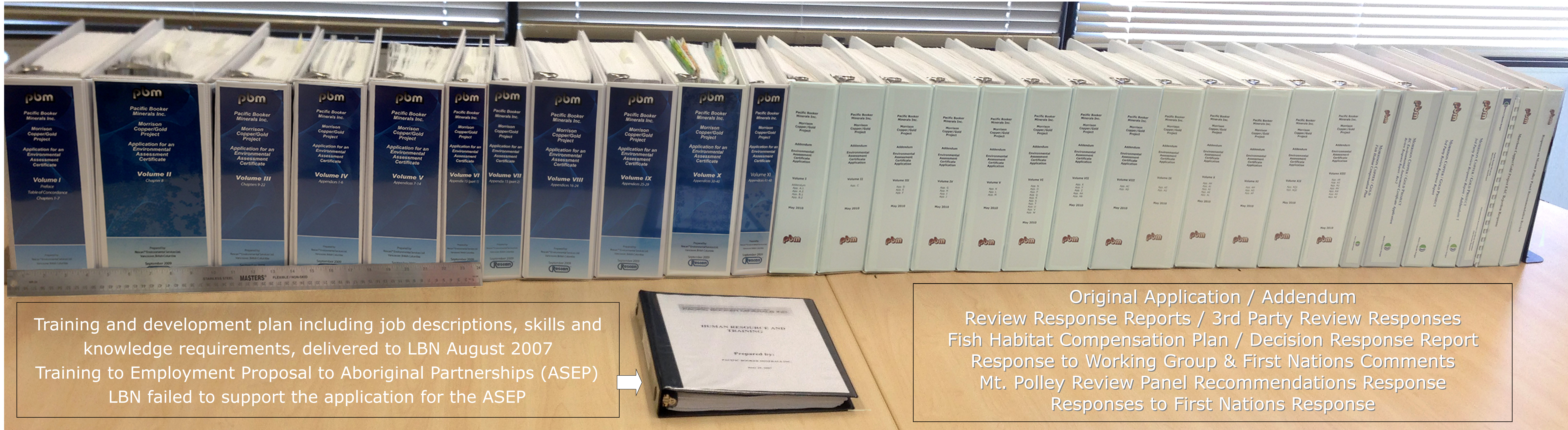


Morrison Copper/Gold Project



Training and development plan including job descriptions, skills and knowledge requirements, delivered to LBN August 2007
Training to Employment Proposal to Aboriginal Partnerships (ASEP)
LBN failed to support the application for the ASEP

Original Application / Addendum
Review Response Reports / 3rd Party Review Responses
Fish Habitat Compensation Plan / Decision Response Report
Response to Working Group & First Nations Comments
Mt. Polley Review Panel Recommendations Response
Responses to First Nations Response

EA Reports Submitted - Cost: about \$10million

Application report stating EAO satisfaction with First Nations and public consultation, potential for significant adverse effects and mitigation conditions prepared by Environmental Assessment Office, Chris Hamilton, Project Assessment Director, dated August 21, 2012. Draft Recommendations of the Executive Director Report, dated August 13, 2012, showing recommendation to issue (OR??? to issue/not issue/ask for more information). Also states that CEAA concludes that the project is not likely to cause significant adverse environmental effects. Final Version of the Recommendations of the Executive Director Report, dated September 20, 2012, recommending refusal from Derek Sturko, Associate Deputy Minister and Executive Director. Refusal of certificate decision by Terry Lake as Minister of Environment and Rich Coleman as Minister of Energy and Mines on September 24, 2012 and announced on October 1, 2012.

Excerpt from Court Transcript from Pacific Booker Minerals Inc. v. British Columbia (Environment) 2013 BCSC 2258

Day 2: Judge: My use of the word sham yesterday was not meant to imply that this was all some kind of a phony exercise. There's obviously been an enormous effort been put into evaluating this project by people within the government and, of course, by the petitioner, but--it's clear that it's an impressive effort. My concern that I expressed yesterday is driven by the fact that what happens here is that eventually the petitioner is told you have reached the point where we are satisfied that the potential environmental impacts can be adequately mitigated. And, well, in Exhibit double C that you referred to a moment ago you read a passage under the heading of next steps where it's expressly said that -- the expression is used again that the potential for significant adverse effects on environmental, social, economic, health and heritage value components can be mitigated or avoided. And, of course, that's a theme throughout. And my concern has been that the petitioner engages in the process and whatever the background of all this is that you've taken me through, the outcome of all that is that the petitioner is advised that it has achieved what it's asked to achieve. At least, that's the way it appears to me at the moment. And as you said a moment ago, perhaps the project hit some pretty low points at times and, in fact, it might have been moribund, to use your word, at one point. But then the petitioner does things to get it up and going again. And, ultimately, as I say, it comes to the point where it has jumped through all the hoops. And, then, notwithstanding that, the recommendation goes forward to the ministers that they should decline the certificate. That's what I meant by sham. That you -- to put it a bit differently, you -- you kick the ball and it goes through the goalpost, but then the referee says no, sorry, we moved the goalpost just before you kicked the ball or just after you kicked it, however the metaphor works. That's the sort of concern I have.

Excerpt from Reasons for Judgment from Pacific Booker Minerals Inc. v. British Columbia (Environment) 2013 BCSC 2258

[1] For several years PBM has been working towards obtaining an environmental assessment certificate to enable it to construct and operate a copper/gold and molybdenum mine adjacent to Morrison Lake, 65 kilometres northeast of Smithers. In August 2012, the MOE and MEM&NG received a final assessment report from the executive director of the EAO which concluded that although the project would not result in any significant adverse effects with the successful implementation of mitigation measures and conditions, he recommended the ministers refuse to issue the certificate. In September 2012 it was rejected.

[5] My understanding of the petitioner's position is that if the respondents' arguments are correct, the process employed for applying for a certificate in this instance was fundamentally unfair. It placed the petitioner in the invidious position that, even though it had met the criteria for success in obtaining a certificate, and had been informed that the report to the ministers would conclude that the project posed no unacceptable environmental hazards, the executive director's recommendation to the ministers to refuse the certificate, on other criteria, unknown and unknowable to the petitioner before the decision was made, was *ultra vires*. (definition of *ultra vires*: beyond one's legal power or authority.)

[143] More procedural protections are afforded when the decision determines the issue and further requests cannot be submitted. As well, procedural requirements may be relaxed in cases where the function of the decision maker is primarily one of managing competing interests in a regulatory matter. As I have already found I do not accept that the language of the *Act* informs the duty of fairness by defining it in some measure. The *Act* does not permit an appeal of the ministers' decision. However, the consideration that the petitioner is entitled to submit a revised application for a certificate must be acknowledged, even though in my view, it is somewhat of a chimera (definition of chimera: a monster from Greek mythology that breathes fire and has a lion's head, a goat's body, and a snake's tail: something that exists only in the imagination and is not possible in reality). The petitioner has already engaged, in vain, in a very lengthy and expensive process and can have little confidence that if it returned to the task one more time it would have any greater prospect of a successful outcome.

[148] The petitioner's right to procedural fairness was respected throughout the several years of the assessment process. The petitioner was encouraged to participate at every step and had been kept informed of the concerns of others affected by the project and had been given a full opportunity to respond to them. Its complaint is that in the final crucial stage of the referral to the ministers, when the executive director firmly put his thumb on the scale, the petitioner could not see that he had done so, let alone given the opportunity to attempt to restore the balance.

[154] 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* (definition of *certiorari*: A formal request to a court challenging a legal decision of an administrative tribunal, judicial office or organization (eg. government) alleging that the decision has been irregular or incomplete or if there has been an error of law.) quashing and setting aside the ministers' decision and an order remitting the petitioner's application for a certificate to the ministers for reconsideration.

Full document can be found online at www.courts.gov.bc.ca. The link is also shown in our news release dated December 19, 2013 and can be found on our website on the news releases tab.