Navigating Regulatory Issues in Spain and Greenland Offers 2 Critical Mineral Companies Time Out in the Courtroom

written by Tracy Hughes | May 28, 2024

The Critical Minerals Institute (CMI) Board often debates the rising interest of government investment dollars versus the challenges innate in bringing an exploration company to production. While recent headlines celebrate the burgeoning budgets being allocated to the critical minerals supply chains, the relationship between exploration and mining companies and governments are often fraught with challenges. Challenges that stem from complex legal, environmental, and economic factors. Two recent examples involving Energy Transition Minerals Ltd. (ASX: ETM) in Greenland and Berkeley Energia Limited (ASX: BKY | LSE: BKY) in Spain highlight the intricate dynamics and disputes that can arise in this sector.

We are watching these stories with great interest.

Energy Transition Minerals Ltd (ETM), through its subsidiary Greenland Minerals A/S (GMAS), has found itself embroiled (May 27, 2024, Source) in a legal battle with the Government of Greenland over the Kvanefjeld Rare Earths Project. The dispute centers on the denial of an exploitation license by Greenland's authorities, which GMAS argues it is entitled to under its existing exploration permit. The company has initiated litigation in both the Court of Greenland and the District Court of Copenhagen to assert its rights, challenge the validity of a law prohibiting uranium exploration and exploitation, and seek compensation for financial losses.

GMAS' legal strategy includes multiple claims, such as the right to an exploitation permit for various minerals including rare earths, zinc, fluorspar, and uranium. The company disputes the application of the Uranium Act to its operations and the legitimacy of the government's decisions to reject its license requests. These proceedings aim to establish the company's rights and potentially overturn the governmental decisions, while also seeking financial compensation for delays and the economic impact on the project.

Similarly, Berkeley Energia is in a dispute (May 28, 2024, Source) with the Spanish government over the Retortillo uranium mine project near Salamanca. Despite receiving preliminary approval in 2013, the project was subsequently blocked by Spain's Energy Ministry, citing concerns raised by the Nuclear Security Council. In response, Berkeley has sought $1 billion in damages through arbitration at the World Bank's International Centre for Settlement of Investment Disputes, claiming that the Spanish government's actions violate the Energy Charter Treaty, which aims to ensure the stable and open operation of energy markets.

Berkeley argues that the Spanish government's refusal to grant final approval for the project has caused significant financial harm, thwarting a substantial investment that would have generated thousands of jobs. The company maintains its commitment to the project and expresses a willingness to negotiate with the Spanish authorities, hoping for a resolution that allows the project to proceed.

These cases exemplify the broader challenges that exploration and mining companies face when navigating governmental regulations and legal frameworks. Companies often invest substantial resources in exploration and development, only to encounter regulatory roadblocks that can significantly delay or

even derail their projects. Such disputes can arise from differing priorities between governments and companies, such as environmental concerns, public opposition, and economic considerations.

The legal battles between companies like ETM and Berkeley and their respective governments underscore the need for clear regulatory frameworks and open communication channels. These disputes also highlight the potential for significant financial and operational impacts on mining projects, necessitating thorough risk assessments and contingency planning by companies operating in this sector.

The relationship between exploration and mining companies and governments is inherently complex and multifaceted, involving legal, environmental, and economic dimensions. The cases of ETM in Greenland and Berkeley in Spain illustrate the potential for conflict and the necessity of robust legal and regulatory strategies to navigate these challenges effectively. This situation raises concerns about the stability and trust in investments in critical minerals supply chains, which are crucial for future technological and industrial needs. The need for comprehensive approaches that include exploration, technology, and processing facilities is essential for a resilient supply chain. It is frustrating to see such vital projects hindered by regulatory conflicts, especially when timely investments in new mining ventures could alleviate many of these issues.