



Fish Habitat Management
Suite 101, 5204-50th Avenue
Yellowknife, Northwest
Territories
X1A 1E2

Your file *Votre référence*

Our file *Notre référence*
SC99037

December 10, 2007

Laura Tyler
BHP Billiton (BHPB) Diamonds Inc.
#1102 4920 – 52nd Street,
Yellowknife, Northwest Territories
X1A 3T1

**Re: Amendment to *Fisheries Act* Authorization SC99037, BHP Billiton
Diamonds Inc., Ekati Diamond Mine, Northwest Territories**

Dear Mrs. Tyler:

The Department of Fisheries and Oceans – Western Arctic Area (DFO-WAA) has reviewed the request dated November 28, 2006 for extension of *Fisheries Act* Authorization SC99037 (the Authorization) which currently expires December 31, 2007.

It is our understanding that changes to the mine plan have resulted in the works or undertakings involving Sable Lake and Two-Rock Lake developments not being conducted in 2003 as originally planned. Development for Sable Lake and Two-Rock Lake is now proposed to commence in 2011. The works or undertakings involving Beartooth Lake and Bearclaw Lake were completed as planned.

It is understood that prior to development, BHPB shall once again remove fish from Sable Lake, Two-Rock Lake, and Big Reynolds Pond as stipulated by a fish salvage protocol that will be provided by DFO in advance of the fish out. In general terms, this protocol will focus on fish salvage with the preference being for live transfer to a nearby fish-bearing watercourse / water body. If live transfer is not feasible, and the rationale is agreed upon by DFO, fish would be euthanized and provided to community members to avoid fish wastage. The salvage program will be based upon reducing catch per unit effort (CPUE) to a level acceptable to DFO. In order to provide more information on the fish community present in these lakes, fishing effort may be expanded to include alternative methods such as electroshocking that were not included in the original fish out protocols.

The proposed changes do not affect the decision made in the original environmental assessment report. DFO has confirmed with the Mackenzie Valley Environmental Impact Review Board (MVEIRB) that this minor variation to the scheduling of monitoring requirements will not require a new environmental assessment by the MVEIRB.

Based on the above information, DFO-WAA is hereby amending the Authorization issued on January 17, 2003, pursuant to Subsection 35(2) of the

Fisheries Act, for the works or undertakings associated with Sable, Pigeon and Beartooth developments at the EKATI diamond mine, NT.

(i) The current valid authorization period of **January 17, 2003 - December 31, 2007**, shall be amended to be **January 17, 2003 - December 31, 2013**.

(ii) Condition 1 which currently reads:

*Only the following HADD of fish habitat, not exceeding a total area 614,700 m² of lake fish habitat and 840 m² of stream fish habitat, resulting from the works or undertakings set out under the heading Description of Works or Undertakings, above, and completed from the date of issuance until **December 31st 2007**, is authorized.*

Shall now be amended to read:

*Only the following HADD of fish habitat, not exceeding a total area 614,700 m² of lake fish habitat and 840 m² of stream fish habitat, resulting from the works or undertakings set out under the heading Description of Works or Undertakings, above, and completed from the date of issuance until **December 31st 2013**, is authorized.*

(iii) Condition 4 which currently reads:

BHPB shall remove fish from Sable, Beartooth, and Two Rock Lakes as stated in the DFO-approved “Beartooth Lake Fish Out Plan – July 2002” and “Sable and Two Rock Fish-out Protocols – August 2001” (Protocol). A written report of the results of the fish-out programs shall be submitted no later than nine months after the fishing has been completed, by BHPB to DFO for review and be subject to DFO approval. The report shall include such things as methods, fishing effort, and all biological data collected, as per the Protocol.

Shall now be amended to read:

BHPB shall remove fish from Sable Lake, Two Rock Lake, and Big Reynolds Pond as per the approved DFO protocol. A written report of the results of the fish-out programs shall be submitted no later than nine months after the fishing has been completed, by BHPB to DFO for review and be subject to DFO approval. The report shall include such things as methods, fishing effort, and all biological data collected, as per the Protocol.

(iv) Condition 11 which currently reads:

*It is understood that not all of the works or undertakings described under the heading Description of Works or Undertakings above, and the associated HADD of fish habitat, may be completed by **December 31, 2007**. For greater certainty, BHPB may complete by **December 31, 2007** such works or undertakings described under the heading Description of Works or Undertakings above, and any associated HADD to fish habitat, or any part of them, as it chooses, but no works or undertakings*

*described under the heading Description of Works or Undertakings above, or the associated HADD of fish habitat, authorized to be completed by **December 31, 2007** may be carried on or caused by BHPB beyond this date.*

Shall now be amended to read:

*It is understood that not all of the works or undertakings described under the heading Description of Works or Undertakings above, and the associated HADD of fish habitat, may be completed by **December 31, 2013**. For greater certainty, BHPB may complete by **December 31, 2013** such works or undertakings described under the heading Description of Works or Undertakings above, and any associated HADD to fish habitat, or any part of them, as it chooses, but no works or undertakings described under the heading Description of Works or Undertakings above, or the associated HADD of fish habitat, authorized to be completed by **December 31, 2013** may be carried on or caused by BHPB beyond this date.*

All other conditions of the Authorization shall continue to apply

Please Note: This authorization does not cover any harmful alteration, disruption or destruction of Horseshoe Lake. The deposit of deleterious substances into water frequented by fish is prohibited under the *Fisheries Act*.

Please contact Bruce Hanna at (867) 669-4931 should you have any questions or require additional information.



Marc Lange
District Manager, South
Western Arctic Area

cc: Ernest Watson - DFO
B. Hanna - DFO
Gerald Fillatre – DFO
Bill Ross, Sean Kollee, Kevin O'Reilly – IEMA
Zabey Nevitt – MVLWB
Eric Denholm, Charity Clarkin - BHPB Diamonds Inc.
Florence Catholique – Lutselke
Sheryl Grieve – NSMA
Anne Wilson, Savanna Levenson – EC
Nathen Richea, Julian Kanigan, Marc Casas - INAC