

***3rd Environmental Agreement Implementation Meeting
Yellowknife, NWT
March 30, 2007
Summary of Discussion***

Revised: April 4, 2007

Participants

Tom Beaulieu, Government of the Northwest Territories
Tim Byers, Independent Environmental Monitoring Agency
Charity Clarkin, BHP Billiton Diamonds
Joel Holder, Government of the Northwest Territories
Teresa Joudrie, Department of Indian Affairs and Northern Development
David Livingstone, Department of Indian Affairs and Northern Development
Lionel Marcincoski, Department of Indian Affairs and Northern Development
Kevin O'Reilly, Independent Environmental Monitoring Agency
Bill Ross, Independent Environmental Monitoring Agency
Laura Tyler, BHP Billiton Diamonds

The purpose of the meeting was to discuss the two areas of dispute that arose in the January 31, 2007 meeting of the parties to the Resolution Agreement, as initiated by the Government of the Northwest Territories.

Tom Beaulieu stated that GNWT hopes to resolve the dispute without mediation and that it had no firm position on either of the two issues. It wanted a discussion to better understand the positions of the Agency and BHPB, and had some questions for each.

Laura Tyler stated that BHPB's position is that the Separate Fund is only for interventions at public hearings, not the regular business of the Agency or to cover its regular workload. If there are no public hearings, then there should be no expenditures related to the \$40k in the Separate Fund. BHPB believes that the Agency must be an intervenor and be involved in a legal or regulatory process to use the Separate Fund, and that involvement in review of submissions to the Wek'eezhii Land and Water Board is as a stakeholder, not an intervenor.

Bill Ross stated that the Agency position is that whenever the Agency is involved in a regulatory or legal process, for example the review of the Interim Closure and Reclamation Plan, then the Agency is entitled to draw upon the Separate Fund. Tom Beaulieu asked why Separate Fund money would be used by the Agency to fulfill its mandate under Article 4.2(c)(iii) of the Environmental Agreement that deals with the Agency's review and recommendations on environmental plans and programs. Kevin O'Reilly responded by stating that the definition of "environmental plans and programs" under the Environmental Agreement refers to the plans and programs as required under the Environmental Agreement, not necessarily those under a water licence. Bill Ross said that the water licences that BHPB holds for the project are conditional in nature, and

that further decisions are required by the Wek'eezhii Land and Water Board on some plans, reports or studies submitted by BHPB, and the Agency's participation in that approval constitutes a legal or regulatory process where the Agency is an intervenor.

Laura Tyler stated that it was BHPB's preference that should the Agency require additional resources to review submissions made pursuant to the water licences, that a request be made for funds rather than draw upon the Separate Fund. Tim Byers said that if the Agency had to apply for additional funds each time it wishes to participate in a review of BHPB's submissions under the water licences, that would be a cumbersome process and result in delays that would likely make the Agency ineffective. Bill Ross added that the Agency does not support the position that the Separate Funds were intended only for public hearings, and that the Agency's involvement in approval of submissions under the water licences, is as an intervenor in a regulatory and other legal processes as specified in the Environmental Agreement.

David Livingstone stated that DIAND's position was likely to be somewhere in the middle between the Agency and BHPB. He is of the view that most management plans and their review, should be part of the core budget in general, and that there was no desire to review the core funding needs of the Agency as that was the subject of the last mediation. The Separate Fund should be accessible not just for appearances at a public hearing, but preparation too. DIAND is of the view that the review of the Interim Closure and Reclamation Plan is a special case. The ICRP will involve a public hearing and preparation work and those expenses should be recoverable through the Separate Fund.

The discussion moved to the second issue of the ability of the Agency to solicit and receive funding from outside of BHPB. Tom Beaulieu noted that the Agency had received outside funding in the past without having to go through BHPB first.

Laura Tyler mentioned that this second matter is not a big issue for BHPB. She stated that the Resolution Agreement sets out the process for the dealing with the perceived need for additional funds. The concern for BHPB is that the Agency should not be soliciting for funds that are outside its mandate. Theoretically it would be possible for the Agency to seek outside funding for work that the three parties to the Environmental Agreement consider to be outside of its mandate. BHPB does not support work that is outside of the mandate of the Agency as this may detract from its ability to focus on the project. BHPB understands that the Agency is set up as a non-profit society with its own by-laws, but the Environmental Agreement must take priority.

Bill Ross stated that if the three signatories were of the view that an Agency request for funding was outside its mandate, the Agency would be highly unlikely to pursue the matter. He also stated that the Agency would not pursue outside funding for activities that the Directors believe are on the edge or outside of its mandate. For example, there was a recent request from the Mackenzie Gas Project Joint Review Panel to appear at a future public hearing and the request has been declined as the Directors had some difficulty finding an appearance as within the Agency's mandate.

David Livingstone stated that DIAND was of the view that if the three Environmental Agreement signatories reject a funding request as being outside the mandate of the Agency, then the activity should not be pursued unless one of the government parties decides to pick up the costs and it is in the public interest or part of the Agency serving as in a 'good citizen' role. David was of the view that an appearance before the Joint Review Panel is where the Agency would be taking on a 'good citizen' role. Another example was raised by Bill Ross where the Agency has been invited in the past by outside organizations to present or appear at events and the expenses are reimbursed. There was agreement that the Agency could accept outside funding to fulfill a good citizen role if the activity does not take away from the ability of the Agency to carry out its mandate. Clearly if the three parties are of the view that an activity that is the subject of an additional funding request is not worthwhile, the Agency should not pursue it. Tom Beaulieu supported this view.

Laura Tyler stated that BHPB recognizes the value of the Agency playing a 'good citizen' role, but it also does not want the Agency to have an adverse impact on the company or the industry as a whole. BHPB would not try to stop the Agency from talking to others, in an effort to share its insights and experiences as long as approval for activities outside the mandate of the Agency is sought from BHPB.

Tim Byers offered an example where the Agency had discussed lessons learned with others, but has not assisted in the design of oversight mechanisms for others as this would be outside the mandate of the Agency. Bill Ross added that the Agency itself would not want to take on 'good citizen' activities that would have an impact on its ability to carry out its mandate.

In summary, David Livingstone stated that he was of the view that a special case for the involvement of the Agency in the ICRP could be made to allow it to use the Separate Fund. He suggested that the Agency and BHPB might like to reconsider their respective positions in light of the discussion at this meeting.

Laura Tyler stated that BHPB would reconsider its position and that the second issue was of lesser importance to the company. It was her view that it was not necessary to involve Bill Tilleman in the dispute at this point.

Bill Ross said that there may be potential to reach agreement on the first matter and that the meeting was more productive than he thought it might be.

There was an agreement that both the Agency and BHPB would reconsider their positions and meet together before meeting with the two governments again.