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Reference/File Number: W2009L2-0001 (Type "A")

Licensee: BHP Billiton Canada Inc. (BHP)

Subject: Interim Closure and Reclamation Plan,
Version 2.4

Wek'èezhìi Land and Water Board (WLWB)

REASONS FOR DECISION

Issued pursuant to Section 26
of the *Northwest Territories Waters Act*, R.S.C. 1992, c.39

1.0 Decision

On November 7, 2011, the Wek'èezhìi Land and Water Board (WLWB or the Board) approved Version 2.4 of BHP Billiton Canada Inc.'s (BHP) Interim Closure and Reclamation Plan (ICRP), which was submitted to the Board on August 31, 2011. The Board has determined that BHP has satisfied the conditions of Water Licence W2009L2-0001 relating to closure and reclamation and the conditions of the December 10, 2010 directive and conditional approval appropriate for this stage of the mine's life.

Additional background information and discussion about the review of Version 2.4 of the ICRP can be found in the November 10, 2011 Board Decision Package which contains: a directive from the Board; the staff report presented to the Board at the November 7, 2010 Board meeting; and an annotated outline for the Annual ICRP Progress Report.

2.0 Background and Regulatory History

BHP currently holds a type A water licence administered by the Wek'èezhìi Land and Water Board. This licence permits BHP to construct, operate and close the EKATI mine as outlined in Water Licence W2009L2-0001. BHP is required to operate under an approved Interim Closure and Reclamation Plan, as

per Part K, Items 1, 2, 3, and 4. BHP prepared this version (Version 2.4) of the ICRP in response to the Board's December 10, 2010 Directive. The following is a brief summary of the history of the ICRP process for the EKATI mine:

1997: Following the completion of the Environmental Impact Statement (EIS) and approval for the mine was granted, BHP submitted an initial Abandonment and Restoration Plan (A & R Plan) as required by Part K of their Water Licence; N7L2-1616.

2000: The Environmental Agreement (Article VIII section 8.1) also required a Closure and Reclamation Plan, so to streamline these requirements the 1997 A & R Plan was updated to address the requirements from both the Water Licence and Environmental Agreement. This plan was submitted to the Mackenzie Valley Land and Water Board (MVLWB) in 2000 and subsequently approved in 2002.

2003: BHP submitted an update to the 2000 Closure and Reclamation Plan to include the Sable, Pigeon and Beartooth kimberlite pipes as required by their 2nd Class 'A' Water Licence; MV2001L2-0008. This closure plan was not approved by the MVLWB on the basis that it didn't contain sufficient detail should the mine close earlier than the expected end of mine life.

2005: BHP renewed their main Class 'A' Water Licence (originally N7L2-1616) which meant that the company was now operating under Water Licence MV2003L2-0013 for the main site and under MV2001L2-0008 for the Sable, Pigeon, and Beartooth developments. Both of these water licences required the company to update the closure and reclamation plan for the EKATI site and Part J of Water Licence MV2003L2-0013 required the company to propose a Terms of Reference (TOR) that would guide the update to the ICRP. The Board established a Working Group to review and comment on the TOR for the ICRP and to make recommendations on the ICRP Working Draft and the Final ICRP Working Draft.

2008: BHP submitted the Final ICRP Working Draft to the WLWB.

2009: A public hearing was scheduled for May to hear interventions regarding BHP's Interim Closure and Reclamation Plan. However, on May 12, 2009, BHP submitted a motion to clarify:

“Whether the Wek'èezhìi Land and Water Board, in the context of BHP Billiton Diamonds Inc.'s obligations relating to closure and reclamation of the EKATI Diamond Mine, has the jurisdiction to require that BHP Billiton Diamonds Inc. establish and maintain fish or fish habitat in the closed pit lakes or the Long Lake Containment Facility at the EKATI Diamond Mine”.

On July 15, 2009 the WLWB held a public hearing to hear argument on the motion from the Independent Environmental Monitoring Agency (IEMA), the Tlicho Government and a combined submission from the Department of Fisheries and Oceans (DFO) and Aboriginal Affairs and

Northern Development (AANDC). The WLWB issued its Reasons for Decision on July 26, 2009 ruling that:

“BHP Billiton has not convinced the WLWB that its jurisdiction is limited or even affected in any way by the 1996 Agreement. Therefore the WLWB rules that it does have the authority to require BHP Billiton to create fish habitat in the exercise of its reclamation authority. ”

On August 25, 2009, BHP filed an Originating Motion with the NWT Supreme Court beginning the process of judicial review on the WLWB’s decision. On October 22, 2009, the WLWB directed the company to update its Reclamation Research Plans in an effort to continue to develop the ICRP while all parties waited for the courts to carry out the judicial review.

2010: The Originating Motion from BHP was heard in the NWT Supreme Court on February 3, 2010. BHP submitted its revised RRs to the Board on February 26, 2010, which were subsequently circulated to reviewers for comment on March 4, 2010. The NWT Supreme Court distributed its Reasons for Judgement on March 15, 2010; the main conclusion of Justice J.Z. Vertez was that *“the application for judicial review is dismissed as premature.”* The WLWB held a public hearing on September 28-29, 2010 in Behchoko to hear interventions on BHP’s ICRP. The Board issued a Directive along with its Reasons for Decision on December 10, 2010.

2011: Version 2.4 was submitted on August 31, 2011. As outlined in the December 10, 2010 WLWB Directive, *“Board staff will conduct a conformity check to ensure BHP Billiton has fulfilled the conditions of approval; this may involve further information requests to the company. The WLWB will notify all stakeholders when the conditions of approval have been confirmed.”* The conformity check conducted by staff was presented to the Board for approval on November 7, 2011 and distributed on November 10, 2011 as part of the Board Decision Package.

3.0 Reasons for ICRP Approval

The reasons the Board approved Version 2.4 of the ICRP are as follows:

1. The Board believes that the ICRP review process was fair and reasonable.
2. Version 2.4 of the ICRP satisfies the relevant terms and conditions in Part K of Water Licence W2009L2-0001, as appropriate for the current stage of closure planning.
3. BHP has satisfied the conditions outlined in the December 10th, 2010 Board Directive.

4.0 Annual ICRP Progress Report and Version 3.0 of the ICRP

The Board will be requiring BHP to submit an Annual ICRP Progress Report, as stated in previous directives to BHP. The Annual ICRP Progress Reports will be a useful vehicle for tracking the progress of all Reclamation Research results and determining the need to conduct further studies if necessary. The

Board has outlined requirements for the Annual ICRP Progress Report in an 'Annotated Outline for Annual ICRP Progress Reports' in the November 10, 2011 Board Directive.

5.0 WLWB Future Actions

The Board have identified three additional actions that it will undertake in the future in relation to this and future versions of the ICRP, as follows:

- i. The Board will inform BHP of the submission date for Version 3.0 of the ICRP at least 6 months in advance, and that this date will be based on the progress demonstrated in the Annual ICRP Progress Reports (i.e. research, community engagement, etc.). At this stage a deadline sometime in 2015 seems most probable.
- ii. The Board will determine whether a fourth version of the ICRP, prior to submission of the final closure and reclamation plan, will be necessary later in the closure planning process.
- iii. WLWB staff will work with AANDC and BHP to review the current security liability for the EKATI minesite and determine if any updates are necessary based on the approved ICRP.

6.0 What does approval of Version 2.4 of the ICRP Mean?

During the review of the various versions of the ICRP, some reviewers requested that the Board provide clarification on what approval of the ICRP means. The confusion exists in part because unlike other plans submitted to the Board; this is an interim plan, so by its very nature will change. To clarify this issue, we have provided a brief description of the meaning of approval of the ICRP.

Approval of the ICRP means that the following aspects of the closure plan are subsequently approved and that supporting evidence would be required before the Board would approve changes to these aspects:

1. Closure goal(s)
2. Closure objectives; as new information is obtained, objectives may need to be modified; however, stakeholder input is required for any changes. BHP or any other party can propose a change to the objectives
3. Preferred closure activities
4. Reclamation Research Plans, except the research related to closure criteria, which may be modified once the Board better defines the role of regulators and hosts the risk assessment workshop
5. Temporary or interim closure measures, although in the event of a temporary shutdown, the Board may require additional detail

7.0 Final Comments

The Board would like to thank all parties for their participation in this important process and to commend BHP for its sustained effort in developing a comprehensive Interim Closure and Reclamation Plan. The Board recognizes the crucial efforts of all involved parties that are essential to the Board making the most informed and reasonable decision.

The Board also acknowledges and expects that BHP's closure and reclamation plan will continue to evolve in the future as new technologies and best practices become available, as research results are collected and analysed, and as the project approaches final closure. BHP has the opportunity to provide evidence (e.g., through the completion of the appropriate research, changes in best available technologies, new information provided through the community engagement process) to the Board in the future which may support a request for changes to the ICRP. The Board would like to remind all stakeholders that recommendations, comments, and requests in relation to the plan are welcome at any time and are most helpful to the Board when accompanied by a clear rationale and sufficient evidence.

Signed the 5th day of December, 2011, on behalf of the Wek'èzhii Land and Water Board



Witness



Violet Camsell-Blondin
Chair, WLWB