IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 14TH JUNE, 1984,
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

C.R.A. EXPLORATION PTY. LIMITED

v.

ROBERTS

BENCH:

On 12th January, 1984 the Corporate Counsel for C.R.A. Services Limited requested that compensation be assessed on behalf of C.R.A. Exploration Pty. Limited in relation to lands affected by Prospecting Licence No. 2366. An initial listing of that application occurred on 8th February, 1984 when Mr. Clark, Solicitor of Sydney appeared for the applicant, and Mr. Buckworth, Solicitor of Broken Hill appeared for Mr. H.I. Roberts, the holder of Western Lands Lease No. 10289 which covers part of the land affected by the licence. For the purpose of this assessment I refer to C.R.A. Exploration Pty. Limited as the applicant and Mr. Roberts as the respondent.

At the initial listing on 8th February there was what might be termed an interim agreement without prejudice reached by the parties, that is to say that on the basis of certain matters occurring, there would be a payment into court by the applicant of the sum of $1,500 representing a figure of $500 for three bore holes. The matter was adjourned to 17th April, 1984 at Broken Hill with leave to either party to request an urgent listing in Sydney, should there be any breach of the interim agreement.

No such request was received and on 17th April, 1984 I embarked upon a defended hearing of the application to assess compensation in respect of lands affected by Prospecting Licence No. 2366.

For the applicant, Mr. John Victor Main, the Chief Geologist for the applicant, gave evidence of past exploration activities on the respondent's property which is called "White Leeds" Station. These consisted of laying gridlines by use of a vehicle and the insertion of rotary air blast (Rab) holes, together with the sinking of three holes which occupied two sites,

by means of a percussion drill with a diamond tail. Mr. Main said that the present percussion drill holes occupied respective sites of 40 by 35 metres and 60 by 40 metres. Occupation of them occurred over three days in respect of the first hole and thirty-three days for the second. In relation to future activities the applicant proposed to maintain the title until the area was fully explored and while Mr. Main could not forecast precisely the exact nature of activities which could be undertaken in the future, there was a very strong chance that two additional percussion holes would be sunk and that it was also possible there would be some shorter percussion holes or reverse circulation holes and costeans put down. No additional Rab holes were planned at the stage that Mr. Main gave evidence as he felt that the area was now effectively covered by Rab holes. There was a possibility that electromagnetic surveys would be conducted in the two additional holes which involves the bringing onto the site of a generator and a large coil of wire necessitating the formation of a series of loops and perimeter lines in a grid approximately 200 metres square. As to access tracks to the larger drill holes, some 80 metres of track was necessary to the first hole and 60 metres to the second, both tracks being 3 to 4 metres wide. Most of the time four men had been employed on the drilling, being two contractors and two employees, with perhaps a geologist occasionally also there.

Considerable evidence was given and cross examination took place about a discussion which Mr. Main had had with the Roberts family and in particular the respondent on a previous occasion during which it was requested of the respondent that he sign a compensation agreement. It was a discussion which lasted all day and although the parties departed as friends, they had agreed to disagree on the rates payable per hole.

Mr. Main stated in evidence that generally in this area there were two types of compensation agreements. Firstly, that in which the landowner agreed that compensation would be nil but secondly where it was agreed that there should be a monetary rate for respective holes, namely $50 per diamond drill hole, $25 per percussion drill hole and 50¢ per Rab hole. The latter rate, Mr. Main felt, was adequate compensation to the respondent. Mr. Main was

asked whether the applicant was prepared to pay 35¢ per square metre of land disturbed and he replied that it would be excessive in respect of all types of disturbance. His evidence implies that this figure applied to costeans and was not intended, according to Mr. Main, to apply to sites acquired for the purposes of sinking percussion or diamond drill holes, rab lines or other milder forms of disturbance.

Mr. Roberts on the other hand gave evidence of how his 27,118 hectares had been subjected to a great deal of geological activity. "White Leeds" had an area of 7,203 hectares which had been particularly exposed and he listed a number of companies which had already prospected over his land. Mr. Roberts explained that he had been paid by another company the sum of $500 per hole and that in relation to the applicant's exploration activities, Mr. Graham Ball, an officer of the applicant company, had telephoned him, the respondent, from Perth and had agreed to pay a similar amount. He said further that while he had declined to sign a compensation agreement which specified something less than $500 per borehole, he had been willing to accept "payment in kind", that is if the exploration company were able to do something for him by way of supplying material, then he would be anxious to take advantage of this. In this regard he agreed that he had telephoned personnel of the applicant and had been supplied with some old drilling rods which he had used in the construction of a stock yard. As to monetary compensation for the two large drill sites, he claimed the sum of 35¢ per square metre which as to the larger one of 60 by 40 metres meant a payment to him of $840 and the sum of $490 for the 40 by 35 metre area. For this disturbance, he complained, he had been only offered $50 per hole by the applicant.

The respondent further stated that not only was vegetation destroyed in respect of which there would be a period of some fifteen to twenty years before it regenerated, but also exploration companies created a lot of dust with their vehicles and at either side of tracks for a considerable distance there would be a deposit on the vegetation of what he termed "bulldust". He had always been careful to attempt to preserve the land by means of

keeping well below the carrying capacity of it which he estimated to be one sheep to every twelve acres. The suggested ratio of sheep to cattle was one bullock to each six to eight sheep and his evidence is that although it is officially estimated that his carrying capacity is 770 head of cattle, in fact he runs between 400 and 500 head. For what it is worth in this matter, I accept 450 head of cattle as an average realistic figure.

Mr. James Roberts, the son of the respondent, gave evidence of having been present during the much discussed all-day visit by Mr. Main to his father's property. He had confirmed to a large extent the evidence that Mr. Main had refused to pay $500 per diamond drill hole. Mr. Terry Francis Blore, a grazier from Mundi Mundi, gave some evidence about the value of grazing land within an 80 kilometre radius of Broken Hill, saying that on a walk-in walk-out basis, it would be worth $10 per acre of $25 per hectare. This was, of course, without stock. He expressed the view that saltbush and bluebush, once disturbed or crushed, would take some twenty-five years to regrow and that the environment in the district was fragile. Further he said that dust was a problem in that once a track was established and vehicles ran along it constantly, vegetation on either side became dust-contaminated. Mrs. Roberts, the wife of the respondent, also gave evidence of being present during the all-day visit by Mr. Main. She remembered that her husband had asked for $500 per drill hole and that the applicant was prepared to pay only $50.

The final witness called was Mr. Terry Barclay, a geologist with the applicant. He confirmed receiving telephone calls from the respondent and having on one occasion delivered to him some old drilling rods. On a second occasion, although the respondent had requested more drilling rods, none had been supplied.

I am conscious of the fact that many land occupiers in the Broken Hill district have become disenchanted with current and previously privately agreed rates of payment for compensation paid to them by exploration companies and have sought to have the matter the subject of clarification

by either the Warden's Court or an appellate court. In the matter of R.T. Toohey v. A.S. Exploration Ventures Pty. Ltd. and Seltrust Mining Corporation (Warden's Court, Goulburn, 28th March, 1984) I assessed rates of compensation for Mr. Toohey's property "Oakdale" but then set down guidelines, which were not assessments as such, for the Broken Hill area which I hoped would be of assistance to exploration companies and landholders alike. I am aware that some landholders and companies have accepted these figures, although there is always some difference in circumstances, for example, in the present matter, "White Leeds" is within five or six kilometres of the city of Broken Hill, whereas "Oakdale" is in excess of twenty-five kilometres from that centre.

It must not be forgotten that the land the subject of this licence is typical of land in the Western Division of the State, especially in the Broken Hill, Cobar and Bourke districts, that is, it is of fairly arid nature, supporting primarily only saltbush and bluebush. Generally, eucalyptus trees grow on permanent or semi-permanent watercourses only so re-vegetation as a rule means only regrowth of saltbush or bluebush, and this could be expected to be completed for all practical purposes within fifteen years. I do not detract from the value of these bushes for grazing and stock survival purposes, but I feel that for the sum of 35¢ per square metre to be allowed for a drill site might well be excessive.

A Warden in determining compensation must be guided by the provisions of Section 124(1)(b) which are:-

> "Where compensation is by this Act directed to be assessed by the Warden the assessment -
>
> > shall, except where the assessment is to be made for the purposes of section 117A(14) or 123, be of 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 of or 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; and

(vi) all consequential damages;"

These provisions speak of loss caused or likely to be caused by the various activities and therefore a Warden is left to make an assessment of future likely loss in addition to any loss which had already been suffered. Although Section 126 refers to an assessment having been made in accordance with Section 124 in providing that an assessment of compensation may be made for "further loss", significantly future loss is not mentioned.

The time for an appeal in the Toohey matter having expired without appeal from either party, it now rests with this court or an appellate from this decision to settle additional rates which may be accepted by the remainder of the mining and exploration community on the one hand and by the grazing and pastoral industry on the other.

Considerable thought has been given to the matter as to what disturbed land would be. Under some exploration licences, costeans, that is, trenches,

are put in by a bulldozer or similar bladed machine. These are usually several metres long. In doing these, the exploration company normally strips topsoil and places it to one side, explores the subsurface by means of taking bulk samples and when work is completed, returns the subsoil before replacing the topsoil and levelling the area. In exploration activities there are degrees of disturbance in that around a percussion or diamond drill hole there would be an area of about 2,000 square metres approximately where the topsoil has been disturbed and vegetation removed. After the hole is inserted, backfilling of it takes place and even a certain amount of mounding is left so that when subsidence occurs, the area will be approximately level. The area of 2,000 square metres around these holes is usually levelled and left to revegetate. Where Rab holes are sunk, generally speaking there is an area of approximately four square metres disturbed which when backfilled still leaves some disruption of the surface, so much so that the presence of a Rab hole is clearly visible. Leading up to the percussion or diamond drill hole there is a track some three or four metres wide which has been made by the tyres of heavy machinery and personnel carrying vehicles to and from the site. Along each line of Rab holes there is a set of tyre tracks made by the drillers, although this is disturbance of a minor nature. All of these would be forms of disturbance and I am of the view that I must attempt to classify each of them under the heading of standards or degrees of disturbance.

I am of the view that the area of the percussion drill sites is not excessively disturbed with the exception of the actual hole itself, which is excessive disturbance and that the area of a costeaning operation would be only moderately disturbed. The area around a percussion or diamond drill hole could also be called moderate disturbance. Similarly, the area around a Rab hole would be subjected to moderate disturbance only, bearing in mind that arrangements have been made by exploration companies to backfill these holes although I feel constrained to say that some of the efforts of backfilling leave a very great deal to be desired. Often plastic bags filled with earth or two or three stones are simply stuffed into the hole and topsoil is used to secret the absence of proper backfilling procedures.

The wheel tracks to the percussion or drill sites are themselves areas of slight disturbance only as are the gridline tracks along the Rab lines.

Mr. Main calculated that only some 10.2 hectares of the 7,203 hectares of "White Leeds" was disturbed. As I have already commented, a fact which perhaps was not taken into account in his calculations, is the question of dust from the wheels of vehicles. Certainly a large area on either side of each track would be affected and while Mr. Roberts said in his evidence that one mile each side of the track was adversely affected by dust, I could not completely accept that this is so. So as far as value is concerned for the purposes of Section 124(1)(d) I am dealing with a much greater area of land than 10.2 hectares.

The Mining Act talks of assessment of compensation. I am conscious of the decisions of the High Court and superior courts from time to time on the question of compensation generally although none has precisely arisen from the 1973 New South Wales Mining Act. Some of the decisions were quoted to me by Mr. Thompson in the Toohey case and adopted by Mr. Buckworth on behalf of Mr. Roberts in this matter. I must however be primarily guided by the Mining Act, although conscious of the decisions in which, inter alia, it was said that compensation is designed to put the sufferer back into a position which he was before the act in respect of which compensation is sought, occurred.

I am of the opinion that excessive disturbance has taken place but only the holes themselves are instances of this, whether they be diamond/ percussion holes or Rab holes. I am of the view that for the diamond/ percussion drill holes, the sum of $10 for each hole is appropriate and for each Rab hole the sum of 85¢. In my opinion moderate disturbance has occurred in the areas where costeans have been put down and percussion/ diamond drill holes sunk and in this regard I am of the opinion that 5¢ per square metre is a fair and reasonable assessment of compensation for these areas. The slight disturbance which has occurred in the use of the access track to the percussion/drill sites can be in my opinion satisfactorily compensated for by an assessment of 70¢ per linear metre.

The very slight disturbance which has occurred where the gridlines have been laid can, in my opinion, be adequately compensated for in the payment of 85¢ per Rab hole.

The question of dust on vegetation has given me some considerable cause for concern. As I have said, dust does rise from the wheels of vehicles and does settle on vegetation making it less palatable for stock. That situation normally pertains until the next rainfall. I think that perhaps a flat figure of $80 could be adequate recompense to the respondent in respect of this matter.

When I asked the respondent during the hearing to give an indication of stock or area loss by reason of the applicant's exploration activities, he was unable to do so, and so no calculations based on evidence could be done as to possible stock or area loss by reason of the exploration activities.

One other aspect bearing in mind those guidelines laid down by Section 124(1)(b) is the need for the respondent to exercise some supervision over the activities of the applicant. I direct that the sum of $100 is appropriate and I make that assessment.

In respect of "White Leeds", I make the following calculations:-

3 percussion/diamond drill holes on 2 sites at $10	$30
2 sites:	
60 x 40 metres at 5¢ per square metre	$120
40 x 35 metres at 5¢ per square metre	$70
5 costean areas totalling 1750 square metres at 5¢ per square metre	$87.50
Access roads: 140 metres at 70¢ per metre	$98
Dust	$80
Supervision	$100
	$585.50

together with a calculation based on 85¢ per Rab hole.

Three other matters need to be the subject of comment. During his final address Mr. Clark made mention of the drilling rods which had been supplied by the applicant to the respondent on the respondent's request. He said, in effect, that as "payment in kind" had been made the respondent was disentitled to compensation, at least in respect of past activities. Part VIII of the Mining Act which covers the question of compensation provides that the parties may have compensation dealt with in two fashions. Firstly, they may agree in writing (Section 122(2)), which document shall be lodged with the Secretary, Department of Mineral Resources, but secondly, if a valid agreement is not entered, any party may apply to a Warden for assessment of compensation. It is apparent on the evidence that there was no written agreement nor indeed oral agreement between the parties and all that the applicant did was to supply the respondent with drilling rods at the respondent's request. Favours such as this are frequently done by mining or exploration companies for landowners or occupiers, e.g. the sinking of waterbores, the building of dams, the leaving of useful material on the site after their operation is finalised. The drilling rods were of some value but in my opinion were in in the nature of a favour done by the applicant to the respondent and I hold that their supply does not constitute any valid agreement so as to preclude me from making any assessment to cover past or future operations.

Another matter concerns costs. A Warden has a discretion under Section 146 to awards costs but over the period of time which is nine years, that I have been the Chief Mining Warden, compensation hearings have never attracted an award of costs. I only depart from this practice when it is obvious that a particular party has been unreasonable in forcing his opponent to court. There is nothing in the action of either party in this matter to suggest this and I direct in the exercise of my discretion that the parties pay their own costs.

The final matter, the question of payment into court of the $1,500 which was made by the applicant in February and which is currently held by the

Registrar at Broken Hill needs to be considered in the light of my assessment herein. The applicant is to supply the Registrar and the respondent within fourteen days from today information showing the number of rotary airblast (Rab) holes, thus permitting a calculation. Following this calculation made in accordance with my assessment, the Registrar may pay out to the respondent the appropriate amount and should there be any excess return to the applicant the balance. In the event of $1,500 being insufficient, the balance is to be paid by the applicant to the Registrar within three months from today. Any payment out is not to take place until the expiry of the time for the lodging of an appeal by either party.