



This issue of Northern Perspectives is dedicated to Jim Bourque. Jim passed away recently after a lifelong career furthering resource management in the North. Jim's latest contributions included work in the field of Traditional Knowledge and assistance with the environmental agreement on the BHP project. He will be sorely missed.



The BHP Environmental Assessment Panel meeting in Kugluktuk (Coppermine)

Introduction

On 8 August 1996, the Hon. Ron Irwin, Minister of Indian Affairs and Northern Development, and the Hon. Don Morin, Premier of the Government of the Northwest Territories, held a press conference in Ottawa to announce the federal Cabinet's decision on a proposal by BHP Diamonds Inc. and Dia Met Minerals Ltd. to mine diamonds at Lac de Gras. Some weeks before, after extensive public hearings in the North, a four-person environmental assessment panel had concluded that the mine would have few negative environmental consequences and recommended that it proceed. Many intervenors were highly critical of how the panel carried out its business. The Northern Environmental Coalition (CARC, Canadian Nature Federation, Ecology North, and World Wildlife Fund Canada) was visibly disappointed with the panel's superficial report and overly general recommendations. Feeling powerless, some environmental and aboriginal groups openly discussed litigation as they digested the long-term meaning of the report.

Most, but not all, northerners want the mine—and in light of massive unemployment in the North a good case can be made for it—but virtually everyone involved in the public hearings expected the panel to recommend clear, detailed terms and conditions to minimize environmental costs and maximize economic benefits to aboriginal peoples and other northerners. As well, it was widely hoped that the panel would address cumulative impacts in the region of the proposed mine and advise how the mine might accelerate the development of additional diamond and precious and base metal mines in the Slave Geological Province north of Yellowknife. These expectations were raised, in part, as a result of information presented in the hearings by Alex Maun, an

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aboriginal resident of Papua New Guinea, who showed that the Australian-based BHP had caused an environmental mess there at its Ok Tedi mine. Mr. Maun suggested that BHP also had a poor track record in dealing with aboriginal peoples. There is some evidence that BHP manipulated the Papua New Guinea government into drafting legislation that would have made it a criminal offence for those directly affected by Ok Tedi to sue BHP. Some observers were concerned that BHP might act in a similar manner towards the territorial government based in Yellowknife. While the panel had made little of this information, the August press conference was crowded, reporters were primed, and ministers looked a little nervous.

The Decision

Mr. Irwin announced that the federal Cabinet had accepted the recommendations of the panel and had approved the project in principle, freeing the proponent to apply for permits and licences to construct and operate the mine. But this was not all. He then went well beyond the recommendations of the panel and a less-than-informative press release issued by his department, saying:

the federal government will negotiate abiding environmental agreement with the company. This agreement will cover all those issues which are normally not part of licensed terms and conditions. It will provide a visible record of the commitments of the company to carry out environmental monitoring programs and to prevent and mitigate environmental impacts. Among important tools for ensuring the project impact is properly managed are the impact benefit agreements. And the company is negotiating with Aboriginal communities affected by the project. These are critical and are meant to ensure Aboriginal communities benefit from resource projects which occur in their backyard. It is important for the government of Canada to get assurance that significant progress is being made on both the environmental agreement and the impact benefit agreements before final approval is given.

Mr. Morin, supported by Mr. Irwin, noted the importance of the next 60 days, during which both governments expected "significant progress" to be made towards finalizing these agreements. Reporters pressed for details. What would happen if "significant progress" was not made? Ministers refused to be drawn, and expressed confidence that everyone would work hard towards this end. CARC was pleased that Mr. Irwin was committed to an independent, legally based environmental monitoring agency, which the Northern Environmental Coalition, aboriginal peoples, and even some government agencies had recommended but which had not been supported by the panel. Progress on a territory-wide strategy to protect key environmentally significant areas—a particular objective of the World Wildlife Fund—was also promised by governments.

Curiously, during the 60-day period and in spite of CARC's intervention, DIAND issued an amendment to BHP's land-use permit covering its exploration activities at Lac de Gras. The amendment allowed BHP to begin construction of the project during the 60-day period and before Cabinet approval.

There was much in the federal Cabinet's decision to applaud, and CARC issued a press release that cautiously did so. Yet Cabinet's decision, as it currently stands, has been made despite the environmental assessment and panel recommendations, not because of them. CARC believes that Cabinet's decision on terms and conditions under which the development may proceed owes more to political action and lobbying after the environmental assessment report was made public than to the report itself. While supportive of the terms and conditions announced by ministers, particularly the promised independent monitoring agency and benefit agreements, CARC remains deeply concerned about three issues—aboriginal land-claims and treaty entitlement agreements, marketing Canadian diamonds, and the capacity of the federal government to regulate resource development in

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the North. None of these issues was addressed by ministers, and only the first was mentioned, and then only cursorily, by the panel.

Aboriginal Land Claims and Treaty Entitlement

During the public hearings, senior managers from the Department of Indian Affairs and Northern Development stated unequivocally that Dene would not be allowed to select land within BHP's 4000-km² claim block as part of ongoing land-claims and treaty entitlement negotiations. Prohibitions in the federal landclaims policy, and the fact that the company's property was in an "advanced" stage of exploration, were offered as reasons for this refusal. As well, DIAND managers said that Dene had not attempted through the now defunct 1990 Dene/Metis Final Land-Claims Agreement, to "withdraw" land in this region from disposition-essentially an expression of interest by aboriginal peoples in selecting the land.

CARC refuted this position in the hearings by noting the federal land-claims policy limits land selection to those areas over which both traditional and contemporary land use can be shown-tests passed by Dene-and reminded all that Inuit had selected mineral properties in an "advanced" stage of exploration through the Nunavut Agreement. CARC argued that the national land-claims policy should be implemented evenhandedly and fairly, not capriciously. In the hearings, the Yellowknives Dene First Nation tabled maps they had used in land-claims negotiations in the late 1980s and during the North Slave land withdrawal negotiations illustrating the Dene interest in owning land at Lac de Gras well before diamonds were discovered there. Land ownership at Lac de Gras remains unclear, and neither the report of the environmental assessment panel nor government's response to it has helped to resolve this issue.



BHP / Dia Met bulk sampling plant at Lac de Gras

Marketing Diamonds

The diamond trade is highly secretive. Most of the world's diamonds are not marketed in an open manner according to free market principles; they are handled by the London- and South African-based DeBeers and its Central Selling Organization-a very successful cartel that controls the volume of diamonds entering the world market and fixes their price. BHP Diamonds Inc. offered little information in its environmental impact statement (EIS) and in the public hearings on its plans to market Canadian diamonds. In a summary of its EIS, BHP stated:

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The Proponent plans to sell rough diamonds on the world market at world prices. Sales may be directly to dealers or manufacturers; through joint venture marketing entities with established industry vendors or agency arrangement; or by auction or tender.

This circumlocution kept all the proponent's options open, but was questioned neither by the environmental assessment panel nor by federal agencies even though our national newspapers report that BHP Diamonds Inc. and DeBeers are discussing diamond marketing. As a result, federal politicians still have to deal with a key policy question: Is Canada, a country now proud of its free-trade credentials, prepared to see its diamonds marketed by a cartel? If so, under what terms and conditions? Might there even be a case for referring this issue to the competition tribunal to ascertain the legality of this method of marketing Canadian diamonds?

These important issues question the stability of the world diamond market. The proponent plans for at least 25 years of diamond production at Lac de Gras. Northerners therefore look forward to long-term jobs and the federal government anticipates more than \$2 billion in taxation and royalty revenues during the life of the mine. But are we building on shifting sand? This grand scenario must be depressingly familiar to those who fifteen years ago predicted massive oil and gas development in the Beaufort Sea region. That particular vision floundered when another cartel, the Organization of Petroleum Exporting Countries (OPEC), could not maintain a high world price for oil under conditions of plentiful and growing supplies. The laws of supply and demand eventually replaced political wishful thinking, and the world price for oil collapsed, making oil and gas exploration and development in the Arctic uneconomic. Could this scenario overtake the diamond market? As environmental assessments into oil and gas and base and precious metal projects invariably consider information about product marketing, the panel might, at least, have queried this possibility. Indeed, projects are rarely assessed until proponents provide concrete information about their product marketing arrangements.

Federal Capacity in the North

The performance of some federal departments during the BHP review was appalling. Human Resources Development Canada, the main federal agency on training and employment, failed to make a presentation. The sole Department of Fisheries and Oceans representative at the September 1996 NWT Water Board hearing on BHP's water licence application left before presenting or questioning. DIAND was criticized by CARC and others at the hearings for its declining commitment and capability to regulate resource development in the North. Although DIAND personnel vehemently denied those assertions, a recent internal audit of its land and water management related to mining confirmed many of our concerns. DIAND is ill-prepared for implementation of the new Canadian Environmental Assessment Act and still, as pointed out in the recent audit, does not have a mine site reclamation policy or a policy on sustainable development.

The blame should not fall on the few public servants left to defend the public interest in the BHP review and in similar matters. Indeed, the strong federal and territorial government support for the BHP project at the outset of the hearings in Yellowknife seriously constrained any public servant from raising concerns or issues with this project.

The clearest demonstration of the faltering federal commitment and capability in the North is the consensus on the need for an independent monitoring agency for the BHP project and perhaps for future mines in the region. When combined with a lack of confidence in government and industry to regulate development, the current inadequate regulatory systems and declining resources for monitoring, inspection, and enforcement have given birth to the legally binding environmental agreement and independent monitoring agency for the BHP project.

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The Environmental Assessment

For more than 20 years the federal government has required northern development projects to be screened and assessed for their environmental and social impacts. The 1973 to 1977 Berger Inquiry into a proposed Mackenzie valley gas pipeline was the first major environmental assessment in the North. Others followed. CARC has intervened in numerous such assessments of oil, gas, and mineral exploration and development. Our involvement is documented in the pages of *Northern Perspectives* and in our briefs and presentations to the National Energy Board and various environmental assessment panels. Berger set a highwater mark for public participation and scientific rigour for assessment of resource development that, in our experience, has been steadily eroded over the years.

We conclude that the environmental assessment of the BHP diamond mine was fundamentally flawed; the process was neither rigorous, comprehensive, nor fair. This, we believe, is why the recommendations of the four-person panel are weak and insipid. Once more, environmental assessment itself is at issue. This is why in this issue of *Northern Perspectives* we have printed CARC's 21 June critique of the BHP Diamonds Inc. environmental assessment process and our advice to Hon. Sergio Marchi, Minister of Environment, and Hon. Ron Irwin, Minister, Indian Affairs and Northern Development, offered on 21 June and 26 July. The decision on the proposed diamond mine is now finalized, but the need for comprehensive, rigorous, and fair environmental assessments remains. The flawed process and recommendations from the panel have only fuelled the requirement for an independent monitoring agency for BHP's diamond mines.

CARC has been disappointed before in the conduct and outcome of environmental assessments, but this most recent experience prompts us to question both our participation in future assessments and their value to the public under current rules of conduct. Some observers argue that too much is expected of environmental assessments, which try to be all things to all people, and this comment is well placed, for concerns of marginal relevance to development projects are inevitably raised by citizens during public hearings. Yet this fact should neither prevent nor preclude a detailed and technical assessment of development projects.

We conclude that the environmental assessment of the BHP diamond mine was fundamentally flawed; the process was neither rigorous, comprehensive, nor fair. This, we believe, is why the recommendations of the four-person panel are weak and insipid. Once more, environmental assessment itself is at issue.

The early 1990s witnessed a major policy and legislative debate that culminated in the January 1995 proclamation of the Canadian Environmental Assessment Act (CEAA). When announcing the BHP diamond mine assessment in December 1994, Deputy Prime Minister Sheila Copps assured that it would be conducted in the "spirit" of the CEAA. It was not. The Canadian Environmental Assessment Agency will soon adopt procedures to guide the conduct of future panels; however, the draft procedures now circulating would, if adopted, entrench the weaknesses, inadequacies, and failings of the BHP assessment. This must be avoided. This summer the CEAA circulated discussion papers to streamline environmental assessment and to recover costs of such assessments from industry. If Cabinet approves proposals in these papers, comprehensive and public environmental assessments may be a thing of the past.

Environmental assessment in the North is in crisis, the timing of which could not be worse. Additional diamond, base, and precious metal mines and associated infrastructure are planned for the Slave Geological Province north of Yellowknife. The giant nickel and cobalt deposit at Voisey's Bay in Labrador is well on its way to

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development. How will Ottawa respond? Surely not with the tawdry and tortuous process used to assess the proposed BHP diamond mine? The North deserves better.

Kevin O'Reilly was formerly CARC's Research Director.

21 June 1996
Honourable Sergio Marchi
Minister of Environment
Terrasses de la Chaudiere
Hull, Quebec
K1A 0H3

Dear Minister Marchi:

You have now received the report of the environmental assessment panel that reviewed the BHP diamond mine proposal. CARC believes the environmental review was fundamentally flawed for the process was not comprehensive, rigorous, or fair. These matters are important not just for the BHP project but also to ensure that the up-coming review of the Voisey's Bay proposal in Labrador is not subject to these same deficiencies. In the attachment to this letter entitled "Critique of the BHP Environmental Assessment: Purpose, Structure, and Process", we outline several significant deficiencies. CARC would appreciate meeting with you at the earliest possible date to discuss our concerns in detail. We are currently evaluating the panel's report and will share that analysis with you as soon as it is available.

This project, and the review of it, will set precedents. We urge you to take whatever time is needed to consult as widely as possible about the review process itself and the recommendations. Such an approach will go a long way towards addressing the concerns of many who believe the BHP environmental assessment is characterized by omissions, oversights, untested evidence, and too little opportunity to be heard fully.

I am writing now to suggest a number of principles and perspectives that you and your officials will want to keep in mind as you evaluate the panel's report and recommendations:

- *The fundamental need for an environmental assessment to be a thorough and rigorous technical review of the project. As our accompanying notes show, by the Chair's own admission this assessment did not even attempt such a review.*
- *It is in the public interest that government demonstrate its commitment to the just, fair, and expeditious settlement of aboriginal land claims and treaty entitlements in the Slave Geological Province by adopting measures that enhance those negotiations, and thus create the local and regional capability to manage people, resources, and the environment.*
- *In the absence of land-claims settlements and successfully re-negotiated treaty entitlements, legally binding impact and benefit agreements should be in place before project approvals are given. Such agreements are necessary to provide an acceptable level of certainty to the parties with respect to the management of impacts and benefits.*
- *A formal and binding commitment on the part of governments to establish a sustainable economic development and diversification fund utilizing revenues generated by mineral development.*
- *Legally empowering a monitoring body that 1) would harmonize existing monitoring functions in the Slave Geological Province, 2) would identify and remedy gaps in monitoring capability, and 3) would treat traditional knowledge of the aboriginal peoples and the best scientific information with full and equal consideration, and 4) would ensure effective enforcement.*
- *That an ecosystems approach toward project management be adopted, including conservation of environmentally significant areas, to ensure that sustainable development objectives in the region are attained.*

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In your evaluation of the panel report we believe that the tests of comprehensiveness, rigour, and fairness are the key criteria. The report must clearly show that it has considered relevant issues, including the six points above, in both breadth and depth. Unfortunately, the flaws in the process have precluded a broad and detailed analysis of the project and the issues it raises. As well, the report must demonstrate clearly that the evidence presented has been subjected to the highest quality scrutiny and that all parties to the process have received fair treatment and that their views have been fully considered.

There are significant benefits to you, to the Department of the Environment, to the federal government as a whole, and to the proponent, BHP, in ensuring that environmental and aboriginal values are properly considered in evaluating the panel's report. It will be important to

- *Avoid the very real possibility of a legal injunction against the BHP project stemming from land-claims disputes or procedural errors by the environmental assessment panel. No doubt you are aware of the potential for an injunction in the Voisey's Bay project.*
- *Avoid approval of a project that has real potential to cause significant ecological impacts. The BHP experience at the Ok Tedi mine in Papua New Guinea and the current charges against the company under the Fisheries Act should prompt caution.*
- *In light of the fact that regulatory authority and responsibility in the North is very much in flux, ensure that through land-claims, treaty entitlement, and impact and benefit agreements, the organizational capability to manage people, resources and the environment in the North is put in place.*
- *Ensure a sense of trust in decision-making processes involving aboriginal and other northern residents, governments, and the mining company that final decisions will reflect fairly everyone's interests, not only for the BHP project, but also for other developments soon to follow.*

Our attached briefing notes outline several key deficiencies in the BHP environmental assessment process:

- *Lack of an adequate technical review; e.g., panel chairperson declared it was not a technical review*
- *failure to live up to the fundamental purposes of an EA review; e.g., lacks comprehensiveness and rigour*
- *single project rather than regional scope; e.g., too little attention to region-wide cumulative effects*
- *inadequate funding of the panel and intervenors; e.g., panels for similar projects **much better funded***
- *insufficient funding and expertise to prepare interventions; e.g., too little money, EIS not available in aboriginal languages, and lack of expert assistance was unfair*
- *insufficient time in public hearings to present evidence; e.g., technical experts had just 15 minutes to present significant amounts of information*
- *failure to meet the panel's guideline on traditional knowledge; e.g., no community research was conducted*
- *Late filing of EIS data; e.g., 1995 field season data allowed as a late submission without proper review period*

In requesting to meet with you now it is our intent to discuss these issues in more detail. We are reviewing the report and its recommendations and we will report further to you. We would also hope to hear about your own approach to the evaluation of the panel's report so that we can keep our 8,000 supporters well informed.

In conclusion, we believe the process by which the BHP project has been assessed is flawed. It was not comprehensive, rigorous, or fair. Again we urge you to take whatever time is needed to consult as widely as possible about the review process itself and the recommendations of the panel. We look forward to discussing these matters with you at your earliest convenience.

Yours sincerely,

Terry Fenge, PhD

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The late Joe Charlo speaking to the BHP Environmental Assessment Panel, Dettah

1. Introduction

Broken Hill Proprietary Ltd. (BHP) has proposed to develop and operate a diamond mine in the Slave Geological Province (SGP) in the Northwest Territories. Its project is presently undergoing an environmental assessment. That review is flawed in fundamental ways. But, before discussing these issues, some background information is helpful.

Significant mineral development in the Slave Geological Province north of Yellowknife is likely in the next few years. The scale and pace of development will be determined by the size and grade of ore deposits, the world price of minerals, and the cost of extracting and transporting them to market. Diamonds, gold and other precious metals, and base metals have been found, some as "world class" deposits.

In 1994, the Government of the Northwest Territories recommended that the federal government "invest" \$650 million to provide infrastructure in the region-an all-weather road from Yellowknife to Coppermine and a port on the Arctic coast. The NWT Power Corporation identified potential hydropower sites on the region's rivers that could be developed. It has been estimated that mining could contribute nearly \$20 billion to national Gross Domestic Product.

BHP Diamonds Inc. has moved rapidly to develop its Lac de Gras diamond property 250 km northeast of Yellowknife, and Kennecott Canada is poised to follow suit on its diamond property just to the south. BHP's proposal is subject to the 1984 Environmental Assessment and Review Guidelines Order. Subsequent mines will be subject to screening and review under the Canadian Environmental Assessment Act.

When evaluating the future of the Slave Geological Province it is crucial to appreciate that

- Aboriginal land-claims and treaty entitlement negotiations are on-going in the southern half of the region. As a result, aboriginal title and aboriginal or treaty rights are asserted to BHP's property by Dene residents in the region.
- The Nunavut Land Claim Agreement applies to the northern half of the region.
- No land-use plans have been developed for the region.
- No parks or protected areas have been established in the region.
- The region is noted internationally for the 350,000strong barren-ground Bathurst caribou herd, which calves in the north and winters in the south of the region, and for grizzly bears that den in the region's eskers.
- The region's rivers Coppermine, Hood, Back, and Burnside-attract canoeists and wilderness recreationists in increasing numbers.
- Aboriginal people are promoting cultural tourism as a sustainable development initiative.
- The outfitting economy continues to grow in the region.
- Land-use and occupancy studies show unequivocally that this region is used extensively and intensively for hunting, fishing, trapping, and gathering by Inuit and Dene.

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- Regulatory affairs in the Slave Geological Province are in flux as a result of continuing devolution, aboriginal self-government, constitutional development, land-claims and treaty entitlement negotiations.

2. The BHP Review

Following screening of the proposed project by the Yellowknife-based Regional Environmental Review Committee, the Minister of Indian Affairs and Northern Development referred the project in summer 1994 to the Minister of Environment for a public review by an environmental assessment panel. A four-person panel review of the proposed development was announced in December 1994. Public meetings were held in winter 1994-1995 to "scope" the nature of the assessment. Environmental impact statement (EIS) guidelines were issued by the panel to the proponent on 23 May 1995 and the proponent presented its EIS to the panel on 24 July 1995. Public hearings on the EIS were held in January and February 1996. The panel submitted its report and recommendations to ministers in June 1996.

When announcing the review, Minister Copps noted it would be conducted "in the spirit of the Canadian Environmental Assessment Act," which came into effect a scant six weeks later. This was taken to mean that cumulative effects assessment and sustainable development principles would feature significantly in the environmental assessment. Simultaneously, Ron Irwin, Minister of Indian Affairs and Northern Development, announced a five-year environmental baseline study—the West Kitikmeot-Slave Study—to develop information to assess regional and cumulative effects of large-scale mineral development in the region, including but not limited to the BHP project.

Several important issues loom large in the BHP review.

2.1 Purpose of the Environmental Review

An environmental review, by pursuing standards of comprehensiveness, rigour, and fairness, is intended to give ministers impartial advice on whether a project should proceed, and if so, under what conditions. It is our position that the review of the BHP project has not been comprehensive, rigorous, or fair.

BHP's project is complex and technical. It therefore follows that the review should deal carefully with technical issues, seeking to understand the implications and impacts of the proposed development in order to recommend mitigative measures. In the course of the hearings, the panel chairperson stated, "I would also like to stress that this is not a technical review per se." Furthermore, the panel did not retain legal or technical experts to help it frame its own interests, raise questions, or assist others to explore technical issues. Perhaps the panel expected government agencies to come forward with sound technical analyses of the proposal. Some did, notably the Department of Renewable Resources, GNWT. Others did little to advance the technical investigation. Some departments were absent from the proceedings, hardly in keeping with the panel's request for information from all relevant and involved agencies.

CARC is deeply concerned about the quality of the review. If the BHP review was not intended to examine technical aspects of the project, under whose auspices and when will such a review take place?

2.2 Funding

We understand that the Government of Canada planned to provide the panel with \$250,000 to conduct the assessment, and that a further \$250,000 was available to assist intervenors. This level of funding was wholly insufficient, which explains, in part, the severe time constraints placed upon intervenors in both the community and Yellowknife hearings. The participant funding committee made some very poor decisions. For example, the community of Lutsel K'e received only \$6,000 and the Dene Nation, nothing at all. [Authors' note: The final figure for the BHP panel has been estimated at \$900,000, well over the initial budget. The panel must have been under intense pressure to conclude the review and limit further expenditures.]

We note by comparison that other project reviews, some of much less technical complexity, received more funding. The Labrador-Quebec Low Level Flying Panel received in excess of \$2 million, while the Pearson International Airport Expansion panel received just over \$1 million. The Great Whale project received just under \$4 million. The Northern Diseased

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Bison review-scarcely the revenue-generating project that the BHP project is-was given just over \$500,000.

In light of the difficult fiscal climate facing the federal government, it is worth comparing the cost to government of the review with likely revenues to be generated by the project. DIAND' s submission to the panel estimated that royalty and taxation revenues to the federal government over the expected 25-year life of the mine would amount to \$2.1 billion. This estimate is based on current taxation and royalty rates, both of which are under review and likely to be increased. With the prospect of such a large economic impact on the national and regional economies, and significantly enhanced revenue flows to government, the decision to under-fund this review makes little sense.

2.3 Scope of the Assessment

The terms of reference to the panel and the panel's Draft EIS Guidelines were encouraging. Both referred to regional perspectives, traditional knowledge, and cumulative impact analysis as important building blocks for an effective assessment. Unfortunately, the final guidelines did not fully reflect the representations for improvement that many intervenors suggested. The regional view gave way to a much narrower single project/claims block view. Resources and time to do good traditional knowledge research were not available. Attempts to take account of cumulative effects fell far short of expectations. The West Kitikmeot-Slave Study, now two years into its mandate, has only in the past couple of months commissioned its first research projects. What should have been a comprehensive regional assessment now stands as a very limited analysis of a single project with reference neither to the potential for significantly greater development nor to long-term cumulative effects.

2.4 Speed of the Review

Industry and the territorial government complained of delays in setting up the review panel after the project was referred to the Minister of Environment, a chronic complaint we note from past reviews. The current complaint seems justified. Once established, however, the panel proceeded at a brisk pace. The EIS was available to the public in mid-summer 1995, giving intervenors five months to digest the documents and build their cases. The lack of adequate funding compounded the difficulty in meeting deadlines. This was all the more critical for those aboriginal residents of the affected area whose first language is not English.

BHP's project is complex and technical. It therefore follows that the review should deal carefully with technical issues, seeking to understand the implications and impacts of the proposed development in order to recommend mitigative measures. In the course of the hearings, the panel chairperson stated, "I would also like to stress that this is not a technical review per se."

2.5 Procedures

The combined effect of problems with the scope of the review, its essential purpose, under-funding, and the haste with which the panel proceeded set the scene for serious procedural deficiencies. Three types of hearings were scheduled: 1) Community Hearings; 2) General Sessions - Yellowknife; 3) Technical Sessions - Yellowknife.

Community hearings lasted for part of a day in each of the affected communities. In some cases, discussion went late into the night to keep to the next day's schedule. It should be remembered that community hearings are an opportunity for all people there who wish to be heard. When the panel chairperson asked for people in the communities to come forward with only those views and information not already discussed, the communities were offended.

In the Yellowknife hearings, time restrictions were adopted by the panel, again to keep to a pre-ordained schedule. More specifically,

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- the panel failed to provide sufficient time for technical experts to present scientific information: presenters were allowed 15 minutes; questioning of presenters was limited to 30 minutes in total;
- the panel did not provide sufficient time for intervenors to question the proponent or other presenters;
- the panel varied the questioning procedures during the hearing, which resulted in uneven opportunities to ask questions.

These time restrictions call into question the value received from intervenor funding. It is fair to ask at this point whether these funds were "wasted" since so little time was available for intervenors and experts to present the information they had prepared. Since the members of the panel are not themselves technical experts, and since the panel did not have technical advisors, it cannot claim that it can rely on the briefs that were submitted.

Time restrictions clearly diminished the opportunity for people to express their views fully and, therefore, for the panel to be informed fully. These restrictions had a particular and negative impact on CARC, Ecology North, World Wildlife Fund Canada, and the Canadian Nature Federation, the members of the Northern Environmental Coalition (NEC), who brought to the hearings numerous experts to present technical information and to question the proponent. The NEC was one of very few intervenors to bring forward such experts.

Traditional knowledge research findings were limited to an overview of the literature, interviews with some of BHP's own aboriginal employees, and preliminary issues identified by aboriginal organizations. In fairness to the proponent, it was not something it alone should have been asked to do. Documentation of traditional knowledge must be done by aboriginal communities.

2.6 Traditional Knowledge

Although the panel's guidelines called for "full and equal consideration" for traditional knowledge, aboriginal participants, government officials, environmental groups, and CARC agreed that the EIS failed to meet this requirement. Traditional knowledge research findings were limited to an overview of the literature, interviews with some of BHP's own aboriginal employees, and preliminary issues identified by aboriginal organizations. In fairness to the proponent, it was not something it alone should have been asked to do. Documentation of traditional knowledge must be done by aboriginal communities.

2.7 Late Information

The proponent submitted its EIS only two months after receiving the EIS Guidelines. This remarkable achievement was at a cost—the EIS did not include data from the 1995 field season. To the surprise and consternation of many intervenors, the panel allowed the proponent to submit this information (essentially appendices to the EIS) in December 1995 but did not alter its hearings scheduled to begin in January 1996. Intervenors had only days to analyze the new data before the hearings commenced. This was improper and unfair.

2.8 Conclusion

CARC believes firmly that three principles—comprehensiveness, fairness, and rigour—should underlie all environmental assessments. We conclude that the BHP assessment failed to live up to these principles. The advice it will give can therefore only be partial, untested in parts, and not fully representative of the legitimate interests that appeared before the panel.

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The costs to governments in proceeding before making a fuller evaluation of all relevant matters could be very great. We respectfully urge you Mr. Minister to proceed with caution and to take the time needed to consult widely and deeply so that the deficiencies noted above, and any others that appear once the panel report is released, can be rectified.

21 June 1996
Honourable Sergio Marchi
Minister of Environment
House of Commons
Ottawa, ON
K1A 0A6

Dear Minister Marchi:

Re: EARP panel recommendations on BHP Diamonds project

On June 21, the Canadian Arctic Resources Committee circulated to you our critique of the environmental assessment process, as we observed it during the review of the BHP Diamonds project in the Northwest Territories. We have now completed our review of the Environmental Assessment Review Panel's report. The recommendations made by this panel reflect the flawed process used for this assessment.

The recommendations are generally vague, and often defer action on critical issues to the future or other processes. The panel discussed issues raised during the hearings but failed to make recommendations in such crucial areas as:

- sustainable development and cumulative effects;
- closure and reclamation;
- alternatives to the project or alternative methods of carrying out the project;
- wilderness and protected areas; and
- impacts on traditional resource harvesting activities

CARC makes the following recommendations for terms and conditions on the BHP project. Detailed briefing notes on the rationale for these recommendations are attached to this letter.

THAT BHP be required to post bonds for reclamation and clean-up.

THAT production and operational costs be publicly reported.

THAT the draft surface lease be released by DIAND and the proponent with an appropriate review period for public comment.

THAT Impact and Benefit Agreements with affected aboriginal groups be completed prior to project construction and operation. This may mean obtaining the consent of the Dene, Metis and Inuit for the project to proceed, or a process of binding arbitration for IBAs within predetermined time frames.

THAT an independent project monitoring committee be established with representation from the major stakeholders to oversee all project monitoring by BHP and the government, including environmental and socio-economic effects.

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THAT the project monitoring committee be embedded in the terms of regulatory approvals issued for this project including the surface lease and water licence.

THAT, as a condition of the surface lease, BHP be required to fund all the research associated with effects monitoring on its claims block.

In addition, over a longer term, we recommend:

THAT greater effort and resources be devoted by the federal government towards a fair and just settlement of Dene claims in the region. Federal land claims policy re: land selection and interim protection should be reviewed, in the light of evident inequities.

THAT governments review the West Kitikmeot-Slave Study after six months, to determine if the study is able to follow up on recommendations directed to it by the panel.

THAT the economic rent regime for minerals in northern Canada be reformed to include a "Sustainability Fund" for community and regional-based research and more sustainable economic development initiatives.

THAT procedures for public reviews under the new Canadian Environmental Assessment Act be reformed, to ensure that the procedural problems we noted with this review are not perpetuated under the new Act. (Our critique of the public review process was distributed to you on 21 June.)

The Canadian Arctic Resources Committee believes that these recommendations, if adopted by the federal Cabinet, would go a long way to addressing the real opportunities and challenges posed by the BHP project. We would be happy to meet with you to discuss these ideas further.

Yours sincerely,

*Marina Devine
Chairperson*

[Editor's note: This letter was also addressed to Honourable Ron Irwin, Minister, Indian Affairs and Northern Development.]

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