64.

HEARING OF EXEMPTION APPLICATION(S) FROM EXPENDITURE CONDITIONS

Delivered 2.12.1987

APPLICATION FOR EXEMPTION NO(S)	24/878
APPLICANT(S) *	Western Gulf Oil & Metals Ltd
TENEMENT(S) AFFECTED	P16/523 - 16/525
ANNIVERSARY DATE OF TENEMENT(S)	26.8.87
TOTAL EXPENDITURE REQUIRED PER FULL YEAR	$ See Attached
* EXPENDITURE SHORTFALL APPLIED FOR	$ See Attached
* EXPRESSED IN TWELFTHS	12/12THS
REPORTED EXPENDITURE(S) IN PAST 2 YEARS	$ N/A AND $ N/A
PREVIOUS EXEMPTIONS GRANTED IN PAST 2 YEARS (IF ANY)	NO. N/A (/12THS = $) NO. N/A (/12THS = $)
CONDITION(S) IMPOSED ON GRANT OF LAST EXEMPTION (IF ANY)	N/A
GROUNDS FOR EXEMPTION UNDER SECTION 102 (State subsection)	SUBSECTION(S) ((2) (b))
OBJECTIONS (IF ANY)	NIL
BY:	

WARDEN'S RECOMMENDATION OF EXEMPTION APPLICATION ABOVE

The attached evidence (sworn, written, plans, technical information, claims of projects etc) has been examined and the above application is recommended for:

APPROVAL — REFUSAL — ADJOURNED (TO / /)

AS ABOVE OR:
For ..../12ths Exemption
amounting to $ .....

OR

OR

WARDEN

WARDEN

WARDEN

COMMENTS/NOTES (ATTACH ADDITIONAL SHEETS IF REQUIRED)

See reasons attached.

The hearing of the above application was heard by the Warden on 2.12.87.
in the Kalgoorlie Warden's Court.

REASONS FOR REFUSAL TO RECOMMEND

EXEMPTION FROM EXPENDITURE CONDITIONS FOR

PROSPECTING LICENCES 16/523 - 525

Pursuant to S. 102(1) of the Mining Act it is the holder of a mining tenement or its authorised agent who must apply for an exemption from prescribed expenditure conditions.

In this case such an application no. 24/878 was signed on 24 August, 1987 by Mr K Connell as agent for Western Gulf Oil and Mining Ltd. The application sought exemption for expenditure of $3640, $2200 and $3400 respectively for the year ended 26.8.87, being 12/12ths of each expenditure requirement. It was received by the Coolgardie Mining Registrar on 26.8.87.

I note that this application was submitted with a statutory declaration and a covering letter on letterhead from Grant's Patch Mining Ltd which was dated 25 August, 1987 and signed as follows:-

"Yours faithfully
For and behalf of
Grants Patch Mining Ltd
Kevin Connell
Tenement Officer"

I observe that Grants Patch Mining Ltd is not the holder of the particular tenements under consideration. A statutory declaration dated 24 August, 1987 made by Mr Connell was apparently designed to support the application for exemption in the following terms:-

"1. I am employed as a tenement office acting on behalf of Western Gulf Oil & Mining Ltd.

2. Application for Exemption is made for the period ending 26.8.87.

3. Previous work carried out was minimal and time is required to plan future exploration.

.../2

4. The licences were only recently transferred to Western Gulf. I requested details of work carried out and expenditure incurred prior to the transfer from the previous holder however, they advised that no work had been done in this period."

Warden Reynolds SM was not satisfied with the supporting information for this application and directed the Registrar to write to the applicant being Western Gulf Oil and Mining Ltd. The letter dated 29 September, 1987 was in the following terms:-

"APPLICATION FOR EXEMPTION 24/878 ON PROSPECTING LICENCES 16/523-525

I advise that the Warden has adjourned your application to the 15th October, 1987.

The Warden requires the following in the form of a Statutory Declaration. Having been told by the previous holder that no work was done during the expenditure year in question, why didn't the applicant expedite an exploration programme on this land during the five months from March to August?"

A further statutory declaration was made by Mr Connell on 9 October, 1987 as follows:-

"The applicant could not expedite an exploration programme in those few months as it had already spent a considerable sum of money in acquiring the tenements and did not have the time or the funds to do so. Furthermore I was only advised by the previous holder on August 17, 1987 that no work had been done by him prior to transfer.

At present the company is proposing to implement a geochemical testing programme on the Jaurdi Hills prospect to be carried out by a group of consulting geochemists."

.../3

I observe that this statutory declaration was also forwarded by Mr Connell under a covering letter signed in an identical manner to that of 25 August, 1987.

As Warden I considered the content of the two statutory declarations to be an inadequate basis for determining the application when I read the papers at Coolgardie on 15 October, 1987. I adjourned the application to the Kalgoorlie Warden's Court on 17 November, 1987 and directed that I would take evidence from the Directors of Mannkal Mining Pty Ltd (who were the previous holders of these tenements) in regard to the negotiations for transfer of these tenements.

My concern was that the transfer had been apparently negotiated in March 1987 and yet the agent of the aquiring party maintained that the fact that no expenditure had been spent on the tenements was only made known to him or the applicant on 17 August, 1987. This indicated a lack of proper and prudent enquiry by the aquiring party who now sought to rely on their lack of enquiry as a basis for an exemption from the expenditure requirements.

The Registrar at Kalgoorlie wrote to the applicant direct on 2 November, 1987 in the following terms:-

"PROSPECTING LICENCES 16/523-525 : COOLGARDIE APPLICATION FOR EXEMPTION 24/878

I advise that the abovementioned matter has been adjourned to the Warden's Court to be held at Kalgoorlie on the 17th day of November, 1987.

The Warden requires that you arrange for the previous holder of the tenement to appear before the Warden on that date to give evidence in relation to the details of transfer negotiations, to support your exemption application.

Please arrange for Mannkal Mining Pty Ltd to have in attendance at the court a Director qualified to speak on its behalf."

No representative of the applicant company appeared at the Kalgoorlie Warden's Court on 17 November, 1987. However the Registrar did receive a letter from a Mr Ron Manners on behalf of Mannkal Mining Pty Ltd which inter alia, said:-

.../4

"...we have located the old file and find that these tenements were sold to Western Gulf Oil & Mining Limtied in an agreement dated 1st October, 1985.

As Clause 4 of the Agreements states "the purchaser also agrees to carry out exploration sufficient to meet the Mines Department annual requirements", our file was closed on these tenements."

In addition on 17 November, 1987 a letter dated 13.11.87 was received from Mr Mark Campana of Tenement Administration Services of Perth. The letter is set out in full below but it does not attempt to answer the specific concerns raised by the Warden in regard to the application for exemption. The letter said:-

"I am writing on behalf of Western Gulf Oil and Mining Ltd who made application for exemption on the above licences.

Since sending a copy of the Mining Registrar's letter dated 2nd November, 1987 to Mannkal Mining Pty Ltd, I have been advised by Mr Ron Manners of Mannkal Mining's office that he sent a letter to the Mining Registrar's office on 3rd November, 1987 relating to the sale of the Licences. Please note that Mr Manners' letter was sent to the Mining Registrar's office one day after the Mining Registrar's letter was sent to Western Gulf Oil and Mining Ltd.

The prospecting licences were granted on 27.8.86 and were subsequently transferred and registered in Western Gulf Oil and Mining Ltd's name on 11.3.87.

These licences form part of Western Gulf's project at Jaurdie Hills and with a geochemical programme underway and further operations proposed they are of a significant importance to the company's holdings.

The granting of the exemption will allow the company to continue with its operations which has considerable importance to the future of the Jaurdie Hills project on the whole."

.../5

As Warden I noted the content of this letter and further adjourned the application to 2 December, 1987. I also ordered that a summons be issued requiring Mr Kevin Connell to appear in the Kalgoorlie Warden's Court at 10.30am on 2 December, 1987 and that he was to bring with him all files and documents held by the applicant company relating to the aquisition of these tenements from Mannkal Mining Co.

A letter, rather than a summons, was sent to Mr Kevin Connell (by certified mail on 24 November, 1987) at the following address:-

"Mr Kevin John Connell
Tenement Office
Western Gulf Oil & Mining Ltd
1st Floor
15 William Street
PERTH WA 6000"

On December 1, 1987 I received a letter by facsimile from Mark Campana of Tenement Administration Services which read as follows:-

"I refer to a letter from the Mining Registrar dated 24th November, 1987 requesting Mr K Connell to appear in the Warden's Court on 2nd December, 1987 and advise that Western Gulf Oil & Mining Ltd did not receive the letter until 1st December, 1987. I request this matter be adjourned to a later date.

Please be advised that Mr Connell is no longer employed by Western Gulf Oil & Mining Ltd."

At this point it is not clear that Mr Campana is the authorised agent of the Applicant company in regard to these applications for exemption.

As I understand the position the terms of Regulation 56(1) provide that a Warden may accept evidence by way of a statutory declaration in such matters but it is clear that a Warden may require the applicant to attend the Court and give evidence. In this case the Warden has raised quite serious concerns about

the merit of this application as far back as 29 September, 1987. The applicant now seeks a further adjournment by way of a letter which again makes no reference to specific matters of concern to the Warden.

It is my view that even if the Applicant company only received the letter of 24 November, 1987 on 1 December, 1987 (which seems an exceptional delay for a certified mail letter) it was clear from the letter that either Mr Connell as agent or the Applicant company should have been represented at the Warden's Court at 10.30am on 2 December, 1987. It is common knowledge that a number of legal firms at Kalgoorlie are available to accept instructions in Warden's Court matters.

There is also the matter of Regulation 114 which makes it an offence for any person to disobey a lawful order of a Warden. The fact that Mr Connell may have left the employment of Western Gulf Oil & Mining Ltd does not alter his liability to appear in the Warden's Court when he is directed to do so by the Warden.

It should be clear from the sequence of events detailed above that it was the content of the two statutory declarations by Mr Connell which needed to be tested under oral examination by the Warden as a first step in the assessment of the merits of these applications for exemption.

In my opinion the applicant and its authorised agent has had ample notice of the matters of concern to the Warden. There is no adequate reason given for the failure to spend money on these tenements between March and August, 1987. The request for a further adjournment is refused and on the basis of the information before me the application for exemption from the expenditure conditions is recommended for refusal by the Minister.

As a general comment I would add that a Warden is expected to consider a very large volume of such applications each month. Usually no more than a cursory examination is possible because of the Wardens many other duties. When a particular application is identified as being in need of closer scrutiny the applicant should respond promptly and in accordance with the directions of the Warden.

It is very much in the interests of the mining industry that applications for exemption be documented thoroughly and supported by accurate and credible information.

The present proceedure is dependant upon credible and accurate information being set out in a statutory declaration. If each Warden was required to scrutinise every application to the same extent as the applications under consideration here, the whole proceedure with exemptions would become bogged down.

It is clear from sub-section 102(5)(b) that each application for a certificate of exemption shall be determined by the Warden in such manner as he thinks fit (or may be prescribed). The production of files and personal attendance of witnesses is in my view a necessary step to properly determine particular applications. It is only the pressure of other duties which prevents a Warden from taking such steps more often.

I G Brown .....

Ivan G Brown SM
WARDEN 2/12/1987.