

## Robert Friedland and the former Summitville Mine, Colorado

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### Summary of key facts & timeline of principal events

Robert M. Friedland's involvement with events associated with the development, operation and closure of the former Summitville Mine in Colorado, USA, has been widely misrepresented and misrepresented. This summary outlines key facts and principal events concerning Mr. Friedland's role. The facts have been documented, examined and affirmed in a number of court proceedings, most extensively in Canada's Ontario Court of Justice in 1996. A more comprehensive reference collection of pertinent information also is available, upon request.

#### **OCTOBER 1984**

The State of Colorado issued a permit for construction of the Summitville Mine after the mining company, Summitville Consolidated Mining Co. Inc. (SCMCI), successfully completed testing of heap-leach technology using a diluted cyanide solution to recover gold from crushed rock. Summitville Consolidated Mining Co., the developer and operator of the mine, was owned by Galactic Resources Ltd., a publicly traded Canadian company. Robert Friedland was Chairman and CEO of Galactic Resources.

The site of the mine on South Mountain, and the area around it, had been extensively disturbed during more than 100 years of previous mining. Decades of prior, untreated acidic drainage from old mine workings had seriously impacted waterways and aquatic life, which was independently documented. This drainage from the old workings continued, unchecked and untreated, during the life of the Summitville Mine.

#### **JUNE 1986**

The Summitville Mine officially opened. At that time, Mr. Friedland owned 10% of the stock in the parent company, Galactic Resources.

#### **JANUARY 1987**

Mr. Friedland resigned as President of SCMCI, his last official position with the mine operating company. (This was five years before the mine's closure).

#### **NOVEMBER 1990**

Mr. Friedland resigned as a member of Galactic Resources' Board of Directors, the last of his official positions with Galactic. He previously had relinquished the position of Galactic's CEO in June, 1990.

#### **DECEMBER 1992**

Although designed and built by industry-leading consultants and contractors to be a zero-discharge mining operation, a miscalculation of projected annual precipitation and evaporation at the site subsequently required the mine to make controlled discharges of treated water from the leaching pond. In a 1989 response, the State of Colorado had imposed its highest quality standard for discharged water. The standard, permitting only extremely low levels of silver that could not be met at that time, was formulated to protect a Class 1 fishery that in fact did not exist in the adjacent waterways. An accidentally-caused leak in the protective polyethylene liner underlying the leach pad that contained the mined ore also contributed to the water imbalance, although leach solution that did escape through the leak was captured by a built-in drainage control system and pumped back into the leach pond. Solution from the leak was not released into the offsite environment.

SCMCI advised the State of Colorado on December 1, 1992, that it intended to cease operations. For more than a year, Galactic had issued warnings about rising costs and falling gold prices, had sold assets to pay Summitville reclamation costs and had unsuccessfully attempted to treat acid mine drainage and meet stringent State water-quality standards. SCMCI initiated bankruptcy proceedings on December 3 and ceased minesite operations on December 15, 1992. The U.S. government's Environmental Protection Agency (EPA) assumed control of the site (and exempted itself from the water-quality standards that the State had imposed on the mine). The Summitville Mine had produced more than 300,000 ounces of gold and was in full compliance with its operating permits when operations ceased.

## **JANUARY 1993**

The parent company, Galactic, with no financial resources to continue operations, filed for bankruptcy.

## **MAY 1993**

A report by independent consulting engineers Knight Piésold concluded in part that Summitville was “the manifestation of a myriad of decisions, actions, rules and procedures that were not unilaterally determined by any one party.”

*(Ironically, in December 2000 — after more than seven years of questionable, EPA-directed clean-up spending and a Canadian court’s extraordinary judicial censure of the U.S.’s misconduct in its ill-founded, secretive, international litigation against Mr. Friedland — the U.S. and Colorado governments also agreed in their voluntary settlement agreement with Mr. Friedland that “no one person or entity is solely responsible for the environmental problems or subsequent cleanup” at Summitville. See pages 5, 7 & 8.)*

**Mining experts concurred with the EPA's expressed view that no disaster had occurred. There was no failure of a containment dam and no major, uncontrolled release of cyanide solution into adjacent waterways, contrary to numerous, inaccurate published reports. Untreated acidic drainage from historic, abandoned mine workings below the Summitville minesite was identified as the principal cause of reported downstream fish losses. However, water in the Alamosa River caused no harm to people, animals or crops.**

EPA rejected offers by Mr. Friedland and the mining industry during 1993-94 to assist with remediation measures at Summitville.

## **MAY 1995**

EPA officials noted media reports that Mr. Friedland could receive substantial financial gain from his interest in Diamond Fields Resources, an unrelated exploration company that had discovered the giant Voisey’s Bay nickel deposit in the province of Newfoundland & Labrador, in eastern Canada. Mr. Friedland was Co-Chairman of Diamond Fields Resources at the time.

## **NOVEMBER 1995**

Mr. Friedland, in a published media letter and interviews, repeated his standing offer to make a voluntary contribution to help implement appropriate remediation measures at Summitville.

## **MARCH 1996**

Mr. Friedland’s U.S. attorney John Fognani held a first meeting with EPA to discuss a possible voluntary contribution by Mr. Friedland toward remediation work at Summitville. Significantly, EPA did not disclose that at the very same time its staff was developing a secret scheme to try to seize Mr. Friedland’s assets as reimbursement for environmental remediation costs at Summitville under the U.S. Comprehensive Environmental Response Compensation and Liability Act.

## **MAY 1996**

The United States/EPA launched covert, civil-suit court action in Colorado aimed at seizing US\$150 million worth of Mr. Friedland's assets in Canada that were to be created by the impending sale of his Diamond Fields shares. In a secret hearing, the U.S. persuaded a Federal District Court judge in Denver to issue a secret garnishment order against Mr. Friedland's pending asset gain.

## **AUGUST 1996**

Selectively withholding important and highly relevant information from the judges, EPA then took its secret garnishment order obtained from the Colorado court and initiated further secret court hearings in Canada, where EPA obtained another secret court order, known as a Mareva injunction, which had legal force in Canada. The secretly obtained Canadian court order imposed a temporary freeze on Mr. Friedland's investment assets. However, the United States Government and EPA then were required to take their case to an open court hearing in Canada in their attempt to have the temporary asset-freeze injunction converted into a court order that would permit a permanent seizure of Mr. Friedland's assets.

## **OCTOBER 1996**

The first open-court hearing over the asset freeze, held before the Ontario Court of Justice in Toronto on October 22-31, 1996, provided Mr. Friedland and his legal team with their first opportunity to review and challenge the United States' evidence that had been used in previously secret court sessions in Canada and the U.S. As part of the process, Mr. Friedland's counsel also were able to compel the United States to disclose vital evidence that the United States had deliberately withheld from the previous, secret court hearings in the United States and Canada.

## **NOVEMBER 1996**

Following what was to become the first and only open and thorough examination in a court of law of the U.S.'s purported evidence against Mr. Friedland, Mr. Justice Robert Sharpe, of the Ontario Court of Justice, in Toronto, Canada, on November 5, 1996, ordered the release of Mr. Friedland's assets and found the United States "guilty of conduct which merits the censure of this court."

**Mr. Justice Sharpe found that the United States had demonstrated a "pervasive failure" to live up to its duty to disclose evidence to the courts, had "painted a misleading picture of (Mr. Friedland's) role in the mine and its operations"; he also found that the United States had "failed to establish a strong prima facie case of liability" against Mr. Friedland.**

**The Ontario Court judge specifically criticized the United States/EPA for misrepresenting evidence and withholding vital information favourable to Mr. Friedland, including the fact that Mr. Friedland previously had offered to make a voluntary settlement contribution and that EPA believed it had a strong case against other potentially responsible parties.**

**"In my view, the extent of non-disclosure and misstatement by the United States of America was serious and fundamental," Mr. Justice Sharpe said in his judgment, which he read in court.**

**Evidence showed that experienced executives were in charge of the mine and that Mr. Friedland did not make key, day-to-day operational decisions, he did not make key decisions about the installation of the heap-leach liner and he had nothing to do with the abandonment of the mine.**

**In his decision, Mr. Justice Sharpe stated, in part: "In my view, the picture painted by this material offered by the United States was a misleading one. It suggests that Robert Friedland was effectively a one-man operation making all crucial decisions relating to the mine and its operations, and that is plainly not the case."**

The Canadian judge cited the United States for “material misrepresentation of the facts.” After reviewing all of the evidence, the Canadian court also found that Mr. Friedland, who established residency in Canada in 1981 — five years before the Summitville Mine opened — did not conceal personal assets and did not leave the U.S. to avoid responsibility after the closure of the Summitville Mine, as the United States had alleged.

**Mr. Justice Sharpe ordered the immediate return to Mr. Friedland of the previously frozen financial assets and, in addition, also ordered the United States to pay Mr. Friedland’s costs and attorneys’ fees. (The United States subsequently complied with the court order and paid Mr. Friedland’s costs, totalling US\$1.25 million, in early 2001).**

The United States did not appeal the Canadian court’s extraordinary findings and criticisms. ([Complete judgment: www.ivanhoecapital/pdf/Ontario-Court-judgment-re-USA&Summitville-November-1966.pdf](http://www.ivanhoecapital/pdf/Ontario-Court-judgment-re-USA&Summitville-November-1966.pdf))

#### **APRIL 1997**

Mr. Friedland launched a countersuit in Canada’s Ontario Court of Justice seeking an award for damages of CDN\$150 million against the U.S. and certain EPA and Department of Justice officials involved in the attempted seizure of his assets.

The U.S. subsequently claimed that it had sovereign immunity in Canada.

#### **MARCH 1999**

After potential settlement discussions with the United States failed to reach an agreement, Mr. Friedland launched another counterclaim lawsuit against the United States and Colorado in Federal District Court in Denver in response to the United States Government’s original covert civil action in May 1996.

#### **APRIL 1999**

Mr. Friedland launched a third-party lawsuit against 10 companies, alleging they were liable to share the costs of cleaning up the Summitville site. The companies included Bechtel, Bank of America and Industrial Constructors, which respectively were instrumental in the mine’s design, financing and construction.

#### **OCTOBER 1999**

The United States and Colorado expanded their cost-recovery action beyond Mr. Friedland by naming a total of seven companies that had been associated either with the Summitville mine or previous industrial activities on the site.

#### **MARCH to JULY, 2000**

The United States withdrew its motion in Federal District Court, Colorado, for partial summary judgment on its US\$130 million cost-recovery claim against Mr. Friedland. The United States cited uncertainties associated with the activities of its main clean-up contractor at Summitville: Environmental Chemical Corp. (ECC). On May 30, 2000, ECC principals were indicted in Kentucky on 42 counts, including racketeering, fraud and bribery. ECC had received federal contracts worth US\$139 million between 1989 and 1998.

[In a column published in the \*Denver Rocky Mountain News\* on May 21, 2000, Mr. Friedland yet again reiterated his standing, seven-year pledge to do "the right thing" to help raise money and support remediation at Summitville.](#)

#### **AUGUST 2000**

The Supreme Court of Canada — the nation’s highest court — agreed to hear Mr. Friedland’s case against the United States and to make the final ruling on the United States’ claim of sovereign immunity against Mr. Friedland’s 1997 damages countersuit in Canada. A hearing date was not set.

The Canadian Supreme Court's decision prompted an editorial in *The Denver Post* newspaper on August 28, 2000, warning that costs awarded to Mr. Friedland against the United States could rise much higher than the original award of \$1.25 million by Canada's Ontario Court of Justice in 1996.

*The Denver Post's* editorial noted:

**“It has long been clear that the Clinton administration decision to go after Friedland in the heat of the 1996 presidential campaign was a big mistake that has badly backfired. It will now be up to a set of Canadian judges to determine just how big that mistake was.”**

## **SEPTEMBER 2000**

Scott McInnis, a Colorado member of the U.S. Congress's House of Representatives, called on EPA to conduct a thorough investigation into the conduct of Environmental Chemical Corp., involving work conducted at the site of the Summitville mine since 1995. Previous complaints by the Republican congressman in 1995 had sparked an earlier federal audit and a review of ECC activities. The audit found that federal administrative bungling had allowed ECC to be overpaid by about US\$6.5 million and to triple its potential profit to \$8.6 million from its first two years of work at Summitville.

## **DECEMBER 2000**

**On December 22, 2000, Mr. Friedland, the government of the United States of America and the Colorado state government announced a voluntary settlement of all lawsuits and counterclaims between them.**

**As part of the settlement agreement, the United States and Colorado acknowledged that “no one person or entity is solely responsible for the environmental problems or subsequent cleanup” at Summitville, which the governments further acknowledged had been a centre of “substantial mining and construction activity” since gold was discovered in the 19<sup>th</sup> century.**

*(Details of the voluntary settlement are contained in the news release, reproduced on pages 7 & 8, which was issued by Mr. Friedland's Ivanhoe Capital Corporation.)*

## **2001 TO 2008**

**During 2001, Mr. Friedland paid a lump-sum amount of US\$20.28 million in full satisfaction of his undertaking as part of the voluntary settlement reached with the U.S. and Colorado governments in December 2000. The money was dedicated to restoration work in the Alamosa River watershed. (This subsequent, one-time payment superseded the originally anticipated \$27.75 million over 10 years that had been part of the December 2000 settlement agreement.)**

**Also as part of the settlement, the U.S. Government paid Mr. Friedland US\$1.25 million — as had been ordered by Canada's Ontario Court of Justice in 1996— as reimbursement for his costs involved in defeating the U.S.'s attempts in 1996 to seize his financial assets in Canada (see *November 1996* references).**

**In addition, Mr. Friedland continued with third-party lawsuits against other companies that were involved with the design and construction of the Summitville Mine, and insurers.**

**Mr. Friedland subsequently recovered a total of US\$28 million from insurers and other parties.**

**These third-party settlements further support the now unchallenged assertions by Mr. Friedland, the undisputed, 1996 findings of Canada's Ontario Court of Justice — and even the formal, affirming settlement declarations by the United States and Colorado governments — that Mr. Friedland was not solely responsible for the environmental problems or the resulting clean-up costs at Summitville.**

## **NOVEMBER, 2003**

The following correction was published in *The New York Times* on November 18, 2003

### **Correction**

An article in World Business on Oct. 3 about a mining boom in Mongolia misstated the terms of a legal settlement reached in Colorado in 2000 by Robert M. Friedland, the chairman of a company that is developing a copper and gold deposit in the Gobi Desert.

He agreed to a one-time payment of \$20.7 million, not \$27.7 million over a decade, to settle state and federal accusations that the Summitville gold mine, run by a company in which he was a large shareholder, contributed to pollution of a nearby river. (The government paid Mr. Friedland \$1.25 million for costs in related litigation, and he has recovered about \$17 million from others involved in the Summitville mine.)

The article also misstated the source of the contamination of the river, the Alamosa. It was water laden with heavy metals caused by past and current mining in the area and natural acidic runoff, not cyanide-laced tailings spilled from the Summitville mine.

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I V A N H O E  
CAPITAL CORPORATION

For immediate release

December 22, 2000

## **Robert M. Friedland Announces Voluntary Settlement With United States and State of Colorado Over Remediation Costs At Historic Summitville Mining Area**

DENVER, COLORADO — Robert M. Friedland, Chairman of Singapore-based Ivanhoe Capital Corporation, said today that he has reached a voluntary settlement with the United States and the State of Colorado to end four and a half years of lawsuits and counterclaims over a former gold mine in Colorado's historic Summitville mining district. The settlement remains subject to approval by the Federal District Court in Denver.

"This is far from the end of the Summitville story, but at last we have completed one important, long-overdue chapter," said Mr. Friedland, who is continuing his third-party lawsuits against nine companies that were involved with the Summitville Mine and previous activities at the site.

"For me, ending this particular cycle, in which litigation triggered more litigation, is simply the right thing to do. One reason that this agreement can be announced today is that a significant portion of the money I have volunteered to pay over the next 10 years will be dedicated to improving conditions in the Alamosa River watershed, directly benefiting people most affected by more than 120 years of mining in the Summitville area.

"I offered to be part of an industry-led response at Summitville as far back as 1993, but the U.S. Environmental Protection Agency inexplicably rejected my offer. Although one of my legal representatives met with EPA in 1996 and discussed conditions under which I was prepared to make a substantial, voluntary cash contribution to help restore the site, EPA chose to launch ex parte civil lawsuits in closed-door court sessions."

Mr. Friedland was formerly an executive and a director of Galactic Resources Ltd., a publicly traded, Canadian company. Galactic's indirect subsidiary, Summitville Consolidated Mining Co. Inc. (SCMCI), owned the Summitville Mine, which produced more than 300,000 ounces of gold before its closure in December, 1992. Mr. Friedland resigned the last of his positions with SCMCI in 1987 and with Galactic in 1990, more than two years before Galactic declared bankruptcy in 1993. Mr. Friedland owned 10% of Galactic in June, 1986, when the mine opened. He retained most of his shares until 1992, when the trading price had fallen to a low level that resulted in a substantial, personal financial loss on his holdings.

Despite spending millions of dollars in its attempts to meet unattainable quality standards for water released from the minesite into the Alamosa River watershed, SCMCI was unable to adequately remove sufficient metals, notably silver, from water it treated. Although a reported US\$150 million has been spent on remedial measures at the site, EPA today still is not meeting some of the same arbitrary water standards that helped put SCMCI out of business in 1992. It is now clear that successive mining activities dating back to the 1870s only contributed to existing, naturally occurring, acidic water problems in the area.

Without admitting any personal liability for design and construction problems and operational decisions linked to acidic drainage from the minesite between 1987 and 1992, Mr. Friedland has reached the following agreements with the U.S. and Colorado:

- The U.S. and Colorado will end their four-and-a-half-year-old civil action against Mr. Friedland in Federal District Court in Colorado. The U.S. originally sought to have Mr. Friedland alone pay the entire cleanup cost of US\$150 million. However, the federal and state governments expanded their action in October, 1999, to include a total of seven companies previously involved with the Summitville minesite, and both governments will continue this cost recovery action.
- The U.S. and Colorado now acknowledge that "no one person or entity is solely responsible for the environmental problems or subsequent cleanup" at Summitville — a centre of "substantial mining and construction activity" since gold was discovered in the 19<sup>th</sup> century.
- Mr. Friedland will make voluntary payments over 10 years totalling US\$27.75 million, beginning in 2001 with two initial payments totalling US\$5.25 million, followed by nine annual payments of US\$2.5 million. The payments will be made to an escrow fund, jointly administered by state and federal officials, to be used to help restore natural resources in the Alamosa River watershed.

- As ordered by the courts in Canada, the U.S. will pay Mr. Friedland US\$1.25 million in attorneys' fees and costs. In exchange, Mr. Friedland will withdraw his Canadian lawsuit against the U.S. seeking damages arising from U.S. government closed-door court actions in 1996 that temporarily froze US\$152 million of his assets in Canada. The U.S.'s attempt to seize the assets was dismissed by Canada's Ontario Court in November, 1996. After Mr. Friedland filed a counterclaim in 1997, the U.S. claimed sovereign immunity protection against his action. In August of this year, the Supreme Court of Canada agreed to hear the case and make the final ruling on the U.S. claim of sovereign immunity. The case will not be heard if this settlement agreement is approved.
- Mr. Friedland will continue with his third-party lawsuits in the U.S. against nine companies that have been associated with the Summitville site. They include Bechtel Corporation, which designed and directed construction of the SCMCI mine; Industrial Constructors Corp., a unit of Morrison Knudsen Corp., which built and operated the SCMCI mine; Bank of America, which helped finance the SCMCI mine; and Klohn Leonoff, GSE Lining Technology and Columbia Reservoir Systems, which were involved with the SCMCI mine's heap-leach pad and synthetic liner. Mr. Friedland's suit alleges that actions by these companies caused, or contributed to, the release of hazardous substances from the site.
- Mr. Friedland will retain the right to initiate new actions against contractors and subcontractors that have worked for the U.S. government at the minesite since 1992. Mr. Friedland's legal team is continuing its efforts to question officials of the government's principal contractor, Environmental Chemical Corp. (ECC), which received US\$89 million for purported cleanup work at Summitville under contracts awarded without competitive bidding. On May 30, a number of principals associated with ECC were indicted in Kentucky on 42 criminal counts that included racketeering, fraud and bribery relating to various federal government contracts. Federal audits in 1995 showed that mistakes had allowed ECC to be overpaid by US\$6.5 million for early work at Summitville. On September 20 this year, Rep. Scott McInnis (R-Co), whose investigations sparked the 1995 audits, formally asked EPA Administrator Carol Browner to conduct a "thorough investigation" of ECC's conduct and management at Summitville between 1995 and 1999.
- Mr. Friedland will not make claims against several million dollars worth of assets and reclamation bonds that were posted by Galactic and its subsidiaries and forfeited in the bankruptcies eight years ago.
- The U.S. and Colorado will protect Mr. Friedland against any further liability or contribution arising from the Summitville Mine.

Mr. Friedland said that his attorneys now will concentrate on the Colorado third-party action that he launched in April, 1999, against companies that were associated with Summitville.

"As this settlement agreement shows, much can be achieved through cooperative and focused efforts. I hope that this spirit of doing the right thing will have an influence in coming months on those companies whose roles in the chain of events at Summitville are still before the courts. I am confident that each company will accept its obligation to contribute a fair share of costs and that there will be more positive news ahead for the people and communities along the Alamosa River."

Mr. Friedland's voluntary settlement means that the lengthy, landmark Ontario Court proceedings in Toronto, Canada, in November, 1996, will remain the only time that EPA/U.S. allegations about Mr. Friedland's role at Summitville were subjected to examination in open court.

The Ontario Court found that, contrary to the allegations, the evidence showed that experienced executives, not Mr. Friedland, were in charge of the mine and that Mr. Friedland was not a one-man operation making crucial, day-to-day decisions about the mine. The court said there was no evidence to show that Mr. Friedland carelessly proceeded with the operation of the mine, made key decisions about the leach-pad liner or had anything to do with the abandonment of the mine. The court also found that Mr. Friedland — who established residency in Canada in 1981, five years before the mine opened — did not conceal personal assets and did not leave the U.S. to avoid responsibility after the mine's closure, as was alleged.

The Ontario Court found that EPA had concealed vital information from courts in Canada and the U.S., including evidence showing that Mr. Friedland had offered to make a voluntary contribution to the cleanup and that EPA believed it had a strong case against other potentially responsible parties.

The Ontario Court censured the U.S. for misrepresenting and withholding evidence. It ordered the release of US\$152 million worth of Mr. Friedland's assets and ordered the U.S. to pay Mr. Friedland's attorneys' fees and costs. The U.S. did not appeal the court's findings.

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