**[2010] WAMW 10**

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| **JURISDICTION** | **:** | MINING WARDEN |
| **LOCATION** | **:** | PERTH |
| **CITATION** | **:** | MAWSON WEST LTD & ANOR -v- SARUMAN HOLDINGS PTY LTD [2010] WAMW 10 |
| **CORAM** | **:** | CALDER M |
| **HEARD** | **:** | 31 MARCH 2010 |
| **DELIVERED** | **:** | 28 JUNE 2010 |
| **FILE NO/S** | **:** | APPLICATION FOR EXEMPTION 299783 |
| **TENEMENT NO/S** | **:** | EXPORATION LICENCE 63/1042 |
| **BETWEEN** | **:** | MAWSON WEST LTD and PANGOLIN RESOURCES PTY LTD (Applicants)<br><br>AND<br><br>SARUMAN HOLDINGS PTY LTD (Objector) |

*Catchwords:*

EXEMPTION - Application for - First year of tenement life
EXEXMPTION - Combined reporting status granted after end of expenditure year
EXEMPTION - Justified in Minister's opinion
EXPENDITURE - Exemption - Combined reporting status
EXPENDITURE - Exemption - Justified in Minister's opinion
EXPENDITURE - Exemption - First year of tenement life
FORFEITURE - Expenditure non-compliance - First year of tenement life

*Legislation:*

*Mining Act 1978* (WA), s 64, s 102(2), s 102(3), s 115A, s 118A
Mining Regulations 1981 (WA), r 96B, R154

*Result:* *Grant of certificate of exemption recommended.*

**Representation:**

*Counsel:*

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| Applicants | : | Mr M F Gerus |
| Objector | : | Mr M T McKenna |

*Solicitors:*

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| Applicants | : | Blakiston Crabb |
| Respondent | : | Hunt and Humphry |

**CALDER M**

# WARDEN'S REPORT AND RECOMMENDATION TO THE MINISTER: APPLICATION FOR EXEMPTION: EL 63/1042: YEAR ENDED 31 JULY 2008

## INTRODUCTION

### The Proceedings

1 This matter concerns exploration licence 63/1042 ("EL 63/1042"). Mawson West Ltd and Pangolin Resources Pty Ltd ("Pangolin") are the joint Applicants for the grant of a certificate of exemption for the expenditure year ending 31 July 2008 for EL 63/1042. During that expenditure year neither Mawson West nor Pangolin was the registered holder of the tenement. Mawson West was registered as the holder on 8 August 2008 and Pangolin was registered as the holder on 7 July 2009. The application for exemption was lodged on 20 August 2008 by Mawson West. Pangolin became a joint applicant for exemption in August 2009.

2 Mawson West and Pangolin submit that the Minister, in accordance with subs 102(3) of the *Mining Act 1978* (WA) ("the Mining Act"), in all of the circumstances, would be of the opinion that there is sufficient reason to justify the grant of a certificate of exemption. The application for exemption expressly states that, for purposes of subs 102(3), one such reason is that EL 63/1042 is part of a project acquired by Norseman Gold Plc ("Norseman Gold") and that Norseman Gold requires time to review the whole project. It is also said that the grant of the exemption will benefit the State of Western Australia.

3 Norseman Gold is the ultimate holding company of Central Norseman Gold Corporation Ltd ("Central Norseman") which is the ultimate holding company of Pangolin. Until May 2008, Mawson West was the holder of all of the issued shares in Pangolin.

4 Saruman Holdings Pty Ltd objects to the exemption application on the ground that for the expenditure year ending 31 July 2008 the tenement holder failed to meet the minimum expenditure requirements. The year ending 31 July2008 is the first year of grant of EL 63/1042. Saruman says that the expenditure non-compliance occurred despite undertakings having been given on application for grant of the licence that the applicant had the financial and technical resources to satisfy the minimum expenditure condition.

5 Saruman also lodged an application for forfeiture of EL 63/1042. The stated reason for forfeiture is failure to comply with expenditure condition in respect of the expenditure year ended 31 July 2008.

6 This recommendation and this report to the Minister are only for the purposes of the exemption application.

## Issues

7 The primary issue is whether or not, for purposes of subs 102(2) of the Mining Act there is any reason other than those prescribed in subs 102(2) which, in the opinion of the Minister is sufficient to justify the grant of a certificate of exemption. There are a number of ancillary issues arising from the circumstances of the case which are relevant to the application of subs 102(3). Those ancillary issues are as follows:

8 Is an exemption appropriate given that it is sought in respect of the first year of the life of EL 63/1042?

9 Is exemption appropriate given that the current holder of the exploration licence, Pangolin, has no present plans for work and expenditure, on or off ground, that specifically target EL 63/1042?

10 What, if any, effect does the fact that an application for combined expenditure reporting status pursuant to s 115A of the Act was applied for during but not granted until after the end of, the subject expenditure year?

11 What, if any, consequence flows from the fact that the entities that now control Pangolin and its tenements and which were responsible for the execution of the agreements that achieved that control would have been aware at all material times that in acquiring, firstly, an equitable and, subsequently, a legal interest in the exploration licence they were acquiring a tenement that was not in good standing in terms of expenditure condition compliance?

12 If there was a breach of subs 64(1) of the *Mining Act* arising from the transfer of the tenement application during without the consent of the Minister, would it be inappropriate to allow the transferee to gain the benefit of a certificate of objection?

13 In the circumstances, would the grant of a certificate of exemption be inconsistent with the objectives and policies of the *Mining Act*?

## THE EVIDENCE

14 The general historical circumstances by which Pangolin came to be the registered holder of EL 63/1042 in July 2009 and by which Norseman Gold Plc ("Norseman Gold") through its subsidiary Central Norseman Gold Corporation Ltd ("Central Norseman") gained control of Pangolin and the legal and equitable rights that Pangolin held in relation to EL 63/1042 is largely undisputed. I find that application for the grant of EL 63/1042 was made by The Lady Dee Pty Ltd ("Lady Dee") on 14 June 2006. Grant of the tenement to Lady Dee occurred on 1 August 2007. Prior to grant, on 16 November 2006, Lady Dee sold its interest in the application for the tenement to Pangolin. At the time Pangolin was a wholly owned subsidiary of Mawson West.

15 On or about 19 May 2008, Central Norseman acquired all of the issued shares in Pangolin pursuant to an agreement between Mawson West and Norseman Gold On the following day an application was lodged on behalf of Pangolin for EL 63/1042 to be given combined reporting status under s 115A of the *Mining Act*.

16 Upon grant, and until 8 August 2008, Lady Dee was the registered holder of EL 63/1042. On 8 August, and in error due to administrative misunderstanding on the part of its tenement manager, Mawson West became the registered holder of the exploration licence. The error arose from the fact that on 16 November 2006 Lady Dee had signed two separate agreements. It signed one for the sale of its interest in the then pending application for EL63/1042 to Mawson West and it also signed an agreement to sell its interests in the pending application for EL 63/1042 to Pangolin. It was not until 7 July 2009 that a transfer of the tenement to Pangolin was registered. Pangolin remains the registered holder of EL 63/1042. In the meantime, on 13 March 2009, EL 63/1042 was granted combined reporting status along with 120 other tenements held by either Central Norseman or Pangolin. The other tenements in the group of tenements the subject of the combined reporting arrangement consist of 107 mining leases, four exploration licences and 10 prospecting licences. Exploration licence 63/1042 has also been the subject of an authority given by the Minister pursuant to s 111 for the holder to explore for iron ore.

17 Norseman Gold acquired ultimate control of EL 63/1042 as follows. Pangolin, a subsidiary of Mawson West, held many tenements in the subject area known as the "Norseman Project". A decision was made by Mawson West to sell those tenements. After that decision was made

Mawson West decided to purchase from Lady Dee the pending application for the grant of EL 63/1042. The intention was that EL 63/1042 be granted to Pangolin as the registered holder. In April 2007 Norseman Gold acquired from the administrator of Croesus Mining Pty Ltd all of the shares held by Croesus in Central Norseman. The consideration paid by Norseman Gold for that share acquisition was approximately $71,000,000.

18 It was the intention of Norseman Gold that all of Pangolin's tenements and pending tenement applications be consolidated into a single project comprising 121 tenements, being those acquired through the purchase of the Central Norseman shares and those acquired through the purchase of the Pangolin shares. The whole project included two operating goldmines, namely, Bullen and Harlequin, as well as the Phoenix mill. The mill was then, as now, operating at approximately 60 per cent of its maximum capacity. During the expenditure year the subject of these proceedings both the Bullen mine and the Harlequin mine were continuously operated.

19 I infer that no expenditure at all was incurred by Lady Dee or any other person during the subject expenditure year after grant of that EL 63/1042. I find that prior to 18 May 2008 when Norseman Gold acquired control of Pangolin, no person incurred any expenditure on or in connection with mining on EL 63/1042.

20 During the expenditure year the subject of these proceedings no work was done on the ground the subject of EL 63/1042 by either of Norseman Gold or Central Norseman or any other person. Approximately $8.4 million was expended on exploration. During the combined reporting period from 1 July 2007 to 30 June 2008 on the tenements in the Central Norseman Project acquired from the administrator. That exceeded the minimum aggregate expenditure for those tenements by approximately $3,000,000. During the same period, on the tenements acquired by the purchase of Pangolin, which I take as including EL 63/1042, expenditure, in aggregate, was approximately $124,000 short of the minimum aggregate expenditure requirement. For the 2009 expenditure year total aggregate expenditure on all 121 tenements exceeded the required aggregate minimum expenditure by approximately $4.3 million. The figures that I have just quoted are taken from reported claimed expenditure in respect of each tenement.

21 **Mr Barry Cahill** was called by the Applicants. He is a director of Norseman Gold, of Central Norseman and of Pangolin. He is a very

experienced mining engineer and manager. He is familiar with all of the tenements that have been referred to and with the projects which those tenements constitute. From April 2007 he was the chief executive officer of Norseman Gold and he has managed the operations of the Norseman Project since May 2007. He said that Mr David Thomas, the exploration manager for the group since September 2007, is the person responsible for identifying priorities for exploration on the project tenements and that Mr Thomas is also responsible for preparation of exploration programs and budgets. Approval for budgets and programs is given by either Mr Cahill or the joint board of directors.

22 Mr Cahill said that the expenditure budgets are dependent upon cash flow obtained from gold production and, accordingly, that is what governs priorities. He said that he has begun the implementation of a four-stage development plan of the project tenements. Stage 1 calls for stabilisation of production at the two operating mine, Harlequin and Bullen, and maintaining utilisation of the Phoenix mills at 60 per cent of its capacity. The second stage is the development of a third mine with the objective of increasing mill production to 100 per cent of the mill's capacity, namely, 700,000 tonnes of ore per year. The third stage is to increase the mine life of the project's ore reserves from three to five years. The fourth stage is to increase the mine life from five to 10 years.

23 Concerning stage 1, Mr Cahill outlined several steps that have been taken to reduce costs, increase efficiency and improve productivity. He said that, at present, production has stabilised at 60 per cent of the maximum capacity of Phoenix mill. Mr Cahill said that the initial target of production of 24,000 ounces of gold a quarter was not achieved. That target was reduced to 19,500ounces of gold per quarter. In conjunction with that target reduction, further operating cost reductions were achieved by restructuring.

24 In addition to operating costs, the group has expended large sums in capital investment in connection with the Bullen and Harlequin mines and the development of a new mine at the OK Decline. Approximately $6,000,000 was spent on re-capitalisation for the year ended 30 June 2008 and approximately $12,000,000 during the year to June 30, 20009.

25 In respect of stage 2, Mr Cahill said that in October 2009 the Norseman Gold board had approved the commencement of mining operations at a deposit known as the OK Decline. Drilling results indicated a two-year mine life at present. He said that he expected

de-watering operations to be completed at a deposit known as North Royal at which time drilling or feasibility studies would commence.

26 As to stages 3 and 4, namely, the extension of project mine life, firstly, to five years and, subsequently, to 10 years, Mr Cahill gave evidence as to Proved and Probable Reserves of the project. He said as at 30 June 2007 those reserves were 1.3 million tonnes of ore at 8.0 grams of gold per tonne for 333,000 ounces of gold; as at June 2008 1.2 million tonnes at 8.2 grams per tonne for 308,400 ounces. He said that those reserves represented an approximate mine life of three years. He said that by June 2009 the reserves had increased to 1.4 million tonnes at 8.9 grams for 400,000 ounces of gold which represented the approximate five-year mine life sought to be achieved during stage 3. He said that during 2009 there was a large increase in the project's Measured, Indicated and Inferred Resources of 15.6 million tonnes at four grams per tonne for 1.99 million ounces in 2008 to 20,000,000 tonnes at 5.5 grams for 3.7 million ounces of gold in 2009. He said it is the intention of Norseman Gold to conduct further feasibility studies in an endeavour to convert those Resources into Reserves and increase the mine life of the project to 10 years.

27 In respect of the acquisition of the Pangolin tenements, Mr Cahill said that it was done because of two historical mines that are within the tenements, because there are identified Resources, because of the total area and the fact that they were continuous and because there were indications from the presence of a sedimentary iron formation ("SIF") ridge which ran across some of the tenements that there is prospectivity for gold and iron ore. He said it is planned that the Pangolin tenements will all be explored as part of the process of extending the mine life of the whole project. The decision as to what tenements will be explored is one that will be made by Mr Thomas, the exploration manager.

28 He said the EL 63/1042 has been identified as one of the tenements through which the SIF ridge runs. He said that the Pangolin tenements had been purchased as part of Norseman Gold's long-term strategy for development of the whole project and that it was always intended the EL 63/1042 would be part of that process. He made the general broad comment that Norseman Gold "*... is in the best position ...*" to explore and, if appropriate, to mine the ground the subject of EL 63/1042 because it has the technical and financial resources and infrastructure to effectively and efficiently do so.

29 Mr Cahill conceded that North Royal is at present the project's number 1 exploration priority and that its next current primary priority is an area known as Crown West which is not on EL 63/1042. He said that exploration will always be conducted in the vicinity of operating mines as a matter of standard practice in order to try and extend the life of those operating mines where considerable expenditure will have been incurred in setting up of the mining operations. He said that on the sites of those operating mines a drilling rig is operated 24 hours, seven days a week.

30 Mr Cahill agreed that the four-stage strategy would continue unaltered even if EL 63/1042 is not held by Pangolin. He agreed that there was not a lot of money available to Norseman Gold in the context of its operating costs. In respect of the SIF ridge, which runs through a relatively small portion in the far north-west of EL 63/1042, Mr Cahill said that the group was primarily a gold producer but that it is considered that there may be some potential to extract iron from the ore and sell it at a profit.

31 **Mr David Thomas**, an experienced exploration geologist employed by Norseman Gold, gave evidence for the Applicants. He is the exploration manager for all of the tenements within the group's project at Norseman. His responsibilities include surface exploration, exploration budgeting and database management in the context of the implementation of the four stages referred to by Mr Cahill.

32 The exploration team recruited by Mr Thomas for the project between November 2007 and March 2008 has progressively reviewed a large amount of data that came with the acquisition of Central Norseman and Pangolin. The Pangolin data was not available to the team until after 18 May 2008. He said that he had no recollection of any of the data relating to the Pangolin tenements that had been studied between 18 May and 31 July 2008 (that date being the end of the subject expenditure year for EL 63/1042) having any specific reference to EL 63/1042. His evidence is that since 31 July 2008 the exploration team has been focused on reviewing data for ground closest to the Phoenix mill and closest to other areas where reserves have been identified. The areas of that focus do not include EL 63/1042.

33 Mr Thomas said that no specific plans for the exploration or development of EL 63/1042 had been made since the tenement was acquired. He said that the focus of the exploration team had been upon efforts to identify further ore sources capable of supporting a third mine and supplementing production from the Harlequin and Bullen mines. He

said that until June 2008 exploration drilling had been directed to the Bullen and North Royal Slipper prospects (both on the same tenement - M 63/156) and upon the Lady Miller prospect on M 63/69. He said that EL 63/1042 will be part of the proposed process of exploration of other regional tenements and that it will be of higher priority than other regional tenements because it is relatively close (10 kilometres) to the Phoenix mill and because of the SIF modelling indicating a high potential for gold and iron mineralisation. He said that it was the objective of the whole project to first increase production to the maximum capacity of the Phoenix mill and to then prioritise other exploration targets, including EL 63/1042.

34 Mr Thomas gave evidence that data review validation is still continuing. He said that in 2009 the data revealed that 50 holes and 220 samples had been taken in the past from ground now the subject of EL 63/1042. He said that some of those holes were encouraging for gold potential. He said that in July 2008 there had been expenditure on storage and cataloguing of the historical samples from the Pangolin tenements. He said, during cross-examination, however, that it was probably the case that none of the soil samples came from EL 63/1042. He said that there was still a need to relate the samples that they had obtained to drill holes.

35 Mr Thomas said that claims of expenditure on EL 63/1042 had been made in the Form 5 operations report for the expenditure year ended 31 July 2008. He had been responsible for such amounts being claimed. He said that the claims of expenditure included review work done of the Pangolin tenement database for the reason that review work was generally directed towards obtaining an understanding of the regional geology which will assist in obtaining an understanding of the geological characteristics of the ground the subject of EL 63/1042.

36 Items that have been claimed in respect of the exploration licence are $885 salary and wages and $4600 for overheads and administration. He said that to arrive at the figure for wages he had taken into account the annual cost of one geologist and one cartographer as the cost to the project of doing the work of reviewing the newly acquired data and reviewing data from exploration activities conducted by the group on other tenements. He then used the ratio of EL 63/1042's minimum expenditure requirement ($23,000) against an estimate of the aggregate minimum expenditure requirement of all of the project tenements to apportion the costs of the geologist and cartographer in respect of EL 63/1042.

37 The $4600 claimed for overheads and administration, he said, was calculated on the basis that the legislation allows 20 per cent of the

minimum expenditure to be claimed. He referred to the instructions at item 3 on the Form 5 saying that it states that 20 per cent can be apportioned against administration and overheads. A perusal of that instruction shows that the witness has a misunderstanding of its purpose and effect. I will refer to that later. In addition to the two abovementioned amounts the Form 5 also includes expenditure for rent and rates totalling $3337. Mr Thomas agreed that he did not know precisely what amount had been spent, if any, on EL 63/1042. He said that the formula that he had used for calculation of administration and overheads in respect of EL 63/1042 was not applied to the calculation of overheads and administration for all of the group's tenements when preparing the Form 5's for those tenements.

38 Concerning the claimed gold and iron mineralisation contained within the extension of the SIF ridge into ground the subject of EL 63/1042, Mr Thomas said that in about the middle of 2008 drilling results from the Lady Miller prospect had identified the SIF unit and that using those results, together with other historical data, a model was prepared which indicated that potential mineralisation. He said that expenditure in respect of that modelling had not been included in the Form 5 for EL 63/1042 for the subject year. He did not give any estimation of the total cost of that exercise or of any estimate of any part of that total sum that could be attributed to EL 63/1042.

39 Concerning the project generally, Mr Thomas said that the Harlequin mine is located across three mining leases and the Bullen mine is also located across three different mining leases. All of the larger amounts of expenditure, being those in excess of approximately $100,000, he said, are expenditure in respect of those six tenements. A perusal of the claimed expenditure in respect of all of the project tenements indicates that about 70 per cent of total expenditure was claimed against those six tenements.

## CONCLUSIONS

40 The facts that I have previously mentioned as being undisputed are accepted by me. In addition to those matters I conclude as follows. I find that during the expenditure year the subject of these proceedings it was the intention of Norseman Gold that there be no direct expenditure on exploration on EL 63/1042 for the period when it effectively had control of the tenement from 18 May 2008 to the end of the expenditure year on 31 July 008, and that there were no specific plans or even general plans that targeted that exploration licence. Nevertheless, I am satisfied that the future intention of the three related companies is that if and when its

present and future exploration priorities on its other project tenements are completed or are sufficiently completed to enable it to do so and if and when the group's future financial position enables it to do so, then exploration on the ground and other work in connection with mining on the ground will occur in respect of EL 63/1042.

41 If those primary circumstances exist, then it is likely that some priority will be given to EL 63/1042. That likelihood arises from the belief based upon extrapolation and based in part upon work done on other tenements within the project that the SIF ridge extends into the exploration licence, that the licence is located about 10 kilometres from the Phoenix mill and relatively close to a rail line to Esperance. Any potential that EL 63/1042 only has to be given greater priority than other unidentified tenements within the project is entirely dependant upon the progress and results of exploration and studies other than on EL 63/1042.

42 It is relevant that further exploration anywhere within the project tenements is significantly dependent upon the production of gold from the Bullen and Harlequin mines and will be dependent in the future, in addition, on production from the OK Decline and any other mines that may be progressively established. It is clear, however, that the commencement of mining in any other areas apart from at or close to the Bullen, Harlequin and OK Decline mines will not occur for a considerable period of time. It is uncertain whether the proposed further feasibility studies that will be undertaken with a view to converting identified resources into identified reserves from which recovery of gold will be achieved will happen at such a rate as will enable production from the Phoenix mill to be at a rate that exceeds 60 per cent of the capacity of the mill, thus making more funds potentially available for exploration on prioritised ground.

43 The evidence before me is to the effect that production costs have had to be considerably reduced in order that they are able to be met from gold production and that gold production from the mines within the project tenements has remained fairly much at the same level since the beginning of 2008.

44 It is of considerable significance that the four-stage plan for development of the whole project has been established and is being implemented. Concerning EL 63/1042, however, there is no substantial evidence about its future beyond the expression of opinion by Mr Cahill and by Mr Thomas to the effect that it has some prospectivity arising from the potential mineralisation from the SIF ridge and its proximity to the

Phoenix mill and the railway line that may give it some priority in the future in terms of exploration interest and expenditure. The fact that in the eyes of the holder a tenement has a degree of prospectivity is, in my opinion, not relevant to the question of whether or not an exemption should be granted beyond, perhaps, the fact that it may be an indicator of the chances of future expenditure being committed to the tenement. In the present case that is very much affected by so many unknown factors as to almost bring it to the level of a mere hope, and certainly not an expectation, of anything being done in the foreseeable future.

45 While I accept that there will be a continuing review and analysis and verification of the data obtained as a result of the acquisition of Pangolin and its tenements which will, in the broadest sense, assist in creating an understanding of the geology of the region which includes EL 63/1042, in my opinion that does not convert to there being expenditure on or in connection with mining on that tenement. That is not to say, however, that such a consideration is not relevant to a determination by the Minister of an application for exemption based upon subs 102(3) or par (h) of subs 102(2) (where that paragraph is being relied upon, which is not the case here).

46 Mr Thomas gave evidence concerning expenditure claimed in the Form 5 operations report lodged for EL 63/1042 for the year ended 31 July 2008, the subject year of these proceedings. He said that $4600 had been claimed for administration and overheads on the basis, as he put it in his statement (62 to 63) "*... in accordance with instruction 3 of the 'Instructions for the Completion of Form 5' which stated that 20 per cent of the minimum expenditure commitment can be apportioned against administration and overheads.*" That is not what instruction 3 says.

47 The obligation of expenditure in connection with an exploration licence comes from subs 62(1) of the Mining Act. That subsection requires the holder to comply with the expenditure conditions prescribed in the Regulations unless exemption is granted. Subsection 68(3) requires the holder, when and in the manner prescribed, to file with the Department a report of all work done and money expended during the period to which the report relates. Subregulation 21(1b) prescribes the minimum amount which must be expended in mining on or in connection with mining on an exploration licence. Subregulation 21(1e) says that reg 96C applies when calculating expenditure under reg 21.

48 Regulation 22 says that the report required by s 68 must be in the form of Form 5 in the first schedule. Regulation 90 says that forms

prescribed in the Regulations are to be completed in accordance with such directions as are specified in the prescribed form. Regulation 96C contains a number of subregulations with specified activities in respect of which expenditure is allowable for purposes of, *inter alia*, s 62, subs 68(3) and reg 21. Subregulation 96C says (inter alia):

> "*Administration ... relating to land which is the subject of a mining tenement may be used in the calculation of expenditure ... but only up to 20% of the minimum commitment, or 20% of the total expenditure ... whichever is the greater amount.*"

49 Form 5 has provision for the holder to enter an amount expended in respect of "***administration/overheads***". The form also contains, under the heading "**Instructions for the Completion of Form 5**", instruction 3. Instruction 3 says, in part:

> "*... Administration/overheads ... costs are not to exceed 20% of the minimum expenditure commitment, or the total of expenditure incurred on activities, whichever is the greater (see D and E below for the costs that can be claimed)*."

50 Below that, under the heading:

> "***E. Administration and Overheads:***
>
> *All non-field activities such as head office costs, accounting, mining tenement management, administration, research, literature studies, training, et cetera*".

51 Instruction 2 for the completion of a Form 5 also says that the format of the Form 5 includes "*Attachment 1*" to provide details of the cost and description for each activity. Attachment 1, "***Summary of Mineral Exploration and/or Mining Activities***", in which the holder is expressly required to complete it in accordance with the instructions in the Form 5, then has provision under the heading "***E. Administration and Overheads***" for the holder to complete the details of the costs incurred for administration and overheads. It is my understanding that, as a matter of practice, the Department does not require holders, in completing that part of the Form 5, to provide a detailed breakdown of the activities and costs of activities that result in the total amount claimed for administration and overheads.

52 In my opinion, those provisions of the Mining Act and Regulations and the instructions in the Form 5 to which I have made reference do not

have the effect that where expenditure on administration and overheads is in fact less than 20 per cent of the minimum prescribed expenditure or less than 20 per cent of the total of allowable expenditure on all other activities the holder is entitled to record in the Form 5, as expenditure on administration and overheads, 20 per cent of either of the minimum prescribed expenditure or the aggregate of allowable expenditure on all other activities.

53 If there was no expenditure on administration or overheads which can be directly or indirectly attributed to a tenement, then nothing may be claimed. If the actual amount of any such expenditure is less than 20 per cent of the aggregate amount of allowable expenditure on other activities, then 20 per cent of that other expenditure may not be claimed for administration or overheads. The holder may only claim actual expenditure.

54 Similarly, where the administration or overheads expenditure exceeds 20 per cent of the aggregate of allowable expenditure on activities other than overheads and administration, then a maximum of 20 percent of that other expenditure is all that the holder is allowed to claim. The holder may not claim more than actual expenditure in any circumstances.

55 In the present case, I am satisfied that very little actual expenditure can be attributed to administration or overheads, directly or indirectly, in connection with EL 63/1042 during the expenditure year 1 August 2007 to 31 July 2008. Insofar as the acquisition of EL63/1042 by Central Norseman, by means of the purchase of the shares in Pangolin, was being pursued up to 18 May 2008, any administrative expenses incurred by any of the parties to the share sale agreement must be attributed to acquisition expenses which are not allowable in any event and, in this case, related to a purchase of company shares rather than a purchase of shares in a mining tenement as such. There is no evidence that, prior to the sale of the Pangolin shares, either Mawson West or Pangolin incurred any administration or overhead costs in connection with EL 63/1042.

56 After Central Norseman acquired control of EL 63/1042 on 18 May 2008 an application was made to the Department for approval for combined reporting status to be given in respect of all of the Pangolin tenements, including EL 63/1042. The making of such an application was an extremely simple procedure. I am satisfied that no separate work was undertaken and no separate expenditure was incurred in respect of EL 63/1042 in obtaining the s 115A combined reporting approval. I accept that after acquiring control of EL 63/1042 some administration

costs would have been incurred arising from the pending incorporation into the project of EL 63/1042 (even though it had not yet been granted,) into the Norseman Group's general accounting and tenement management system which is under the control of Mr Thomas.

57 In the circumstances, I conclude that the amount of $4600 claimed as expenditure in respect of administration and overheads for the subject year is not wholly allowable. It does not represent the actual expenditure. It is not based upon any acceptable formula for the making of a reasonable calculation in the absence of a capacity within the holder's administrative system to accurately attribute or otherwise calculate actual expenditure on a particular tenement. It derives from an incorrect application of the provisions of subreg 96C (3) and the instructions in the Form 5. In the circumstances, I consider that no more than $1000 could be attributed to administrative and overhead costs incurred during the two and a half months left of the expenditure year after 18 May 2008.

58 The amounts of $2333 for annual tenement rent and $1004 for local government rates I accept as having been paid during the subject expenditure year. They are allowable pursuant to subreg 96C (2) (a).

59 In the Form 5 for the subject year Mr Thomas included an amount of $885 in respect of mineral-exploration activities for the subject year. He calculated that amount by dividing the minimum expenditure requirement of $23,000 for EL 63/1042 by the minimum expenditure requirement for all of the project tenements (including the Pangolin tenements) and then multiplying the result of that division by an amount of $250,000 which is his estimate of the annual cost of employing one geologist and one cartographer ($250,000).

60 The rationale for use of the formula given by Mr Thomas is that work had been done in respect of the region in which EL 63/1042 is located and the work was generally directed towards understanding the regional geology. He said that that is of assistance in understanding the geological characteristics of EL 63/1042. He said that he did not use that formula for all of the project tenements when preparing Form 5's for those other tenements. He believes that the formula produces an appropriate amount of expenditure for exploration on tenements when no exploration activities directly concerning the tenement have been done but where work has been done in order to understand the regional geology in which the tenement is located.

61 In the circumstances I consider that the approach taken by Mr Thomas is a reasonable one and that the amount claimed should be accepted as allowable. The most compelling factor in arriving at that conclusion is that EL 63/1042, together with all of the other Pangolin tenements, was acquired to bring additional ground into the already existing project and that the results of all work done on all of the tenements within the project is available to be applied in the development of every other tenement in the project, particularly in the context where tenements are contiguous.

62 The total amount of allowable expenditure for the subject year in respect of EL 63/1042 is, therefore, $5222 - about 23 per cent of the prescribed minimum expenditure.

## Section 118A

63 Section 118A allows the holder of an exploration licence "*... by instrument in writing,* (to) *authorise another person to carry out mining on ...* (the tenement)". Subsection (4) says that mining carried out under such an authorisation is to be regarded for purposes of the Act as mining carried out by the holder of the tenement. Subsection (5) says that any such expenditure is to be regarded as expenditure by the holder for purposes of the prescribed minimum expenditure condition.

64 The Objector queried whether or not anything expended by or on behalf of Pangolin during the subject expenditure year, for the whole of which Lady Dee was the registered holder, could be taken as expenditure that was authorised by Lady Dee pursuant to s 118A and thus be considered as expenditure by Lady Dee.

65 In the Pangolin share sale agreement, which was tendered in evidence, there is reference to the "*Lady Dee Agreement*". That is defined to mean:

> "*... A letter agreement dated 16 November 2006 between Pangolin Resources Pty Ltd and John Peckham for the purchase by Pangolin of Exploration Licence Application 63/1042*".

66 Had the managing director of Mawson West, Mr David Frances, appeared to give evidence, as was planned by the Applicants, then he would have produced a copy of the Pangolin/Lady Dee Agreement. The witness statement of Mr Frances had been served on the Objector and a copy had been filed in advance of hearing for purposes of these

proceedings. Counsel for the Applicants and counsel for the Objector had seen the document, as had I. Pursuant to subreg 154(1) a Warden conducting the substantive hearing of an exemption application is bound by the rules of natural justice, is not bound by the rules of evidence and may inform himself of any matter in manner he or she considers appropriate. In the circumstances I consider it appropriate that I acknowledge the existence of and the contents of that agreement.

67 The agreement with Pangolin is comprised of a single page document headed "Pangolin Resources Pty Ltd". It is dated 16 November 2006. It is in the form of a letter to "John Peckham The Lady Dee Pty Ltd". It contains a heading "OFFER TO PURCHASE - EL 63/1042". It consists of six paragraphs in which Mr Frances, on behalf of Pangolin Resources Ltd, offers to purchase the exploration licence application on the terms that are listed therein and which (in summary) are described as being a cash consideration of $15,000, plus GST and a royalty to a maximum of $3.5 million. It also bears, above a signature, the words "*David J. Frances Managing Director*". It is "*Signed in acceptance"* by John Peckham and Doreen Peckham. The Peckhams were directors of the Lady Dee Pty Ltd at the relevant time. Against the signature of each of the Peckhams appears the date 16/11/2006. A copy of the agreement is annexed to the witness statement of Mr Frances which was not tendered as an exhibit but was marked for identification in these proceedings.

68 In my opinion the proper inference to be drawn as to the intention of both of Pangolin and Lady Dee is that by entering into the agreement all rights and obligations of the Lady Dee in connection with the application for the exploration licence and those rights and obligations that would arise upon grant of the exploration licence would pass irrevocably to Pangolin other than the right to have the exploration licence issued in its name and, further, that Lady Dee had the obligation to transfer the granted licence to Pangolin or Pangolin's nominee. When Lady Dee became the registered holder of the granted EL 63/1042, Pangolin became the beneficial holder of the tenement and of the rights in that tenement. It was the intention of both Lady Dee and Pangolin that upon grant Pangolin would be the party that would ensure that the expenditure compliance condition was fulfilled for any period during which Lady Dee remained the registered holder.

69 That was the intention of both parties when the agreement was executed in November 2006 and it remained the intention of the parties at all times during the expenditure year the subject of these proceedings.

That being the intention of the parties at the time of execution of the agreement and during the whole of the relevant expenditure year, I am satisfied that it was the intention of both parties that Pangolin be authorised by the Lady Dee as the holder of the exploration licence to carry out mining on the tenement once the tenement was granted. In my opinion an authorisation for purposes of s 118A is necessarily implied. The evidence is to the effect that after 16 November 2006 Lady Dee had nothing more to do with the exploration licence application or the granted tenement other than to execute in error a transfer of the granted tenement to Mawson. Mawson became the registered holder on 8 August 2008. The authorisation in accordance with s118A was an effect intended by the parties to the agreement.

70 It seems that a purpose of s 118A is to not deny the holder of a mining tenement credit, for purposes of compliance with the expenditure condition, for the value of work done on the tenement by a person authorised by the holder to do it. Section 118A means that there can be no argument as to whether or not, for purposes of (in the case of an exploration licence) reg 21, the holder "caused" the expenditure. If work is done by a person other than the holder and that is authorised in accordance with subs 118(2), the expenditure qualifies as expenditure for purposes of the expenditure condition without more provided, of course, that the work was in respect of an activity that is on or in connection with mining on the tenement.

71 In any event, s 118 is not a mandatory requirement and does not mean that expenditure that is otherwise allowable but that is not done pursuant to a s 118A(2) authorisation cannot fulfil the expenditure condition for the tenement holder. It is not an offence to not give written authorisation under s 118A.

72 Regulation 21 says that the holder of an exploration licence is to expend or cause to be expended the prescribed amount of money during each year on the tenement. The holder may "cause" allowable expenditure to be incurred by another person in respect of an exploration licence without there being any written authority at all. Section 118A does not affect the operation of reg 21 in that regard. In the present case, for purposes of making a recommendation in relation to the exemption application, it is unnecessary to determine whether or not any allowable expenditure by or on behalf of Pangolin during the subject expenditure year was "caused" by Lady Dee by means of either or both of the Lady Dee/Pangolin agreement of 16/11/2006 and the conduct of the parties to

that agreement until the transfer in error of the tenement to Mawson shortly after the end of the subject expenditure year.

73 The fact is that, after grant of the tenement and during the subject expenditure year, there was allowable expenditure by or on behalf of Pangolin in respect of EL 63/1042. That is a relevant fact that the Minister may properly take into account for purposes of determining, pursuant to subs 102(3) of the *Mining Act*, the outcome of the exemption application. That is so whether or not it is the case that the holder of the tenement, Lady Dee, "caused" the allowable expenditure. Similarly, whether or not Lady Dee authorised under s 118A work done and expenditure incurred by or on behalf of Pangolin in respect of EL 63/1042, the Minister may, nevertheless, take that fact into account for purposes of determining the exemption application.

74 Further, even if the effect of s 118A is that work and expenditure on a tenement by a person other than the holder where the holder has not, in writing, authorised the carrying out of the work is that the expenditure may not be claimed as expenditure by the holder, the Minister would not be precluded from taking into account such expenditure for purposes of determining the exemption application. In such cases it could be said that the policy of expenditure and development was being advanced even though it was not being advanced in accordance with specific provisions of the legislation.

75 The Objector submitted that it is not uncommon for tenement sale agreements to expressly include provision for the purchaser to be given authority to enter the subject land prior to transfer being registered. The Objector submitted that at common law implied terms should only be read into a contract if it is reasonable and equitable, if it is necessary to give business efficacy to the contract, if it is so obvious that it goes without saying, if it is capable of clear expression and if it does not contradict any express terms of the contract. The Objector argued that the term sought to be implied does not satisfy those criteria. The Objector says that in particular the term sought to be implied is not so obvious that it goes without saying, that the contract is effective without it and that the term is not readily capable of clear expression without further provisions.

76 It is said that it is not obvious that Pangolin should have rights to work the tenement until transferred, that the sale agreement as such is effective regardless of whether any work is done on the tenement and that further provisions are required to make the authorisation term sought to be implied capable of clear expression. It is said, for example, that issues of

liability and indemnity would arise if the purchaser were entitled to conduct activities while the tenement remained in the vendor's name. I do not accept those submissions. I consider that, in all of the circumstances, the implied term is obvious. I consider that the contract is not effective without the implied term because the intention was that the application would proceed to grant and that, once granted, the tenement would be kept alive, thus requiring expenditure and that it was the intention of the parties that Lady Dee have nothing more to do with the application or the tenement beyond ultimately transferring it when granted.

77 It is to be necessarily implied as well in those circumstances that it was a term of the contract that Lady Dee would do nothing to prevent the application proceeding to grant and, once granted, would not do anything with the intention that the tenement be placed at risk of forfeiture in any way. The implied term of authorisation is reasonable and equitable. It is necessary to give business efficacy to the contract and it does not contradict any express terms of the contract. It is entirely consistent with the expressed terms of the contract. In any event, the trust relationship that does between Lady Dee and Pangolin itself placed a duty upon Lady Dee to do all in its power to preserve the trust asset. In the circumstances, the means considered by the trustee and the beneficiary to be appropriate to achieve that preservation was for Lady Dee to permit Pangolin or its agents, prior to transfer of the exploration licence to Pangolin or its nominee, to enter the subject land in order to comply or attempt to comply with the expenditure condition. That, too, is a matter that the Minister may properly take into account in considering the application of subs 102(3).

## Section 64

78 Section 64 of the *Mining Act* says that during the first year of the term of an exploration licence a legal or equitable interest in the licence shall not be transferred unless, *inter alia*, prior written consent to the transfer is given by the Minister or his delegate. No written approval or the transfer within the first year of grant of EL 63/1042 was ever applied for or given pursuant to s 64 of the Act. The letter agreement for the sale of the tenement was signed before the tenement was granted. The first transfer of the tenement was from Lady Dee to Mawson. That transfer was registered on 8 August 2008. The transfer was registered in error. There having been, in error, an offer made by Mr Frances on behalf of Mawson West to Lady Dee to purchase the rights to the application for EL 63/1042. In error, a transfer to Mawson was prepared and executed by

tenement agents purporting to act on behalf of Mawson. That transfer was not registered until after the end of the expenditure year the subject of these proceedings.

79 The Objector says that the application for combined reporting status for EL 63/1042, which was lodged on 20 May 2008 on the understanding that Pangolin owned the tenement, makes it clear that the tenement had been "dealt with" for purposes of s 64 of the Act during the first year of the tenement without ministerial consent. That, it is said, is an unequivocal breach of the *Mining Act*. I do not accept that argument. In my opinion "*dealt with*" in subs 64(1) and "*dealing*" in subs 64(2) do not include the making of an application for combined reporting approval under s 115A. The "dealing" with which s 64 is concerned is a dealing in a legal or equitable interest in or affecting the exploration licence. All that s 115A is concerned with is the lodgment of mineral exploration reports by tenement holders and all that subs 115A(4) is concerned with is facilitating reporting where two or more tenements fulfil the criteria set out in the guidelines published under s 115A. That does not concern any dealing in a legal or equitable interest in or affecting the exploration licence.

80 In **Mining Law in Western Australia** Michael Hunt comments (5.7) that an application for an exploration licence is not transferable and that there is no specific provision restricting sale of an application. He notes that a purchaser of an application for an exploration licence cannot protect the interest purchased by lodging a caveat. With respect, I agree with those comments. Further, I do not consider that it can be said that an agreement to sell the applicant's interest in an application for a tenement is contrary to or inconsistent with the terms of or the effect of or the purpose of s 64. In this case no issue arises as to whether it would not be in the public interest to allow an exemption in respect of a tenement that is the subject of a breach of the *Mining Act*.

## Section 115A

81 Section 115A requires tenement holders to file mineral exploration reports annually. Subsection 115A(1) defines such a report to mean one containing records of the progress and results of specified activities that have been carried out in the search for minerals on the tenement. It is not the same as the operations report required by subs 68(3) in respect of exploration licences in which work done and details of expenditure are reported. The form and contents of the mineral exploration report are to comply with guidelines published under the Regulations. Under those

same guidelines approval may be given for combined mineral exploration reports to be filed for two or more tenements. The procedure for obtaining approval for combined mineral exploration reports is quite simple. It is set out in the guidelines.

82 The holder or the holder's agent may make the application for approval. The form of request for combined reporting status only requires basic information to be provided by the applicant. That information includes a list of the proposed tenement showing ownership of each tenement, details of the person who will prepare and submit the report, a map showing the perimeter of the proposed combined reporting group and the boundaries of all of the subject tenements and the simplified geology of the area. In addition, the applicant must specify the mineral that it is being explored for.

83 The subject tenements must be contiguous or nearly contiguous and must be being worked in a common exploration program. When a request for approval for combined reporting status is being considered, the Director of the Geological Survey must take into account whether the subject tenements cover a contiguous geological unit or contiguous zone of adjacent related geological units, whether there is any justification for inclusion of non-contiguous tenements within the group, the total area the subject of the application, the history of combined reporting requirements and compliance of the applicant. Consideration must also be given to "the common ownership or legal control of all tenements in the group". That consideration may take into account legal ownership or control or the legal ability to acquire a controlling interest in each of the subject tenements.

84 The guidelines state (23) that the Minister's approval for combined reporting "*... is primarily for the purpose of reporting geoscientific mineral exploration data. The approval also establishes a tenement group for the purpose of applying for exemptions from expenditure conditions under Section 102(2) (h) of the Act.*"

85 Guideline 19 expressly states that an approval for combined reporting does not apply to the submission of Form 5 operations reports which must be lodged individually for every tenement within the combined reporting group.

86 As previously mentioned, application for inclusion of EL 63/1042 in the existing combined reporting group was made on 20 May 2008, being the day following the transfer of control of the Pangolin tenements to

Central Norseman. The application did not receive approval until after the end of the 2008 expenditure year for 63/1042. There is nothing in the evidence before me to explain why it took so long for the approval to be given. In particular, there is nothing to indicate that when the Director of the Geological Survey, on behalf of the Minister, was giving consideration to approval, the previous history of combined reporting on tenements controlled by Norseman Gold or Central Norseman affected the time taken.

87 There is no evidence before me which suggests that the Director had any concerns about any of the other factors that are required to be taken into account under any guideline in determining the application for approval. In the absence of any such evidence it is open to me to infer, and I do, that the time taken was due to nothing more than the staff resources capacity of the Department to process the application. I infer that had the application for approval been dealt with before the end of the subject expenditure year for EL 63/1042, it would have been granted. I infer that as at the date when the application was made, namely, 20 May 2008, the exploration licence was a tenement that was then eligible for approval of combined reporting status and that between then and the end of the 2008 expenditure year, it remained eligible and had the Director dealt with the matter during that time, approval would have been granted.

88 I infer that it was not anything done by or any failure to do anything by, or for any other reason attributable to, any of Mawson, Pangolin, Norseman Gold or Central Norseman that had the effect that combined reporting status was not granted until after the end of the 2008 expenditure year or that combined reporting status would not have been granted before the end of that expenditure year had the Director of the Geological Survey finished giving consideration to it during that period. In my opinion, it is important to note that the combined reporting guidelines do not expressly specify as a criteria to be taken into account by the Director of the Geological Survey that, under the "*common exploration program*", work has been done on every tenement within the group or has been specifically planned and provided for. In my opinion, such criteria are not implied.

89 The giving of combined reporting approval has the immediate effect of giving to the holder of any tenement within the combined reporting group a potential reason for the granting of a certificate of exemption which would not be available if the combined reporting approval were not extended to that tenement - par 102(2) (h). In my opinion, for purposes of

subs 102(3) of the *Mining Act*, the Minister is entitled to take into account the following factors in the present case:

- The combined reporting approval application was lodged during the expenditure year the subject of the exemption application and the subject of the forfeiture application approximately two and a half months before the end of that year.

- The application for approval was lodged on behalf of Central Norseman within one day of Central Norseman gaining control of the tenement

- Had the Director of geological survey considered the application immediately upon lodgment or, in any event, before the end of the subject expenditure year, combined reporting approval would have been given.

- The delay in approval being given was not due to anything done or not done on the part of the holder of the tenement or any other person not connected with the Mines Department.

- Norseman Gold and Central Norseman have control EL 63/1042.

- The tenement is part of a large project involving 120 other tenements.

- Until the ability to legally control EL 63/1042 was obtained by Central Norseman, Central Norseman would not have been able to have the exploration licence included in a combined reporting approval with its other project tenements. Further, there was, until then, no "common exploration program" and no "common operator".

- By 20 May 2008 all of the elements in guideline 22 that the Director of geological survey must take into account were present.

90 That is not intended to be an exhaustive list of matters that the Minister may, for purposes of subs 102(3), take into account arising out of the giving of approval of combined reporting arrangements in respect of EL 63/1042 pursuant to s 115A.

91 It is important to note that combined reporting approval given under s 115A does not necessarily entitle the tenement holder to the grant of an exemption under par 102(2) (h). Paragraph 102(2) (h) is only one of the several reasons specified in subs 102(2) for which the Minister may, as a

matter of the exercise of a discretionary power, grant a certificate of exemption. Even though approval has been given under s 115A for combined reporting, the Minister, in exercising the discretion under s 102, must take into account all other matters which would usually be taken into account in determining whether it is appropriate to grant an exemption. Such matters include current grounds upon which exemptions have been granted and to work done and money spent on the tenement (subs 102(4)), and the particular circumstances in which the application for exemption is made.

92 There is no qualification within par 102(2) (h) and none within the published exemption guidelines to the effect that no exemption should be granted under par 102(2) (h) where the expenditure year the subject of the exemption application is the first year of life of the tenement. There is no such qualification in s 115A or in any regulation or in the s 115A guidelines that has such an effect.

## The Circumstances of Acquisition of EL 63/1042 by the Norseman Group

93 I am satisfied that all of Norseman Gold, Central Norseman, Pangolin and Mawson during all negotiations related to the execution and implementation of the Pangolin share sale agreement were aware, or should have been aware, that EL 63/1042 was not in good standing from the point of view of the expenditure condition not having been fulfilled and unlikely to be fulfilled during the 2008 expenditure year. Proper due diligence on the part of the Norseman Group would, by 19 May 2008, have revealed that. The inference that I draw is that whether or not there had been expenditure compliance in respect of EL 63/1042 was a matter of either no concern at all to any of those involved in the share sale agreement or, if it was of any concern, was not of sufficient concern to prevent the tenement being included in the shares sale agreement.

94 The holding of EL 63/1042 is not, and has never been, a matter that is relevant to the present or continuing view of the Norseman Group as to the viability of the project as a whole. Whether the Group has control of the tenement or not is not a critical factor. Having said that, however, I am of the opinion that it is commercially reasonable for Norseman Gold and Central Norseman to want to include it in the project given its size and location and its geographical and geological connection to other project tenements. It is also relevant, in my opinion, that the essential objective of the vendor and the purchaser in the Pangolin share sale agreement was that control of all of the Pangolin tenements, or those believed to be held by Pangolin - that is, including EL 63/1042 - would

pass to the purchaser of Pangolin. Mawson did not want to be left as the holder of EL 63/1042 when it was issued.

95 There is merit in the submission by the Objector that it was not reasonable for Central Norseman to decide that it would not try and fulfil the minimum expenditure condition by the end of the 2008 expenditure year simply because it expected to be given combined reporting status and, thereby, a reason for exemption. It was, however, not unreasonable for Central Norseman to expect that combined reporting approval would be given for EL 63/1042.

96 In general terms I am satisfied that this is not a case where it can be inferred from the evidence that no funds will ever be made available for expenditure directly upon EL 63/1042, nor that, as part of development of the whole project, the holder of the tenement will not expend money on the project generally and on other tenements which will have the effect of advancing the knowledge and understanding of the holder of the geology and of the potential for mineralisation and productive mining on EL 63/1042. This is not a case where a tenement has been acquired on a stand alone and purely speculative basis where the holder has no intention to do anything other than to try and realise a profit on subsequent sale.

97 In my opinion, the fact that neither Mawson nor Pangolin, prior to the completion of the Pangolin share sale agreement, did anything to ensure that EL 63/1042 was in good standing when the transfer of Pangolin to Central Norseman occurred is not something that should be given such weight as would justify the refusal of a certificate of exemption even though Norseman Gold and Central Norseman were or should have been aware of that circumstance. It was submitted that the Norseman Group, through Pangolin, is in the "best position" to efficiently and effectively explore and, if appropriate, mine the tenement. That is said to be because of the understanding of the regional geology that has been obtained from exploration to date on their project tenements together with the presence of the operating Phoenix Mill. It is said that Norseman Gold has available sufficient cash reserves, experienced personnel and other resources to explore and develop a mine on EL 63/1042.

98 In my opinion it is inappropriate to say that Pangolin, Norseman Gold and Central Norseman, together, are in the "best position" to do anything. There is no evidence before me from which such a comparative proposition may properly be derived. Taken at face value, the proposition is a hyperbole. It should be taken as a claim that Pangolin/Central Norseman are in a very good position because of the factors previously

mentioned to deal with EL 63/1042 in a manner that is consistent with the objectives and policies of the legislation. Taken in that way, the proposition is, in the circumstances, correct and reasonable. The knowledge and experience that the Norseman Group has of the geology surrounding EL 63/1042 is an important factor in determining the commercial viability of and the nature and timing of any future activity on and in connection with the tenement.

## RECOMMENDATION

99 Taking into account all of the abovementioned matters, I recommend to the Minister that he grant a certificate of exemption in respect of EL 63/1042 for the expenditure year ended 31 July 2008 in the whole of the amount of the expenditure shortfall that has been identified in this report.