

JURISDICTION : MINING WARDEN

LOCATION : Perth

CORAM : Warden A Maughan

HEARD : 15-16 April 2015

DELIVERED : 22 May 2015

File No : APPLICATION FOR EXEMPTION FROM
EXPENDITURE 427283-427285 AND OBJECTIONS
429036, 429038 AND 429039 REGARDING
E08/2160, 08/2161 AND 08/2165

BETWEEN : **CAULDRON ENERGY LIMITED**
(Applicant)

and

ENERGIA MINERALS LIMITED
(Objector)

Counsel:

Claimant : Mr Kavanagh
Defendant : Mr Masson

Solicitors:

Claimant : Hunt & Humphry
Defendant : Lawton Lawyers

Catchwords:

Application – Exemption from Expenditure Conditions – Objection – Section
102 Mining Act

Legislation

- *Mining Act 1978*
- *Mining Regulation 1981*

Cases referred to in the Judgement

- ***Donald Kimberley North v Armada Mining Limited*** 2014 WAMW10
- ***General Gold Resources NL v Exmin Pty Ltd*** [2002] WAMW18 at [92] – [93]
- ***Nova Resources NL v French*** (1995) 12 WAR50

REASONS FOR DECISION

Background

- 1 Cauldron Energy Limited ("Cauldron") is a public company listed on the Australian Stock Exchange. Cauldron has a number of uranium exploration projects in Argentina and Australia. One of Cauldron's uranium exploration projects is in the north-western portion of Australia and is known as the Yanrey Uranium Project ("the Yanrey Project").
- 2 The Yanrey Project is currently comprised of 15 Granted Exploration Licences and 7 Applications for Exploration Licences. Annexed hereto and marked "1" is a map of the various licences.
- 3 To date most of the Cauldron's focus has been on works at E08/1493 which contains the Bennett Wells deposit.
- 4 The Yanrey Project area has relatively flat and continuous geological layers that stretch for hundreds of kilometres. Within each of these units are subtle differences such as a type of sediment, proximity to palaeo channels, varying porosity, and permeability that helps establish the geological model for the area. Cauldron's position is that this model then becomes useful when predicting the location of other bodies of uranium mineralisation.
- 5 Cauldron seeks the granted of certificates of exemption, for each of the exploration licences 08/2160, 08/2161, and 08/2165 which form part of the Yanrey Project. Those certificates are sought pursuant to the following provisions of the *Mining Act 1978* ("the Act"):-
 - a. S102(2)(d) - that the ground subject to the mining tenement is, for any sufficient reason, unworkable.
 - b. S102(2)(g) - that the political, environmental, or other difficulties in obtaining requisite approvals preventing mining or restrictive in a manner that is, or subject to, conditions that are for the time being impractical; and
 - c. 8102(3) - that any other reason that may be prescribed or which, in the opinion of the Minister, is sufficient to grant exemption.

- 6 Energia Minerals Limited ("Energia") objects to the grant of the Certificates of Exemption on the following grounds:-
- That the applicant has failed to comply with the expenditure conditions.
 - There are no valid grounds for seeking a Certificate of Exemption.
 - The expenditure claim has not been legitimately incurred on or in connection on the mining tenement.
 - That the grant of a Certificate of Exemption is contrary to policy.
- 7 The following table outlines the relevant expenditure and exemption information gleaned from the documents relevantly filed with the Department of Mines and Petroleum.

	EO8/2160	EO8/2161	EO8/2165
Expenditure Year	21 May 2012 to 20 May 2013 1st year	15 June 2012 to 14 June 2013 2nd year Exemption sought Refused in 1st year	15 June 2012 to 14 June 2013 2nd year Exemption sought Refused in 1st year
Expenditure Commitment	\$174,000.00	\$142,000.00	\$171,000.00
Amount of exemption sought	\$174,000.00	\$142,000.00	\$171,000.00
Claimed Expenditure	\$60,187.38 Doc 37	\$64,337.87 Doc 38	\$60,400.81 Doc 39
Claimed expenditure shortfall	\$113,812.62	\$77,662.13	\$110,599.19

- 8 The applicant, seeks a Certificate of Exemption in respect of each of the exploration licences for the total sum of the expenditure committed.
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The Law

- 9 The objects and policy of the act is well outlined in **Nova Resources NL v French** (1995) 12 WAR50 where Roland J said, at [50] the following:-

"A primary object is to ensure as far as practicable that land for which has or may have potential for mining will be made available to those who wish to engage in prospecting, exploration and mining, and that where those objectives are not being achieved others who have an interest in achieving that then are given an opportunity to acquire the subject ground".

- 10 The object and policy of the act is that the holder of a mining tenement either uses the land that comprises a mining tenement or loses it to another person who wishes to exploit the potential mineral wealth that may lie within the land.
- 11 To ensure the exploitation of the mining tenement there is imposed an obligation upon the holder of a mining tenement to annually expend, or cause to be expended, in mining or on or connection with the mining on the mining tenement, a minimum amount of expenditure. Section 62 of the Act and Regulation 21 of the Mining Regulations.
- 12 The requirement to expend the prescribed minimum amount of expenditure upon a mining tenement is not fixed and immovable. As noted in **General Gold Resources NL v Exmin Pty Ltd** [2002] WAMW18 at [92] - [93], the Warden said:-

"There is no expectation by the provision of the Mining Act and Regulations that expenditure occur for the sake of expenditure. That is made clear by the exemption provisions for the Mining Act and Regulations.

Rather the exploitation of mineral wealth of this state requires a planned and methodical approach, compliance with all aspects of both state and federal legislation and within the existing financial and economic circumstances that prevail at the time".

- 13 The previously sighted provisions of s102(2) and s102(3) of the Act make provisions for certain grounds upon which the holder of a mining tenement may apply to the Honourable Minister for either whole or partial exemption from compliance with the expenditure conditions associated with the grant of a mining tenement.
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- 14 A holder of a mining tenement who makes an application for exemption from expenditure conditions bears the onus to satisfy the Warden that it has established the grounds for the exemption and the exemption ought to be recommended to the Honourable Minister for grant.
- 15 The issues in this particular case have been outlined and the positions which have been adopted by the relevant parties are set out in these reasons.

Ground 1 The grounds subject of the mining tenements is for any sufficient reason are unworkable.

- 16 Cauldron called Jess Timothy Orom to give evidence. Mr Orom is a Geologist who has been employed by Cauldron since 11 August 2014 – post-dating the expenditure year in question.
- 17 Mr Orom testified;
- i) Cauldron carried out drilling and exploration on licences 08/1493 and 08/1945, not the disputed licences, in October, November, and December 2012.
 - ii) The drilling in 2012 was completed in accordance with a Program of Workers ("POW") approved by the Department of Mines and Petroleum in November 2011. It was not feasible to complete any drilling on any other mining tenements within the Yanrey Projects, such as the disputed tenements, as it was essential to gain an understanding of the geology and uranium mineralisation located at Bennett Wells deposit on E8/1493 before doing so.
 - iii) That the Yanrey Project is situated in the north-west of Western Australia which suffered an unusual amount of rain from the first 8 months of 2013. Access to E8/2160 and E8/2165 from the north-west coastal highway via the Twitchen Road was closed. He produced public records to that effect.
 - iv) As a result of the closure of Twitchen Road, Cauldron was unable to complete any exploration on E8/2160 and E8/2165 in the exploration year.
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18 Mr Orom's testimony needs to be contrasted with the evidence of Mr Mark Anthony Cousins, who was the Geologist in the employment of Cauldron at the material time. He testified;

i) That airborne electro-magnetic surveys and gravity survey could have been conducted on the disputed tenements during the relevant expenditure year.

ii) It had been his recommendation that such airborne electro-magnetic surveys or gravity surveys should be conducted and those recommendations were contained in the company's Annual Technical Reports for the preceding years, which were tendered.

19 Mr Cousins further testified that the applicant, Cauldron, had never planned to conduct ground activities during the subject expenditure year.

20 Whether the ground was unworkable is only a relevant ground upon which to seek a Certificate of Exemption if the Applicant would otherwise have conduct on-ground activities and the planned work was not able to be conducted because of the unworkable ground.

21 I prefer the evidence of Mr Cousins in this regard. He was the Geologist employed by Cauldron Energy Limited during the expenditure year, the subject of the present dispute, and he says that work namely airborne studies was able to be done on the exploration licence. That work was not done.

Ground 2 The Political Environment Or Other Difficulties Containing The Requisite Approvals Prevent Mining Or Restricted In The Manner That Is Subject To Conditions That Are For The Time Being Impractical.

22 In respect of E08/2160 the applicant asserts that the absence of a heritage agreement for the entire period of the expenditure year made it impractical to conduct the ground exploration.

Whilst that may be the case, as previously stated, there was no reason why the lack of a heritage agreement would have prevented the conducting of the aerial electro-magnetic surveys previously referred to. A heritage agreement is only required to conduct groundwork.

23 Further, and in any event, the applicant failed to produce any evidence regarding negotiations with the Gnulli People to verify the extent of the negotiations alleged to have occurred during the relevant period and what steps were actually taken by the applicant to resolve the alleged impasse with the Gnulli People in relation to the issue of the heritage approval.

24 In ***Donald Kimberley North v Armada Mining Limited*** 2014 WAMWIO, Warden Tavener said at paragraph 31:-

"To rely on the provisions of section 102(2) (g) of the Mining Act, as the basis for an exemption, it is necessary for Armada to demonstrate it has made genuine and reasonable attempts to obtaining the requisite approvals. Compliance with the Aboriginal Heritage Act, for instance, should not be regarded as a basis upon which there is to be long delays in obtaining clearances or abstaining from expenditure. Work could be done which does not involve interference with or excavation of sites of significance. There is a limited period of time by which an unsupported submission or a unilateral declaration of intention can be accepted by the court as an explanation for delay".

25 In respect of E028/2161 and E028/2165 a heritage agreement was in place that would have allowed for on-ground mining during the period of September 2012 to November 2012 (prior to the onset of wet weather).

26 For similar reasons, as stated above, the submission ought be rejected.

Ground 3 Any Other Reason Which May Be Prescribed Which, In The Opinion Of The Minister, Is Sufficient To Justify Exemption.

27 The applicant asserts, through Mr Orom, that it takes a "project" approach to the exploration of its tenements. Mr Orom testified, in effect, that having a full and proper understanding of the exploration of the Bennett Wells tenement makes any future exploration of other tenements, including the dispute tenements, easier to plan as similarities between those tenements and the Bennett Wells tenements might be used as a basis for further-explanation

28 Mr Orom, however, stated at paragraph 10 of his statement dated 18 December 2014 – which was tendered into evidence by consent – that:-

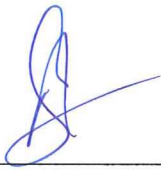
“Uranium exploration in Palaeo Channel type environments is carried out by completing geophysics such as electro-magnetic surveys or gravity surveys identify palaeo channels”.

- 29 Mr Orom did not give a satisfactory explanation as to why the electro-magnetic surveys - or gravity surveys - which had been recommended by Mr Cousins as part of the company's Annual Report, were not undertaken.
- 30 In any event, Mr Orom was not the Geologist in charge of the Yanrey Project during the relevant expenditure year. In my view, the evidence of Mr Cousins as to the basis on which further tenements forming part of that project ought to be explored, is to be preferred. Mr Cousins testified that whilst an understanding of the Bennett Wells tenement would be of assistance in exploring other tenements within the same geological region, it was not a necessary prerequisite and at the time of his tenure he was anxious to proceed with the airborne electro-magnetic surveys, or gravity surveys, to identify further prospective uranium deposits.
- 31 The contents of the amended Form 5's setting out the expenditure on the subject tenement during the dispute year were also questioned. Those Form 5's were prepared and submitted by Mr Cousins. He was not challenged in any significant way as to the bone fides of those documents. Mr Oram was also asked about contents of the Forms but was largely unable to assist me.
- 32 I find there was expenditure on each of the tenements – but that expenditure fell well short of the required expenditure.
- 33 In my view none of the grounds relied upon by the Applicant for a Certificate of Exemption have been made out.

Order

34 Accordingly, I make the following order:-

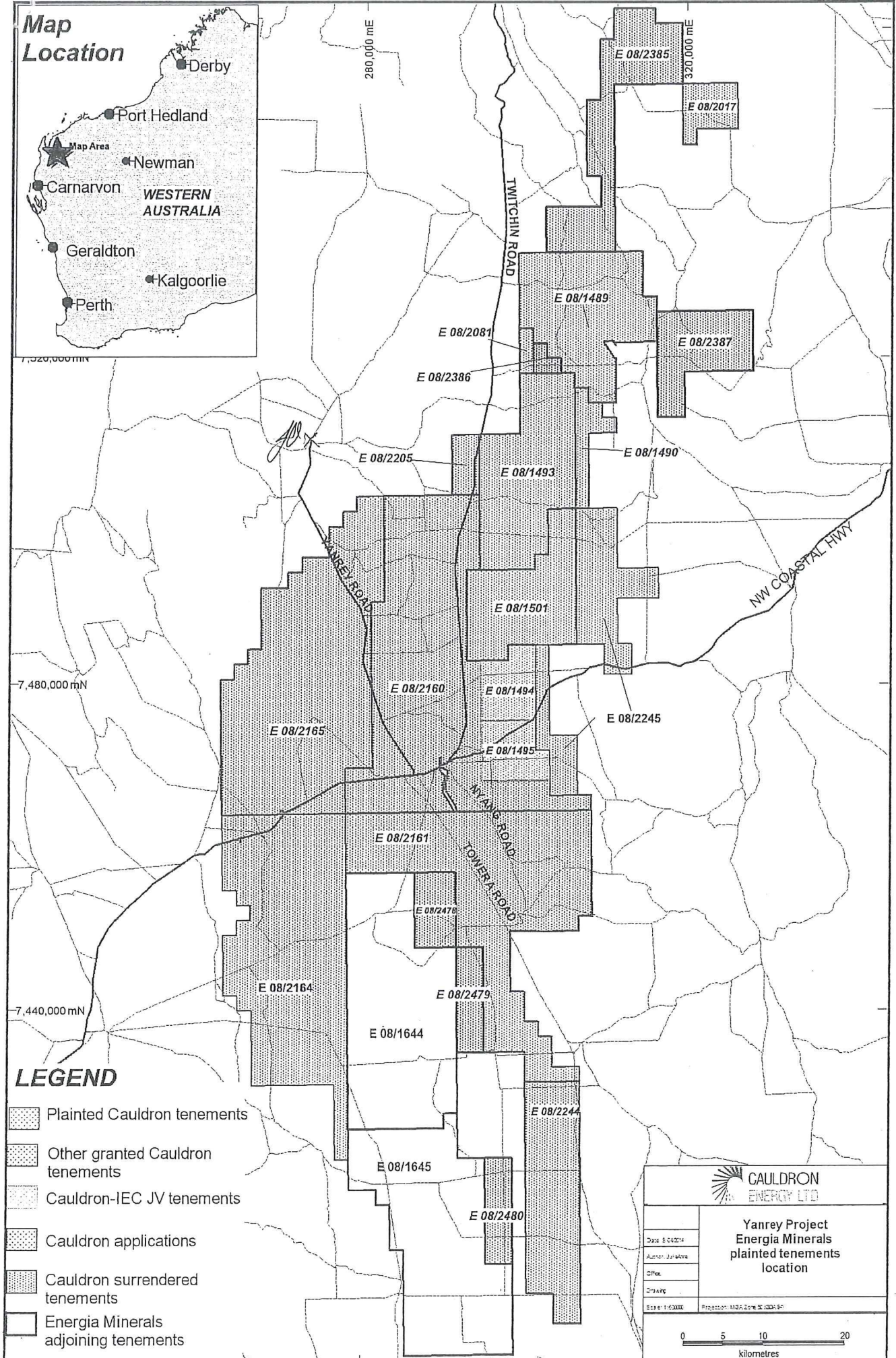
- 1) Certificates for Exemption from Expenditure are recommended for refusal by the Minister pursuant to s102(6) of the *Mining Act* 1978.



Warden Andrew Maughan

22 May 2015

Map Location



LEGEND

- Planted Cauldron tenements
- Other granted Cauldron tenements
- Cauldron-IEC JV tenements
- Cauldron applications
- Cauldron surrendered tenements
- Energia Minerals adjoining tenements



**Yanrey Project
Energia Minerals
planted tenements
location**

Date: 5/4/2014
Author: J. Williams
Drawn:
Scale: 1:50,000

Projection: MGA Zone 50 UTM SR

0 5 10 20
kilometres