

IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 26TH JULY 1991
BEFORE J L McMAHON
CHIEF MINING WARDEN

ASSESSMENT OF COMPENSATION RELATIVE TO PROSPECTING LICENCE 1148
HELD BY BONTIMA PTY LIMITED (applicant).
T M McGEE & B W GOLDMAN (respondents)

This is an assessment of compensation arising under Part VIII of the Mining Act in respect of Prospecting Licence No 1148 held by Bontima Pty Limited which is now by virtue of recent changes to the Mining Act deemed to be an Exploration Licence. The licensee (Bontima) has recently had it renewed until 7th December 1992 and proposes to undertake certain prospecting activities on the land held by both respondents. It is said that of the land held by Mr McGee some 136 hectares are covered by the licence and as to the land held by Mr Goldman, some 20 hectares of his land are affected by the licence. It is obvious that the parties had attempted conciliation and negotiation and settlement among them but it is also obvious that there have been a number of obstacles appearing in the way of the respective parties in coming to a settlement and as a result after a prolonged period in my lists this matter had to be brought on for hearing. The within assessment therefore is an attempt not only to make assessments of compensation but also to lay down, subject to the Mining Act and the provisions of the licence, some rights, duties and obligations of the respective parties in the hope that the parties will better understand their individual situations.

The land of Mr McGee

It is indicated to me by Mr Bruce Burge who is a Director of Bontima that three main methods of prospecting were intended, firstly by hand sampling, then possibly by the sinking of calweld drillholes - about 20 in number - or

preferably and thirdly the sinking by means of a excavator of approximately 20 trenches or costeans. The hand operations would simply involve the taking of samples by means of manual tools such as shovels or mattocks and would appear not to present great potentiality for damage to the land. The drillholes would have a diameter of approximately 1 metre and would present some potential for damage. Mr Burge said however in evidence that in lieu of drillholes, costeaning was the preferred option, that the arm of the excavator would be some 7 metres long, meaning that the depth would go to a maximum of 7 metres and it followed from an engineering point of view that the trench could be up to 3.5 to 4 metres long with a width of 600 millimetres. Twenty of such costeans would also be intended. Mr Burge made it clear that Bontima intends to reinstate the land immediately after drilling or costeaning and that the truck mounted calweld drill, or the excavator which was a tracked machine would refill each hole or costean immediately the sample was taken out, and subsequently once soil settlement has taken place, returning to the site and reinstating the area to make the surface level again. He estimated that the total time taken for this operation from digging to total re-settlement would be 3 months but emphasised that it was intended, because of previous experience, to reinstate each hole as it was used thereby reducing the possibility of stock being injured by falling into the holes. He felt that after settlement was taken into account there could be a slump of about 300 millimetres which would need to be reinstated.

Mr Burge tendered as exhibit 1 a copy of a draft agreement prepared by solicitors in respect of which there had been problems in arriving at final details. He wanted some of those details amended so that in the special conditions to the schedule. As to paragraph (a) for instance, which provided that all drillholes shall be filled in or covered over to the reasonable satisfaction of the owner/occupier, he felt that owner/occupier should be

deleted and the Regional Inspector of Mines be inserted in lieu thereof. I can see no problem with such an amendment bearing in mind that the Regional Inspector of Mines, Mr Stephens, gave evidence that he was willing, within reasonable time constraints, to inspect the area. Likewise, as to paragraphs (f), (g) and (h), Mr Burge said that he felt that there should be some mechanism inserted for any dispute to be settled by a Mining Warden, but in view of the proximity to the area of the Regional Inspector of Mines, it seems to me that that officer rather than a Warden could be asked, in the first instance anyway, to make an on-the-spot decision in respect of the matter. In this regard I would favour then the insertion of a further paragraph (i) to the effect that any dispute arising under paragraphs (f), (g) and (h) be determined in the first instance by the Regional Inspector of Mines.

Mr Stephens, gave evidence of having had prior knowledge of the operations of Bontima on a property close-by owned by a Mr Law. The effect of the evidence of Mr Stephens was that the conduct of Bontima was far from satisfactory, and he doubted very much that Bontima could ideally reinstate the holes as the samples were taken. Certainly, he said, in respect of the activities of Bontima on Mr Law's property there had been some considerable delay in reinstating holes to the extent that he had had to carry out inspections of the area. There was also an unsatisfactory experience which Mr Law had had when a foal was found to be down an excavation caused by Bontima, and there was some tardy payment of compensation by Bontima to Mr Law. On the other hand, Mr Burge said that there were faults on both sides in relation to the Law matter and it was intended by Bontima to conduct their operation on Mr McGee's property differently so that there be no further cause for complaint. Mr Burge further said that he was willing in the case of those unusual situations when a hole could not be immediately backfilled and made safe to construct a proper stockproof fence around the hole to prevent beasts falling down or otherwise

becoming injured. In this regard it seems to me that in lieu of a series of star picket posts and plain wire in those circumstances there should be a fence constructed with strainer posts on each corner properly stayed with hinged joint or ring-lock to prevent stock including calves and foals from entering an area of danger. Additional conditions will be inserted to give effect to these comments.

Mr Thomas McGee, as the landowner, gave evidence that his property was of some 730 hectares upon which he ran 75 breeding Angus cattle females with access to 10 to 12 bulls using primarily the artificial insemination method. He ran also approximately 100 commercial cows as beef cattle, had 15 stud horses and approximately 30 other horses and between 1500 to 2000 sheep. This grazing activity was his principal source of income. He expressed a genuine fear that if there was a mechanical breakdown or the weather intervened during the drilling, digging or rehabilitation of the holes then his stock could become injured and he did not want to have to go through the experience of having to attempt to save any such animal. As the landowner he was sensitive to the environment not only in respect of his heirs, but the community generally. Most of the area the subject of the licence consisted of his holding paddocks and he was concerned firstly in relation to the need to protect his stock but secondly the amount of time that he would have to spend in supervising the activity of the prospector bearing in mind the potential danger. He made mention of the fact that in respect of Mr Law's property a foal had fallen into a hole, that stock will seek out and get into trouble and that when Mr Law had attempted to contact Mr Burge he had been told "What do you want me to do about it". Mr Burge incidently, had implied that he had not made that statement and that he had expressed genuine concern about the foal and had even attended the site himself, had got into the hole and helped remove the foal from it which had "jumped out of the hole just as fresh as a daisy". Mr

McGee realistically conceded that a refilled hole did not constitute any danger to livestock but he doubted very much the capability of Mr Burge to refill the holes as he has undertaken to do and he said there was a genuine and ongoing lack of trust between Bontima and himself. He was happy if the court were to make an assessment and determination about the various matters.

In deciding this matter and making a determination in accordance with Part VIII of the Act I take into account firstly that Mr Burge has been required to lodge a security deposit against non compliance with the conditions of the licence and secondly under Section 126 contained within Part VIII a person may make an application for further compensation to be assessed even after compensation has already been assessed. I propose to adopt the amounts of compensation and then to lay down the conditions as discussed and they are as follows in relation to the land of Mr McGee:

1. The licensee shall pay and the owner/occupier shall accept an amount calculated in accordance with the following rates as the amount of compensation payable for any loss suffered or likely to be suffered as a result of the grant of the authority to the licensee or the exercise of the rights conferred on the licensee by the Act or authority.

\$10.00 per rotary air blast hole.

\$100.00 per diamond drill hole.

50¢ per square metre of land surface disturbed in costeaning operations on land other than cultivated land.

\$1.00 per square metre of land surface disturbed in costeaning operations on cultivated land (under lucerne or crop).

\$15.00 per calweld hole.

2. In the event of actual loss by the owner/occupier exceeding in value the amount calculated in accordance with the preceding clause then the parties shall, at the request of the owner/occupier negotiate to determine an agreed amount of compensation for loss in fact suffered. In default of agreement, the matter may be directed to a Mining Warden for assessment.
3. This determination shall be effective for the term and currency of this Authority and any renewal thereof.
4. This determination shall be subject to the special conditions as set out herein.
 - (a) All drill holes shall be filled in or covered over to the reasonable satisfaction of the Regional Inspector of Mines.
 - (b) No dogs or firearms shall be allowed on the property without the prior consent of the owner/occupier.
 - (c) All gates of access shall be closed or left open in accordance with the requirements of the owner/occupier.
 - (d) The licensee shall not carry out any prospecting operations within 50 metres of any dam on the property without the prior verbal consent of the owner/occupier.
 - (e) No water from any dam on the property shall be used for prospecting operations without the prior consent of the owner/occupier.

- (f) Vehicular access is to be restricted where practical to existing tracks and further where possible to conform to the contour of the land so as to avoid soil erosion. Where erosion does occur as a result of the prospecting operations by the licensee the said licensee shall take action to control such erosion.

- (g) The owner/occupier shall be consulted prior to the commencement of any phase of the exploration programme and the licensee shall comply with any reasonable requests and further, to ensure the minimum of disturbance to the owners/occupiers pastoral pursuits.

- (h) The licensee shall have regard to the report of the Soil Conservation Service in respect of former Prospecting Licence Application No 501 Inverell to the intent that no activity be conducted upon the owner/occupier's land in the areas indicated in the said report as "Areas of Gully erosion and severe Soil Instability" without the prior consent of the owner/occupier first had and obtained in writing.

- (i) In the event of a dispute arising as to paragraphs (f), (g) and (h) it shall be determined in the first instance by the Regional Inspector of Mines with a right to any party to apply under due process of law to a Mining Warden.

- (j) The licensee shall backfill and reinstate all holes or excavations sunk immediately after samples are taken and shall not leave any hole or excavation or surface damage open so that any animal belonging to the owner/occupier can be injured or killed by or in it.

- (k) In the event of intervention by the weather, mechanical breakdown illness or accident which would prevent the safety measures envisaged by paragraph (j) above being carried out, the licensee shall construct around each excavation a stock-proof wire fence, all angles of which shall be of proper strainer posts construction with stays which shall have attached to it additional fencing material in the ringlock or hinge joint variety or similar material.

I direct that a sum of money calculated in accordance with Paragraph (l) hereof be paid by the licensee to the owner/occupier within 14 days of completion of the operations.

The land of Mr Goldman

An additional compensation assessment has now to be considered in respect of the lands owned by Mr Goldman. As I understand the situation, some 20 hectares of his land being covered by the licence, a less critical but nevertheless important consideration has to be given to the requirements of the landowner and licensee. Received in the mail from Messrs Avern McIntyre & Co was a further draft agreement and on consideration of it and the matters put to me by Mr Burge in court I propose to adopt the terms of that agreement with some amendment as my assessment of compensation. Unlike the McGee property matter, there will be no requirement for immediate back-filling.

Compensation is assessed at \$10.00 per test hole and 50¢ per square metre of disturbed surface where consteans are used with a minimum of \$10.00 per costean.

CONDITIONS:

1. Manpower/Access

- (a) The landowner shall be given seven (7) days notice of intention to enter the property.
- (b) The landowner shall be advised of the number and names of men to be on the property.
- (c) The landowner shall be advised of the name of the person who is entering the property who is authorized to deal with any problem or matters raised by the landowner.
- (d) Prospecting and exploration activities shall be limited to daylight hours.
- (e) The licensee shall have public liability insurance at its own expense of at least \$1,000,000.00.

2. Conservation

- (a) No growing timber shall be disturbed.
- (b) A contour shall be built on the elevated side of any costean to avoid the creation of erosion in later years. The contour is to be the length of the costean and be so erected as to direct water flow around the area of broken earth caused by the costean.

- (c) Size of any individual shall be costean limited to one metre by six metres.
- (d) The licensee shall have no access to the property if there has been 5mm of rain in the preceding twenty four hours as measured at "Shanta-Clare" Homestead.
- (e) Prospecting and exploration shall be limited to non-mechanical excavation and hand sieving and panning in the areas marked black as areas of severe soil instability in a report from the Soil Conservation Service and the recommendations in that report shall be complied with by the licensee.
- (f) There shall be a maximum of five consteans allowed to remain open at any one time. No costean shall be allowed to remain open for longer than one month.

3. Fences/Livestock

- (a) In the event of costeans being left open, the licensee shall construct around each excavation a stock-proof wire fence, all angles of which shall be of proper strainer posts construction with stays which shall have attached to it additional fencing material in the ringlock or hinge joint variety or similar material.
- (b) The licensee shall not damage or cut existing fences.

(c) In addition to the payments as above assessed, there shall be payable to the landowner compensation at a rate of \$15.00 per man hour for stock work necessitated by the exercise of the licensee's licence including:

(i) rounding up stock escaping through gates left open or fences damaged;

(ii) removal of stock from areas fenced by the licensee including excavations.

Provided that in cases of dispute any party may apply under due process of law to a Mining Warden.

4. Restoration

(a) All excavations shall be refilled to ground level with the soil taken from that excavation excepting samples taken for testing. All excavations shall be refilled with top soil at the surface.

(b) All excavations shall be hand sown with lucerne and clover when refilled.

(c) The licensee shall take all reasonable steps to eradicate noxious weeds growing in areas of disturbed soil for the term of the licence or within 12 months of the expiration thereof.

5. General

(a) The rights of the licensee for access to the property shall immediately cease upon notice in writing being received from the Regional Inspector of Mines to the effect that the licensee has not complied with the provisions of the licence or the terms of this determination.

(b) The landowner as owner of the minerals shall be entitled to receive the sapphires found during prospecting and exploration.

I direct that a figure be paid by the licensee to the landowner within 14 days of completion of operations.

Costs

As to the licensee and Mr McGee and Mr Goldman, I direct that the parties pay their own costs.