
JURISDICTION : MINING WARDEN

LOCATION : PERTH

CITATION : BROSNAN & ORS -v- MERIDIAN MINING
LIMITED [2010] WAMW 6

CORAM : CALDER M

HEARD : 10 DECEMBER 2009

DELIVERED : 20 MAY 2010

FILE NO/S : APPLICATIONS FOR FORFEITURE 279986,
282102, 282103, 282104, 281397

TENEMENT NO/S : M70/815, M70/816, E70/2132, M15/621

BETWEEN : 1. ALAN NEVILLE BROSNAN and
PHYLLIS MARIE BROSNAN
(Applicants – 279986: M70/816))

AND

MERIDIAN MINING LIMITED
(Respondent)

2. BRONTE ALPHONSUS STEWART
(Applicant – 282102: M70/815)

AND

MERIDIAN MINING LIMITED
(Respondent);

3. BRONTE ALPHONUS STEWART
(Applicant – 282104: E70/2132)

AND

MERIDIAN MINING LIMITED
(Respondent);

4. BRONTE ALPHONUS STEWART
(Applicant – 281397: M15/621)

AND

MERIDIAN MINING LIMITED
(Respondent

5. BRONTE ALPHONUS STEWART
(Applicant – 282103: M70/816)

AND

MERIDIAN MINING LIMITED
(Respondent

Catchwords:

EXPENDITURE - Aerial surveys
EXPENDITURE - Adjoining tenements – aerial surveys
EXPENDITURE - Apportionment between tenements
EXPENDITURE - Data acquisition
EXPENDITURE - Administration and overheads
FORFEITURE - Sufficient gravity

Legislation:

Mining Act 1978 (WA), s 98
Mining Regulations 1981, r 31, r 96C(3b), r 96C(3c), r 96C(3d), r 96C(3e)

Result: *Forfeiture applications all dismissed*

Representation:*Counsel:*

Applicants	:	Mr G H Lawton
Respondent	:	Mr A F Mizen

Solicitors:

Applicants	:	Lawton Lawyers
Respondent	:	Mizen & Mizen

Murchison Mining Co Pty Ltd v Castle Hill Resources NL and Peter Dawson [2001] WAMW 16.

CALDER M

**WARDEN'S REPORT AND RECOMMENDATION TO MINISTER:
APPLICATION FOR FORFEITURE; MINING LEASES 70/815, 70/816,
15/621, EXPLORATION LICENCE 70/2132**

INTRODUCTION

1 Meridian Mining Ltd is the holder of mining leases 70/815, 70/816, 15/621 and exploration licence 70/2132. Mr Alan Neville Brosnan and Mrs Phyllis Marie Brosnan ("Brosnan") have applied for the forfeiture of M70/816 on the basis of alleged non-compliance with the expenditure condition for that mining lease for the year ended 12 August 2007. Mr Bronte Stewart has applied for the forfeiture of M70/815, M70/816, M15/621 and E70/2132. The applications are based upon the alleged non-compliance by Meridian with the expenditure condition for the year ended 12 August 2007 in respect of M70/815 and M70/816, for the year

ended 22 August 2007 in respect for E70/2132 and for the year ended 19 October 2007 for M15/621. The Stewart application for forfeiture of M 70/816 was lodged after the lodgement of the Brosnan application for forfeiture of that tenement.

2 Mining leases 70/815 and 816 are contiguous with each other. They are entirely contained within the boundaries of E70/2132. Together they occupy approximately 11.2 per cent of the total area of E70/2132. The relevance of that is in regard to the issue of apportionment of claimed expenditure by Meridian for the cost of an aerial survey which it has claimed as expenditure during the relevant year.

3 Mining lease 15/621 is not in any way geographically connected to the other three tenements.

4 The essential allegation of the Applicants for forfeiture in each case is that the expenditure claimed by Meridian in the operations reports lodged by it for each tenement for the subject expenditure year are false in that the expenditure was not incurred at all or, if any was incurred, a lesser amount than that claimed was in fact expended. In particular, it is alleged that claimed administrative/overhead costs were not expended or cannot be justified; that expenditure claimed for an airborne magnetic survey of M70/815, M70/816 and E70/2132 were not expended but that if there was any such expenditure incurred, the manner in which such expenditure was apportioned to each of those three tenements cannot be justified and requires a different apportionment to bring it within the relevant legislative provisions.

5 The Applicants say, in each case, that there has been a significant shortfall in expenditure and that the gravity of the expenditure non-compliance is sufficient to justify forfeiture of each tenement. The Applicants say that, in each case, the expenditure history of the tenement holder, Meridian, is relevant and is a factor to be taken into account for purposes of determining sufficient gravity.

6 One other area in respect of which the Applicants take issue with the Respondent is that of the claimed payment of amounts to Mr Morellini, a director of Meridian, for the purchase of geological data.

7 Meridian says that all of the amounts claimed in its operations reports for the relevant years are genuine, justifiable, and as contemplated by the Act and Regulations. Any expenditure non-compliance, it is said, is not of sufficient gravity to justify forfeiture.

All of the forfeiture applications were heard together.

THE EVIDENCE

The Tenements

8 Meridian became the registered holder of M70/815 and M70/816 in December 2005; it became the registered holder of M15/621 in June 2006 and of E70/2132 in February 2006.

9 During the subject expenditure year, ending in each case during 2007, the minimum amount of expenditure required on the subject tenements is as follows:

- M70/815 - \$18,241,
- M70/816 - \$46,016,
- E70/2132 - \$24,000,
- M15/621 - \$66,667.

Those minimum amounts of expenditure for each of M70/815, M70/816 & M15/621 takes into that each tenement was for part of the relevant expenditure year, the subject of an application for forfeiture that was dismissed.

10 Expenditure that was claimed in its Form 5 operations reports for the subject years by Meridian was as follows:

- M70/815 - \$19,735,
- M70/816 - \$49,382,
- E70/2132 - \$26,944,
- M15/621 - \$75,796.

11 Mining lease 70/815 was granted in 1997, as was M70/816. Mining lease 15/621 was granted in 1992. Exploration licence 70/2132 was granted in August 2005; the subject year of the plaintiff for forfeiture of E70/2132 is thus for the second year of the life of the exploration licence.

Claimed Expenditure Details

- 12 In the Form 5 operations report lodged on behalf of Meridian for the expenditure year ending 12 August 2007 for M70/815 it has claimed a cost of \$12,912 for aerial magnet survey and \$3648 for administration and overheads. For annual tenement rent and rates an amount of \$7900 has been claimed. For M70/816 for the same expenditure year Meridian has claimed expenditure of \$32,279 for aerial magnetic survey and \$9203 for administration and overheads. An amount of \$7900 has been claimed for tenement rental and shire rates. Concerning E70/2132, in its operations report for the year the subject of the plaint, Meridian has claimed expenditure of \$19,368 in respect of aerial magnetic survey, \$4800 for administration and overheads and \$2776 for annual tenement rent and rates. Meridian's operations report in respect of M15/621 for the expenditure year ending 19 October 2007 claims expenditure of \$18,159 for purchase of a diamond drill core library, computer modelling studies, hydrology and reagent studies and a mining profitability forecast. In addition \$15,240 is claimed for "Geko open pit 2007 study". Amounts of \$27,497 for annual tenement rent and rates and \$14,900 for administration and overheads are also claimed.
- 13 The Applicants, in each case, say that the claimed expenditure for the airborne magnetic survey was not expended by the Respondent during the subject expenditure year and that, in any event, has been apportioned between M70/815, M70/816 & \$70/2132 in a manner that is not permitted by the legislation. The Applicants for forfeiture also say that the amounts claimed in respect of all four tenements as expenditure on administration and overheads was not expended and is not, in each case, an amount that can be properly claimed as expenditure for purposes of compliance with the expenditure condition. The Applicants also say that amounts claimed by Meridian as being the cost of the purchase from Mr Morellini, a director of Meridian, of geological data should not be accepted as expenditure for purposes of the fulfilment of the expenditure condition because any such transaction was not genuine and also that it was unnecessary because the material was already in the possession of the Respondent. Ultimately, the Applicants say that the evidence reveals an expenditure shortfall in the case of each of the subject tenements, the shortfall being a matter of such gravity as is sufficient to justify forfeiture of each tenement.

The Applicants

14 **Mr Stephen Denn** was called by the Applicants to give evidence. Mr Denn is an experienced geologist. He first became associated with Meridian in late 2005. Mr Denn was a director of Meridian from 8 February 2007 to 18 June 2007. From mid-March 2007 until he ceased to be a director of Meridian, Mr Denn was the company's managing director.

15 During his time as managing director Mr Denn was paid a salary. He has been involved in litigation with Meridian concerning his claim that between 2005 and 2007 he had performed work of a geological nature for the company on the basis that he would be paid separately for that work and paid in cash. Part of the arrangement between Mr Denn and Meridian included his purchase of 2,080,000 shares in the company at a discounted price of one cent per share. Those shares were transferred to him and the amount of \$20,800 was paid to Meridian for them. Mr Denn no longer works for Meridian.

16 Mr Denn said that the majority of his time as managing director of Meridian was taken up in pursuing efforts on the part of the company to achieve public listing. He said that, as part of that effort towards a public float of Meridian, he, together with Mr Everett, another director of Meridian (for the same period that Mr Denn was a director), had flown to Perth from Kalgoorlie on three separate occasions solely for the purpose of meeting with and making presentations to potential investors. As part of that effort payments had been made by Meridian to "Stoneflower Gardens & Design" for preparation of what Mr Denn called "cartoons" being solely for use as a PowerPoint presentation for potential investors. The presentations contained maps and information but, in his opinion, added nothing to the Respondent's knowledge or understanding of the tenements. Their purpose was to help people who had no relevant geological or other technical knowledge. None of the costs related to the presentations made to potential investors were included in any relevant Form 5.

17 Mr Denn said that he had travelled to the "Geko" tenement, M15/621, in October or November 2007 using his own vehicle. He said that the trip took one day and that he would value the cost of his time for going there at \$1000 and the value of use of his own vehicle at \$100. The value of his trip was not reflected in any Form 5.

On the basis of Mr Denn's evidence, I find that in respect of matters such as access to the tenements, Aboriginal affairs, occupational health and safety, Mr Denn authorised payment by Meridian to Terra Gold Pty Ltd, a company controlled by Mr Everett, for such services. He authorised two separate payments of \$8983.33 to Terra Gold in May of 2007. Mr Denn also authorised two payments of \$4400 each to Terra Assets for land management services. Payments made to Terra Assets and Terra Gold included GST.

18 The two invoices from Terra Assets which relate to those two payments do not refer specifically to the tenements the subject of these proceedings. They simply refer to a retainer for land management for projects under the control of Meridian mining, being Tampia, Mt Dimer, Geko and Tropicana. The invoices from Terra Gold in respect of the abovementioned payments do not expressly refer to any of the tenements the subject of the four applications for forfeiture. There is, however, some reference to the consultancy "duties" involving collection of data from Perth, taking it to Kalgoorlie, liaising with "Tampiar Farmer on land access ..., farm valuation information, establishment of facilities in Kalgoorlie, meeting with strategic investors, travel, fuel, accommodation, investigating rural valuations within the Narembreen area, meeting with the farmer, meeting with mining companies "(contacts)" who have standard land access agreements for comparison". Mr Denn said that at the time Terra Assets was responsible for management of approximately 30 tenements on behalf of Meridian.

19 Mr Denn, in June or July of 2007, was responsible for Meridian entering into a contract with Fugro Airborne Surveys for Fugro to conduct an airborne magnetic and radiometric geophysical survey over E70/2132 and the two mining tenements, M70/815 and M70/816. I find that that survey was conducted in about November 2007 by Fugro. The costs of the survey had been prepaid by Meridian. \$64,558.90 was paid by Meridian before the end of the expenditure year the subject of these proceedings for M70/815, M70/816 and E70/2132.

20 For all four tenements the subject of the forfeiture applications, for the expenditure year ended during 2006, Meridian claimed various amounts for purchase of data and for review by a geologist of that data. Mr Denn agreed that when he first began working for Meridian in 2005 he was given a quantity of digital geological data which he reviewed. He said that he is the geologist referred to in each of the relevant Form 5's as the person who reviewed the data. He said that the data had been purchased from Mr Morellini. Mr Morellini has been, to the present time,

a director of Meridian continuously from appointment in September 2004. Mr Denn said that the purchase of the data had been authorised at a board meeting of Meridian which Mr Denn had attended. He considers that there was no good reason for purchasing the data because, prior to Meridian formally agreeing to purchase it, it had been readily available to the company and, further, the material was generally available in the public domain. He did agree that, as a general rule, it is preferable to work from original data rather than copied data that is available to the public.

21 In respect of M15/621, for the expenditure year ended 2007, Meridian has claimed in its Form 5 \$33,339 made up of \$18,159 for the purchase of a drill core library, computer modelling studies, hydrology and reagent studies and mining profitability forecast, together with \$15,240 for a 2007 “Geko open pit study”. There is no claim for the expenditure year ended 2007 in respect of purchase of data for the other three tenements. Mr Denn said that the data was purchased from Mr Morellini. He said that he was not aware of the 2007 Geko open pit study. He said that up to the time when he ceased working for Meridian in June 2007 there had been no discussion about it with him. He said, however, that it could conceivably have been done between the time of his departure from Meridian, in June and the end of the expenditure year on 19 October 2007.

22 Mr Denn's estimate of the work effort apportionment on the part of Meridian in relation to all of its approximately 30 mining tenements during the 2006 and the 2007 expenditure years was one third on the Tampia tenements, one third on Geko and one third on the remainder of tenements held by the company. He considered that of the Tampia tenements, M70/816 was most likely to contain a resource of interest.

23 **Mr Mark Boreman** was called as a witness by the applicant. He is a mining tenement consultant who trades as Terra Assets. From late 2005 until December 2007 he did consultancy work for Meridian. That work included compliance with the Mining Act and Mining Regulation requirements, including preparation of Form 5's on the basis of information received from Mr Denn and from Mr Morellini. For the expenditure year ended in 2007 for each of the tenements the subject of the forfeiture applications, the Form 5's that he prepared were based only on information received from Mr Morellini. In respect of the amount specified in the 2006 Form 5's for M70/815, M70/816 and E70/2132 in respect of the aerial survey carried out by Fugro, Mr Boreman said that

the allocation between those three tenements of the total cost of the survey was, in accordance with instructions received from Mr Morellini.

24 Mr Boreman produced a list of pending and granted mining tenements of Meridian. The list also includes nine tenements granted to holders other than Meridian in respect of the Mt Dimer project. Meridian holds only one tenement (E77/1313) for the Mt Dimer project and has one pending application (E77/1312). The list shows a total of 34 tenements held or applied for by Meridian. Of that number there are 10 granted tenements and 24 pending applications. Only one of 24 pending applications was lodged during the 2007 expenditure year, namely, ELA15/940 which was lodged on 28 September 2006 and granted on 2 July 2007. All other applications had been lodged by 29 June 2006; the majority by February 2006. Four were lodged on 29 June 2006 and they were all replacement applications for earlier applications that had been withdrawn. Mr Boreman's work for Meridian included work connected with the lodgment of those applications.

25 I find that until March 2007 Mr Boreman had not been paid in money for the work that he had performed for Meridian. There is a dispute between himself and Meridian as to whether or not shares that were issued to him during 2007 were issued by Meridian and received by him in full consideration for that work. Mr Boreman served Meridian with an invoice dated 17 December 2007 in an amount of \$30,371 (including GST) for work done during the period from December 2005 to April 2007 for "Land Management Assistance". The description of the work is broad. It refers to land management for projects under the control of Meridian, specifically mentioning Tampia, Mt Dimer, Geko and Tropicana. It refers to statutory requirements, ground availability identification, processing of applications, preparation of Form 20's and 21's, preparation of work programs, advertising, reports and data entry, assistance with agreement issues, maintenance of tenure, assistance in preparation of ministerial submissions and meetings. I proceed upon the basis that the work is in relation to all of the granted tenements and all pending applications set out in the list previously referred to.

26 As previously referred to in the evidence of Mr Denn, from March 2007 until December 2007 there was an agreement between Mr Boreman and Mr Denn and Mr Perec, purportedly acting on behalf of Meridian, whereby Mr Boreman was to be paid a monthly retained of \$4000. I find that Meridian did pay Mr Boreman (Terra Assets) a total of \$8000 (exclusive of GST) on invoices presented by him to Meridian for the two months 19 March 2007 to 18 May 2007. I find that Mr Boreman was

subsequently told by Mr Morellini that Mr Morellini did not accept the validity of that arrangement between Mr Boreman & Meridian. As a consequence, Mr Boreman refrained from presenting any further monthly invoices in respect of the retainer until he delivered the invoice of 10 December 2007 previously referred to for the seven-month period from May to December 2007 inclusive. He has not been paid the amount of \$30,800 which he claimed in that invoice. He has not been paid the amount of \$30,371 claimed in the previously mentioned invoice dated 17 December 2007.

27 Mr Boreman was subsequently issued with, it appears, 400,000 one dollar shares in Meridian at no cost to Mr Boreman. He said in evidence that it has always been his understanding that those shares were issued to him as an incentive for him to continue to give priority to his work in respect of all Meridian tenements and applications for tenements and that they were not issued as consideration for the work that he had done for Meridian up until March 2007. He said that the share issue had followed discussions that he had with Mr Denn and Mr Perc. I infer from the fact of the appointment of both Mr Perc and Mr Denn as directors in February 2007 that the share issue occurred during the expenditure year the subject of the four applications for forfeiture.

28 Mr Morellini, purporting to speak as a director of Meridian, has told Mr Boreman that the share issue to Mr Boreman was meant to discharge any liability that Meridian may have had to pay Mr Boreman for his work prior to the commencement of the retainer and that Meridian, therefore, would not pay the amounts claimed on the invoices of 10 December 2007 and 17 December 2007. Those two invoices contain no specific reference to the four tenements the subject of the forfeiture applications and there is nothing within them which would form the basis of any specific allocation of the work done to any of the four tenements. There is nothing in the evidence of Mr Boreman which would justify specific allocation of any portion of the amounts claimed in those two invoices to any one of or any combination of the four tenements in respect of which forfeiture is now sought. As Mr Boreman observed in his evidence, Meridian held no tenements at Mt Dimer until the grant on 27 August 2007 of E77/1313 which had been applied for in December 2005.

29 My understanding of Mr Boreman's evidence is that he said that the invoice of 17 December 2007 excluded any amount in respect of work done by him concerning tenement applications. That, however, appears to be inconsistent with the description of work done contained in that invoice which includes "... assist with identification of ground available, all work

involved in processing applications, and for granted tenements. Preparation of Form 20 and 21's, preparation of specific work programs ... pastoral notices, advertising affidavits ...". Mr Boreman also said that he had done a "fair amount" of work advising lawyers who were involved in the proposed public float of Meridian. He said that the work that he did in that capacity was not mentioned in either of the invoices of 10 and 17 December 2007 expressly but was covered under the generic description of "land management".

30 The Respondent called **Mr Craig Anderson**, the marketing manager for Fugro, to give evidence.

31 Mr Anderson confirmed that Meridian had entered into an agreement with Fugro for the previously mentioned airborne magnetic survey over ground the subject of M70/815, M70/816 and E70/2132. He confirmed the evidence of Mr Denn that the cost of the survey had been paid for in advance in July 2007. He said that the survey had been done in November 2007.

32 On each of the two Fugro invoices that were tendered in evidence there appears the following notation, "*In relation to and in connection with: 20 per cent on mining lease 70/815, 50 per cent on mining lease 70/816, 30 per cent on exploration licence 70/2133.*" Mr Anderson said that that notation was included at the express request of Mr Morellini. Mining leases 70/815 and 816 were not individually over-flown for purposes of an independent survey. They were over-flown during continuous transverse flights which, on each occasion, also over-flew the whole of E70/2132. Neither the written agreement entered into by Fugro and Meridian nor the report provided by Fugro separately allocate or call for a separate allocation of costs as between each of the three tenements. A total of 2239.7 line kilometres was flown. The Fugro report (1.1) states that the survey consisted of one area flown over.

33 **Mr Christopher Stevens** was called by the Respondent. He is a geologist. In late 2008 he reviewed data connected with the three Tampia tenements. The data consisted of historic material together with the airborne survey report of Fugro. He expressed the opinion that it was appropriate for Meridian to have undertaken the survey as part of its exploration strategy. He also said that it is preferable to have original historical data rather than to rely upon data that is available from sources such as DOIR. He said he had experienced instances where material held by the Department of Mines had been shown to be inaccurate as a result of not having been properly scanned or not having been scanned at all.

He said that most geologists prefer to access original hardcopy reports. He considers that the results of the Fugro survey presented a significant improvement of knowledge concerning the Tampia tenements. He conceded, however, that he had not been given the results of previous surveys that had been undertaken and which were publicly available.

34 **Mr Robert Warren**, a chartered accountant, gave evidence, having been called by the Respondent. He provides accountancy services to Meridian. He identified a document that was presented to him as a loan agreement in the accounts of Meridian which reflected acknowledgment of liability for several invoices that had been presented to Meridian by Mr Morellini. They are all invoices for the sale of data by Mr Morellini to Meridian. They are dated, respectively, between 10 July 2006 and 11 January 2007. They are for amounts of \$14,500, \$21,500, \$12,000, \$5000 and \$18,159.

35 The witness also produced a copy of an invoice dated 16 October 2007 addressed to Mr Morellini at Meridian from Civil and Mining Earthmoving. The invoice is in an amount of \$15,240 (exclusive of GST). It says that it is in respect of a review of the "1998 Geko Optimisation Open Pit". It makes reference to the application of "*2007 Mining Methodologies and Costs*" and "... *identification of availability and cost of mining and processing equipment suited to the project*". It is noted on the invoice that it was paid by cheque. Mr Warren also produced a copy of a cheque of Meridian Mining for \$16,764 dated 12 December 2007, being the full amount of the invoice, including GST, together with a copy of a Meridian ANZ bank statement for the period 11 December 2007 to 24 December 2007 which includes a debit in that same amount on 13 December 2007.

36 The same witness also produced a document entitled "Ron Morellini - Payroll Summary". Mr Warren said that the document showed gross salary payments to Mr Morellini between May 2007 and December 2007 of \$46,153. Produced by the witness was a copy of a page from Meridian's annual general ledger from 01/07/2006 to 30/06/2007 showing wages payable or paid to Mr Denn and to Mr Morellini. Mr Warren also produced a page from the ledger from 01/07/2006 to 30/06/2007 showing wages payable or paid to Mr Denn and to Mr Morellini.

37 Concerning the amounts in the previously mentioned five invoices from Mr Morellini to Meridian, Mr Warren said that the total of those five invoices had been paid by the issue of shares with a face value of \$109,600 together with a cash payment of \$115,759.

38 Mr Warren produced a copy of the annual general ledger of Meridian for the period from 1 July 2006 to 31 March 2007. He said that the "Opening Balance" of \$154,200 was what was owed to Mr Morellini by Meridian. That document shows two shares issue of one cent per share to Mr Morellini on 8 February 2007 totalling \$109,600. There are five other entries in the ledger in favour of Mr Morellini, each entry being for the amount of one of the five invoices that I have just referred to. The ledger also shows a single payment on 21 March 2007 of \$115,759 to Mr Morellini which, together with the value of the share issue of \$109,600, reduced the balance owing by Meridian to Mr Morellini to zero. For purposes of the issue to Mr Morellini the issue cost per share was one cent.

39 **Mr Jayson Meyers**, an experienced geologist, was called by the Respondent. He has had considerable experience with airborne magnetic surveys. He said that the Fugro contract was in a standard form. He said that it is essential to have the sort of information that the survey provided in order to get a better idea of the general geology of the area and orientation of any mineralisation in order to ensure optimal drilling can be subsequently undertaken. He said that he had been informed by the chief geophysicist at the Mines Department that there was very little government data available over the three Tampia tenements.

40 The Respondent's final witness was Mr Marr. Mr Marr was a director of the company from September 2004 until March 2007. He was reappointed as a director in June 2007 and is currently a director.

41 Mr Marr said that M70/816 is the principal exploration target for Meridian.

42 Concerning the five invoices presented by Mr Morellini to Meridian for sale of data, Mr Marr confirmed that he had seen the data at the Respondent's office in Applecross and that those invoices were in respect of the purchase by Meridian from Mr Morellini of it. He said that he had seen the Geko open pit study previously referred to. Mr Marr said that the study was undertaken in order to update and advance the then current information about the Geko project. He said that he had been aware that Meridian had commissioned and had received the report. He said that it was he who signed the Meridian cheque dated 12 December 2007 for \$16,764 as payment to Civil and Mining Earthmoving for the Geko review. He said that he had approved of the payment to Mr Morellini of the amounts on the five invoices of Mr Morellini for the sale of data and that the data had been physically obtained by Meridian. Mr Marr said that

he was aware that some of the material contained within the data that had been purchased was available free of charge from the Mines Department. He considered that it was to the benefit of Meridian that the data had been purchased.

SUBMISSIONS

Aerial Survey - Apportionment

43 The Applicants for forfeiture say that the apportionment of costs of the aerial survey should be either on the basis of the number and length of flight lines passing over each of the tenements or, in the alternative, a calculation based upon the ratio of area of each of the three Tampia tenements. The Respondent submits that the total of kilometres flown over all three tenements was stated in the contract to be 2215. (I find that the total flown was 2240 as specified in the report). Based upon the boundaries of each of the tenements as disclosed on the Departmental web site, the Applicant has calculated that the total of east-west and north-south line kilometres flown over M70/815 is 47, that flown over M70/816 is 116 kilometres, with the balance being flown over E70/2132. In the alternative the Applicants say that the area of E70/2132 is to be taken as being 2400 hectares, the area of M70/815 is 200 hectares and the area of M70/816 is 500 hectares. Upon the basis of the ratio between those sizes a calculation is made of what is said to be the proper apportionment of the cost for each of the 3 tenements.

44 The Applicants say that the allocation that Mr Anderson of Fugro placed upon the invoices, namely, 20 per cent on M70/815, 50 per cent on M70/816 and 30 per cent on E70/2132, at the direction of Mr Morellini, is inappropriate and cannot be accepted as being correct.

The Respondent says that apportionment between tenements where more than one tenement is over-flown and surveyed at the same time is to be determined by the holder of the tenements. It is submitted that subreg 96C(3d) leaves it open to the tenement holder to apportion such expenses between the tenements as the holder thinks fit. That subregulation says:

"Where the cost of an aerial survey is used in the calculation of expenditure for more than one mining tenement, the cost is to be apportioned between the mining tenements in such a way that the total expenditure claimed does not exceed the cost."

45 The Respondent also notes, in that context, that the three Tampia tenements had combined reporting status from 12 April 2007.

46 In relation to reg 96C, the Respondent says that so long as the apportionment is reasonable it is up to the tenement holder to determine the apportionment and that, given that within that group of three tenements Meridian's primary focus is on M70/816, it is reasonable to allocate 50 per cent of the cost of the survey to that tenement, 30 per cent to E70/2132 and 20 per cent to M70/815. It is noted that, in addition, the GST element of the Fugro bill was not claimed.

Overheads

47 Meridian says that the overheads for the relevant expenditure years should include the amount for work claimed in the Terra Gold invoices for April and May 2007, less 10 per cent attributed to a meeting with investors, namely, a total of \$16,170. To that, Meridian says, \$8800 should be added, being the amount of two invoices of Terra Assets for the period 19 March 2007 to 18 May 2007. It is submitted that, in addition, in respect of the Terra Assets invoice of 17 December 2007 for a total of \$30,371 it should be taken that the work the subject of that invoice was for a period from August 2006 to April 2007 (being eight out of 15 months, namely, \$16,197). In respect of the Terra Assets invoice of 10 December 2007, which is expressed to be for a period of seven months from 19 May 2007 to 18 December 2007, it is said that an amount of \$13,200, being three months between 19 May and 19 August 2007, should be included. The total of those amounts is \$54,367.

48 Using the percentage allocation of work attributed between the Tampia, Geko and Mt Dimer tenements by Mr Boreman, it is said that 50 per cent of the total of \$54,367, namely, \$21,183.50, can be allocated to the three granted Tampia tenements and that 30 per cent of \$54,367, namely, \$16,310.10, can be attributed to the Geko tenements. The only Geko tenement the subject of these proceedings is M15/621. The Respondent says that there is a need to deduct a portion of the \$16,310 for September and October 2006, namely, \$2718.33, and then to add 30 per cent of that part of the Terra Assets invoice for \$8800 in respect of the two months for August to September and September to October 2007, namely, \$2640. The net result calculated by Meridian is that for Geko an amount of \$16,231.77 can be allocated to administration.

49 It is then submitted that because within the Tampia project there were only three granted tenements and the others were all pending, all of

that expenditure should be attributed to the three granted tenements, namely, M70/815, M70/816 and E70/2132 with no allowance being made for any expenditure on the pending applications. That is because all work in respect of the pending applications had been done during the previous tenement year or years. There is one exception to that which the Respondent takes into account, namely, that within the Geko group of tenements, E15/940, which had been applied for in September 2006 was granted in July 2007. The Respondent says that it is appropriate to allocate \$1000 to the work that would have been undertaken after grant in respect of E15/1940.

50 The Respondent says that for the subject expenditure year, for M15/621, there is a "pool of expenditure" for administration based solely on the Terra Assets invoices of 10 and 17 December of \$15,231.77. It is then said that if that sum is allocated between the granted tenements in respect of Geko on the basis of the expenditure commitment, the figure available to be allocated to M15/621 is \$10,113.38 which is a shortfall of \$4786.62 from that which was claimed. In conclusion in relation to administration overheads, Meridian says that the total of \$27,183.50 that can be allocated to the three Tampia tenements easily covers the total claimed in respect of those three tenements.

51 Concerning M15/621, Meridian says that \$10,113.38 demonstrated expenditure may be allocated to that tenement. It is then noted that those allocations of \$27,183.50 and \$10,113.38 do not take into account rent or any other administrative expenditure incurred during the tenement year. It is said that if rent is added to the allocations, then what is available exceeds that which has been claimed. It is then submitted that a total of \$37,500 rent which was paid between August 2006 and June 2007 adds substantially to the total allocatable expenditure and it is submitted that it would be reasonable to allocate at least 50 per cent of that rent sum to the administration pool.

52 The Applicants submit that, from the evidence of Mr Denn, it is apparent that there has been no proper allocation as between the subject tenements of the claimed expenditure arising out of the invoices of Terra Assets and Terra Gold. It is further submitted that it has not been demonstrated that the amounts claimed are genuine administrative or overhead costs. The difficulty of differentiating between allocation of expenditure to work done on the public float and that done on genuine administration and overheads is noted.

Rent and Rates

53 The Applicants refer to the amount of \$27,497 for rent and rates which is claimed as expenditure in respect of M15/621 for the 2007 expenditure year. The search of that tenement that was tendered in evidence shows that for that expenditure year an amount of only \$13,860 was due and paid for rent. There is no explanation as to how it could be that for that year the balance of \$13,637, after deducting \$13,860 from \$27,497, could possibly have been the amount of Local Government rates levied on the tenement. It is also noted that for the previous year of 2006 rent was \$13,420, annual tenement rent and rates claimed in the Form 5 was \$41,944, leaving a difference of \$28,524 said to have been paid for rates.

54 Although it was not expressly referred to by counsel, I note that in respect of M70/816 for the 2006 expenditure year rates of \$8078 was claimed, whereas for the following year only \$943 rates was claimed. In each case that amount is arrived at after deducting from the Form 5 amount claimed “for Rent & Rates” the amount for rent shown in the search of M70/816. The search of M70/816 reveals that the amount claimed as expenditure for rates after deducting rent as shown in the search of the tenement was as follows: 2003, \$687; 2004, \$139; 2005, nil. For M15/621 the amount that is claimed after deducting rent from the total claim for rent and rates is as follows: 2001 \$5091; 2002 \$5875; 2003, \$6836; 2004, \$1732; 2005 (unable to ascertain); 2006, \$28,524; 2007, \$13,637. No rates notices for those two tenements were tendered in evidence.

CONCLUSIONS

Rates

55 I infer, in the absence of any evidence explaining or justifying it, that the claimed expenditure for local government rates in respect of M15/621 for the years ending 2006 to 2009 inclusive are incorrect, in particular for the 2006 year, namely, \$28,524. That is more than double the amount claimed for the 2007 year and is approaching triple the amounts claimed for 2008 and 2009. I cannot be satisfied that any particular amount was paid for rates. For M70/816 for the 2006 year the amount of rates claimed is \$8076. There is before me no evidence of payment of that amount in the form of, for example, an invoice or a receipt and there is no explanation as to why it is more than eight times the amount claimed for

the 2007 year and more than seven times the amount claimed for the 2008 year. I infer, in the absence of any explanation or evidence, that the amount claimed is incorrect. In saying that, I note that the search of the register for M70/816 that was tendered in evidence shows that rent for the tenement for that year was \$6571 and the combined amount for "Rent/Rates" shown under "Expenditure Details" is for \$6571. Even if no rates were paid in 2005, there is no explanation before me and no apparent reason why rates would have been so high for 2006 compared to, for example, 2003 (\$687), 2007 (\$943) and 2008 (\$1117).

- 56 It should be noted, in connection with the abovementioned amounts of rates expenditure claimed, that the only material produced before me in that regard was the tenement search of each tenement together with the Form 5's for 2006 and 2007. It appears to me that consideration should be given to a Departmental audit being undertaken of Meridian's claimed expenditure for these tenements.

Aerial Survey

- 57 I find that the aerial survey referred to in evidence and the subject of claimed expenditure for the years the subject of these proceedings was undertaken in accordance with the contract entered into between Meridian and Fugro Airborne Surveys Pty Ltd and that it was paid for by Meridian during the expenditure year for the three tenements M70/815, M70/816 and E70/2132. The work was performed after the end of the subject expenditure year for each of those three tenements. The total amount paid inclusive of GST was \$64,559. I consider that to be expenditure "on or in connection with mining on each of those leases for that expenditure year". The fact that the work was not done until the following year, in my opinion, does not mean that it is not to be taken to be expenditure during the subject year for the purposes of reg 21 and reg 31 respectively. During the expenditure year Meridian entered into a binding enforceable agreement with Fugro to perform work connected with its proposed future investigations to ascertain the nature and extent of any mineralisation within the three tenements over which the aerial survey was undertaken.

- 58 In my opinion the legislation does not contemplate an apportionment of the costs of the aerial survey based solely, or even partly, upon an assessment by the tenement holder or any other person of the actual or potential relevant value or worth or merit of the survey tenements. I consider that that is not a criterion that is supported by the wording of either of reg 21 or reg 31, or by any provisions of the *Mining Act*. I consider that none of the provisions of subregs (3b), (3c), (3d) or (3e) of

reg 96C have the effect of allowing such an apportionment for purposes of reg 21 or reg 31 or for the purposes of any provision of the Act. Subreg (3b) says:

"The cost of an aerial survey may be used in the calculation of expenditure expended on, or in connection with, mining on any mining tenement that is located wholly or partly within the boundaries of the survey when those boundaries are projected onto the surface of the Earth."

- 59 One purpose of that subregulation is to ensure that the total cost of the survey, including the cost of necessary flight beyond the boundary of any tenement in order for the aircraft to be able to turn around and fly back across external boundaries of a tenement, is expenditure that is to be taken into account for purposes of compliance with the tenement expenditure condition. That is to say, it is the "boundaries of the survey" (provided those boundaries are themselves necessary and reasonable) that are reflected in the amount of claimable expenditure rather than the boundaries of the surveyed tenements.

Subregulation 96C(3d) says:

"Where the cost of an aerial survey is used in the calculation of expenditure for more than one mining tenement, the cost is to be apportioned between the mining tenements in such a way that the total expenditure claimed does not exceed the cost."

- 60 In my opinion the only apportionment that is contemplated by subreg 96C(3d) is an apportionment that is referable only to the expenditure actually incurred in respect of each of the mining tenements to which the subregulation may have application. I consider that the purpose of inclusion of the subregulation is only to ensure that, in no circumstances, can the holder of a tenement effectively claim in respect of all of the surveyed tenements, in total, an amount of expenditure that exceeds the amount actually expended. For example, in the present case, the tenement holder would not be allowed to claim, in respect of E70/2132, the cost of flying over M70/815 and M70/816 and to also claim, in respect of expenditure on those two mining leases, the same respective costs of flying over those two tenements. That is so even though it may have been the case that if there had been a separate survey of each of the mining leases at different times to each other and at different times to the survey of the exploration licence, it would have been necessary for the aircraft to have flown over some ground the subject of

E70/2132 and, conversely, in order to separately survey E70/2132 it would be unavoidable that the aircraft over-fly the two mining leases.

61 The present is not a case where, for example, parts of only the exploration licence were flown over with closer flight-line spacings than were flown over the mining leases, or, aside from the manner of flying over the tenements, for example, more intensive data generation was undertaken by Fugro in respect of any part of the ground the subject of the aerial survey which, in either case may have resulted in an actual increase of Fugro's charges for a tenement, properly due only to additional work in respect of any one of the three mining tenements. The work done by Fugro did not in any way differ in its performance or the calculation of the total contract cost from any one of the three tenements to the others. The allocation on the Fugro invoice as between the three tenements of 20 per cent to M70/815, 50 per cent to M70/816 and 30 per cent to E70/2132 arose solely as a result of a request from Mr Morellini that Mr Anderson include that specification on the invoice and does not reflect the actual cost of flying over each of the tenements.

62 The notion of apportionment of expenses between a number of tenements not based upon actual expenditure was considered by Warden Wilson M in *Murchison Mining Co Pty Ltd v Castle Hill Resources NL and Peter Dawson* [2001] WAMW 16. The relevant circumstances in that case were that the tenement the subject of the proceedings was one amongst a number of tenements held by the tenement holder. Some of the total amount expended on all of the tenements, including the tenement the subject of the proceedings, had been allocated, where it was able to be done, on the basis of identified actual expenditure on each of such tenements. The remainder of the total expenditure was unable to be allocated on that basis.

63 The tenement holder recorded in expenditure claimed for all of the tenements an amount that was apportioned to each tenement based upon the percentage of the total area of land covered by all of the tenements that was covered by the individual tenement. The Warden accepted that that method of apportionment was the only "simple and effective method of accounting for expenditure". He said that expenditure on such things as geological surveys on large areas containing many tenements cannot simply be allocated to a specific tenement.

64 With respect, I agree with the general principle applied by Warden Wilson. In my opinion the proper method of allocating expenditure amongst a number of tenements, where actual expenditure on

each tenement cannot be identified but where the work the subject of the expenditure or the utilisation of the subject of expenditure has indiscriminate application to all of the tenements, is a pro rata apportionment based upon the area of each tenement as a proportion of the total area of all of the tenements. I see no reason why that method of apportionment should not be applied to a case such as the present where the expenditure related to three tenements, where the work that was performed, both as to the flying operation and as to the analysis of the data that was supplied to Meridian pursuant to the Fugro contract, was not in any way based upon any discrimination as between any of the tenements, where there was no particular focus, in terms of flight path or data recovery and analysis in respect of any one of the tenements.

65 Accordingly, the allocation of the total amount paid, that is, \$64,559, as between the tenements should be pro rata on the basis of the size of each of the tenements. That, in my opinion, accurately represents the true amount of expenditure incurred in respect of each of the tenements for purposes of compliance with the expenditure condition.

66 The area of M70/815 is 198 hectares. .The area of M70/816 is 501 hectares. The area of E70/2132 is 6271 hectares. The total of those three areas is 6970 hectares. M70/815 (198 ha) occupies 2.8 per cent of the total of 6970 hectares; M70/816 (501 ha) occupies 7.19 per cent of the total; E70/2132 (6271 ha) occupies 89.97 per cent of the total.

67 Accordingly, the expenditure allocation as between the three Tampia tenements is to be taken as follows. In respect of M70/815 (2.84 per cent) \$1833; in respect of M70/816 (7.19 per cent) \$4642; in respect of E70/2132 (89.97 per cent) \$58,083.

Overheads

68 I accept as reasonable and appropriate the approach taken by Meridian in the calculation and allocation of overheads as between the tenements the subject of these proceedings. The effect of that is that the two Terra Gold invoices for April and May of 2007 amounting in total to \$17,967 are to be accepted, as to 90 per cent, namely, \$16,170 as being allowable expenditure in respect of the subject tenements. The two Terra Assets invoices totalling \$8800 are likewise to be accepted as allowable expenditure. In relation to the Terra Assets invoice for the period August 2006 to April 2007, the expenditure year for the Tampia tenements, eight months of that, representing 8/15ths of the total of \$30,371, namely,

\$16,197, can be accepted for purposes of compliance with the expenditure condition. The Terra Assets invoice for the period 19 May to 19 August at \$4400 per month totals \$13,200. The total of those amounts is \$54,367.

69 The last-mentioned Terra invoice covered a period of seven months up to 18 December 2007. The two months from 19 August 2007 to 19 October 2007 are within the expenditure year for M45/621. At \$4400 per month that represents an amount of \$8800. Given that I accept the percentages at which work should be allocated between the Tampia, Geko and Mt Dimer tenements is respectively 50 per cent, 30 per cent and 20 per cent, the allocation to Tampia should be 50 per cent of \$54,367, namely, \$27,183.50, and the 30 per cent allocation to Geko of the \$54,367 is \$16,310.10. For the final two months of the Geko expenditure year the amount of \$16,310 for M15/621 includes two months prior to the beginning of the subject expenditure year but does not include two months at the end of that expenditure year. The two months prior to the commencement of the expenditure year represents one sixth of the allocation of \$16,310, namely, \$2718.33. In respect of September and October for 2007 30 per cent of the total of \$8800 should be added, namely, \$2614. The net result is an amount of \$16,231.77.

70 I agree, as submitted by Meridian, that very little of the work carried out in connection with the invoices would have been in respect of pending applications, none of which were made during any expenditure year the subject of these proceedings. E15/940 was granted, as part of the Geko group of tenements, on 2 July 2007. The allocation suggested by Meridian of \$1000 for any work connected with the period after grant of E15/940 is, in the circumstances, reasonable and I accept it. If that \$1000 is deducted from the previously mentioned allocation of \$16,231.77 to the Geko tenements, a balance of \$15,231.77 remains. Meridian then says, and I accept it is a reasonable method of apportionment, that of that remaining \$15,231.77 allocation as between all of the granted tenements at Geko on the basis of the minimum expenditure requirement for each granted tenement means that \$10,113.38 should be allocated to M15/621. In that context it is noted that three of the Geko tenements were granted in July 2007.

71 I accept that, as submitted by Meridian at the hearing, GST amounts paid in respect of the aerial survey and in respect of the Geko open pit study, the sum of \$1000 for Mr Denn's field trip to M15/621, wages and superannuation paid to Mr Denn and Mr Morellini during the subject tenement years were not claimed in the Form 5's for the tenements.

72 Although the matter was not fully argued, I proceed upon the basis that GST is claimable in the present case. I also accept that wages and superannuation paid to Mr Denn and Mr Morellini by Meridian apportioned and allocated appropriately is claimable. I do not accept that the amounts paid to Stoneflower represent expenditure for purposes of mining. They were expenditure for promotional purposes in connection with the attempted public float of Meridian.

73 In relation to wages and superannuation, I proceed upon the basis that Mr Denn was paid at the rate of \$170,000 per annum for three months from March to June inclusive of 2007. The amount paid to him was thus within the subject expenditure year of all four tenements. Three months at a rate of \$170,000 per annum amounts to \$42,500. I am satisfied, upon the basis of the evidence of Mr Denn, that most of his time during that three-month period was occupied in work connected with the proposed public float of Meridian. Had he not been engaged in that work, and given that the accepted allocation of work as between the subject groups of tenements, namely, Tampia, Geko and Mt Dimer, was as to 50 per cent to Tampia, it could be said that his time spent in relation to work on Tampia tenements would otherwise amount to \$21,250. Because of his primary work focus during the three-month period being upon the proposed public float, although I have not been given any specific figures, I am not prepared to accept that he spent any more than 25 per cent of his time on or in connection with mining on the tenements. 25 per cent of \$21,250 is \$5312 for the three Tampia tenements; allocation between each of those three tenements should therefore be \$1771.

74 In his evidence Mr Denn said that he was paid a salary at a rate of \$170,000 per annum together with superannuation. No details of the amount of superannuation were presented in evidence. In Meridian's payroll summary, produced in evidence by Meridian's accountant, it is noted that Mr Morellini was paid superannuation at the rate of 9 per cent. I proceed on the basis that it is most likely that Mr Denn's superannuation would also have been paid at 9 per cent of his salary. That amounts to \$159 for each of the Tampia tenements. Similarly, in relation to the work done by Mr Denn that can be properly attributed to Geko and thus to M45/621, using the same formula as for the Tampia tenements, is \$3188 for wages and \$287 for superannuation, totalling \$3474.

75 Concerning Mr Morellini, there was no evidence as to his involvement in the proposed float of Meridian. I infer from the evidence, however, that Mr Morellini was very active in all aspects of the company's management and other activities and that, accordingly, a

considerable amount of time in respect of which Mr Morellini was paid wages was devoted to the proposed float. Mr Morellini was paid wages according to the payroll summary that I have previously referred to. That shows that from the period 19 March 2007 to August of 2007, a period that is within the subject expenditure year of all four tenements, he was paid wages of \$43,231 and superannuation of \$4251. For the two months of September and October, which are within the subject expenditure year for M15/621, he was paid additional wages of \$10,000 and superannuation of \$1260. I consider that it is appropriate to deduct, one third of his salary and superannuation payments on the basis that at least that portion of his work was directed towards the proposed public float.

76 For the period from March to August 2007, within the expenditure year for each of the three Tampia tenements, Mr Morellini was paid wages of \$43,231 and superannuation of \$4251. Of that amount, a 50 per cent allocation to Tampia results in an allocation, before any deduction for work done by Mr Morellini in connection with the float and in connection with other tenements held or applied for by Meridian, \$23,741 for wages and superannuation. Two thirds of that \$23,741, namely \$15,827 can be attributed to expenditure on the three Tampia tenements, namely, \$5276 each means that for each

77 In respect of Geko, using the same method of calculation and allowing 30 per cent work focus on Geko for mining on or in connection with that tenement gives a result that his wages should be allowed a \$15,970 for the period March to October 2007 and, for the same period, superannuation of \$1653. Those two amounts total \$17,623. The \$17,623 for the Geko tenements in respect of wages and superannuation one third should be deducted to represent work to be attributed to Mr Morellini in respect of the proposed float. Accordingly, two thirds of two thirds of \$17,623 is \$11,749 which is allowed expenditure.

78 On the basis of the above, expenditure for each of the four subject tenements that should be accepted as being expenditure for purposes of the expenditure condition for the expenditure year the subject of the forfeiture applications is as follows:

M70/815 (Mininum:\$18,241)

Rates	417
Rent	2758

Aerial survey	2016
Overheads	3684 (20 per cent of \$18,421)
Wages and Superannuation	
Denn	1930
Morellini	5276
TOTAL	<u>\$16081</u>
(shortfall of \$2,341)	

M70/816 (Minimum: \$46,016)

Rates	943
Rent	6957
Aerial survey	5105
Overheads	9203 (20 per cent of \$46,016)
Wages and Superannuation	
Denn	1930
Morellini	5276
TOTAL	<u>\$29414</u>
(shortfall of \$16,602)	

E70/2132 (Minimum: \$24000)

Rates	255
Rent	2521
Aerial survey	63899
Overheads	4800 (20 per cent of \$24,000)
Wages and Superannuation	
Denn	1930
Morellini	5276
TOTAL	<u>\$78681</u>
(no shortfall ; excess of \$54,681)	

M15/621 (Minimum: \$66,667)

Rates	nil accepted
Rent	13860

Overheads	10113 (20 per cent of \$66,667)
Field trip (Denn)	1000
Wages and Superannuation	
Denn	3474
Morellini	11749
Open pit study	15240
Data purchase	18159
TOTAL	<u>\$73,595</u>

(no shortfall ; excess of \$6928)

79 The shortfall in allowable expenditure for M70/815 for the expenditure year ended August 2007 is not substantial and, of itself, does not justify forfeiture. Given that the three tenements M70/815, M70/816 and E70/2132 were attributed with combined reporting status from 12 April 2007 and given that the total allowable expenditure in respect of those three tenements, namely, \$124,176, exceeds the aggregate of the required minimum expenditure on those three tenements, namely, \$88,257, by approximately \$36,000 and given the necessary geological and explorational connection between those three tenements, the failure to comply with the expenditure condition in respect of M70/815 by a relatively small amount and despite the relatively large non-compliance in respect of M70/816, I am of the opinion that the shortfall in the expenditure of those two tenements is not sufficient in all the circumstances to justify forfeiture.

80 That conclusion is to be taken also in the context that there is a potential for results obtained in respect of the aerial survey over E70/2132 to be of considerable value in the future exploration and possible development of M70/815 and M70/816 which are contiguous with each other and which are located in the centre of E70/2132. In this case that is a significant factor in my concluding that forfeiture is not justified. In respect of M15/621 allowable established expenditure of \$73,595 exceeds the minimum prescribed expenditure of \$66,667.

81 The plaint for forfeiture of E70/2132 is dismissed. The plaint for forfeiture of M15/621 is dismissed.