeed, the Ontario Superior Court in *Platinex v. Kitchenuhmaykoosib Inninuwug First Nation* has recently criticized a junior mining exploration company for failing to disclose to investors the nature and extent of community opposition to mining development.

## **2. Orders in the public interest**

It is not in the public interest to allow bcMetals to misrepresent to investors and regulators the risks of investing in its securities. Investors are ordinary members of the public. Investors are concerned with the value of their investments; many are also concerned with sustainable development. They should be permitted to make informed decisions based on equal access to information about risk – risk to their investments, and risk to the environment and local communities. This is fundamental to public confidence in the integrity and ethics of the securities market.

With the present “gold rush” mentality in the mining industry brought about by the increase in metal prices, and with the unfortunate growing conflict between junior mining companies and local communities opposed to mines on their land, MiningWatch urges the B.C. Securities Commission and its regulatory partners to study and recommend guidelines for better continuous disclosure from junior mining companies.

As demonstrated in Kitchenuhmaykoosib Inninuwug – the “stakes” are too high not to regulate mining companies’ participation in capital markets. Had Platinex Corporation been prevented from misrepresenting risks by a securities regulator, it is possible that its present multi-million dollar litigation against a First Nation may have been deterred.

The goals of deterrence and prevention support, at minimum, that bcMetals Corporation be reprimanded and ordered to disclose and report material facts about this lawsuit.

Thank you for considering our complaint,

Joan Kuyek  
National Co-ordinator, MiningWatch Canada

cc. Market Surveillance, Toronto Stock Exchange  
Manager, Inquiries & Contact Centre, Ontario Securities Commission

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<sup>7</sup> Tab F: Mark Hume, “Band finds it’s not alone in fight for wilderness” (Globe and Mail, August 8, 2006).