

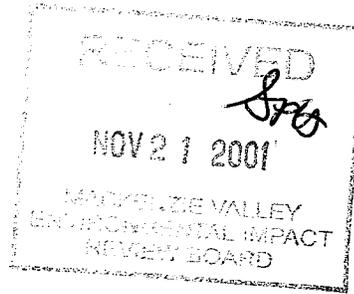


Fisheries
and Oceans

Pêches
et Océans

Fish Habitat Management
Suite 101, 5204-50th Avenue
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Territories
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November 21, 2001



Your file *Votre référence*

Our file *Notre référence*

SC99037

Vern Christensen, Executive Director
Mackenzie Valley Environmental Impact Review Board
Box 938, Yellowknife, NT X1A 2N7

RE: BHP's Sable, Pigeon and Beartooth development

Dear Mr. Christensen:

As you are aware, the Department of Fisheries and Oceans (DFO) has recently concurred with the decision by the Minister of Indian and Northern Affairs Canada (INAC) to adopt, with modifications, the recommendation of the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for BHP's Sable, Pigeon and Beartooth development.

Although DFO agrees with the final decision to allow the development to proceed, DFO wishes to note that it disagrees with the argument used to come to the final conclusion regarding significant adverse impacts to fish and fish habitat, especially given that the Board did not consider compensation as a mitigation provision under the MVRMA.

DFO assumes that the MVEIRB made the conclusion of no significant adverse impacts to fish and fish habitat based on BHP's suggestion as presented in the February 7, 2001 Report of Environmental Assessment on the Proposed Development of Sable, Pigeon and Beartooth Kimberlite Pipes, MVEIRB, as follows:

"BHP suggested that the numbers and size of fish in Beartooth Lake, Big Reynolds Pond, Sable Lake and Two Rock Lake represented very small fraction of fish biomass in the BHP claim block lakes or in the Lac de Gras, Yamba/Exeter and Coppermine watersheds. BHP argued that combined, those lakes would not constitute a fishery as defined by the Fisheries Act. BHP concluded that the loss of fish populations from these lakes would therefore not have an effect on population genetics elsewhere in the Lac de Gras or Yamba/Exeter watersheds."

However, DFO contends that without successful fish habitat compensation, significant adverse impacts to fish and fish habitat will occur as a result of the Sable, Pigeon and Beartooth development, regardless of the proportion of the total fish biomass in BHP's claimblock represented in these lakes and regardless of whether or not the lakes constitute a fishery. Lakes will be destroyed in their entirety and in our opinion this is in and of itself a significant adverse impact. It is

also important to note that the *Fisheries Act* applies to any area that fish use directly or indirectly in order to carry out their life processes. The *Fisheries Act* does not restrict the conservation of fish and fish habitat only to “fisheries” nor is the Act restricted to populations of measurable “genetic” importance. Instead, the *Fisheries Act* applies to all waters of Canada where fish or fish habitats are present. As such, it is DFO’s position that destruction of fish habitat and fish, especially whole lakes, constitutes a significant adverse impact.

Furthermore, the conclusion that no significant adverse impacts to fish and fish habitat will occur as a result of the Sable, Pigeon and Beartooth development is particularly important in light of the MVEIRB’s interpretation that compensation is not a mitigation provision in the MVRMA. If compensation is not an acceptable mitigation provision under the MVRMA then DFO submits that it is not possible to mitigate the impacts of whole-lake destruction as is proposed for the Sable, Pigeon and Beartooth development.

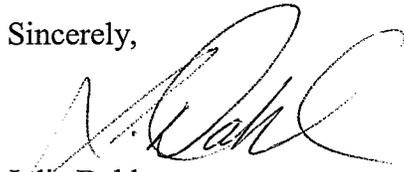
Though we will be addressing compensation options and their feasibility in the regulatory phase, DFO is of the opinion that the impacts, mitigation, and compensation (arguably a form of mitigation) associated with the development could have been more fully addressed during the Environmental Assessment (EA). This could have included the identification of a significant adverse impact with measures prescribed, including habitat compensation, to address it. Without a satisfactory discussion of compensation options during the EA, DFO can not be assured that fish habitat losses associated with the project can be successfully offset. If losses cannot be offset by gains via compensation, DFO cannot issue an authorization.

For this reason DFO looks to and relies on the environmental assessment process established under the MVRMA to meet our obligations under environmental assessment regimes, and to satisfy our obligations under the *Fisheries Act*. It is important to DFO that we be assured that our concerns and goals are taken into account during the review and decision making process of the EA. The MVEIRB has sought, received, and taken account of DFO’s concerns during the review of the project, however, our concerns must be satisfied during the decision making process as well. Indeed without such coordination and cooperation in the future, DFO may find itself in a position of not being able to adopt the EA conducted by the MVEIRB for the purpose of issuing permits under the *Fisheries Act*, leading to an unfortunate yet avoidable duplication of process.

Finally DFO echoes INAC’s recommendation that the Board establish a more iterative process with interested parties in future environmental assessments. //

DFO looks forward to discussions with the Board on the concerns presented above and possible solutions for closer coordination and cooperation.

Sincerely,



Julie Dahl
Area Chief, Habitat
Fish Habitat Management
Department of Fisheries and Oceans- Western Arctic Area

Copy: Marc Lange, Area Habitat Biologist, DFO
Jeff Stein, Director, Habitat Management Division, DFO (via email)
Melody J McLeod, Chairperson MVLWB (via email)
David Livingstone, Director, Renewable Resources and Environment,
INAC (via email)