

BHP Billiton Diamonds Inc.
Operator of the EKATI Diamond Mine



BHP Billiton Diamonds Inc.
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May 16, 2008

Wek'èezhii Land and Water Board
P.O. Box 2130
Yellowknife, NT
X1A 2P6
Attention: Ms. Violet Camsell-Blondin, Chair

Dear Ms. Camsell-Blondin:

Re. Amalgamation of Water Licences

This letter provides a response from BHP Billiton Diamonds Inc. ("BHP Billiton") to the suggestions provided to the Wek'èezhii Land and Water Board (the "Board") from Environment Canada, the Department of Fisheries and Oceans, Indian and Northern Affairs Canada, NWT Environment and Natural Resources, and the Independent Environmental Monitoring Agency that the water licence presently before the Board for renewal, the Sable, Pigeon and Beartooth Type A Water License MV2001L2-0008 (the "SPB Licence"), be amalgamated with the water licence for the main site at EKATI, Type A Water License MV2003L2-0013 (the "Main Licence").

As the federal departments recognized, this issue was canvassed just three years ago during the renewal of the Main Licence. At that time, the Mackenzie Valley Land and Water Board ("MVLWB") decided not to amalgamate the licences. Further to their decision not to amalgamate the water licences at that time, the MVLWB also decided that it could not use the renewal of the Main Licence as a means of providing for amalgamation in 2009 when the SPB Licence was to be renewed. The MVLWB stated on page 9 of 28 of their Reasons for Decision for renewal of the Main Licence that "The [Mackenzie Valley Land and Water] Board is of the opinion that it cannot impose a condition binding on another water licence through this licence".

The current proponents of amalgamation have not indicated that there are any new reasons for amalgamation. Therefore, BHP Billiton believes that the reasoning and decision of the MVLWB on this issue remains valid.

BHP Billiton wishes to bring to the Board's attention three additional items that are important to the issue of amalgamation of the water licences.

Firstly, the Board should not re-open the Main Licence or its terms and conditions on the basis of achieving administrative efficiency through amalgamation. The Main Licence has more than

five years remaining in its term. BHP Billiton has designed and implemented operations management plans based on the Main Licence as it presently stands and is conducting operations to meet the criteria under that licence. It would be contrary to the principles of fairness and natural justice for the Board to reopen the Main Licence on this basis.

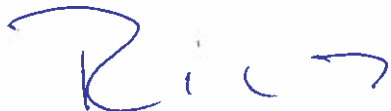
Secondly, the jurisdiction of the Board does not lend itself to a forced amalgamation of current licences. Section 18(b) of the *Northwest Territories Waters Act*, R.S.C. 1985, c. N-27 (the "*Waters Act*") gives the Board authority to: "amend, for a specified term or otherwise, any **condition of a licence**". The section dealing with renewals, s. 18(a), gives the Board authority to: "renew a licence, each renewal being for a term not exceeding twenty-five years, either with or without changes **to the conditions of the licence**". The wording of the Board's power to amend indicates that it is restricted to a power to amend a condition, not a licence generally. The structure of the licences themselves emphasizes the differences between the scope of the licence and its conditions. The "conditions" of each licence start after the scoping and definition sections. Indeed, in the SPB Licence "amendment" is defined as: "any change, addition, or deletion to this Water License that is **within the original scope** of the license".

Thirdly, BHP Billiton believes that the administrative efficiencies that the federal departments seek are addressed within the application for renewal of the SPB Licence. The changes that are proposed include harmonizing certain clauses between the two licences where this improves efficiency and extending the licence to the end of the mine life to avoid repetitive renewals. Additionally, BHP Billiton has proposed wording for the SPB Licence that will allow plans and reports required under SPB Licence to be provided as addendums to or incorporated into the corresponding plans and reports required by the Main Licence. These, along with the proposal to substantially mirror the EQCs from the Main Licence to the SPB Licence, will achieve the administrative efficiency sought by the federal departments.

BHP Billiton puts a great deal of effort into managing the water licences in an efficient manner and has proposed changes to the SPB Licence that will increase efficiency for all parties while respecting the established terms and conditions of the Main Licence. BHP Billiton asks that the Board consider the information provided in this letter and proceed with renewal of the SPB Licence with a term to the end of the mine life as proposed.

Please contact Eric Denholm, Environment Superintendent - Traditional Knowledge and Permitting, at 669-6116 if you have any questions.

Sincerely,
BHP Billiton Diamonds Inc.



Ricus Grimbeek
President and Chief Operating Officer
EKATI Diamond Mine