

REC

ATTORNEY GENERAL
OF WASHINGTON

DEC 11 2008

GOVERNMENT COMPLIANCE
& ENFORCEMENT



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

PERUVIAN RESOURCES
MANAGEMENT USA, LLC; MACHU
PICCHU GOLD MINING CORPORATION;
DOUGLAS CYR; DOUGLAS
ASHWORTH; AND THOMAS OLSON,

Respondents.

OAH Docket No. 2006-DFI-0004
OAH Docket No. 2006-DFI-0005
OAH Docket No. 2006-DFI-0006
OAH Docket No. 2005-DFI-0013
OAH Docket No. 2005-DFI-0016

Department No. S-05-007

FINAL DECISION AND ORDER
AFFIRMING INITIAL ORDER OF
ADMINISTRATIVE LAW JUDGE

THESE CONSOLIDATED MATTERS (hereinafter, "Consolidated Case") come before Scott Jarvis (hereinafter, "Director") of the Washington State Department of Financial Institutions (hereinafter, "Department"), upon petitions for review by each of the Respondents (hereinafter, collectively, "Respondents") and the Replies to Petition for Review by the Division of Securities (hereinafter, "Division") from the Initial Decision and Order (hereinafter, "Initial Order") made on July 20, 2007, by Administrative Law Judge Rebekah R. Ross (hereinafter, "Administrative Law Judge") of the Office of Administrative Hearings (hereinafter, "OAH").

1.0 History of the Case

The Consolidated Case commenced when Respondents collectively requested an adjudicative hearing to challenge a decision by the Division to issue under Division Case No. S-05-007 a Summary Order to Cease and Desist and Notice of Intent to Impose Fines and Recover

Costs, dated May 18, 2005 (hereinafter, "Summary Order"). The Respondents in the Consolidated Case and their assigned Docket Numbers before the OAH are, as follows:

1. Peruvian Resources Management USA, LLC, Docket No. 2006-DFI-0006 (hereinafter, "PRM");
2. Machu Picchu Gold Mining Corporation, Docket No. 2006-DFI-0005 (hereinafter, "MPGMC");
3. Douglas Cyr, Docket No. 2005-DFI-0016 (hereinafter, "Cyr");
4. Douglas Ashworth, Docket No. 2005-DFI-0013 (hereinafter, "Ashworth"); and
5. Thomas Olson, Docket No. 2006-DFI-0004 (hereinafter, "Olson").

After protracted pre-hearing conferences, the Administrative Law Judge conducted a full hearing of the Consolidated Cases over a period of six (6) days, ending March 20, 2007 (hereinafter, "Hearing"). The issues presented at the Hearing and upon which testimony and other evidence were submitted and considered were limited to the allegations made by the Division in its Statement of Allegations addressed to the Administrative Law Judge, dated March 30, 2008 (hereinafter, "Statement of Allegations"). The Administrative Law Judge gave deference to the parties by keeping the Hearing record open until May 27, 2007, for the submission of closing briefs in chief and responsive briefs. Assistant Attorney General Charles E. Clark (hereinafter, "Division Counsel") represented the Division. Respondents Cyr, Ashworth and Olson appeared *pro se*. Cyr represented PRM. Ashworth represented MPGMC.¹

In making her decision, the Administrative Law Judge considered the Division's Hearing Brief dated February 26, 2007 (hereinafter, "Division's Hearing Brief"), Cyr's and PRM's Pre-

¹ Each of the Respondents in this case does not appear to be an attorney at law in any jurisdiction and has appeared *pro se* before the Administrative Law Judge and the Director, either for himself and/or as a non-attorney representative of PRM or MPGMC.

Hearing Brief dated March 2, 2007 (hereinafter, "Cyr-PRM Pre-Hearing Brief"), the testimony of witnesses as reflected in the Transcript of Administrative Hearing dated March 5, 6, 7, 8, 9 and 20, 2007 (hereinafter, "Report of Proceedings" or "RP"), the Hearing Exhibits admitted in evidence (hereinafter, as applicable, "Exhibit" or "Exhibits"), the Closing Brief of MPGMC dated May 10, 2007 (hereinafter, "MPGMC Closing Brief"), Cyr's and PRM's Closing Brief dated May 10, 2007 (hereinafter, "Cyr-PRM Closing Brief"), the Division's Post-Hearing Brief dated May 10, 2007 (hereinafter, "Division's Post-Hearing Brief"), the Division's Reply to Respondents' Post-Hearing Briefs dated May 23, 2007 (hereinafter, "Division's Post-Hearing Reply"), Cyr's and PRM's Post-Closing Brief dated May 24, 2007 (hereinafter, "Cyr-PRM Post-Closing Brief"), and Ashworth's and MPGMC's Response to Division's Closing Brief dated May 24, 2007 (hereinafter, "Ashworth's Responsive Closing Brief").

On July 20, 2007, the Administrative Law Judge issued the Initial Order, which consisted of seventy-seven (77) pages. The Administrative Law Judge identified and addressed in her Initial Order twenty-five (25) enumerated issues of fact and law as set forth in the Initial Order's Summary of Issues and Results.² The Administrative Law Judge made two hundred thirty-four (234) Findings of Fact (hereinafter, "FOF") as contained in the Initial Order. Based upon the FOF, the Administrative Law Judge made seventy-two (72) Conclusions of Law (hereinafter, "COL") as contained in the Initial Order. Based upon the FOF and COL, the Initial Order declared that the Respondents and their agents and employees must cease and desist from violating the following provisions of the Securities Act of Washington (hereinafter, "the Act"):

² The Administrative Law Judge decided in the affirmative ("Yes") to all but 3 of the 25 issues of fact and law presented at the Hearing. As to the three issues to which the Administrative Law Judge decided in the negative ("No"), they were, as follows: (1) That the Department's fine of \$30,000 against Olson as set forth in the Summary Order was improper; (2) that the Department's fine of \$35,000 against MPGMC as contained in the Summary Order was improper; and (3) that the imposition in the Summary Order of \$50,000 in fines against Ashworth was improper.

1. RCW 21.20.140, requiring registration of securities;
2. RCW 21.20.010, the anti-fraud provision of the Act; and
3. RCW 21.20.040, the provision prohibiting offering and/or selling an unregistered security while not registered as a securities salesperson.

In addition, the Initial Order required the payment of fines, costs, fees and other expenses, as follows:

1. PRM was ordered to pay fines of thirty-five thousand dollars (\$35,000.00) and costs, fees, and other expenses of four thousand seven hundred and ninety-one dollars (\$4,791.00) to the Department;

2. Cyr was ordered to pay fines of thirty-five thousand dollars (\$35,000.00) and costs, fees, and other expenses of four thousand seven hundred and ninety-one dollars (\$4,791.00) to the Department;

3. MPGMC was ordered to pay costs, fees, and other expenses of four thousand seven hundred and ninety-one dollars (\$4,791.00) to the Department;

4. Ashworth was ordered to pay costs, fees, and other expenses of four thousand seven hundred and ninety-one dollars (\$4,791.00) to the Department; and

5. Olson was ordered to pay costs, fees, and other expenses of five thousand four hundred and nineteen dollars (\$5,419.00) to the Department.

Cyr, on behalf of himself and PRM, made and delivered by FAX transmission on or about August 8, 2008, a Petition for Review (hereinafter, "Cyr-PRM Petition for Review"), assigning error to the Initial Order on account of WAC 460-44A-504(a)(b)(c) and (d) and setting forth the following reasons: (1) That there was an actual investment price of \$5,000 each

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(\$20,000 total) for 4 Washington State investors; (2) that no commissions were paid; (3) that there were less than 20 purchasers; (4) that each investment did not exceed 10% of each purchaser's net worth; and (5) that the purchasers of the investments.

MPGMC and Ashworth, in turn, each filed separate Petitions for Review on or about August 8, 2007 (hereinafter, "MPGMC Petition for Review" and "Ashworth Petition for Review," respectively), assigning the same error as the Cyr-PRM Petition for Review and further asserting that a Cease and Desist against MPGMC SAC and Ashworth was "unfounded and unsupported and lacked any investor complainants" and that there was "a lack of evidence in support of RCW 21.20.390(5)" to support the Initial Order against MPGMC and Ashworth.

The Cyr-PRM Petition for Review, MPGMC Petition for Review and Ashworth Petition for Review are hereinafter referred to in this Final Decision and Order as "Respondent's Petitions for Review."³

It has been determined by this Director that Olson's separate Petition for Review (hereinafter, "Olson Petition for Review") was timely filed according to the preliminary consideration and findings of the Director contained in Subsection 4.1.3 below.

On August 17, 2008, Division Counsel filed on behalf of Division replies to each of the Respondents' Petitions for Review as set forth below in Subsections 2.2.5 through 2.2.9, inclusive.

2.0 Record on Review. The Record on Review includes, without limitation, the following:

2.1 The entire OAH File consisting, without limitation, of:

³ The Cyr-PRM Petition for Review, MPGMC Petition for Review and Ashworth Petition for Review were actually separately FAXed to the Director on August 8, 2007, and not just served on Division Counsel. Therefore, there does not appear to be any issue that they were timely filed with the Director. See Section 4.0, Preliminary Considerations.

- 2.1.1 The Summary Order;
- 2.1.2 Application for Adjudicative Hearing (hereinafter, "Application for Hearing");
- 2.1.3 Order for Telephonic Pre-Hearing Conference dated March 2, 2006 (hereinafter, "First Pre-Hearing Conference Setting");
- 2.1.4 Pre-Hearing Conference Order Consolidating Cases dated March 17, 2006 (hereinafter, "First Pre-Hearing Order");
- 2.1.5 Notice of Hearing Setting dated March 20, 2006 (hereinafter, "First Hearing Notice");
- 2.1.6 Division's Statement of Allegations dated March 30, 2006;
- 2.1.7 Order for Telephonic Pre-Hearing Conference dated May 5, 2006 (hereinafter, "Second Pre-Hearing Conference Setting");
- 2.1.8 Second Pre-Hearing Order dated June 1, 2006 (hereinafter, "Second Pre-Hearing Order");
- 2.1.9 Order for Telephonic Pre-Hearing Conference dated June 27, 2006 (hereinafter, "Third Pre-Hearing Conference Setting");
- 2.1.10 Notice of Hearing Setting dated August 16, 2006 (hereinafter, "Second Hearing Notice");
- 2.1.11 Order for Telephonic Pre-Hearing Conference dated September 7, 2006 (hereinafter, "Fourth Pre-Hearing Conference Setting");
- 2.1.12 Letter from Administrative Law Judge dated October 3, 2006;
- 2.1.13 Letter from Administrative Law Judge dated October 31, 2006;

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- 2.1.14 Order for Telephonic Pre-Hearing Conference dated October 31, 2006 (hereinafter, "Fifth Pre-Hearing Conference Setting");
- 2.1.15 Letter from Ashworth to Administrative Law Judge dated November 17, 2006;
- 2.1.16 Order Granting Motion to Compel Discovery dated November 22, 2006 (hereinafter, "Pre-Trial Discovery Order");
- 2.1.17 Third Pre-Hearing Order dated November 22, 2006 (hereinafter, "Third Pre-Hearing Order");
- 2.1.18 Notice of Hearing Setting dated February 23, 2007 (hereinafter, "Third Hearing Notice");
- 2.1.19 The Division's Hearing Brief;
- 2.1.20 Cyr-PRM Pre-Hearing Brief;
- 2.1.21 The Report of Proceedings;
- 2.1.22 The Hearing Exhibits, consisting of:
 - 2.1.22.1 The hearing exhibits offered by Division and admitted by the Administrative Law Judge (hereinafter, "Division's Exhibits");
 - 2.1.22.2 Exhibit 51 offered by Cyr and admitted by the Administrative Law Judge (hereinafter, "Cyr's Exhibit"); and
 - 2.1.22.3 The exhibits offered by Olson and admitted by the Administrative Law Judge (hereinafter, "Olson's Exhibits");
- 2.1.23 The MPGMC Closing Brief;
- 2.1.24 The Cyr-PRM Closing Brief;

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- 2.1.25 Division's Post-Hearing Brief;
- 2.1.26 Division's Post-Hearing Reply;
- 2.1.27 The Cyr-PRM Post-Closing Brief;
- 2.1.28 Ashworth's Responsive Closing Brief; and
- 2.1.29 The Initial Order; and

2.2 The following documents on Petition for Review:

- 2.2.1 The Cyr-PRM Petition for Review;
- 2.2.2 The MPGMC Petition for Review;
- 2.2.3 The Ashworth Petition for Review;
- 2.2.4 The Olson Petition for Review;
- 2.2.5 The Reply to the PRM Petition for Review (hereinafter, "Division's PRM Reply");
- 2.2.6 The Reply to the Ashworth Petition for Review (hereinafter, "Division's Ashworth Reply");
- 2.2.7 The Reply to the Cyr Petition for Review (hereinafter, "Division's Cyr Reply");
- 2.2.8 The Reply to the MPGMC Petition for Review (hereinafter, "Division's MPGMC Reply"); and
- 2.2.9 The Reply to the Olson Petition for Review (hereinafter, "Division's Olson Reply").

3.0 Standard of Review. The standard of review before the Director is whether the FOF, as contained in the Initial Order, are supported by substantial evidence which was admitted, as

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contained in the Report of Proceedings and the Hearing Exhibits.⁴ With reference to questions of fact and the FOF, due regard should be given to the opportunity of the Administrative Law Judge to actually observe witnesses, including their credibility.⁵

With regard to the COL as contained in the Initial Order, the Director is obliged, in the manner of a reviewing court, to review the statutes and implementing regulations of the Division under the error of law standard, which permits the Director to substitute its judgment from that of the Division's Summary Order and the Administrative Law Judge's Initial Order.⁶ But, in the same manner as a reviewing court, the Director accords substantial weight to the expertise of the Division in the field of securities law and its interpretation of the governing statutes and legislative intent, as expressed through Division Counsel – especially in its Replies to the Petitions for Review.⁷

When a party has not actually assigned error to any of the FOF or COL as contained in the Initial Order, the Director is not obliged to consider that party's petition for review. When, by way of petition for review, a party has failed to (1) cite with required specificity the portions of the Initial Order to which the party takes exception and (2) adequately state the reasons for taking exception, then the Director cannot consider such a petition for review.⁸ However, even when a party has not filed a petition for review, the Director still has the authority, prior to

⁴ See *Nationscapital Mortgage Corporation v. Department of Financial Institutions*, 133 Wn. App. 723, 737; 137 P.3d 78 (2006).

⁵ See RCW 35.05.464(4).

⁶ See *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), *review denied*, 137 Wn.2d 1028 (1999); cited in *Nationscapital* at p. 737.

⁷ See *Overton v. Econ. Assistance Authority*, 96 Wn.2d 552, 555, 637 P.2d 652 (1981).

⁸ See WAC 10-08-211(3).

entering a Final Decision and Order, to consider *sua sponte* (i.e., absent any petition from a party) whether any part of the Initial Order is not supported by the evidence of record.⁹

4.0 Preliminary Considerations.

4.1 Timely Filing and Service. First, the Director is obliged to consider whether the Cyr-PRM Petition for Review, the MPGMC Petition for Review, the Ashworth Petition for Review, and the Olson Petition for Review were timely filed. The Model Rules of Procedure,¹⁰ which govern time for filing petitions for review, have been adopted by the Department.¹¹ The Division has argued in reply to each of the Respondents' Petitions for Review¹² that the Initial Order was served by mail on July 20, 2007, and that each of the Respondents failed to timely and properly file and serve their respective Petitions for Review with the Director within twenty (20) days of service of the Initial Order¹³ – that is, by August 9, 2007. In this regard, the Director has determined as to each of the Respondent's Petitions for Review, as follows:

4.1.1 MPGMC Petition for Review and Ashworth Petition for Review. On August 8, 2007, the Department received, to the attention of the Director, by FAX transmission, the MPGMC Petition for Review and Ashworth's Petition for Review. The Division Counsel, by and through the Attorney General's Office, also appears to have received the MPGMC Petition

⁹ See RCW 34.05.464(4); see also *Northwest Steelhead v. Washington State Department of Fisheries*, 78 Wn. App. 778, 896 P.2d 1292 (1995); see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

¹⁰ Chapter 10-08 WAC.

¹¹ WAC 208-08-020(1).

¹² These arguments are made in the Division's PRM Reply, Division's Ashworth Reply, Division's Cyr Reply, and Division's MPGMC Reply.

¹³ WAC 10-08-211(2) states: "The petition for review shall be filed with the agency head [DFI Director] within twenty days of the date of service of the initial order unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed." The Initial Order did not specify a different time for filing a petition for review.

for Review and Ashworth's Petition for Review on August 8, 2007.¹⁴ The Director finds, for purposes of these Consolidated Cases, that a FAX transmission timely received by the Director and Division Counsel constitutes a proper and timely filing and service in conformity with WAC 10-08-211(2).

4.1.2 Cyr-PRM Petition for Review. On August 8, 2007, the Department received, to the attention of the Director, by FAX transmission, the MPGMC Petition for Review and Ashworth's Petition for Review. The Division Counsel, by and through the Attorney General's Office, also appears to have received the MPGMC Petition for Review and Ashworth Petition for Review on August 8, 2007.¹⁵

4.1.3 Olson Petition for Review. By letter dated August 14, 2007, addressed to Joseph Vincent, in his capacity as General Counsel to the Director, the Division Counsel admits having received the Olson Petition for Review by mail on August 9, 2007, which was within the twenty (20) days for service of petitions for review as required by WAC 10-08-211(2). Olson's Petition for Review is dated August 6, 2008. According to the stamping on the envelope addressed to the Director, the Olson Petition for Review was mailed from the "Tacoma-Olympia 983" office of the U.S. Postal Service on August 8, 2007. However, the Zip Code of the Director's address was marked "98507-1200," rather than "98504-1200," the latter of which is the Director's correct Zip Code for purposes of the Director's P.O. Box. The only record of receipt of the Olson Petition for Review by the Director shows a file stamp for the Department of

¹⁴ The Director is in possession of a copy of these petitions for review with a file stamp of Attorney General of Washington, Government Compliance and Enforcement, dated August 8, 2007. The FAX transmission leader indicates, anomalously, that the transmission is dated 1/30/1995, at 2336 HRS from a "James Cline." This is not dispositive and is overcome by evidence that Division Counsel was served with its copy, albeit by FAX transmission, on August 8, 2007.

¹⁵ The Director is in possession of a copy of these petitions for review with a file stamp of Attorney General of Washington, Government Compliance and Enforcement, dated August 8, 2007. The FAX transmission leader indicates the transmission is dated August 8, 2007.

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Monday, August 13, 2007. The only person who would have opened the Director's mail on August 9, 2007, August 10, 2007, and August 13, 2007, was Susan Putzier, Executive Assistant to the Director. The final date for timely filing (receipt by mail) of the Olson Petition for Review was August 9, 2007. The records of the Department indicate that Susan Putzier was absent August 8, 9 and 10, 2007. Therefore, based upon the peculiar circumstances set forth above, including timely service on Division Counsel on August 9, 2007 and the mailing of the Olson Petition for Review to the Director on August 8, 2008, the Director finds that Olson made a timely filing and service of his petition for review in conformity with WAC 10-08-211(2).

4.1.4 FAX Transmissions. The Director further finds, for purposes of these Consolidated Cases, that a *FAX transmission* timely received by the Director and Division Counsel constitutes a proper and timely filing and service in conformity with WAC 10-08-211(2).¹⁶ Therefore, the Cyr-PRM Petition for Review, MPMGC Petition for Review and Ashworth Petition for Review are deemed to have been timely filed with the Director and served on Division Counsel.

4.2 Improper Assignment of Error. WAC 10-08-211(3) requires that every "petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition." Therefore, before the Director can consider a petition for review (albeit, one which has been timely filed and served), the Director must consider whether a petitioner (respondent) has specified portions of the initial order to be reviewed and whether a petition has also referred to evidence of record in reliance

¹⁶ The Respondents were not represented by an attorney at law. With the exception of Olson, each of the Respondents resided or was domiciled outside the State of Washington. At least one of the Respondents contacted Joseph Vincent, General Counsel to the Director, prior to the filing of any petition for review, indicating a good faith effort to comply with the filing deadline.

upon the exceptions to the initial order he or she has specified. When put to this test, the Director finds with respect to the Respondents' Petitions for Review, as follows:

4.2.1 MPGMC Petition for Review. The MPGMC Petition for Review does not properly assign error as required under WAC 10-08-211(3). The "sections" of the Initial Order to which MPGMC makes reference are "(a) (b) (c) (d) (I) [sic] and (d) (ii)." There is no such numbering in the Initial Order which corresponds to any of the exceptions taken by MPGMC in its Petition for Review, which is a requirement of WAC 10-08-211(3). MPGMC argues that: (a) "[t]he actual price of \$5,000 total of \$20,000 for all Washington State Investors; (b) "No Commissions were paid"; (c) "Less than 20 Purchasers"; (d)(i) "Does not exceed 10% of purchasers net worth"; and (d)(ii) "Purchasers had knowledge of financial and business matters." This appears to be a specific reference to the apparent conditions in WAC 460-44A-504 for qualifying for an exemption from registration under the Securities Act. However, MPGMC has cited no specific FOF or COL from which it takes exception. Nor does it cite any evidence in the Record on Review (Report of Proceedings and Exhibits) to support its claims. As set forth below in this Final Order, the Director is of the view that MPGMC has not met the burden of proving that it is entitled to an exemption under WAC 460-44A-504. Moreover, MPGMC has not even addressed the fraud violation under RCW 21.20.010.

4.2.2 Ashworth Petition for Review. The Ashworth Petition for Review is nearly identical in form and substance to the MPGMC Petition for Review. Therefore, the Ashworth Petition for Review is viewed by the Director in the same manner as the MPGMC Petition for Review.

4.2.3 Cyr-PRM Petition for Review. The Cyr-PRM Petition for Review is substantially similar in form and substance to the MPGMC Petition for Review. Therefore, the Cyr-PRM Petition for Review is viewed by the Director in the same manner as the MPGMC Petition for Review.

4.2.4 Olson Petition for Review. The Olson Petition for Review takes exception to COL 31, at page 63, of the Initial Order. The Olson Petition for Review also takes exception to the “lack of evidence in support of RCW 21.20.390(5).” However, as to this second exception, Olson does not cite the specific COL in the Initial Order upon which it is based; nor does Olson cite any portions of the Report of Proceedings which would support an alternative conclusion. Moreover, Olson’s Petition for Review is otherwise deficient to the extent that Olson states repeatedly that he will refer to evidence of record that will support: (1) “why WAC 460-44A-504 best pertains to [PRM]”; (2) “that my actions of providing friends and family with information about PRM was perfectly legal under WAC 460-44A-504”; (3) “that a complete investigation would have uncovered a single violation by PRM of WAC 460-44A-504”; (4) “that a Cease and Desist Order against [Olson] was not needed or supported”; (5) that “there is no evidence other than testimony by the Department’s investigator” that the Department incurred costs; (6) “that a complete and proper investigation [sic] this case would have never gone to a hearing or incurred \$24,583 in costs”; (7) that the “Department is an enforcement agency and should be held as accountable as the respondents in their cases”; and (8) that from the data log it does not appear that “the amount of time is reasonable or accurate.” These eight (8) contentions, which are contained in the Olson Petition for Review, do not actually take exception to any

specific FOF or COL of the Initial Order.¹⁷ Therefore, the Olson Petition for Review has not followed the requirements of WAC 10-08-211(3) *except* in one instance – the assignment of error as to COL 31, at page 63, of the Initial Order.¹⁸ All other argument in the last paragraph of the Olson Petition for Review is merely rhetorical in nature and does not focus on any of the requirements of a proper petition for review.

The Director, in the course of his own evaluation of the sufficiency of the FOF and COL in relation to the Record on Review (including, without limitation, the Report of Proceedings), has considered all the issues which appear to be related to each of the eight (8) contentions of Olson enumerated above. The arguments of Olson with respect to the insufficiency of COL 31 will be formally considered, regardless of merit, because they have been properly lodged. Beyond that, Olson appears to be relying, in part, on the conditions for exemption from registration under WAC 460-44A-504. To this extent, Olson would appear to be arguing that the conditions for exemption from registration under WAC 460-44A-504 have been met. Accordingly, the Olson Petition for Review is viewed by the Director in the same manner as the MPGMC Petition for Review.

5.0 Director's Consideration of the Respective Arguments of the Parties.

5.1 "Rule 504" Exemption Arguments Unfounded – Burden of Proof Not Met. All of the Respondents have explicitly or implicitly hinged their arguments in their Petitions for Review on the mistaken notion that the offer and sale of securities were exempt from the registration

¹⁷ Olson may have been of the mistaken view that a petition for review was a de novo hearing of the evidence, which it is not. Even though Olson (a non-attorney) has represented himself, he is held to the same standard as persons represented by counsel. Under the Administrative Procedures Act, a petition for review is an inquiry by the Director into whether the findings of fact and conclusions of law made by the Administrative Law Judge in her Initial Order are supported by substantial evidence contained in the Report of Proceedings. Olson never cites any part of the record for his propositions. Therefore, the Olson Petition for Review is substantially deficient in this regard.

¹⁸ The exception to the "lack of evidence in support of RCW 21.20.390(5)" also does not cite any specific FOF or COL and must, therefore, as stated by Olson, not be formally considered.

requirements of RCW 21.20.140 and RCW 21.20.040. The Respondents appear to be claiming that the transactions fall under the “Rule 504” exemption provided for under RCW 21.20.320(9) and WAC 460-44A-504. Yet the Director concurs with Division Counsel that the claimed exemption only applies to RCW 21.20.040 through RCW 21.20.300 and does not in any way affect the fraud violation under RCW 21.20.010. Indeed, WAC 460-44A-504(6) specifically provides: “Issuers are reminded that nothing in these rules alters their obligation under RCW 21.20.010”

None of the Respondents has met the burden of proof required to be entitled to claim exemption from the registration requirements of the Securities Act.¹⁹ The Director concurs with Division Counsel that no evidence, in the Report of Proceedings or the content in the Exhibits, has been cited by any of the Respondents to support their respective claims (explicit or implicit) of exemption. Exemptions are to be strictly construed, and the burden of proving an exemption is upon the person claiming it.²⁰ The Respondents have not met the burden of proof required under RCW 21.20.540 to be entitled to an exemption under WAC 460-44A-504.

5.2 COL 31 and the Olson Petition for Review. Although Olson, as a matter of form, has correctly cited and taken exception to an actual conclusion of law – i.e., COL 31, at p. 63 of the Initial Order – nowhere does Olson support this contention with any citation of the record, either in the Report of Proceedings or Exhibits, to overcome the legitimacy of this conclusion of law.

¹⁹ To qualify for an exemption under WAC 460-44A-504, offers and sales of securities must satisfy all of the terms and conditions of WAC 460-44A-501 through WAC 460-44A-503, inclusive, plus WAC 460-44A-508. See WAC 460-44A-504(1) and (2). Also, WAC 460-44A-504(3)(f) specifically requires the filing of a notice and filing fee as set forth in WAC 46-44A-503. There is no evidence in the record that MPGMC or PRM filed an initial notice with the Division of Securities ten (10) days prior to receipt of investor funds or deliver of the royalty agreements at issue. To the contrary, the evidence in the record indicates that there was no notice of the claim of exemption filed with the Division. See RP at 37-38.

²⁰ RCW 21.20.540.

Olson must show that COL 31 is either not supported by substantial evidence or that the FOF do not support COL 31, or both. Yet the FOF do support COL 31, and Olson has not overcome those findings with a showing of contrary evidence in the record.

5.3 Award of Investigative Costs. Olson, Ashworth and MPGMC appear to take general exception to the award of investigative costs in the Initial Order by asserting that there is a lack of evidence in support of RCW 21.20.390(5). Yet, as persuasively pointed out by Division Counsel,²¹ these respective contentions are contrary to the extensive evidence in the record.²²

5.4 No Petition for Review by Division. The Director notes in passing that the Division did not file its own Petition for Review with respect to the Administrative Law Judge's conclusion that the following fines by the Division were improper: (1) \$30,000 against Olson was improper; (2) \$35,000 against MPGMC; and (3) \$50,000 against Ashworth. The Director has authority to consider *sua sponte* whether the Record on Review substantially supports an alternative finding, including the imposition of greater investigative costs. However, based upon due consideration of the Record on Review, the Director has independently declined to make such an alternative finding in the absence of a Petition for Review by the Division.

6.0 Findings of Fact. Therefore, after consideration of the Record on Review, the Director has determined (1) that each of the FOF contained in the Initial Order is supported by substantial evidence and (2) that none of the FOF has been overcome by either Respondent's Petitions for Review or the Director's review of the Report of Proceedings and Exhibits. The Director

²¹ See Division's MPGMC Reply (p. 2), Division's Ashworth Reply (p. 1), and Division's Olson Reply (p. 1).

²² See FOF 225 through 231, inclusive, at pp. 47-49, of the Initial Order.

therefore re-affirms FOF 1 through 234, inclusive, as contained in pages 6 through 50 of the Initial Order.

7.0 Conclusions of Law. The Director has further determined that, based upon the FOF which are hereby re-affirmed, the COL made by the Administrative Law Judge are substantially supported by the FOF and governing law. The Director therefore re-affirms COL 1 through 72, inclusive, as contained in pages 51 through 75 of the Initial Order.

8.0 Final Decision and Order. Therefore, the Initial Order is hereby confirmed in its entirety as if fully set forth herein. By way of the Department's Final Decision and Order, NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

8.1 All Respondents: Permanent Cease and Desist Order (Violation of Registration of Securities Provision of Securities Act). Respondents Peruvian Resources Management USA, LLC, Machu Picchu Gold Mining Corporation, Douglas Cyr, Douglas Ashworth, and Thomas Olson, their agents and employees, shall permanently cease and desist from offering or selling securities in any manner in violation of RCW 21.20.140, the section of the Securities Act of Washington requiring registration of securities.

8.2 All Respondents: Permanent Cease and Desist Order (Violation of Anti-Fraud Provision of Securities Act). Respondents Peruvian Resources Management USA, LLC, Machu Picchu Gold Mining Corporation, Douglas Cyr, Douglas Ashworth, and Thomas Olson, their agents and employees, shall permanently cease and desist from violation of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

8.3 PRM: Fines. Respondent Peruvian Resources Management USA, LLC, shall pay fines of thirty five thousand dollars (\$35,000.00) to the Department of Financial Institutions.

RE: PERUVIAN RESOURCES MANAGEMENT USA, LLC; MACHU PICCHU GOLD MINING CORPORATION; DOUGLAS CYR; DOUGLAS ASHWORTH; AND THOMAS OLSON - OAH Docket Nos. 2006-DFI-0004, 2006-DFI-0005, 2006-DFI-0006, 2005-DFI-0013; 2005-DFI-0016 - DFINo. S-05-007

8.4 Cyr: Fines. Respondent Douglas Cyr shall pay fines of thirty five thousand dollars (\$35,000.00) to the Department of Financial Institutions.

8.5 PRM: Costs, Fees and Expenses. Respondent Peruvian Resources Management USA, LLC, shall pay costs, fees, and other expenses in the amount of four thousand seven hundred ninety-one dollars (\$4,791.00) to the Department of Financial Institutions.

8.6 MPGMC: Costs, Fees and Expenses. Respondent Machu Picchu Gold Mining Corporation shall pay costs, fees, and other expenses in the amount of four thousand seven hundred ninety-one dollars (\$4,791.00) to the Department of Financial Institutions.

8.7 Cyr: Costs, Fees and Expenses. Respondent Douglas Cyr shall pay costs, fees, and other expenses in the amount of four thousand seven hundred ninety-one dollars (\$4,791.00) to the Department of Financial Institutions.

8.8 Ashworth: Costs, Fees and Expenses. Respondent Douglas Ashworth shall pay costs, fees, and other expenses in the amount of four thousand seven hundred ninety-one dollars (\$4,791.00) to the Department of Financial Institutions.

8.9 Olson: Costs, Fees and Expenses. Respondent Thomas Olson shall pay costs, fees, and other expenses in the amount of Five thousand four hundred nineteen dollars (\$5,419.00) to the Department of Financial Institutions.

8.10 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail; *provided, however,* that all fines, costs, fees and expenses imposed herein shall be fully paid not more than thirty (30) days from the date of this Final

Decision and Order, and, to the extent left unpaid, shall be thereafter subject to immediate execution as provided below in Subsection 8.14.

8.11 Reconsideration. Petitions for reconsideration, addressed to the Director, shall not stay the effectiveness of this Final Determination and Order nor are petitions for reconsideration a prerequisite for seeking judicial review in this matter.

8.12 Stay of Order. The Director has determined not to consider a petition to stay the effectiveness of this Final Decision and Order. Any such requests should be made in connection with a petition for judicial review made under the Administrative Procedures Act, Chapter 34.05 RCW, including RCW 34.05.550.

8.13 Judicial Review. Each of the Respondents has the right to petition the superior court for judicial review of the Department's action under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.

8.14 Non-Compliance with Final Decision and Order. If one or more of the Respondents do not comply with the terms of this order, the Department may seek enforcement by the Office of Attorney General against the non-complying Respondent(s) to include the collection of the fines, fees, costs and expenses imposed herein. Failure to comply with this Final Decision and Order may also prompt additional action against the Respondents by the Department, as permitted by the Securities Act of Washington, Chapter 21.20 RCW, for failure to comply with a lawful order of the Department.

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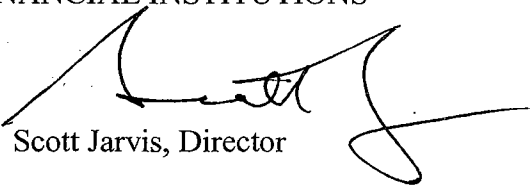
RE: PERUVIAN RESOURCES MANAGEMENT USA, LLC; MACHU PICCHU GOLD MINING CORPORATION; DOUGLAS CYR; DOUGLAS ASHWORTH; AND THOMAS OLSON – OAH Docket Nos. 2006-DFI-0004, 2006-DFI-0005, 2006-DFI-0006, 2005-DFI-0013; 2005-DFI-0016 – DFINo. S-05-007

8.15 Service. For purposes of filing a petition for reconsideration or a petition for judicial review, service of this Final Decision and Order is effective upon its having been deposited in the United States Mail with a declaration of service attached hereto.

Dated at Tumwater, Washington, on this 9th day of December, 2008.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:


Scott Jarvis, Director

RE: PERUVIAN RESOURCES MANAGEMENT USA, LLC; MACHU PICCHU GOLD MINING CORPORATION; DOUGLAS CYR;
DOUGLAS ASHWORTH; AND THOMAS OLSON – OAH Docket Nos. 2006-DFI-0004, 2006-DFI-0005, 2006-DFI-0006, 2005-DFI-0013;
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NOTICE TO THE PARTIES

In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for Reconsideration of the FINAL DECISION AND ORDER must be filed with the Director within ten (10) days of service of the FINAL DECISION AND ORDER. It should be noted that Petitions for Reconsideration do not stay the effectiveness of the FINAL DECISION AND ORDER. Judicial Review of the FINAL DECISION AND ORDER is available to a party according to provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

This is to certify that the FINAL DECISION AND ORDER has been served upon the following parties on December 10, 2008, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: *Susan Putzier*
Susan Putzier
Executive Assistant to the Director

Mailed to the following:

Peruvian Resources Management USA, LLC
39223 Orangelawn
Livonia, MI 48150

✓ Charles Clark, AAG
Office of the Attorney General
PO Box 40100
Olympia WA 98504-0100

Machu Picchu Gold Mining Corporation
7544 FM 1960 E #17
Houston, TX 77346

Michael Stevenson, Esq.
Securities Administrator
Department of Financial Institutions
Securities Division
PO Box 9033
Olympia WA 98507-9033

Douglas Cyr
39223 Orangelawn
Livonia, MI 48150

Suzanne Sarason, Esq., Program Manager
Department of Financial Institutions
Securities Division
PO Box 9033
Olympia WA 98507-9033

Douglas Ashworth
39223 Orangelawn
Livonia, MI 48150

Thomas Olson
P.O. Box 414
Spanaway, WA 98387

RE: PERUVIAN RESOURCES MANAGEMENT USA, LLC; MACHU PICCHU GOLD MINING CORPORATION; DOUGLAS CYR; DOUGLAS ASHWORTH; AND THOMAS OLSON - OAH Docket Nos. 2006-DFI-0004, 2006-DFI-0005, 2006-DFI-0006, 2005-DFI-0013; 2005-DFI-0016 - DFINo. S-05-007