

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JUN 28 2023

ENTERED



No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT,
S.B.C. 2002, C. 57, AS AMENDED AND THE BUSINESS
CORPORATIONS ACT, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

ORDER MADE AFTER APPLICATION
(STAY EXTENSION and ENHANCED MONITOR'S POWERS)

BEFORE THE HONOURABLE) June 28, 2023
MADAM JUSTICE FITZPATRICK)

ON THE APPLICATION of Trevali Mining Corporation (the "**Petitioner**"), coming on for hearing at Vancouver, British Columbia on the 28 day of June, 2023; AND ON HEARING Peter Bychawski, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Twelfth Report of FTI Consulting Canada Inc. (in its capacity as court-appointed "**Monitor**" of the Petitioner) dated June 26, 2023; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

DEFINED TERMS

1. All capitalized terms not defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order granted August 29, 2022 in these proceedings (as may be amended, restated or supplemented from time to time, the "**ARIO**").

SERVICE

2. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other Person is required to have been served with notice of this Application and time for service of this Application is abridged to that actually given.

STAY EXTENSION

3. The Stay Period (as defined in the ARIO) with respect to Trevali Mining Corporation is hereby extended up to and including October 27, 2023.

MONITOR'S EXPANDED POWERS

4. In addition to its prescribed rights pursuant to the CCAA and the powers and duties set out in the ARIO and any other Order granted in these proceedings, and without altering in any way the limitations and obligations of the Petitioner as a result of these proceedings, the Monitor is hereby authorized and empowered, but not required, to:

- (a) cause the Petitioner to take any action permitted pursuant to the ARIO and any other Order granted in these CCAA proceedings;
- (b) preserve, protect and maintain control of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof of the Petitioner, or any parts thereof (the "**Property**") and, for greater certainty, does not include the property that is subject to the receivership order granted January 9, 2023, in these CCAA proceedings and any real property, mineral claims, mining leases, or real property leases owned or held by Trevali Mining (New Brunswick) Ltd.;
- (c) have full and complete access to the Property, including all books, records, data, including data in electronic form, and other financial documents of the Petitioner;
- (d) be entitled to rely on the books and records of the Petitioner without independent investigation, unless otherwise ordered by the Court, and, for greater certainty, the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

- (e) engage, retain, or terminate the services of, or cause the Petitioner to engage, retain or terminate the services of, any officer, employee, consultant, agent, representative, advisor, or other persons or entities, all under the supervision and direction of the Monitor, as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of its powers and duties;
- (f) monitor, review and direct the Petitioner's receipts and disbursements and implement such measures and controls as the Monitor deems reasonably necessary to ensure the appropriate monitoring and controls of the Petitioner's expenses and disbursements;
- (g) facilitate or assist in the accounting, tax and financial reporting functions of the Petitioner, including the preparation of cash flow forecasts, employee-related remittances, T4 statements and records of employment, in each case based solely upon the information available from the Petitioner's books and records on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such reporting, remittances, statements and records;
- (h) execute any agreement, document, instrument or writing of whatever nature in respect of any of the Petitioner's Property, whether in the Monitor's name or in the name of and on behalf of the Petitioner or in the place and stead of any directors or officers of the Petitioner, for any purpose pursuant to this Order;
- (i) exercise any shareholder, partnership, joint venture or other rights of the Petitioner;
- (j) take any and all actions and steps in the name of and on behalf of the Petitioner to facilitate the administration of the Petitioner's business (the "**Business**"), Property, operations, affairs and estate as may be necessary, appropriate, or desirable, in the sole opinion of the Monitor;
- (k) market, conduct, supervise, and direct the sale, conveyance, transfer, lease, assignment or disposal of any remaining Property of the Petitioner or any part or parts thereof, whether or not outside of the normal course of business, subject to approval of this Court as may be required pursuant to the ARIO, and to sign or

execute on behalf of the Petitioner any conveyance or other closing documents in relation thereto;

- (l) conduct, supervise and direct the continuation or commencement of any process or effort to recover Property or other assets belonging or owing to the Petitioner;
- (m) claim or cause the Petitioner to claim any and all insurance refunds or tax refunds, including refunds of goods and services taxes and harmonized sales taxes, to which the Petitioner is entitled;
- (n) administer the claims process authorized by the March 29, 2023 Order of the Court (the "CPO") notwithstanding any obligation in the CPO to consult with, take steps in conjunction with, or obtain the consent or approval of, the Petitioner;
- (o) further to paragraph 21 of the CPO, seek directions from the Court in regards to the process for the determination of Intercompany Claims (as defined in the CPO);
- (p) subject to the CPO, to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Petitioner (or its subsidiaries), the Property or the Monitor, and to settle or compromise any such proceedings;
- (q) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Petitioner (including any governmental authority) in the name of and on behalf of the Petitioner;
- (r) disclaim, in accordance with the CCAA, any contracts of the Petitioner;
- (s) propose or cause the Petitioner to propose one or more (i) plans of distribution or court applications related thereto; and (ii) plans of compromise and/or arrangement;
- (t) cause the Petitioner to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Petitioner in dealing with the Property, operations, restructuring, wind-down, liquidation, distribution of proceeds, and any other related activities;

- (u) assign, or cause to be assigned, the Petitioner into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;
- (v) perform such other duties or take any steps reasonably incidental to the exercise of any powers and obligations conferred on the Monitor by this Order or any other order of the Court; and
- (w) apply to this Court for advice and directions in respect of the exercise and discharge of its powers and duties hereunder,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively, authorized and empowered to do so, to the exclusion of all other Persons, including the Petitioner and its past or present directors and officers and shareholders, and without interference from any other Person. The Petitioner's directors or officers (past or present) shall not be liable for any actions taken by them in accordance with a direction of the Monitor.

5. Notwithstanding anything contained in this Order, counsel to the Petitioner shall, on behalf of the Petitioner, maintain primary carriage of the interpretation dispute related to the Settlement Agreement approved by the Court on October 12, 2023.

6. The Petitioner and its consultants, agents, representatives and advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order, the ARIO and any other Order granted in these proceedings and shall provide such assistance as the Monitor may reasonably request from time to time to enable the Monitor to carry out its duties and powers pursuant to the CCAA, this Order, the ARIO, and any other Order granted in these proceedings.

7. The Monitor is authorized and empowered to operate and control, on behalf of the Petitioner, all of the Petitioner's existing accounts at any financial institution (each an "**Account**" and collectively the "**Accounts**") in such manner as the Monitor deems necessary or appropriate (subject to the Orders in this proceeding), including, without limitation, to:

- (a) exercise control over the funds credited to or deposited in the Accounts;
- (b) effect any disbursement from the Accounts permitted by the ARIO or any other Order granted in these proceedings;
- (c) give instructions from time to time with respect to the Accounts and the funds credited to or deposited therein, including to transfer the funds credited to or deposited in such Accounts to such other account or accounts as the Monitor may direct; and
- (d) add or remove persons having signing authority with respect to any Account or to direct the closing of any Account,

and the financial institutions maintaining such Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions, and such financial institutions shall be authorized to act in accordance with and in reliance upon the instructions of the Monitor without any liability in respect thereof to any Person.

8. The Monitor is hereby authorized, but not required, to open one or more new accounts in its own name (the "**Monitor's Accounts**") and receive third party funds into the Monitor's Accounts or transfer into the Monitor's Accounts such funds of the Petitioner as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein, provided that the monies standing to the credit the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order, other Orders in this proceeding, or by further Order of this Court, and further the Monitor is hereby authorized to make use of the funds in the Monitor's Accounts from time to time to make disbursements and pay amounts for and on behalf of the Petitioner or in connection with the Monitor's exercise of its powers and duties in these proceedings, as the Monitor may in its sole opinion deem necessary or appropriate from time to time.

9. The Monitor is hereby authorized to take any and all actions and steps as the Monitor may deem appropriate related to the transactions completed pursuant to the Share and Asset Purchase Agreement dated December 15, 2022, by and among the Petitioner, Appian Natural Resources Fund III LP, and Appian Natural Resources (UST) Fund III LP (as may be amended, restated or supplemented from time to time) and as assigned by Appian Natural Resources Fund III LP, and Appian Natural Resources (UST) Fund III LP to ANR RP Limited pursuant to an Assignment and Assumption Agreement dated June 2, 2023.

MONITOR'S ADDITIONAL PROTECTIONS

10. In addition to the rights and protections afforded to the Monitor in the ARIO, under the CCAA, or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment, the carrying out of the provisions of this Order, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except for any gross negligence or wilful misconduct on its part. Save as aforesaid, nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA, any other Order of this Court in these proceedings, or any applicable legislation.

11. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor is not, and shall not be deemed to be, an owner of any of the Property for any purpose including without limitation for purposes of Environmental Legislation (for purposes of this Order, the term "**Environmental Legislation**" shall mean any federal, provincial, territorial or other jurisdictional legislation, statute, regulation or rule of law or equity (whether in effect in Canada or any other jurisdiction) respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination).

12. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purpose of this Order, the term "**Adverse Environmental**

Condition" shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the date of this Order.

13. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof that arose, occurred, or continued after the date of this Order unless such Adverse Environmental Condition is caused by the gross negligence or wilful misconduct of the Monitor.

14. Notwithstanding the immediately preceding paragraph, the Monitor shall not be liable beyond the net realized cash value received and available to the Monitor from the Property under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof which is caused by the gross negligence or wilful misconduct of the Monitor.

15. Nothing contained in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "**Possession**"), or require the Monitor to take Possession, of any part of the Property which may be a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any Environmental Legislation.

16. The Monitor shall not be liable for any employee-related liabilities of the Petitioner, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Petitioner, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

17. The enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Petitioner of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related employer of the employees of the Petitioner within the meaning of any provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by the Petitioner. In particular, the Monitor shall not be liable to any of the employees for any wages, including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.

18. The Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the CCAA, the ARIO and any other Order of this Court and all such indemnities, charges, protections and priorities (as amended herein) shall apply and extend to the Monitor in the fulfilment of its duties or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the powers of the Monitor as provided in the CCAA, the ARIO and the other Orders of in this proceeding.

19. The Monitor is not and shall not be deemed to be a director, officer, or employee of the Petitioner.

20. Nothing in this Order or any other Order granted in these proceedings shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Petitioner within the meaning of any relevant legislation, including subsection 159(2) of the *Income Tax Act (Canada)*, as amended (the "ITA"), and any distributions to creditors of the Petitioner by the Monitor will be deemed to have been made by the Petitioner itself. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a person subject to subsection 150(3) of the ITA.

GENERAL

21. Except as may be necessary to give effect to this Order, the ARIO and any other Order granted in these proceedings shall remain in full force and effect and, for greater certainty, nothing in this Order shall derogate from the role of counsel to the Petitioner who shall continue to be paid their respective professional fees and disbursements in accordance with the Orders of this Court and to be entitled to the benefit of the protections, charges and priorities set out in the ARIO. In the event of any conflict or inconsistency between this Order, the ARIO, or any other Order in these proceedings, the terms of this Order shall govern.

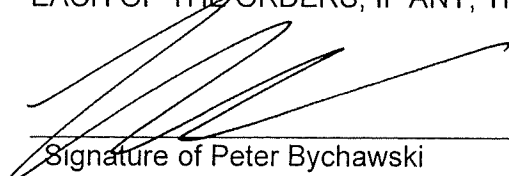
22. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Petitioner with respect to such matters.

23. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator or similar person of the Petitioner, the Business, or the Property.

24. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso, and Namibia to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

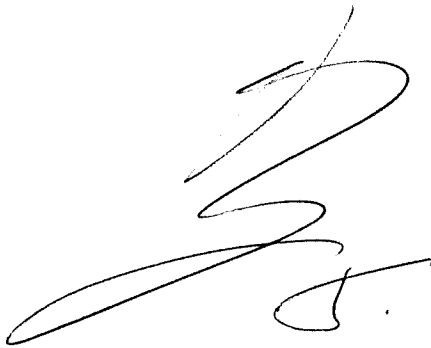
25. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of Peter Bychawski
Lawyer for the Petitioner

BY THE COURT.



Registrar

SCHEDULE "A"

PARTY REPRESENTED	COUNSEL
FTI Consulting Canada Inc., the Monitor	John Sandrelli and Eamonn Watson
Glencore International AG, Glencore AG, Glencore Canada Corporation	Lance Williams and Ashley Bowron
Directors of Trevali Mining Corporation	Amanda Manasterski
The Province of New Brunswick	Tevia Jeffries
Ad Hoc Committee of Trevali Mining Corporation Shareholders	Sage Nematollahi

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