IN THE WARDEN'S COURT, SYDNEY
ON 2ND SEPTEMBER, 1983
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

METALS EXPLORATION LIMITED (on behalf of North Broken Hill Limited)

v.

CALDERA

This has been a hearing under Part VIII of the Mining Act, 1973. That Part provides that a Warden may, in the absence of agreement between parties, assess compensation. The Part also contains certain criteria for the assessment of compensation which will be mentioned later.

North Broken Hill Limited holds Exploration Licence No. 1326 which now covers some 8,400 hectares in the Bourke district in western New South Wales. A total of 6,400 hectares of that licence is contained in a property called "Doradilla" Station held under Western Lands Lease by the respondent, Mr. Maxim Caldera. North Broken Hill Limited executed a joint venture agreement whereby Metals Exploration Limited was given the carriage of exploration activities under the licence and at the present stage has conducted those activities on adjacent land pursuant to the licence but because of the dispute in respect of compensation has not yet entered "Doradilla" Station.

The evidence adduced shows that North Broken Hill Limited intends to sink drill holes predominantly $3\frac{1}{2}$" to 4" in diameter mainly along lines previously cleared by other Exploration companies. It is also apparent that further larger holes may be sunk by diamond drill, these varying from 3" to 6" in diameter. Notwithstanding the fact that some of the holes will be put down along lines which have been previously cleared, there may be some necessity to clear other strips, but this was an activity of which the Senior Geologist with Metals Exploration Limited was unable firmly to predict. It was indicated however that before any on-surface drilling takes place Metals Exploration Limited would conduct an aerial survey of the land with a view to finally determining an exploration programme. At some later stage there is the possibility of sinking trenches or costeans and in that event Metals Exploration Limited would

be making an appropriate application to the Minister for his consent. Initially a distance of 8 km. by 1 km. was required for drilling activity. Mr. Caldera stated in evidence that his plan had been to put "Doradilla" Station to use as a goat farm. He stated that he had already conducted mustering of feral goats, that when these animals were rounded up at the seven watering points some culling had taken place and then some ear marking of the wild goats. From the time of ear marking they then became known as bush goats rather than feral goats. He had introduced some domestic animals into the herd and now was anticipating being able to run his breeding stock freely on the 52,000 acres or 21,045 hectare of "Doradilla". Already some of the stock had been sent to abattoirs. He stated that nannies needed to be undisturbed during kidding. When a nanny had a kid at foot and a noise or disturbance occurred she would hide the goat in scrub and then subsequently may be unable to find it. In this way Mr. Caldera stated disturbance of the area by means of noise such as drilling rigs and vehicles used to gain access to the area by personnel would result in a direct loss of his income. He produced a statement from Mr. McRae of Wellington which read "severe disturbance by man may cause migration" and contended that not only would there be loss of young goats but also the migration which would take place would mean that he would suffer a loss.

He added further that it was necessary for him to conduct supervisory activities of an area in which drilling rigs were operating. This took him time and caused him trouble and he wanted some recompense for this.

In negotiations with the company both through a solicitor and directly Mr. Caldera had claimed a figure of firstly $3,500 per annum, in addition to individual bore hole rates and later and alternatively to $3,500, $1,500 per exploration team visit. There was some confusion as to the basis for the claims of these large sums. At one stage his solicitor referred to them as being reimbursement for loss of time and stock disturbance. On another occasion he referred to the $3,500 as being a nominal payment which would adequately cover all necessary additional expenditure and yet on a third occasion $3,500 was described as an annual fee payable in advance for privilege of access.

The Mining Act lays down the criteria under which a Warden shall assess compensation. These provisions are contained in Part VIII. Section 124(1)(b) provides that the Warden in making an assessment shall take into account the loss caused or likely to be caused by:-

(i) damage to the surface of land, and damage to the crops, trees, grasses, or other vegetation on land, or damage to buildings and improvements thereon, being damage which has been caused by or which may arise from prospecting or mining operations;

(ii) deprivation of the possession or of the use of the surface of land or any part of the surface;

(iii) severance of land from other land of the owner or occupier of that land;

(iv) surface rights-of-way and easements;

(v) destruction or loss of, or injury to, or disturbance of, or interference with, stock on land;

(v) all consequential damages.

Section 124(1)(d) provides that the amount of compensation assessed shall not exceed in amount the market value for other than mining purposes of the land and the improvements thereon.

There is certainly no provision in the Act for the payment of a nominal fee, access fee, key money or front money. That another company saw fit to pay an amount of $3,000 to Mr. Caldera which was of the nature of such a payment is of no consequence although it would certainly have been had I been a shareholder of that company. The Warden is bound to look at only the criteria as laid down in the Act but I am aware that companies frequently agree to pay additional special sums or indeed, do additional work for landowners, for example, sinking of dams, laying of roads and culverts.

However, in his evidence Mr. Caldera did not argue strongly with what he considered to be the normally accepted figures presented to landowners by exploration companies, that is, so much per hole drilled, so much per trench or costean or so much per line kilometre. There was one variation in that the company initially offered $15 per percussion drill hole and Mr. Caldera was claiming $25. The main bone of contention was the claim for $3,500 per annum or $1,500 per visit.

It is always desirable that a Warden in assessing compensation have firm figures upon which to act. The only figures produced by Mr. Caldera were an invoice dated 23rd August, 1983 which referred to the sale of some 28 goats to the Wollondilly Abattoir Co-op Ltd. at Picton for the sum of $341.50. Mr. Caldera stated that he had brought these animals from Bourke to Picton for sale, and that his Marulan property was now depleted of stock. Although he was offered an adjournment for one week to present further documentary evidence he decided that it would be inconvenient for him to come back to court and desired all the evidence concluded on 25th August, 1983. Therefore, apart from scanty evidence as to any return to him for the sale of stock I have little evidence excepting for an expression of his own opinion as to what disturbance will take place to goats and what Mr. McRae says; and of course Mr. McRae was not available for cross examination.

It is hoped that in assessing compensation a Warden's common sense never deserts him. This land is held under Western Lands Lease and is an immense property within New South Wales occupying as it does 21,000 hectares or 52,000 acres. There are three paddocks Mr. Caldera says which could be affected by the drilling operations, two of which are 10,000 acres in size and one 6,000 acres. These themselves are very large areas when one thinks of an acre of land being 69 yards by 69 yards or a hectare at 100 metres by 100 metres. For me to accept that feral goats will be disturbed to such an extent that Mr. Caldera will suffer loss of income arising out of the possible failure of nannies to find their goats having hidden them in the scrub is pushing logic too far. There may be some need for Mr. Caldera to conduct some sort

of supervision but in all the circumstances I cannot see where a figure in the vicinity of $3,500 per annum or $1,500 per visit is appropriate. In my view the supervision factor is more properly $100 per annum.

In coming to this conclusion I have paid particular attention to the provisions of the Act. I believe that it is appropriate for the court to accept the figures which numerous landowners and occupiers over the years are willing to accept and which have had built into them an ingredient designed to cover all of the aspects laid down in the heads contained in Section 124(1)(b).

I assess compensation therefore as follows:- $50 per diamond drill hole; $25 per percussion drill hole; $2.00 per air-blast or auger drill hole of 30 metres or less depth from the natural surface; $5.00 per line kilometre or part thereof of all cleared survey or access line; in the event of the Minister for Mineral Resources granting consent to trenching or costeaning and only in that event, $50 for each trench or costean up to 30 metres in length; $100 for each trench or costean in excess of 30 metres in length but not to exceed 200 metres; $100 per annum supervision fee.

I direct that a sum calculated in accordance with the above formula be paid quarterly to the respondent direct. The first payment to take place on or before 30th November, 1983 and thereafter at three monthly intervals in the first fifteen days of each February, May, August and November.