



February 11, 2009

Dr. Kathy Racher
Wek'èezhii Land and Water Board
#1-4905 48th Street, Yellowknife, NT X1A 3S3

RE: BHP Billiton (BHPB) Final Interim Closure and Reclamation Plan-Working Draft, DFO Verification Comments

Dear Dr. Racher,

As requested, Fisheries and Oceans Canada (DFO) is providing verification comments for the review of the final interim closure and reclamation plan working draft.

Tracking Number 22

Review Comment

DFO appreciates the fact that BHPB has agreed to design and construct fish barriers in such a way that they are removable if it is deemed appropriate. However, DFO does not agree that they would be removed by DFO. Only BHPB would have the necessary means (equipment etc) to remove the fish barriers so the reference to removal by DFO should be taken out.

Status

It is the understanding of DFO from the February 3, 2009 working group meeting that BHPB would remove the fish barriers if water quality criteria were met, DFO agreed with removing the barriers, and if BHPB was still present on site with the necessary personnel and equipment. If this is correct, this issue has been resolved. The ICRP should be revised accordingly.

Tracking Number 23

Review Comment

BHPB states that "BHP Billiton and DFO have formalized agreements where BHP Billiton has provided full compensation for the loss of fish habitat and is not required to construct additional fish habitat in pit lakes at mine closure." It is correct that BHPB has met compensation requirements under the *Fisheries Act* for the pit lakes and the LLCF ; however, it has always been the position of DFO that compensation under the Fisheries Act authorization is completely separate from closure and reclamation requirements under Water Licenses or Land Use Permits. It is the opinion of DFO that the WLWB has the authority to require, and should ensure that both aquatic and terrestrial ecosystems are restored on the mine site. In fact the DFO concurred with the Environmental Assessment conclusions and followed it's issuance of authorizations under the Fisheries Act on the basis that the mine site would fully restore aquatic and terrestrial ecosystems.

As stated in DFO's review of Section 2 of the ICRP (July 27, 2007 letter to the WLWB), it is DFO's opinion that the creation of littoral zone areas in the end pit lakes is critical to meeting BHPB's reclamation goal of returning the Ekati minesite "*to viable, and wherever practicable, self sustaining ecosystems that are compatible with a healthy environment, human activities, and the surrounding environment*".

Research is needed to meet this reclamation goal which is why it is important to have Task 7 Pit Lake Fish Passage Design brought back into the Terms of Reference for the Pit Lake Study. It is disappointing that Beartooth Pit will not be available for pit lake research as previously thought. With the importance of this research for final closure of the mine site, all options should be examined prior to approval being given for the use of Beartooth as a repository for underground mine water.

DFO continues to work together with BHPB to reach an agreement that will ensure that the creation of littoral areas (shallow zones) is included in the ICRP, while addressing BHPB's concerns. It is DFO's goal to have resolution of this issue well in advance of the April 7-8, 2009 public hearing.

Status

This issue remains unresolved. DFO will be satisfied if shallow zones are created in the pit lakes, vegetation is established in these areas, and fish barriers are designed to be temporary and will be removed by BHPB once water quality criteria have been met. DFO and BHPB will meet on March 6, 2009 to attempt to finalize a definitive agreement that is acceptable to both parties. DFO looks forward to working with BHPB and all members of the ICRP Working Group to determine what exactly the shallow zones should look like. DFO also appreciates the constructive suggestions for open pit closure objectives submitted by the Independent Environmental Monitoring Agency as part of the Agency's verification comments.

Tracking Number 23

Review Comment

DFO recognizes the fact that predicted impacts on source lakes and outlet streams from pit flooding are preliminary at this point and will be revised as more baseline data is collected. DFO may provide specific comments once these revisions are complete. It should be noted in this section that Harmful Alteration, Disruption or Destruction (HADD) of fish habitat may also occur due to loss of littoral habitat in the source lakes and reductions in stream flow.

Status

This issue is resolved.

Tracking Number 67

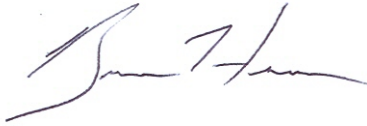
Review Comment

It is the opinion of DFO that there is no need for a fish barrier to be constructed at the outlet of Cell E to prevent fish passage from Leslie Lake as long as water quality is not an issue. Fish are currently present in Cell E and the habitat has not been altered to any significant extent.

Status

It is the understanding of DFO that the fish barrier at the outlet of Cell E will be removed by BHPB once water quality criteria have been met and DFO agrees with the removal of the barrier to allow fish passage. If this is correct, this issue has been resolved. The ICRP should be revised accordingly.

If you have any questions, please contact me at (867) 669-4931.



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