

RIO COLORADO

I. **Rio Colorado's Corporate info and assets**

Incorporation Public Deed

The company's legal name is "**Sociedad de Inversiones Rio Colorado Mining and Exploration S.A.**" (hereinafter "Rio Colorado").

The incorporation was made through public notarial deed dated December 7, 2009, executed in the 27th Notary Public Office of Santiago of Mr. Eduardo Avello Concha, repertoire number 23.253-2009.

It is a Closed Stock Company according to the laws of the Republic of Chile. The shareholders that signed the incorporation deed were:

- Iván Alfredo Benavides Valenzuela, real estate broker, with 35% of Rio Colorado's equity;
- **Mario Alexis del Real Castro, accountant, with 35% of Rio Colorado's equity;**
- Miguel Angel Ortiz Rojas, commercial engineer, with 5% of Rio Colorado's equity;
- Andrés Felipe Vergara Plandiura, journalist, with 25% of Rio Colorado's equity.

Company Purpose

According to Rio Colorado's incorporation deed, the company has as company purpose the execution of activities as real estate investments, mining projects investments, mining concessions, brokerage industry, agricultural properties, business consultancy, marketing of agro-industrial projects, foreign investment business, and commercial representation of national and international consulting firms.

According to Chilean IRS information, Rio Colorado has as registered tax activities the bottling of natural water, hydropower projects, engineering services, consultancy services, and purchase, sale and rental of properties.

Assets: "Hacienda Los Andes" Property

Iván Alfredo Benavides Valenzuela paid his shares in Rio Colorado by means of the contribution of a rural property named "Hacienda Los Andes" in the act of incorporation of Rio Colorado.

Hacienda Los Andes was created as a consequence of the division of a larger property called “Campos de Ahumada”. It is located in the San Esteban Municipality, Los Andes Province, V Region, Chile, and has an approximate surface area of 60,000 hectares.

In accordance with information obtained from Mario del Real, Hacienda Los Andes possesses significant water and minerals. There are allegedly 6 lakes, 27 glaciers and streams as well several mining companies currently operating in this property.

The appraisal value assigned to Hacienda Los Andes when it was contributed for incorporating Rio Colorado was CLP \$210,000,000, equivalent to approximately USD \$417,570 at that moment.

Current Legal Status of Hacienda Los Andes

After a review of public records at Real Estate Register (“*Conservador de Bienes Raices*”) of Los Andes, Chilean IRS (“*Servicio de Impuestos Internos*”) and the Judiciary (“*Poder Judicial*”), we can inform the following:

- The Hacienda Los Andes property belongs to and was registered to the name of “Sociedad de Inversiones Rio Colorado Mining and Exploration S.A” on January 21, 2010.
- The property is affected by 2 rights of way or easements of access (“*servidumbre de tránsito*”), both registered on 2011.
- The property is affected by a lawsuit in the 2nd Civil Court of Los Andes, role number C-586-2011, described below. Because of a judicial order that was issued in such trial, there is a prohibition for the transfer of the property.
- Other than the aforesaid rights of way, the property is not affected by encumbrances, mortgages, prohibitions or injunctions.
- In accordance to the certificate of Chilean IRS, the property has an agricultural purpose and has a property tax valuation of CLP \$124,843,257 (approximately USD \$210,000 at the current USD exchange rate).
- According to Mario del Real, there is a project to sell the water in those lakes to some large mining companies (Angloamerican or Codelco), or to an important water company (Esval). There is also an ancillary project to use the water to power 4-6 MW small hydro plants (“*centrales de pasada*”).

“Hacienda Los Andes” lawsuit

According to Court records, there is a pending lawsuit in the 2nd Civil Court of Los Andes, case number C-586-2011. A company called Altos El Origan S.A. (legal name “Sociedad Altos El Origan S.A.”, hereinafter “Altos el Origan”) sued both Rio Colorado and the Real Estate Register of Los Andes.

Altos el Origan requested the Court that it orders the cancellation of the Rio Colorado’s property title registration of the Hacienda Los Andes at Real Estate Register of Los Andes.

The Rio Colorado’s registration dates from 2009. The property titles date at least to 1917, but were registered in another Real Estate register, that of the city of Quillota.

According to the claimant, there was a superposition on the boundaries of the parties’ properties with an overlapping area of 50,000 hectares.

Therefore, the matters discussed in the lawsuit were as follows:

- Registration of Rio Colorado’s property title of “Hacienda Los Andes”.
- Superposition of property titles of the parties.
- Geographical location of the property matter of trial.
- Liability of Real Estate Register of Los Andes’s in Rio Colorado’s allegedly wrong title entry registration.

The lawsuit commenced April 28, 2011. As from its start, other interested parties have joined the lawsuit, including a community named “Los Capo de Cano Gallego” that claimed “immemorial rights” of a portion of lands belonging to Altos El Origan.

However, Rio Colorado and Altos El Origan signed a settlement agreement by means of a public notarial deed dated December 4, 2013, in the 27th Notary Public Office of Santiago of Mr. Eduardo Avello Concha, repertoire number 29,001-2013. In this settlement agreement they agreed to put an end to such conflict, renouncing to all claims invoked.

In that deed, the parties also created a contractual joint venture or strategic alliance for the coordinated use of both of their properties (Altos El Origan’s property and Hacienda Los Andes) in several businesses such as mining, tourism, energy, agriculture and others activities. The strategic alliance began on December 10, 2013, and would last until 2019.

There was no separate company incorporated for this purpose, but Rio Colorado and Altos el Origan went so far as establishing a 50/50 profit share scheme and a 50/50 corporate governance structure for the contractual joint venture, led by a board of directors.

The board is composed of two incumbent and two alternate directors. Altos el Origan appointed Mr. Jorge Santiago Leiva Delgado as incumbent and Pedro Carvajal Delgado as alternate, and Rio Colorado appointed Mario del Real Castro as incumbent and Pamela del Real Vergara as alternate.

The settlement was handed to the Court that is handling the lawsuit, but such Court did not terminate the lawsuit as there are other parties involved, most importantly, the Real Estate Register itself.

Recently, on August 19, 2014, the Court issued the final decision of first instance. The Court did not accept the claimant's requests as Hacienda Los Andes Property is in fact located within the Real Estate of Los Andes jurisdiction and moreover it established that there no any superposition of the properties. Therefore, it basically declared that the property titles are correct.

As the matter has been settled by the parties, and the other significant party is not aggravated by the decision, at the present time it seems likely that the decision will stand even if it is appealed.

Mario del Real's Record¹

Mr. Mario del Real has participation in 5 companies:

- a) "Sociedad de Inversiones Rio Colorado Mining and Exploration SA", registered on 2009;
- b) "Exxon Corporation S.A", registered on 2014;
- c) "Sociedad de Inversiones Zapalllar Limitada", registered on 2006;
- d) "Sociedad de Inversiones Merced S.A", registered on 2007;
- e) "Bonet, del Real, Díaz Limitada", registered on 2000.

¹ Most of the information of this section was obtained from the report issued by the investigator hired by LOMG.

Mr. Mario del Real, through the aforesaid companies, carries out activities such as sale of computers, software and supplies; computer consultancy services; legal services; and accounting and auditing services.

Currently, Mr. Mario del Real has not paid the value added tax (VAT) on his activities.

Mr. Mario del Real and his relatives have no criminal records or arrest warrants.

II. **“Swap” between Mario Del Real and Ken Johnson**

The information contained in this section was obtained from a meeting that Mr. Andres Chirgwin held with Mr. Mario del Real on July 28, 2014, and from two public notarial deeds that we found when investigating this transaction.

Rio Colorado/GGC “swap”

Rio Colorado/GGC “swap” was an operation between Mario del Real and his family on one side, and Ken Johnson on the other.

Ken Johnson represented to Mario del Real that he owned and could therefore convey 50% of the interest in the GGC companies.

In exchange for interest in the GGC companies and payments of certain amounts of money, Mario del Real agreed to assign to KJ 51% interest in Rio Colorado. This was done by means of a public notarial deed of assignment of shares dated April 15, 2014.

Ken Johnson transferred CLP \$155,000,000 to Mario del Real, in partial payment of share payment obligations he undertook in such deed². Some of these funds could also have been transferred to finance the “*Segunda Campaña*”, i.e. the current project to exploit Rio Colorado. Ken Johnson allegedly missed a CLP \$112,000,000 payment, and also breached an obligation to deliver bank bonds (“*vales vista*”) in partial payment of the price.

Mario del Real did not complete the transfer of the shares to Ken Johnson by reason of the aforesaid breaches.³

² This info was submitted by Mario del Real, and does not match the schedule of payments of the deed, so the actual payments by K.Johnson to Mario del Real, and the concepts for such payments, are currently unclear.

The entrance of Mario del Real in the GGC companies took place partially through assignment of shares, and partially through a capital increase in Inmobiliaria Galt's Gulch S.A (IGG).⁴

Mario del Real sees this is an issue between Ken Johnson and himself, but is aware that the funds that Ken Johnson used belonged to third parties. Ken Johnson's attorneys ("Chile Lawyers") and Mario del Real's attorney (Pedro Cortés) are currently trying to settle the matter.

Execution of the "Swap" documents

Mario del Real mentioned that some of them were drafted by Mr. Juan Francisco Reyes, an attorney that was jointly appointed by Ken Johnson and Mario del Real (but apparently proposed by Mario del Real) to help in the project. Other documents were allegedly directly prepared by the parties in the notary public office without the help of an attorney. Mario del Real was also assisted by his "legal aid" Mr. Diego Chahuán. It is not clear that Ken Johnson had legal representation when negotiating and executing these documents.

Ken Johnson is currently questioning the validity of the documents including his own signature in them. Mario del Real has the position that the documents are valid.

Transfer of Inmobiliaria shares agreement (April 14, 2014)

This first transfer of shares agreement was made through public notarial deed dated April 14, 2014, in the 27th Notary Public Office of Santiago of Mr. Eduardo Avello Concha, repertoire number 9.142-2014. Mr. Kenneth Johnson acted as seller and Mr. Mario del Real Castro, Mrs. Pamela del Real Vergara and Mr. Alexander Michael Felipe del Real Vergara acted as purchasers.

The agreement states that Mr. Ken Johnson owned 8,000 shares of Inmobiliaria Galt's Gulch SA ("Inmobiliaria")⁵. These shares account for 80% of Inmobiliaria's capital stock.

³ There is indeed a provision in the deed that seems to allow this (Clause Six), notwithstanding that there is a public policy rule that prohibits the conditioning of the transfer of property to the payment of the price.

⁴ The April 15 deed included, as part of the payment for the 51% interest in Rio Colorado, the assignment of 350,000 new shares of Inmobiliaria, which were yet to be issued at such point in time. This specific part of the operation is unclear (was K.Johnson to acquire such 350,000 shares and then transfer them to Mario del Real? In other deeds Inmobiliaria itself appears as seller of some shares to the del Real family, something that goes against Chilean company law).

⁵ Through deed dated March 6, 2014, Ken Johnson had already transferred 2,000 shares to the del Real family, 1,000 shares to Mario del Real and 1,000 shares to Pamela del Real.

The purpose of this deed is the transfer of 3,000 shares of Inmobiliaria to Mario del Real Castro (1,000 shares), Pamela del Real Vergara (1,000 shares) and Alexander Michael del Real Vergara (1,000 shares).

The transfer of shares price was CLP \$3,000,000 equivalent to USD\$ 5,475 at that moment. The transfer of shares deed acknowledges that the price was paid at the time of the sale. We have no proof of such payment, this should be reviewed.

Transfer of Rio Colorado shares agreement (April 15, 2014)

This second transfer of shares agreement was made through public notarial deed dated April 15, 2014, in the 27th Notary Public Office of Santiago of Mr. Eduardo Avello Concha, repertoire number 9.275-2014. Mr. Mario del Real Castro acted as seller and Mr. Kenneth Johnson acted as purchaser.

The agreement states that Mr. Mario del Real owned 70,000 shares of “Sociedad de Inversiones Rio Colorado Mining and Exploration SA” (“Rio Colorado”). These shares account for 70% of Rio Colorado’s capital stock⁶.

The purpose of this deed is the transfer 51,000 shares of Rio Colorado to Mr. Ken Johnson.

The transfer of shares price was CLP \$1,067,000,000 equivalent to USD\$ 1,943,533 at that moment⁷. The fourth clause stipulated the price payment schedule, which follows:

- 1) CLP \$25,000,000 equivalent to USD \$ 45,535 was allegedly paid in cash at that moment;
- 2) CLP \$100,000,000 equivalent to USD \$ 182,149 was allegedly paid with a bank bond (“vale vista”) of Banco de Chile dated February 10, 2014;
- 3) CLP \$62,000,000 equivalent to USD \$131,147 was allegedly paid with a bank bond of Banco de Chile dated March 10, 2014;
- 4) CLP \$ 880,000,000 would be paid as follows:

⁶ In order to determine if this is accurate, the stock ledger of Rio Colorado should be examined.

⁷ CLP was converted into USD according the exchange rate of April 15, 2014.

- 4.1) 5,000 shares of Inmobiliaria that are equivalent to CLP \$5,000,000;
- 4.2) 350,000,000 shares of Inmobiliaria equivalent to CLP \$385,000,000, to be issued as result of a future capital increase in Inmobiliaria;
- 4.3) CLP \$ 77,000,000 equivalent to USD \$ 140,255, to be paid on June 15, 2014;
- 4.4) CLP \$ 112,000,000 equivalent to USD \$ 204,007, to be paid on August 15, 2014;
- 4.5) CLP \$ 112,000,000 equivalent to USD \$ 204,007, to be paid on October 15, 2014;
- 4.6) CLP \$ 112,000,000 equivalent to USD \$ 204,007, to be paid on December 15, 2014;
- 4.7) CLP \$ 112,000,000 equivalent to USD \$ 204,007, to be paid on February 15, 2015

In case of any breach, the purchaser must pay USD \$20,000 as penalty, per each event.

Moreover, in case of breach by the purchaser of its obligation to pay the price balance of CLP \$880,000,000, “provided that there is a three months delay, and that such delay is not justified in writing”, as well as “in case payment is completely stopped”, the purchase operation is to be rescinded by the parties and the registration of the share transfer in the stock ledger would be rendered ineffective⁸.

III. **Conclusions**

- Rio Colorado is a real company and holds valuable property. Therefore, the Rio Colorado swap should not be considered as a total scam or fraud.
- The terms of the swap operation seem very one-sided in favor of Mario del Real. It is unclear that Ken Johnson had competent legal representation regarding the negotiation and execution of the swap documents.
- The swap operation has numerous legal issues and should be undone if the GGC project is to still take place. It seems very unadvisable to try to fix the operation or use the

⁸ This provision contradicts the other clause that conditions the registration of the Rio Colorado shares to the purchaser's name until the price balance is paid. The penalty clause contains other unusual provisions that do not comply with common Chilean legal practice and are difficult or may prove impossible to implement.

current ownership situation as a base for granting future ownership rights to third persons.