

IN THE WARDEN'S COURT
HOLDEN AT SYDNEY
ON 31 JANUARY 1990
BEFORE J L McMAHON
CHIEF MINING WARDEN

REGENT RESOURCES v. DUTFIELD

This has been the hearing of two applications made under the Mining Act, the first under Section 175 wherein Regent Resources NL, a partner in the joint venture agreement with Cluff Minerals Australia Pty Ltd, the holder of Exploration Licence 2890, has sought that I impose or stipulate conditions of a right-of-way to that title granted under the Mining Act over the lands owned by a Mr Garth Dutfield of Mumbil. The second application between the same parties is for the assessment of compensation at the instance of Regent Resources NL in order that that company may enter Mr Dutfield's property with a view to conducting exploration activities under the licence.

At the hearing Mr Moore, Solicitor appeared for Regent Resources NL and Mr Baker, Solicitor appeared for Mr Dutfield.

The evidence given on behalf of Regent Resources NL by a Mr John Martin, a Director of that company, was that it was intended by Regent Resources NL (Regent) in pursuance of a joint venture agreement which it held with Cluff Minerals Australia (Cluff) to conduct exploration activities for group one minerals, the primary objective being search for gold. Mr Martin outlined that initially some panning would take place and other manual forms of prospecting but then it was considered necessary to take up under the licence some 60 cubic metres of materials with a view to bulk sampling. Mr Martin had approached Mr Dutfield in respect of this undertaking and while there was harmony between them and a general absence of acrimony, Mr Dutfield had made it plain that he was unwilling to permit the bulk sampling procedures to take place. The

bulk sampling would be brought about by the sinking of no less than 12 and not more than 20 costeans by an excavator with perhaps the assistance of a bulldozer to construct some pads which would have an area of approximately 20 metres x 6 metres. This activity would not take longer than 30 days to complete and it necessitated the presence on site of 3 to 4 men who generally would be under the direction of a supervising geologist. The costeans were envisaged to be some 30 metres long by 1 metre wide, at the most, but many of them would be of half that length. Apart from the excavator and bulldozer coming on to the site there would be personnel and service vehicles making necessary trips to and from the area. Mr Martin said that the costeans would be sunk strictly in accordance with the exploration licence with topsoil stockpiled. Many of them would be refilled on the same day they were sunk and in the cases in which that did not occur the refilling would take place within a maximum period of fourteen days. The joint venture partners, through Regent, had gained access to other properties under the licence for similar purposes.

Mr Dutfield in his evidence said that he was one of the fifth generation of his family who had occupied and used the land for grazing. Over his forty odd years he had lived on the property and during much of his working life had worked in partnership with his father who had passed away three years ago leaving Mr Dutfield the responsibility of running the undertaking which was primarily a grazing property. Currently some 3,100 sheep were run on the 3,600 acre property together with approximately 150 head of cattle which are mostly either Herefords or Murray Greys. Most of the property is good grazing country with an approximation that it can carry one sheep per acre. There is some small area of cultivation together with an orchard, and some pigs are also run on the land. The property produces the sole income of Mr Dutfield and his wife. Occasionally he has to employ hired help to assist them in the running of the undertaking.

It is apparent from the evidence that portions of the property have been mined or explored in the past and now Mr Dutfield not unreasonably wishes to call a halt to this activity. At the hearing on 10 January produced in evidence by way of exhibits were a number of documents and photographs. The photographs indicate topography and vegetation consistent with land which one might expect to find in the central west of New South Wales, the property being near Wellington. It is within sight of the Bungendore Dam but the evidence of Mr Martin suggests that few, if any at all, of the proposed costeaning activities will be in such a position that any of the activities will be sighted from or within sight of the dam. The other documents tendered were a compensation agreement between Regent and another land holder whose lands are similar to Mr Dutfield's land and I admitted that into evidence on the basis of comparability.

During the evidence of Mr Dutfield it became clear that the proposed right-of-way was itself over a Crown road and unless some further action is taken to bring the matter before me I decline to impose or stipulate any conditions as to the exercise of the right-of-way subject to the licence holder not introducing any noxious weeds, firearms or dogs upon the property, not lighting fires, and leaving all gates in the position in which they are found. It is apparent in this regard that the access to the sites can more properly be gained by use of the so-called southern approach.

I turn now the question of compensation. The comparable compensation agreement in Exhibit 4 does not specify any figure and while there is mention in it of a \$5 million insurance policy that does not seek to make available to the land owner any amount in actual dollars. Section 124(1)(b) provides as follows:

- "124. (1) Where compensation is by this Act directed to be assessed by the warden the assessment -
- (b) shall, except where the assessment is to be made for the purposes of section 123, be of the loss caused or likely to be caused by
 - (i) damage to the surface of land, and damage to the crops, trees, grasses or other vegetation on lands, or damage to buildings and improvements thereon, being damage which has been caused by or which may arise from prospecting or mining operations;
 - (ii) deprivation of the possession or of the use of the surface of land or any part of the surface;
 - (iii) severance of land from other land of the owner or occupier of that land;
 - (iv) surface rights-of-way and easements;
 - (v) destruction or loss of, or injury to, or disturbance of, or interference with, stock on land; and
 - (vi) all consequential damages;"

In applying the criteria laid down by that provision I see an exploration company as to this phase of its operation over a period of approximately one month entering land, costeaning and backfilling. I note that Mr Dutfield has said that some of his ewes maybe at a delicate stage of lambing and that the exploration activities will cause inconvenience to his grazing activities. Further, he says that dust will settle on some vegetation causing it to be unpalatable to stock.

While he has expressed concern that stock may be injured in falling into the trenches made by the costeaning operations and suggests that they be fenced, I accept Mr Martin's assurances that the floor of them will be flat and therefore any animals which might enter through curiosity can walk out of such a costean.

As to an amount which can be adequate for assessment, I assess a figure of \$2.50 per cubic metre of land disturbed bearing in mind the criteria laid down by Section 124(1)(b). There will also be a one-only payment of the sum of \$200 per kilometre of track to be used by personnel of the company in gaining access to the various costeaning sites. I assess a further figure of \$500 which I allow for Mr Dutfield generally to supervise the operations over the one month period to attempt to ensure that none of his stock is, or has been, injured by the activities. I direct that a figure calculated on the above be paid by Regent to Mr Dutfield directly on or before 30 April 1990, or such later date which I may approve.

As to the question of costs, I direct that the parties pay their own costs.