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March 5, 2019

Kevin Jardine
Associate Deputy Minister
Environmental Assessment Office
by email to: Kevin.Jardine@gov.bc.ca

Mr. Jardine:

Thank you for your letter dated February 4th.

We will prepare the draft SAIR for review. We expect that we will require 30 days to provide that document.

Our issue with the SAIR has to do with the fact that the original decision announced on October 1, 2012 was based on the referral documents provided by Derek Sturko to Ministers Lake and Coleman. It appears that the original decision was based on incorrect information.

The Recommendations of the Executive Director Report states on Page 31 that "EAO is satisfied that the Assessment process has adequately **identified and addressed** the potential adverse environmental, economic, social, heritage and health effects of the proposed Project, having regard to the successful implementation of the conditions and the mitigation measures set out in Schedule B to the draft EA Certificate" and then the final 2 pages recommends against the granting of the certificate. That page also brings in a risk/benefit approach which was **not part of the original terms of reference** for the application.

Page 32 of that document contains the following statement as one of the reasons for the recommendation not to issue an EAC: "the location of the proposed Project directly adjacent to Morrison Lake, which has a genetically unique population of sockeye salmon **at the headwaters of the Skeena River** that could be impacted if the Proponent's mitigations measures are unsuccessful". The Skeena River originates at the southern end of Spatsizi Plateau, in a valley between Mount Gunanoot and Mount Thule, south of the Stikine River watershed. It flows south-east, then flows westwards, then it turns south, then it takes an eastward turn, then flows south again. It continues through to Hazelton, where it receives the waters of Morice-Bulkley River, and turns south-west. It then heads south-west through Terrace and continues westwards, then flows into the Pacific Ocean. Morrison Lake is **located at the eastern edge of the Skeena River watershed**.



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Morrison Lake drains via the Morrison River into the northeastern arm of the Babine Lake (175 km long). Babine Lake flows into Nilkitkwa Lake and then into the Babine River. The Babine River **meets the middle section of the Skeena River** approx. 50 kms north of Hazelton. From this meeting, the Skeena River flows approx. 225 kms to the ocean.

The powerpoint which was a part of the referral documents for the decision also contained inaccuracies. According to Derek Sturko's affidavit, it "was a document that EAO project director Chris Hamilton prepared at my direction and with my input, with the aim of providing a **high-level visual overview of key information** in the Assessment Report, Recommendations, and submissions contained in the referral package."

On the first slide our Company's name shows as "**Booker Pacific Minerals Inc.**"

On the fourth slide, it states that the project components list includes "sludge storage facilities". The mine plan does not include a "sludge storage facility".

On the fifth slide, the Estimated Capital Investment is shown as \$2.3 billion (life of mine). According to our NI 43-101 feasibility study, the total expenditures by the Company for the life of the mine are estimated as \$4.7 billion.

That slide also showed that the Total provincial revenue over project life (construction and operations) as \$64.5 million. The BC government's input-output model was used to estimate the economic effects for both the construction and operations phases of the proposed Project and it calculated the revenue (over the life of the mine) for BC Mineral Taxes alone would be \$208 million.

The twelfth slide states the EAO Conclusion of "If mitigation measures and commitments proposed by Proponent are successfully implemented, they will prevent or reduce potential proposed Project impacts such that no significant adverse effects are expected to occur". The IF at the beginning implies that there is doubt about the effectiveness of the mitigations proposed and of the ability of PBM to implement them. That determination is one of the key aspects of the EA process and PBM has committed in writing to comply with those conditions.

Because of the incorrect information provided to the Ministers, and the statement from the EAO representatives that we would need to start the entire process again if we wanted the certificate, and that we could not get the Ministers or the EA to address any of the errors or even review the facts, we had no choice but to seek the assistance of the court to preserve the progress we had made to date.

BC Supreme Court Justice Affleck stated "In my view the petitioner (PBM) reasonably expected that it would be given the opportunity to be heard when serious concerns were expressed by others about the project. The user guide reinforced the expectation that the petitioner would be entitled to know of concerns and respond to them. Throughout the process it had been given that opportunity. In my view it was reasonable that it would expect to be able to respond if concerns

were raised by the executive director himself of such significance that he would recommend against granting the certificate.”

Justice Affleck continued “The petitioner was aware that when the package was referred to the ministers for decision it was the intention of the EAO to highlight continuing concerns. The petitioner was made aware of those concerns and was content that the referral proceed on that basis. The respondents take the position that the petitioner in some sense simply took its chances. There may be some substance to that assertion but the petitioner could not know that its chance of success had been greatly diminished because the executive director himself intended to make forceful recommendations to the ministers against issuance of the certificate. In my opinion the petitioner ought to have been entitled to know at least the essence of the adverse recommendations and ought to have been entitled to provide a written response. In my view, the petitioner legitimately believed that if the assessment report concluded that a project would result in no significant adverse effects the executive director would not be overtly hostile to the issuance of the certificate.”

The remedy from the court was that “The petitioner is entitled to a declaration that the executive director’s referral of the application for a certificate to the ministers and the ministers’ decision refusing to issue the certificate failed to comport with the requirements of procedural fairness. There will be an order in the nature of certiorari quashing and setting aside the ministers’ decision and **an order remitting the petitioner’s application for a certificate to the ministers for reconsideration.** On the reconsideration **the petitioner and the interveners** will be entitled to be provided with the executive director’s recommendations, if any, to the ministers, and will be entitled to provide a written response to the recommendations.”

We were very pleased with the judgement from the court as we believed that a new referral would correct the misinformation that was part of the original decision. Unfortunately, that was not the case.

First indication that this process would not go well was that the BC Government **did not acknowledge** the decision of the court. The 30 day period to appeal the decision passed without any communication from the EAO or the ministers.

EAO **did not** comply with the remedy from the court. The judge ordered that our **application** be remitted to the ministers for reconsideration. The working group and the Executive Directors recommendation document were not mentioned as part of the remedy. Only the petitioner (PBM) and the Intervenors (First Nations) were to have an opportunity to respond to any new recommendation of the executive director.

After an additional year went by and more responses were required on matters outside of our terms of reference, including the dam failure at Mt. Polley, we were finally in the decision phase again. We were disturbed that the EAC Rejection Response dated October 30, 2012, prepared by our Qualified Professional (Harvey

McLeod, P.Eng of Klohn Crippen Berger) was ignored. This document was emailed to the ministers and posted on the Company's website in October 2012. And even more disturbing to us was that the Executive Directors Recommendation of September 2012 was part of the referral documents yet again.

With all of the misinformation again presented to the Ministers, we end up with the decision of Further Assessment Required.

It is our understanding that under the statutory rules governing the Application for a Certificate, it is required that an application for an environmental assessment certificate must contain the information that the executive director requires and that the executive director must not accept the application for review unless he or she has determined that it contains the required information. Our application was accepted for review, therefore it must have contained the required information or it should not have been accepted for review in 2012.

In December 2015, our Qualified Professional (Harvey McLeod, P.Eng of Klohn Crippen Berger) proposed that a series of technical sessions be held with EAO, MOE, MEM and First Nations to assist in determining the "Scope" for further assessment. His report stated "For PBM to develop the scope of the SAIR, it will be necessary to engage in discussions with EAO, MOE, MEM and First Nations. Clarity on Policy issues is necessary to gain a clear and transparent understanding of the concerns of the Regulatory agencies and First Nations. The makeup of the Working Group and the allocation of appropriate technical resources and, where required, third party experts, should focus on the key environmental issues, which primarily surround Morrison Lake."

On Dec 23, 2015 you acknowledged our letter and response materials and stated "we will undertake a review of the documents in due course and advise you of our assessment accordingly early in the new year".

On January 21, 2016, you met with Michael McPhie and Raymond Mah at the JJBean Coffee shop on Burrard Street. Taken from notes on that meeting: "The following is a record of my and Ray's conversation with Kevin Jardine earlier today and EAO's view on the letter sent by PBM before Christmas. It was generally a positive conversation but some significant issues were raised and need to be addressed in order to be able to move forward." These items included "**the interpretation of EAO officials was that the letter sent on December 23rd seemed to suggest nothing more needed to be done despite the request for additional analysis and information** provided in the section 17 order. Each point of the AIR should address the main questions of the Order, what the main issues are and how the company intends to address them. In many cases the information might already exist, in other cases new information is required or new studies or analysis must be undertaken. EAO will not convene a meeting of experts until this is provided. A letter will be sent to PBM in the near term stating what is needed."

On February 10, 2016, PBM received your letter. After repeating that the scope of the further assessment is set out in the Order of July 2015, and repeating that the next step was to begin preparing the SAIR, and that feedback would be given **after** the draft SAIR was submitted to the EAO.

On April 5, 2016, John J.L. Hunter, QC, of Hunter Litigation Chambers sent a letter to the attention of Mary Polak, Minister of Environment and Bill Bennett, Minister of Energy and Mines, which stated (in part) as follows: "Pacific Booker does not wish to engage in further litigation in respect of this application and hopes to work with your offices to clarify the nature of the proposed further work set out in Schedule A, and in particular the environmental concerns that the proposed scope of further work is intended to address and the extent to which those concerns may already have been addressed in the exhaustive work that has been done by Pacific Booker in connection with its application to date. Consistent with this goal, Pacific Booker provided a supplemental submission in December 2015 that was intended to seek such clarification. The response received from Associate Deputy Minister Jardine was that "the next step in the process is for Pacific Booker Minerals to begin preparing the SAIR. The SAIR requirements are detailed in the Order and should be completed as directed." Pacific Booker would very much like to work with your offices to address any remaining environmental concerns associated with the proposed project but requires more precision than is set out in Schedule A as to what new work is required in order to do that. Pacific Booker does understand from the Section 17 decision that there remain concerns about the proposed project's impact on Morrison Lake and we understand Pacific Booker plan as a gesture of good faith to commence further monitoring of the water in this regard. **It appears from a review by Pacific Booker's technical staff that many of the other concerns sought to be addressed in the work proposed in Schedule A have been addressed by work already completed.** In this regard, our view is that a meeting between technical staff of our client and your offices to clarify the precise nature of the environmental work is required by Schedule A to address any remaining concerns prior to preparing an SAIR.

On May 4, 2016, you responded to Mr. Hunter's letter and stated "In your letter, you indicate that Pacific Booker's technical staff has reviewed the work already completed by Pacific Booker against the scope of further assessment outlined in Schedule A, and have concluded that many of the concerns outlined by the Ministers have been addressed. The legal Order requires the development of a draft Supplemental Application Information Requirements (SAIR) document for submission to EAO. Once approved, it would be on this basis that Pacific Booker would begin preparing their Supplemental Assessment Report (SAR). Should Pacific Booker have the information and analyses completed with which to complete the SAR, in accordance with the SAIR, then the process of developing the documents **will presumably be simplified.** The Order, however, stands."

At this point and with the election coming in 2017, we were not prepared to proceed on the SAIR without the possibility of having discussions on exactly what was required for the application to proceed with any possibility of getting an approval.

We are now prepared to proceed with the hope and expectation that a meaningful two way discussion on the necessary details will be part of the next phase in our long stay in the EA process.

Respectfully,



John Plourde
President/CEO
Pacific Booker Minerals Inc.

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