IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 12TH APRIL, 1985
BEFORE J.L. McMAHON.

Australasian Mining Title Services Pty. Ltd.
(on behalf of Seltrust Mining Corporation)

v.

W.J. & C.M. Goldfinch

Assessment of Compensation

BENCH:

This is the assessment of compensation under Section 124(1)(b) to the Mining Act, 1973, on the application of Australasian Mining Title Services Pty. Ltd., on behalf of Seltrust Mining Corporation Pty. Ltd., (herein called the applicant) which is the holder of Exploration Licence Nos. 2203 and 2204 which cover lands held by William John Goldfinch and Cecila Maria Goldfinch (herein called the respondents) who are the holders of Western Lands Leases in the Cobar district in New South Wales. Mr. Harrison appeared as authorised agent for the applicant, while each respondent appeared unrepresented at Court.

The evidence shows that the licences were granted for two years from 23rd March, 1984 so that at the present time they have approximately twelve months to run. It is also a matter of evidence that the applicant has negotiated with other land occupiers who hold Western Lands Leases over land covered by these and other licences it holds and that a total of 32 compensation agreements signed by those other Western Lands Lessees have been executed between the applicant and respective land occupiers. As a result of those agreements, the applicant has conducted what is called the initial exploration phases on adjacent lands.

These details were given by Mr. J.B. Christie, the Lands Administration Officer for the applicant and in later evidence at a hearing which I conducted at Cobar on 2nd April, 1985, the Senior Geologist with the applicant, Mr. J.L. Hickingbotham, outlined a works programme. This had originally been intended to be initial activity of taking stream sediments some 50 in number being of

approximately one handful each of soil from creek beds, the second stage of field officers digging a pit approximately 30 cm by 30 cm and some 20 cm deep and taking some 500 samples also each of a handful of soil. A further stage was the gridding of the area and placing lines over it where there were areas of interest. It was proposed to conduct about 100 kms of line clearing with a bulldozer although if the area were not subjected to scrub, simply a chain saw could be used to clear the line. This activity did not result in the topsoil being disturbed, excepting of course by the tracks of the machine if a bulldozer were used. After that activity, some magnetic fields would be laid using 2 field assistants working along the gridlines taking readings from instruments, following which a further phase would be the laying out of cables, exciting them with direct current from a car battery or motor cycle battery and again taking readings. This would involve a landrover or motor cycle being driven very slowly along the gridlines. A further stage was the sinking of RAB (rotary air blast) holes or auger drill holes along the gridlines to depths of between 12 metres and 30 metres. These holes would be backfilled immediately and it was anticipated some 500 holes of this sort would be sunk by means of a drilling rig over approximately 10 days. A further stage could be the sinking of percussion drill holes to a depth of 150 metres with a drill diameter of approximately 15 cms. Some 20 holes would be envisaged and the earth disturbed around the holes would be 6 metres by 4 metres. After that work was finished, a grader would be used to spread the spoil and topsoil. An additional stage could be, if further geological encouragement were given, of sinking some 10 diamond drill holes which could be up to 1 kilometre deep and have a diameter of approximately 8 cms. These holes, when exploration was finished, could also be concreted and the area of spoil and topsoil graded. The final stage envisaged but in respect of which special Ministerial approval would be needed, would be the sinking of costeans or trenches. These would necessitate perhaps the sinking of 5 costeans approximately 3 metres wide by 20 to 30 metres long with a bulldozer. Once samples were taken, these would be backfilled and made good. Water would be needed for some of the drilling activity and it would be envisaged that a small pit would be dug to contain it. After activities finished this would be backfilled and made good.

The plan is to expend approximately $50,000 exploring by virtue of Exploration No. 2203 and some lesser but I take it similar, figure in respect of Exploration Licence No. 2204.

Because initial activity of the soil sampling by means of the stream sediment taking and pit sinking had already taken place on other properties, it was not envisaged that that activity was necessary by virtue of Exploration Licence Nos. 2203 and 2204. Mr. Hickingbotham stated in evidence that at this stage it was intended to commence drilling the RAB holes almost immediately the question of compensation had been settled.

In his evidence, Mr. Christie had mentioned efforts which the applicant had made to settle a compensation agreement with the respondents there having been the writing of letters and the submission of draft compensation agreements. One draft agreement had been returned by Mr. and Mrs. Goldfinch with higher rates inserted than those which the applicant was willing to accept. In addition, Mrs. Goldfinch had indicated that there were a number of factors about which she was unhappy.

In the draft agreements, the applicant had sought to specify a number of conditions which do not relate directly to compensation and of course under the Act I have no power in these proceedings to lay down those conditions; but as a matter of practice in the industry, I am aware that frequently compensation agreements deal with things in addition to compensation, it being simply a convenient way of laying down in writing the matters relevant to the exploration or mining which the parties have agreed upon.

In order to assist the respondents during the hearing I raised and allowed to be discussed a number of matters and sought to clarify points with the applicant. These generally related to the identity of personnel used on the property, the locking of gates, the non encroachment upon the two small parcels of freehold land, the protection of a soak (an area which is continually filled with water notwithstanding the severity of a drought), the

situation if water were to be found in the drill holes, minimisation of soil erosion, the question of bushfires being started by smokers, the giving of 24 or 48 hours notice by the applicant to the respondent and the question of vehicles being driven at reasonable speeds, especially in the near vicinity of sheep which may be weak.

These matters will be dealt with later but with some exceptions were the subject of undertakings given by the applicant which will be set out in this assessment.

I come now to the evidence of Mrs. Goldfinch. She produced as exhibits 10 to 14 a series of past compensation agreements executed by herself and her husband with other mining or exploration companies which from 1976 to 1983 had conducted similar activiites on parts of lands occupied by the respondents. The purpose of tendering of these agreements was to show that other companies were willing to pay higher figures at different times for activities identical to those envisaged by the applicant by virtue of Exploration Licence Nos. 2203 and 2204. Mrs. Goldfinch complained that the cost of living and other factors, including that of inflation, required that the rates be revised regularly and that at least she and her husband were entitled to higher rates than those mentioned in the draft compensation agreements submitted to her on behalf of the applicant.

She said for instance that $50 for a diamond drill hole was more appropriate as against that which had been offered to her by the applicant, as evidenced by exhibit 8, than $35.

As already mentioned, Mrs. Goldfinch was then permitted to raise a number of peripheral matters which do not relate directly to compensation but which however were relevant to her association with the applicant. She stated that in her opinion no-one working on the drilling commitments or in connection with the project should be permitted to smoke. She based her claim upon a recent media publication to the effect that a large percentage of bushfires

are caused by the carelessness of people who smoke and she instanced the very serious bushfires which had recently occurred in the Cobar district. However, I was unwilling to indicate to her that such a condition would be reasonable in my opinion for while I had a personal aversion to smokers and smoking, I felt that it would be neither practicable nor reasonable to require the imposition of such a condition upon the applicant.

Mrs. Goldfinch then raised the question in relation to the entry onto the property by the applicant and she asked that no-one travel pass the homestead to which it was indicated by Mr. Hickingbotham that this requirement would be met. Further, gates were to be left locked or unlocked as they were found and that the applicant would furnish a lock and keys for its own use while entering the property. She added further that any gate inserted in a fence as envisaged by the earlier evidence should be removed and the fence replaced once exploration was finished. As to the lock and the gate, Mr. Hickingbotham indicated that these requirements would be met and that in addition even gates which were being used regularly would be locked at all times, unless in actual use.

Mrs. Goldfinch requested that there be no entry upon the small freehold holdings within the exploration areas and Mr. Harrison for the applicant stated that this condition also could be met. Mrs. Goldfinch raised the question of encroachment by means of drilling on the areas within a 1.5 km or .5 km radius of the soak. Agreement could not be reached in this regard but the parties agreed that if there were a necessity to drill within that area the parties could reapproach the court for a determination in the matter or could arrange for a hydrologist to check the possibility of damage done by the drilling activities within the prescribed radius.

Mr. Harrison said that if ground water were found in any of the drill holes that the land occupier would be notified and Mr. Hickingbotham indicated a course of action to mark and identify the hole and inform the land occupier of the discovery. Mrs. Goldfinch sought that there be as little activity as

possible so that soil erosion would be minimised. This condition was already specified in Condition No. 36 to the licences.

A further matter of some sensitivity was discussed at the hearing and this related to the use of persons other than those from outside the locality of the Cobar district. With the agreement of both parties, I indicated that it ought to be understood as follows:-

> "There should be a communication between the land occupiers and the licensed holder in relation to the identity of certain persons employed by the licensed holder and a communication between the licence holder and any contractors about the wishes of the land occupiers as to the identity of certain persons."

Two other matters were that the applicant and other persons working under the licence should only drive at reasonable speeds near sheep, especially sheep which are said to be weak and further that at least 24 hours notice was needed to be given by the applicant, etc. to the respondents of the intended movements of the applicants and others working under the licences. Undertakings were given as to these matters.

Unfortunately, little evidence was led by the respondents as to the nature of the land and/or the number and nature of the stock run on it. In cross examination Mr. Harrison elicited from Mrs. Goldfinch that the respondents were running approximately 3,500 sheep. I take judicial notice of the fact that this land being within the Western Division of New South Wales at Cobar would be not unlike that to be found in the Broken Hill district. In the matter of Toohey v. A.S. Exploration Ventures and Seltrust Mining Corporation, heard at the Warden's Court, Broken Hill and judgment having been given, for convenience, at the Warden's Court, Goulburn on 28th March, 1984, I dealt with the question of compensation over a property called "Oakdale". Unfortunately, in the present matter I have had no evidence as to how many sheep areas would be affected by the exploration activiites which were discussed in that

judgment, but I am of the view that the activities as envisaged by the applicant in this matter are almost identical with the activities and therefore the affected sheep areas in the Toohey matter. In the Toohey matter I had arrived at a total figure of compensation of $4,420 and applying that to the commonly accepted formula applied by experienced exploration companies on the one hand and prudent land holders on the other, I laid down a set of figures for the guidance of land holders and exploration companies in the Broken Hill area. These figures are available in the Toohey judgment and are almost identical to those offered by the applicant to the respondents in this matter.

While some 12 months has elapsed since the delivery of that judgment, I feel it appropriate to apply like reasoning to this matter, bearing in mind the similarities in the lands and the carrying capacities.

Compensation is assessed herein as follows:-

$35 per diamond drill hole or percussion drill hole. 85¢ per auger drill hole or rotary air blast. 35¢ per square metre of land surface disturbed in prospecting operations on land other than cultivated land. 70¢ per square metre of land disturbed on cultivated land.

Further, applying the reasoning of an additional judgment by myself, handed down at the Warden's Court, Sydney on 14th June, 1984 in the matter of C.R.A. Exploration Pty. Ltd. v. Roberts, which also arose at Broken Hill, I direct that an additional sum of $100 be paid by the applicant to the respondents by way of compensation for supervision and that another figure of $80 be paid by way of damage done to vegetation by reason of dust arising from the wheels of vehicles.

As to other agreements in exhibits 10 to 14, what other companies are willing to pay in isolated instances can be said to have no bearing on my assessment, especially when their agreements were executed before the Toohey and Roberts cases were decided.

As it is not clear to this date exactly how many percussion, diamond or RAB holes are to be sunk, and this figure will not be assessable until exploration activities are near completion, no calculation can be carried out. However, I direct that a sum of money calculated on the number of holes and other aspects of land disturbed, and other factors, be paid by the applicant directly to the respondents within one month of cessation of exploration activities by virtue of the initial grant of Exploration Licence Nos. 2203 and 2204.

On the question of costs, I direct that the parties pay their own.