JURISDICTION	:	MINING WARDEN
TITLE OF COURT	:	OPEN COURT
LOCATION	:	KALGOORLIE
CITATION	:	PLATGOLD PACIFIC NL -v- GLYN THOMAS MORGAN AND CRANSTON GILBERT EDWARDS [2001] WAMW 33
CORAM	:	HEANEY SM
HEARD	:	5 TO 6 SEPTEMBER 2001
DELIVERED	:	30 NOVEMBER 2001
FILE NO/S	:	APPLICATIONS FOR EXEMPTION 386/001 OBJECTION 35/001 TO 53/001 PLAINT FOR FORFEITURE 44/001 TO 62/001
TENEMENT NO/S	:	P24/3540 – 3554 AND P24/3556 - 3559
BETWEEN	:	PLATGOLD PACIFIC NL (Applicants/defendants) AND GLYN THOMAS MORGAN and CRANSTON GILBERT EDWARDS (Objector/plaintiff)

Catchwords:

Legislation:

HEANEY SM

Result:

Representation:

Counsel:

Plaintiffs	:	Ms C. McKenzie
Defendant	:	Mr A. Goldfinch

Solicitors:

Plaintiffs	:	Ms Carmel McKenzie
Defendant	:	Mr A. Goldfinch

Case(s) referred to in judgment(s):

Case(s) also cited:

WARDEN'S DECISION

1 In this matter the applicant Platgold Pacific NL (Platgold) is making application for exemption from expenditure conditions in respect of 19 prospecting licences P24/3540-3554 and P24/3556-3559. The expiry date of the period to which the exemptions relate is 30 September 2000. The application for exemption was filed at Kalgoorlie on 27 November 2000.

2 On 15 December 2000 objections to the abovementioned applications were filed by Cranston Gilbert Edwards (Edwards) and Glyn Thomas Morgan (Morgan) as joint objectors. On that same date the abovementioned objectors also filed a joint plaint against Platgold in respect of each of the abovementioned tenements seeking forfeiture of the tenements.

3 These applications for exemption are made on two grounds, namely section 102(2)(b) and 102(3) of the Mining Act 1978. Section 102(2)(b) provides that:

> *A certificate of exemption may be granted for any of the following reasons:*
>
> *(b) that time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefor.*

4 Section 102(3) provides that:

> *Notwithstanding that the reasons given for the application for exemption are not amongst those set out in subsection (2) a certificate of exemption may also be granted for any other reason which may be prescribed or which in the opinion of the minister is sufficient to justify such exemption.*

5 In respect of the application pursuant to section 102(2)(b) Platgold stated the following further particular:

> *Further to recent metallurgical test work and resource re-modelling on adjacent project tenure, further time is required to compile all data/results to date and implement the proposed programs for the ensuing year.*

6 Towards the end of his final submission Mr Goldfinch for the applicant, sought leave to provide further particulars in respect of the section 102(2)(b) limb of the application. The amended particulars are as follows:

> *… to plan further mining, including the use of the subject tenements which are not host to nickel resources for infrastructure subject to appropriate exploration to ensure no other mineralisation, proposed further work will include theology and beneficiation and atmospheric leaching tests and tests to determine the effectiveness of acid leaching on all samples, further resource modelling as data density permits and mine planning studies.*

7 There is nothing new in these particulars and in fact they appear to be a more accurate reflection of the basis of the applicants claim, than were the original particulars. They are also consistent with section 102(2)(b) which allows an exemption to enable a tenement holder, who is planning future mining.

8 These 19 prospecting licences, the subject of these proceedings, along with several other prospecting licences, which are not part of these proceedings, constitute a contiguous group of tenements referred to as the Siberia South Project.

9 At the hearing of this matter evidence was given by four witnesses, two for the applicant and two for the objector/plaintiffs. The first witness for the applicant was John Edward Jordon who described himself as a mining exploration administrator and property manager employed by Anaconda Nickel and associated companies (Anaconda). He explained Anaconda's involvement with the relevant tenements in the following terms:

> *Coincidental with the development of Murrin Murrin Anaconda undertook to seek further resources in the district … In about late 1996 it approached a company called Platgold and did an agreement with them which consummated in early 1997 whereby we would earn 100% of the lateritic nickel rights. It was an option agreement that went for a year so we could pay a certain amount of money, go in and explore and then after a year if we wanted to consummate the nickel rights, we could pay a bit of extra money or a royalty downstream. In this case here with Platgold after a year we were still quite interested in it we*

> *advised them that we would like to execute the option and their choice was they had a choice of taking a certain amount of money or a smaller amount of money and then a royalty. They chose the second option and that was paid. So effectively we had earned a 100% interest in the nickel cobalt rights but we didn't have the gold rights. Now, they [Platgold] retained the gold rights. So we continued exploring in the area fairly actively as part of a regional program in the district… In November 1999 we made the offer to purchase all the rights and buy out the nickel royalty… the actual agreement we sent to them in September 2000 was finally consummated on 31 August [2001]. Effectively we gained the entire rights to the whole tenements only a week or so ago.*

10 This evidence reveals that by the time this matter came on for hearing on 5 September 2001 Anaconda was in fact the owner of the relevant tenements and Mr Goldfinch was acting on behalf of Anaconda as distinct from Platgold. Mr Goldfinch produced the said agreement and indicated that the consideration for the sale of the tenement from Platgold to Anaconda was $60,000 plus GST.

11 Mr Jordon gave no further evidence in chief and then was cross-examined by Mrs McKenzie for the objectors. In cross-examination Mr Jordon stated:

> *… this is part of what's called the Siberia South project in itself, but Anaconda is doing a feasibility study on the expansion of the Cawse project and this prospect project has become part of that feasibility study and would be included in any expansion of Cawse. So the project in its entirety is the whole of Cawse … We have an agreement with Centaur Exploration and Mining to carry out a feasibility study to earn a certain interest in the Cause project. Incorporated into that will be all the resources available to Centaur and all the resources we have. This agreement is still on foot despite Centaur being in management.*

12 A further exchange between Mr Jordon and Mrs McKenzie revealed that the receiver/manager of Centaur have sent a notice of repudiation of the Centaur/Anaconda agreement. However, Mr Jordon maintains that the agreement is still on foot and that it is for the courts to ascertain the effectiveness of the repudiation notice. At page 22 of the transcript of these proceedings Mrs McKenzie asked Mr Jordon the following question:

… you would agree with me that the emphasis of the exploration activity that has been taken by Anaconda in relation to these 22 tenements has really been confined to four tenements?

13 Mr Jordon:

I will agree that that's what has happened. That's the way it has panned out, but you will appreciate that a project that we're so familiar with and how they develop is you need not only land for mining, you need it for a whole lot of other things … it's part of a project package and we are there to outline a nickel laterite resource and we have done that. That was our emphasis.

14 And at page 23:

Our focus by 2000 was gearing more on the metallurgical test work that didn't require a great deal of work on the ground at the time for this feasibility study.

15 And at page 24:

… you have got to plan how you are going to develop the resources and that requires a whole lot of studies. One thing we realised is that the Cawse area relies on beneficiating the ore and actually treating the ore to make it good enough grade to put through the plant. Now, that became apparent early on and then a lot of studies in 2000 were how we can make all these resources work because standing alone they just won't go on their own. There was a considerable amount of money spent on working out how we can turn this mineralisation into actual ore that's useable.

16 The second witness for the applicant was Peter Robert Thompson, the senior project geologist with Anaconda Nickel. At pages 34 and 35 of the transcript Mr Thompson gives an outline of the processes of the project and the relationship of the Siberia South project tenement:

A 6 tonne sample has been produced including material from the Siberia South project as well as material from other projects contributing towards the expanded project. That material is chosen to be representative of the proposed feed for the new plant and it's submitted to ore test. It's beneficiated by ore test so a high grade product is produced and that high grade product is then put into a circuit which leaches the mineralisation in an

autoclave and produces hydroxide precipitate which is enriched in nickel … A pro rata sample is taken from several projects and combined into one sample so that it represents the mining schedule which is also pro rata. There will be several million tonnes extracted from one deposit and several million from another in any given year of the mining schedule…

A mining schedule was produced - several mining schedule options were produced in the feasibility study during 2000 of the Cause expansion and the Siberia project was represented in that mining schedule…

…during 2000 the emphasis of our work was not on the Siberia South project but on other projects which were either owned by Anaconda or by Centaur which were part of the expanded program. Work on those projects was largely resource infill drilling and extension drilling and metallurgical test work. That work had a relative impact on the importance of the Siberia south ground so any time any resources are changed significantly within the global project, the Siberia South project will have to be remodelled in accordance with the global resource so that any work on other tenements has an effect on the resources here in terms of how it will be scheduled in the mining schedule.

17 At page 40:

Mine planning studies are where the mining engineers get hold of the resource data … they do it for the entire project at once so they would be looking at the entire expanded global project and they would look at all the resources available and do an optimisation and come up with a mine schedule so they could determine how many tonnes are coming from each pit and each sub project are over the life of the mine and how much nickel should be produced over the life of the mine.

18 At page 42:

$6,000,000 [was] spent during 2000 largely on resource evaluation, meaning drilling and metallurgical test work on what we call the extended project, the Yowie project, the Siberia Taipan project and the Menzies project and the Scotia project. So largely because Siberia South was sort of ahead of the rest of the projects in maturity with the drilling we had reached a

> *density of drilling we were satisfied with for pre-feasibility. The others had to do a bit of catching up to do the drilling required. We were still finding new resources, whereas we had got to the stage where we knew the gross resource available at Siberia South.*

19 At page 42 of the transcript Mr Thompson produced a mine schedule which became exhibit J. This is a mining schedule proposed for the first 30 years of the expanded cawse project in which Anaconda was earning an interest of 60 per cent. This plan refers to nine different project areas of which Siberia South is indicated in red.

20 At page 49 of the transcript Mr Thompson referred to Plan 5 which shows the planned mining infrastructure of the Siberia South project. This plan also delineates the ore body and its relationship to the infrastructure. At the completion of his evidence in chief Mr Thompson was cross-examined by Mrs McKenzie for the objectors/plaintiffs.

21 These prospecting licences constituting the Siberia South project, as of 30 September 2000, had had a life span of 4 years. This matter, strictly speaking, only related to the last of these 4 years. The witnesses for the applicant gave evidence relating to the bigger picture, namely, the Project over the long term as distinct from the Siberia South project for the relevant year. This is not surprising being in mind that this is an application for exemption from expenditure requirements. The applicant is seeking exemption from expenditure requirements as only approximately 16 per cent of the required expenditure for these 19 tenements had been done. In this application the applicant seeks to explain this lack of expenditure based on what has been done in previous years.

22 Part of this cross-examination dealt with previous applications for exemptions which had been granted without any objection. Mr Thompson was cross-examined at length in respect of the Forms 5 which related to these previous applications. This appeared to me to be a futile exercise as these Forms 5 had previously been accepted unchallenged. In any event Mr Thompson had little or nothing to do with these previous applications so a cross-examination of him on the documents relating to previous applications were not likely to be effective anyway.

23 Mr Thompson was also cross-examined in respect of Platgold's quarterly and annual reports. As he is employed by Anaconda he was generally unable to be of assistance in clarifying Platgold's reports. He

was also cross-examined extensively in respect of the placement of the infrastructure of the Siberia South project. Mrs McKenzie in her cross-examination seemed to be of the opinion that the infrastructure could be placed elsewhere. She is, of course, entitled to her opinion but it is not for Wardens in proceedings such as these to be making findings as to where a mining company should place its infrastructure.

24 The first witness for the objectors/plaintiffs was Mr Peter Alexander Berger a consultant geologist with qualifications as a master of science in mining and exploration geology, who has been working professionally in the field since 1966 and throughout the world. At page 101 of the transcript he stated:

> *I have been told that there is probably nobody else in the world that has the degree of exposure to nickel laterites that I have had.*

25 Mrs McKenzie pointed out to Mr Berger that the indicated resource of the relevant tenements was 24.4 million tonnes at .554 percentage nickel and asked him how he would rate this deposit relative to existing operations of nickel laterite production in the Eastern Goldfields. His response was:

> *It's effectively a drop in the bucket …it's very insignificant.*

26 At page 103 of the transcript he stated:

> *If you encountered these types of tonnages, these types of grades in an evaluation of a deposit, it's almost something you would be tempted to walk away from unless there was something particularly exceptional about the upgrade ability of the deposit, its proximity to an existing plant and infrastructure or some particularly favourable metallurgical characteristic.*

27 He confirmed that he had examined the public file data, the Platgold quarterly and annual reports and Anaconda's Web site data, their quarterlies and other ASX reports but had been unable to determine therefrom that this deposit had any exceptional circumstances. He further indicated that there was nothing about this deposit that would make it a commercial viable mineable resource. At page 108 of the transcript Mr Berger said that it appeared to him that Anaconda had:

> *Maybe not lost interest but certainly indicated that they had little interest in this deposit relative to other deposits that they continued to work on.*

28 At page 110 of the transcript he also expressed environmental concerns. At page 114 of the transcript he said the resource is not bankable. At page 117 of the transcript he referred to the western half of these tenements as having real gold potential. He said:

> *As far as gold goes it is tiger country.*

29 He indicated that this potential for gold has not been pursued. Given Mr Berger's forthright opinion of Anaconda's endeavours in respect of these tenements it was interesting to hear Mr Berger's comment at page 106 of the transcript that:

> *…the only information that I have got on this deposit is effectively what has been presented in this court.*

30 Mr Berger appears very ready to condemn without any real in depth assessment of the situation.

31 The second witness for the objector/plaintiff was one of plaintiffs himself, Mr Glyn Thomas Morgan. Mr Morgan describes himself as a prospector, an occupation which he commenced in 1978. He prospects over the Eastern Goldfields and is familiar with the territory where the relevant tenements are situated.

32 Basically Mr Morgan's evidence was that he was strongly of the opinion that the ground the subject of these tenements is "very highly prospective" and "that it has an extensive history of gold production." Mr Morgan also expressed concern that Anaconda's proposed structure is on "highly prospective ground" for gold. At page 135 of the transcript Mrs McKenzie asked Mr Morgan of his intentions should he be given these tenements. He responded that:

> *Our policy with exploration is to get down to the nitty-gritty, assess historical WAMACS data bases, do all this type of work, target areas, look for coarse gold to actually target in … There is potential known deposits of alluvial gold throughout those Platgold tenements which we should be able to mine which will keep us viable financially while we look at the bigger picture and trying to find resources.*

33 Before relating the evidence produced at these proceedings to the legislation and in particular sections 102(2)(b) and 103(3) I wish to comment on the main thrust of the evidence given by Mr Morgan and Mr Berger. Mr Berger referred to the fact that the relevant tenements were

"tiger country". Mr Morgan agreed with that and indicated that if he got the tenements he would be exploring for gold. The implied criticism of Anaconda from this evidence was that they were chasing uneconomical nickel resources whereas their target should have been gold and that they should be relieved of the tenements so that exploration for gold could be carried out.

34 It would be strange indeed if a tenement holder could be criticised for not exploring for a particular mineral. Could they likewise be criticised for not exploring for, say, magnesium? The reality is that Anaconda is a nickel mining company. It is entitled to hold tenements and explore for nickel and ignore other metals that may exist in the ground and can't be criticised as long as it carries out its duties under the Mining Act.

35 The evidence in these proceedings revealed that the tenements dealt with are referred to as the Siberia South project. The Siberia South project is in turn an integral part of the project which incorporates other projects along with the Siberia South project.

36 The tenements within the Siberia South project over a 4 year period ending September 1999 had an expenditure requirement of $532,640. An amount of $692,406 has been expended on this 4 year period. This expenditure in excess of the statutory requirement is an indication that it is not the position that Anaconda has no further interest in this project.

37 A mining schedule was produced (exhibit J) which indicates that the Cause project has a mining plan. A plan which is going through a process of refinement. As a Mining Warden sitting to determine an application for exemption from expenditure conditions, I don't have the research facilities or capacities to investigate and decide on the financial merits of this project. Mr Jordon and Mr Thompson outlined Anaconda's position and Mr Berger's assessment of this outline, based only on what he heard and read in the course of this proceeding can hardly be seen to impugn Anaconda's evidence.

38 The applicant applies for an exemption from expenditure conditions pursuant to section 102(2)(b) of the Mining Act 1978, which provides that:

> *Time is required to evaluate work done on the mining tenement, to plan future exploration or mining or raise capital therefore.*

39 Clearly the evidence produced by the applicant fulfils the criteria of section 102(2)(b). The undisputed evidence of Mr Thompson and Mr Jordon is that Anaconda plans future mining and to a lesser extent further exploration. Evidence was given of further testing to be done in relation to the mining procedures and the continuing remodelling of the resource schedules. I am satisfied that the applicant is entitled to a certificate of exemption pursuant to the specific requirements of section 102(2)(b).

40 In respect of the application pursuant to section 102(2)(3) I am likewise persuaded that the applicant is entitled to a certificate of exemption. The Siberia South project is an integral part of the larger project. Over the 4 year life of these tenements the applicant has spent in excess of $150,000 more than its statutory obligations. Admittedly this expenditure was not made evenly over the tenements, nor evenly over time, and in fact some of the tenements in recent years have had little expenditure in respect thereof. But the expenditure was made on these tenements where the ore body was located and required delineation. Those tenements not rich in resources may well be required for infrastructure. I think it would be premature at this stage of the planning process to be excising tenements from this group.

41 On the evidence a mining plan is in existence which envisages a 30-year mining schedule involving the Siberia South tenements. In respect of the 19 tenements, the subject of the proceedings, I will be recommending to the minister that the applicant be granted a certificate of exemption in respect of each of them.

42 If the minister accepts this recommendation, then the plaints lodged in respect of these tenements are to be dismissed. If the minister does not accept the recommendation then the matter will need to be brought before me again to deal with the plaints.