

AGREEMENT IN PRINCIPLE

Between

BHP BILLITON DIAMONDS INC. ("BHP Billiton")

and

the MINISTER OF FISHERIES AND OCEANS ("DFO")

Respecting Construction of Shallow Zones at End Pit Lakes

1. BACKGROUND

- (a) DFO issued s. 35 Fisheries Act Authorization to BHP Billiton in connection with the EKATI Diamond Mine pursuant to which BHP Billiton is authorized to destroy and has destroyed certain fish habitat (the "**Authorization**").
- (b) BHP Billiton has provided full compensation for the loss in perpetuity of such fish habitat by way of a Compensation Agreement with DFO (the "**Compensation Agreement**").
- (c) BHP Billiton is planning for the reclamation and closure of the EKATI Diamond Mine, including the flooding of certain pits to form pit lakes as outlined in the 2000 Abandonment and Reclamation Plan, approved by the Mackenzie Valley Land and Water Board in 2002 (the "**End Pit Lakes**").
- (d) Notwithstanding the Authorization and Compensation Agreement DFO wishes BHP Billiton to create shallow zones at the benches of the End Pit Lakes (the "**Work**") and any other reasonable means or activity required so that the conditions are in place to allow the pit lakes to become fish habitat after the Handover Date (as defined in section 4).

2. PURPOSE

The purpose of this Agreement in Principle is to describe in broad terms the basis upon which DFO wishes to engage BHP Billiton, and upon which BHP Billiton is prepared to be engaged by DFO, to complete the Work. DFO and BHP Billiton will negotiate in good faith with a view to entering into a formal agreement in connection therewith and on terms and conditions consistent with this Agreement in Principle (the "**Definitive Agreement**") no later than December 31, 2008 or such later date as the parties may agree upon, failing which DFO and BHP Billiton shall have another six months to reach the Definitive Agreement.

3. BINDING NATURE

This Agreement in Principle is not intended to constitute an agreement for the performance of the Work that is legally binding on the parties, and no party will be bound by any of its terms. Notwithstanding the foregoing, Paragraphs 2, 10 and 11 of this Agreement in Principle will be binding on the parties upon the execution of this Agreement in Principle.

4. SCOPE OF WORK

The particulars of the Work, including location of the shallow zones, will be determined jointly by BHP Billiton and DFO working in good faith together. BHP Billiton will determine, in its sole discretion, when and how the Work will be carried out and completed, provided the Work will be completed by the date when BHP Billiton has satisfied all of its reclamation and closure obligations in relation to the EKATI Diamond Mine and prior to vacating the EKATI Diamond Mine (the "**Handover Date**").

5. REPORTING, MONITORING AND INSPECTION

BHP Billiton will have no reporting, monitoring, inspection or other ongoing obligations or requirements in respect of the Work as it relates to the Fisheries Act. BHP Billiton makes no, and DFO will acknowledge that BHP Billiton makes no, representations or warranties in connection with the Work, including without limitation as to whether the Work is fit for any particular purpose. DFO may monitor the ecological integrity of the Work, but only on reasonable notice to BHP Billiton and without disrupting BHP Billiton's operations, or reclamation and closure work.

6. DFO COVENANTS

- (a) Any work that DFO undertakes on-site will be done in consultation with BHP Billiton to ensure that there is no disruption of mine operations.
- (b) DFO will provide technical advice in relation to DFO's mandate to BHP Billiton in order to undertake the Work.

7. BHP BILLITON COVENANTS

- (a) BHP Billiton will agree to take reasonable steps to maintain the integrity of the Work until the Handover Date.
- (b) DFO will be able to conduct research and/or fish habitat enhancement projects in the End Pit Lakes designed to achieve the objective of end pit lakes becoming fish habitat after the Handover Date, provided BHP's reclamation and closure obligations are not reasonably compromised.
- (c) BHP Billiton will provide site access to DFO and/or its partners and whatever assistance is reasonably required by DFO in relation to (b).

8. CONDITIONS PRECEDENT

BHP Billiton's obligations under the Definitive Agreement will be conditional on:

- (a) the Work being able to be carried out pursuant to the terms of BHP Billiton's approvals and permits; and
- (b) the Work not being prohibited by any other legal or regulatory obligation binding on BHP Billiton, including without limitation BHP Billiton's interim or final closure and reclamation plan for the EKATI Diamond Mine as approved by the Wek'eezhii Land and Water Board (WLWB) from time to time.

9. LIABILITY AND INDEMNITY

- (a) Construction and operation of the Work will not be construed as creating liability, on the part of BHP Billiton or any of its affiliates in relation to *the Fisheries Act*.
- (b) BHP Billiton shall not be prevented or prohibited from constructing or maintaining barriers within the End Pit Lakes or the Long Lake Containment Facility.
- (c) BHP Billiton is authorised to remove or alter any such barriers at the request of DFO after the Handover Date,

10. CONFIDENTIALITY

The parties acknowledge that the content of this Agreement in Principle and all discussions and information exchanged between the parties in connection with the negotiation of this Agreement in Principle is strictly confidential, except that the parties may disclose the same to its professional advisors or representatives of the Crown who are themselves bound to such party by a duty of confidentiality. Upon executing the Agreement in Principle, and prior to executing the Definitive Agreement, the parties will make this Agreement in Principle available to the WLWB and members of the Interim Closure and Reclamation Working Group in the interest of openness and transparency.

11. MISCELLANEOUS

- (a) This Agreement in Principle may be executed by fax and in any number of counterparts, all of which taken together will be deemed to constitute one and the same original instrument.
- (b) Time is of the essence of this Agreement in Principle.
- (c) This Agreement in Principle will be interpreted and enforced in accordance with the laws of the Northwest Territories and the laws of Canada applicable therein.

SIGNED on behalf of the Minister of Fisheries and Oceans in the presence of:

Denny
or Denny _____
Witness

Name: *Derrick Mogen*
Title: *Habitat Management Team Leader*

SIGNED on behalf of an appropriate representative of BHP BILLITON DIAMONDS INC. in the presence of:

Ricus

Witness

Name: *RICUS GRIMBECK*
Title: *PRESIDENT & COO*
11 APRIL 2008

