



NEW BRUNSWICK
ENERGY & UTILITIES BOARD
COMMISSION DE L'ÉNERGIE ET DES SERVICES PUBLICS
NOUVEAU-BRUNSWICK

PROVINCE OF NEW BRUNSWICK
NEW BRUNSWICK ENERGY AND UTILITIES BOARD
IN THE MATTER OF THE *MINING ACT*, S.N.B., c. M-14.1

Matter: MN-001-2026

BETWEEN:

Adex Minerals Corp.,

Appellant,

-and-

The Recorder

Respondent.

RULING ON MOTION

PANEL: Christopher Stewart, Chairperson
Heather Black, Member
Kenneth McCulloch, K.C., Member

DATE OF HEARING: August 31, 2026
WRITTEN REASONS: September 9, 2026
APPEARANCES: Len Hoyt, K.C. for the Appellant
Christopher Whibbs for the Respondent

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1 Introduction and summary conclusion

- [1] This ruling arises out of a motion filed by Adex Minerals Corp. (“Adex”) seeking an interim stay of the Recorder’s cancellation of mineral claim 1505 (the “Mineral Claim”) and of the withdrawal of the claim area from prospecting and registration pending the final determination of Adex’s appeal of the cancellation.
- [2] Unless otherwise noted, all statutory references in this decision are references to the Act.
- [3] The Board grants the interim stay.

2 Background

- [4] The Mineral Claim is located in the McDougall Lake area of southwestern New Brunswick encompassing what is known as the “Mount Pleasant Mine” property and identified in the Recorder’s records as claim 1505. The Appellant, Adex Minerals Corp., was the legal and beneficial holder of the Mineral Claim until it was cancelled.
- [5] On July 13, 2026, the Recorder issued a Cancellation Notice cancelling the Mineral Claim pursuant to subsection 52(2) and placed the Mineral Claim in “protected status” by withdrawing the claim area prospecting and registration under subsection 52(4), without specifying the period of withdrawal. The stated basis for cancelling the Mineral Claim was that Adex had not resolved its non-compliance with its required work obligations within the five-business day period prescribed in an order issued by the Recorder on July 2, 2026, pursuant to subsection 52(1).
- [6] Adex seeks an interim stay of the cancellation and of the withdrawal of the claim area from prospecting and registration pending the final determination of its appeal of the cancellation notice pursuant to subsection 52(3). Adex has appealed the Cancellation Notice on the grounds that the cancellation was unfair and unreasonable. Alternatively, Adex has applied for an adjudication pursuant to subsection 113(1). The Board will hear the appeal on December 3, 2026.
- [7] The basis of the motion is that the appeal raises serious issues related to the fairness and reasonableness of the cancellation and withdrawal, removing Adex’s principal asset would cause irreparable harm by jeopardizing its investment and exposing its parent corporation and its shareholders to unquantifiable risk, and refusing the stay would confer no benefit on the Recorder.

- [8] The Recorder did not contest that a serious issue is to be tried but denied Adex will suffer any irreparable harm if a stay is not granted. The Recorder also claimed a stay may lead to an absurd result that would harm Adex and constitutes evidence of prejudice to the Recorder.

3 Issues

1. Will Adex suffer irreparable harm if a stay is not granted?
2. If Adex suffers irreparable harm, is that harm outweighed by harm to the Recorder or the public interest?

4 Analysis

- [9] Subsection 52(3) allows a claim holder to appeal from the cancellation of a mineral claim. Section 40 of the *Energy and Utilities Board Act* empowers the Board to make an interim order where it considers it advisable to do so. The appropriate test for the Board to use when determining whether to grant an interim stay is the tripartite test established in *RJR -- MacDonald Inc. v. Canada* (Attorney General), [1994] 1 SCR 311 ("**RJR-MacDonald**"). The Appellant must prove, on the balance of probabilities, that:

1. based on a preliminary assessment of the merits, there is a serious issue for determination on appeal;
2. the appellant will suffer irreparable harm if the stay is not granted; and
3. the balance of convenience and public interest considerations favour the granting of a stay. (i.e. which party suffers greater harm).

- [10] The Board's review of the evidentiary record leads to the following findings and conclusions that, together, satisfy the **RJR-MacDonald** test.

4.1 Serious issues are to be determined on appeal

- [11] The Board finds that the issues identified by Adex in its Notice of Motion are serious issues to be determined on appeal. These include whether the cancellation was procedurally unfair or inconsistent with Adex's legitimate expectations arising from previous correspondence from and conduct of the Recorder and the Minister, whether the deadlines the Recorder imposed on Adex to complete its required work obligations were reasonable and fair, and whether treating the expiry of the deadline as a ground for the cancellation was fair.

[12] The Recorder conceded there is a serious issue to be tried.

4.2 Adex will suffer irreparable harm if a stay is not granted

[13] The Board finds Adex and its parent company, Adex Mining Inc., will suffer irreparable harm if the stay is not granted. This finding is based on Adex's uncontested evidence that the Mineral Claim and associated mining assets and surface lands are its principal asset and the principal asset of its parent company, and that at the time of the cancellation it was seeking prospective counterparties to acquire or invest in that asset through third-party advisors.

[14] As the Supreme Court of Canada articulated in *RJR-MacDonald*, an applicant suffers irreparable harm when a refusal to grant relief could so adversely affect the applicant's interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application. Irreparable harm is harm that cannot be quantified in monetary terms or which cannot be cured.

[15] The Recorder submitted that denying the stay would not harm Adex because Adex had been unsuccessful so far in completing a sale, a transaction could not be completed during the interim period and, if Adex were to identify a potential buyer, the Minister has the statutory power to complete the sale.

[16] These arguments are not persuasive. The cancellation terminated Adex's ownership of the Mineral Claim. Combined with the Minister's power to dispose of the Mineral Claim, the cancellation impairs the value of Adex's principal asset, restricts Adex's ability to market the asset and control negotiations regarding the asset, and limits its right to the proceeds from the sale of or investment in the asset. The evidence supports a finding that these restrictions make it more difficult for Adex to pursue a transaction. The Recorder acknowledged the uncertainty related to the cancellation makes it more difficult to sell the Mineral Claim. He was unable to identify a clear mechanism for completing a sale of the cancelled Mineral Claim and confirmed that Adex would not be entitled to receive the proceeds if the Minister disposes of the Mineral Claim. Information Mr. Yan received from Adex's advisors indicates that the cancellation makes it difficult to attract and retain potential counterparties. This added difficulty causes harm to Adex that is evident in the market reaction to the cancellation, immediately after which the stock price of Adex Mining Inc. dropped 57.8 percent.

[17] Having established harm to Adex's business interests during the pendency of the appeal, the question becomes whether that harm is irreparable. The Recorder submitted that any harm to Adex or its parent would be limited to a lower sale price that could be

quantified in monetary terms and is, therefore, not irreparable. The Board disagrees. A loss of business or goodwill is difficult to assess and are factors to be weighed in determining whether irreparable harm has been shown: *Canada East Manufacturing, Inc. v. Harvey*, 1996 CanLII 4872 (NBCA) and *Leby Fixtures & Interiors Ltd. v. The Bank of Nova Scotia*, 2006 NBCA 93 (CanLII). While Adex has not established that the harm to its business interests will be permanent, the harm affects Adex's principal asset and cannot be quantified because there is no way to assess the value to Adex and Adex Mining Inc. of the sale or partnership opportunities that may be lost if the stay is not granted.

- [18] Furthermore, should the appeal be allowed, the harm Adex suffers during the pendency of the appeal cannot be cured by the Board or the court. The Board does not possess the jurisdiction to order the Recorder to compensate Adex and subsection 13(12) may prevent Adex from pursuing recovery of its losses in court.

4.3 The balance of convenience and public interest considerations favour a stay.

- [19] For the reasons below, the Board concludes that the balance of convenience and public interest considerations favour granting the requested stay.
- [20] The sale of the Mineral Claim is the shared objective of Adex and the Province. The evidence shows the Minister held the opinion that Adex's transactional efforts served the better management of minerals in New Brunswick. The Recorder encouraged Adex to continue those efforts even after cancelling the Mineral Claim. The Board has found that granting the stay would facilitate a sale and denying the stay would impair it. Therefore, granting the stay is a more effective way to advance the shared objective of Adex and the Province during the interim period.
- [21] The ordinary presumption that the Recorder acted in the public interest by cancelling the Mineral Claim for non-compliance is outweighed in the balance by the Board's finding that the regulatory objective is better served by granting the stay. Further, granting the stay would not displace the Recorder's oversight or otherwise prejudice the Recorder.

5 The Board grants the stay

- [22] Accordingly, the Board orders the cancellation of claim 1505 and the withdrawal of the claim area from prospecting and registration to be stayed pending the final determination of the appeal.
- [23] The evidentiary record does not support an order preserving Adex's rights as a registered holder of the Mineral Claim for the entire stay period without regard to its conduct during

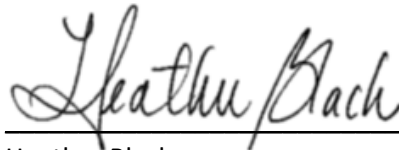
that time. Adex has recourse to the Board should it disagree with any action taken by the Recorder during the stay period.

[24] Costs will be in the cause.

Dated at Saint John, New Brunswick, this 9th day of September, 2026.



Christopher J. Stewart
Chairperson



Heather Black
Member



Kenneth McCulloch, K.C.
Member