



Marmota to commence Supreme Court Proceedings against Barton

Marmota Limited ('Marmota' ASX:MEU) and its wholly owned subsidiary, Half Moon Pty Ltd ('Half Moon'), advises that it has issued a pre-action claim pursuant to Rule 61.7 of the *Uniform Civil Court Rules 2020* (SA) giving formal notice of the intent to commence proceedings in the Supreme Court of South Australia against Barton Gold Holdings Ltd ('Barton' ASX:BGD) and Barton's wholly owned subsidiary Challenger 2 Pty Ltd ('Challenger 2').

- Half Moon is the Manager and majority partner (78.84%) in the Western Gawler Craton Joint Venture ('WGCJV'). The WGCJV has existed since 2010 and includes the Sandstone JV which has existed since 1995.
- As of 31 March 2023, more than \$9.5 million has been contributed by the relevant parties to the WGCJV, and which has already given rise to the discovery of 6 gold deposits with confirmed gold JORC resources.
- The percentage ownership of the WGCJV and respective contributions are as follows:
 - **Half Moon:** 78.84%, contribution to 31 March 2023 of: \$7,527,046
 - **Challenger 2:** 21.16%, contribution to 31 March 2023 of: \$2,020,530

Background

- 1.1 On 3 January 2022, a proposed Work Program and Budget was distributed to all members of the WGCJV Operating Committee. The Budget relating to the Work Program was \$1.69 million.
- 1.2 At the WGCJV Operating Committee meeting held on 6 April 2022, the Program and Budget set out above was unanimously approved.
- 1.3 Notwithstanding that Half Moon is the majority partner of the WGCJV, and the authorised manager of both the Sandstone JV and the WGCJV, and that the Program is unanimously approved and the Budget for same is approved (including by Barton/Challenger 2), and that the WGCJV has operated for some 13 years (WGCJV), and 28 years (Sandstone JV) respectively, Barton/Challenger 2 barred Marmota and Half Moon from accessing any of the tenements the subject of the WGCJV, on the stated basis that they would not permit the Manager on to the tenements the subject of the WGCJV absent an 'access' agreement.
- 1.4 Half Moon, in its capacity as Manager, further prepared the required Program for Environment Protection and Rehabilitation ('PEPR'), to be lodged with the Department of Mining for the required approval pursuant to the *Mining Act 1971* (SA). The PEPR is required to be signed by all tenement holders. The PEPR was signed by Coombedown Resources on 18 July 2022 and then provided to Barton / Challenger2. The latter has failed or otherwise refused to sign the PEPR in breach of its obligations under the WGCJV Agreement, preventing the substance of the approved program for growth of the JORC resource at Campfire Bore from being carried out.

Notices of Default and Demand for Remedy and Notice of Non-Complying Party

1.5 On 6 April 2022, Barton and Challenger 2 were issued with a formal Notice of Default and Demand for Remedy by the Manager of the WGCJV. Barton and Challenger 2 failed or otherwise refused to remedy the default.

1.6 On 8 August 2022, Barton and Challenger 2 (the defaulting party) were issued with a formal notice by the Manager classifying the defaulting party as a Noncomplying Party, pursuant to clause 12.5 of the WGCJV Agreement. Barton and Challenger 2 have failed or otherwise refused to remedy the default.

1.7 On 11 August 2022, the WGCJV Operating Committee further authorised:

That the Manager of the WGCJV be authorised by the Operating Committee to institute proceedings against the Non-Complying Party (and/or any controlling parent of the Non-Complying Party (including Barton Gold Holdings Ltd), to enforce the operation and performance of the WGCJV, including pursuant to clause 12.6 of the WGCJV agreement.

1.8 Challenger 2 and/or Barton did not, and have not, complied with any of the above resolutions, notwithstanding that a further 11 months have passed.

1.9 On 29 May 2023, a Further Notice of Default and Demand for Remedy was issued to Challenger 2 (and to Barton as owner of Challenger 2) pertaining to Challenger 2's failure to make required payments pursuant to a cash call issued by the Manager on 19 April 2023 within 20 business days.

2. Denial of Access to the Manager and Refusal to Sign PEPR

2.1 Barton and Challenger 2 have denied the Manager of the WGCJV access to the tenements the subject of the WGCJV Agreement (including the Sandstone JV) thereby preventing, frustrating and delaying the approved activities that should and would otherwise be occurring under the WGCJV Agreement.

2.2 Further, Barton/Challenger 2 have failed or otherwise refused to sign the PEPR, thereby preventing Half Moon from carrying out the program and budget that has been approved by the WGCJV Operating Committee.

2.3 They have caused ongoing loss and delay to Marmota, to the WGCJV and to Half Moon.

2.4 The conduct of Barton and Challenger 2, by preventing the Manager from carrying out the authorised and approved Budget, further threatens to jeopardise the good standing of the tenements.

2.5 Over \$9.5million in funds have already been contributed to the WGCJV. Barton/Challenger 2 has prevented the productive use of funds already invested, and of further investments, discoveries and resource growth, for more than 12 months.

2.6 Marmota and Half Moon have given notice of their intention to seek damages for:

- (a) the opportunity cost of the \$9.5 million of WGCJV funds already invested but placed on hold for more than 12 months;
- (b) the loss of opportunity to Marmota;
- (c) running expenses to maintain the WGCJV subsequent to being denied access in May 2022; and
- (d) any mandatory dropping of tenements or parts of tenements required by the Department of Mining, now or in the future, consequent on tenement expenditures not being satisfied, and/or consequent on the approved Programs not being able to be implemented due to Barton and/or Challenger 2 preventing the Manager, Half Moon, from accessing the tenements.

3. **Mining of Gold from WGCJV ground**

- 3.1 Pursuant to the Deed of Covenant dated 27 July 2019, Barton/Challenger 2 assumed the obligations of its predecessors in title.
- 3.2 By letter dated 5 April 2022, Barton and Challenger 2 were requested to advise, by close of business on 22 April 2022, how many ounces of gold it, or its predecessors in title, have extracted from Mineral Lease ML6457. It is Marmota and Half Moon's understanding that Mineral Lease ML6457 was established *after* the creation of the WGCJV, and on the Joint Venture Area, and that accordingly any gold located within it, or extracted from it, is the property of the WGCJV (not of Challenger 2 nor its predecessors in title).
- 3.3 In reply, by letter of 28 April 2022, Barton advised that '*Any records Barton holds relating to production on ML6457 are confidential to Barton*'.
- 3.4 Their letter also states, '*Further, if (which is denied), HMP (Half Moon) has a retrospective claim to gold rights on ML6457, HMP would necessarily be liable for a pro-rata share of all exploration, development, operating and administrative costs associated with identifying and extracting gold on ML6457.*'
- 3.5 Marmota and Half Moon intend to seek the Court's determination of (1) whether ML6457 was situated or created on the tenements of the WGCJV, and (2) a determination of how much gold has been extracted by Challenger 2 (and/or its predecessors in title) from ML6457, so that an appropriate claim can be made.

4. **Outstanding Rehabilitation**

- 4.1 The Operating Committee of the WGCJV has become aware that there are some 3,000 drill holes the responsibility of Challenger 2 where rehabilitation is currently outstanding.
- 4.2 Pursuant to Clause 15.1 of the WGCJV Agreement, Challenger 2 remains liable for, and shall duly and punctually observe and perform all obligations with respect to rehabilitation and remediation, in accordance with applicable law.
- 4.3 Despite raising this issue formally at the Operating Committees, Challenger 2 remains in breach of its obligations to the WGCJV, and to the state.
- 4.4 The failure to carry out such rehabilitation further threatens the good standing of the tenements, is in breach of Departmental regulations, and the relevant Native Title agreements.

5. **Relief Sought**

Half Moon and/or Marmota have given formal notice of their intent to issue proceedings against Challenger 2 and/or Barton in the Supreme Court of South Australia, seeking orders including:

- 5.1 A declaration that Challenger 2 is in default of the WGCJV Agreement.
- 5.2 An order for specific performance of the WGCJV Agreement by Challenger 2, including the grant of access to the Manager, execution of the PEPR and any other related documents required to implement any approved Programs of the Operating Committee, or as otherwise provided for by the WGCJV Agreement.
- 5.3 Damages as a result of Challenger 2's breaches of the WGCJV Agreement including damages relating to opportunity cost of capital, damages due to delay, and damages due to current or future mandatory reductions consequent on the conduct of Barton and/or Challenger 2.
- 5.4 Declarations regarding the gold that has been appropriated, mined or sold by Challenger 2 and/or Barton (or its predecessors in title) that is the property of the WGCJV.
- 5.5 An order for specific performance of the WGCJV Agreement by Challenger 2 to carry out the outstanding rehabilitation it is responsible for under the WGCJV.
- 5.6 Costs.

For the purpose of ASX Listing Rule 15.5, the Board has authorised for this announcement to be released.

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For detail on the WGCJV gold resource, see the Tyranna ASX:TYX release of 30 May 2018.