

include the net cost of machinery and equipment including the wash plant (very approximately \$35,000), repairs on the equipment (very approximately \$7,000), mining supplies and fuel (very approximately \$8,000), and travel expenses between Texas and Alaska (very approximately \$10,000). Some of the travel expenses include trips after the expropriation to move his equipment to the Yukon lease on Squaw Creek.

[146] We agree that as a result of the expropriation Yates' opportunity to recoup some of his expenses on the Lower Lease were foreclosed but for the sale of his equipment. However, we also agree with the Crown that Yates did not have a history of successful mining. The Crown is not responsible for Yates' losses due to this factor. We award \$20,000 to Yates for costs thrown away as a result of the expropriation.

5. SUMMARY

5.1 *Heinz Eckervogt*

[147] We have awarded Heinz Eckervogt compensation for the market value of his interest in each of the leases as follows:

Market Value of Middle Lease	\$ 70,000
Market value of Lower Lease	\$ 35,000
Market Value of Upper Lease	<u>\$ 5,000</u>
Total	\$110,000

5.2 *T.D. Oilfield Services Ltd.*

[148] We have awarded T.D. Oilfield Services Ltd. \$75,000 compensation for disturbance damages. TD is not entitled to any compensation for the market value of its interest in the mining agreement for the Middle and Upper Leases.

[149] Since the advance payment to TD of \$250,000 is more than the compensation awarded, pursuant to section 30(2) of the Act we certify the difference of \$175,000 as a debt due by TD to the Crown as represented by the Minister of Employment and Investment.

5.3 *Walter Yates*

[150] We have awarded Walter Yates \$20,000 compensation for disturbance damages for costs thrown away. Yates is not entitled to any compensation for the market value of its interest in the mining agreement for the Lower Lease.

6. INTEREST and COSTS

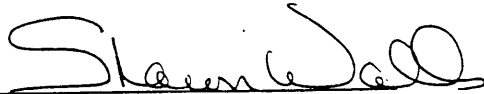
[151] Eckervogt submitted that the issues of interest and costs should be adjourned until the release of our decision. The Crown agreed with this submission and thus we make no awards for interest or costs at this time. However, we will make a few observations that may facilitate the parties in settling these issues in whole or in part without further submissions. We note that since the conclusion of the argument, this board has rendered its decision in *Premanco* where the issue of the commencement date for interest under section 46(1) and additional interest under section 46(4) in similar circumstances to those in this case have been considered. We would also note that although Eckervogt returned the advance payment cheque for \$25,000 for the Lower Lease, section 20(2) of the Act provides that an advance payment under section 20(1) is deemed to be made when the expropriating authority tenders the cheque. Thus, for the purposes of sections 45 and 46, section 20(2) means that Eckervogt is deemed to have received the full \$100,000 as an advance payment on September 26, 1997. With respect to costs, we note that the claims were difficult to characterize and to value. The advance payment made by the Crown and the expert evidence relied on by the Crown from geology engineers based in Nevada are some evidence of the difficulties. At the time that this hearing was held, the decision by the Court of Appeal in *Casamiro* and this board's decision in *Premanco* (as well as the Court of Appeal's refusal of leave to appeal) had not been rendered and therefore there was less authority that the DCF method was inappropriate.

[152] We request that if one or more of the parties wish to schedule a hearing or make written submissions on the issues of interest and/or costs, that they so advise the registrar within 60 days from the issuance of these reasons.

THEREFORE IT IS ORDERED THAT the Crown as represented by the Minister of Employment and Investment shall pay:

1. Compensation to Heinz Eckervogt in the amount of \$110,000 for the market value of his interest in the expropriated property pursuant to section 31(1) of the Act.
2. Compensation to Walter Yates in the amount of \$20,000 for disturbance damages pursuant to section 31(1) of the Act.

EXPROPRIATION COMPENSATION BOARD



Sharon I. Walls
Vice Chair



Lesley Eames, AACI, P.App.
Board Member