

BRIEFING NOTE FOR THE MINISTER

ISSUE: Fish habitat compensation for BHP Diamond Mine

BACKGROUND:

The BHP Diamonds Project is located near Lac de Gras, approximately 300 km northeast of Yellowknife. The project proponent is BHP Diamonds Inc., a wholly owned subsidiary of Broken Hill Property Company Limited, of Australia. In July 1994, the Minister of Indian Affairs and Northern Development (DIAND) referred the project to the Minister of Environment for a federal Environmental Assessment and Review Process (EARP) panel review because of public concern and because of unknown, potentially adverse, environmental effects.

The project involved the destruction of twelve lake trout-bearing lakes, six to permit extraction of diamonds from kimberlite pipes situated below the lakes, five for waste rock and tailings disposal and one to allow construction of a runway. In addition, a number of interconnecting and commonly ephemeral head water streams needed to be diverted or otherwise altered, disrupted or destroyed.

It was determined that compensation for lost stream habitat could be undertaken on site, through the creation of fish habitat within the diversion channel constructed to divert water away from the mine site. DFO achieved "two-for-one" compensation for lost habitat in this way, and results to date indicate the new habitat is functioning well, being utilized by Arctic grayling.

Compensation for lost lake habitat on site was deemed to be technically infeasible on the grounds that:

- Proven methods for whole lake replacement, particularly in the Arctic, do not exist
- Low precipitation rates and high evaporation rates in the area meant that newly dug lakes would fill only very slowly
- Lakes in the area had low rates of productivity – simple replacement of lakes would likely not achieve DFO's goal of no net gain of productivity
- There was no demonstrated reliance on the lake trout stocks
- There is an abundance of similar lakes in the immediate vicinity of the mine

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DFO proposed as part of the EARP review that, owing to these limitations, a Fish Habitat Compensation Fund be established that would be used to restore and enhance fish habitat off site, closer to communities that could benefit from improved fishing opportunities. The EARP panel accepted this proposal, but only if DFO was satisfied that there were no viable options to avoid the loss of habitat or to re-create the lost habitat on site. DFO's position that such options did not exist and that establishment of a Compensation Fund was a viable, albeit unique, alternative was accepted by Cabinet in preparing the federal response to the EARP panel's report.

Accordingly, BHP was required as part of its Fish Habitat Compensation Agreement to pay funds to DFO in accordance with the following schedule:

1. March 1, 1997 - \$1,000,000
2. April 1, 1997 - \$100,000
3. April 1, 1998 - \$100,000
4. April 1, 1999 - \$100,000
5. April 1, 2000 - \$100,000
6. April 1, 2001 - \$100,000

The total cost of \$1,500,000 was established on the basis of how much it would have cost BHP to recreate lake habitat on site. Monies are presently being held in a bank until stakeholder consultations are complete and criteria for the funding of projects have been established.

CURRENT STATUS:

The official opening of the BHP Diamond Mine took place this week. In covering this event, a CBC radio broadcast criticized DFO for accepting cash as compensation, and for failing to put the Compensation Fund into use after over two years since the department agreed to this proposal.

DFO had committed to the EARP panel that the fund would be used to support habitat restoration and enhancement projects proposed by a multistakeholder advisory committee established or selected by DFO. This commitment was reiterated in BHP's Compensation Agreement. It was felt that the multistakeholder Independent Environmental Monitoring Agency that was established to monitor impacts of the BHP mine, and track BHP's compliance with its various licensing and permitting requirements, was the logical entity to serve as an advisory body. However, it took several meetings with the Agency, extending over a period of months, to overcome the Agency's initial reluctance to take on this role.

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The initial payments of \$1.2 million currently rest in an interest-bearing bank account. Engagement of a consultant to undertake community consultations, especially with First Nations, is scheduled to take place this winter. It is anticipated that project funding will commence next summer when weather conditions permit.

The BHP situation posed a singular challenge to meeting the objectives of the Policy for the Management of Fish Habitat. It is DFO's position that the solution arrived at was in keeping with the department's commitment to Sustainable Development. However, the situation was viewed as unique and there is no intention to accept cash in lieu of on site compensation for any other project development.

Prepared by: R. Stevens, Habitat Management 998-9228

Approved by: G.E. Swanson, DG, HMES 991-1280

L.S. Parsons, ADM Science 993-0850