Pacific Booker Minerals Inc. versus the Minister of the Environment and others

Why PBM went to court

The decision was announced that Minister Terry Lake (Environment) and Minister Rich Coleman (Energy, Mines and Natural Gas) had decided not to award PBM the Certificate. This decision was unexpected as PBM was advised that it had met the necessary information requirements, received the verdict of no significant adverse effects and progressed through the consultation obligations. The draft recommendation report recommended the granting of the Certificate. The final recommendation report contained misinformation and was accepted by the Ministers and the decision was made and announced without any advance notice.

The Canadian Press on Oct 01, 2012: Pacific Booker Minerals Inc. had proposed the mine at Morrison Lake, a 15-kilometre-long lake surrounded by Crown land near Smithers. The lake is at the headwaters of the Skeena River, which produces the second-largest number of sockeye salmon in B.C. "This is a part of the province that has a genetically unique species of salmon that could be put at risk," said Environment Minister Terry Lake. Lake said there were many factors about the proposal that took him and Mines Minister Rich Coleman out of their comfort zone, including a five-square-kilometre liner of the mine's tailings pond. "This one simply had too many risks associated with it. We didn't have a high enough confidence level to give it a 'Yes'," Lake said. The B.C. government has faced heavy pressure recently to reveal its stand on the environmental impacts of the proposed Enbridge pipeline between Alberta and B.C. Lake said one had nothing to do with the other and each project is judged on its own merits. "It would send a very negative message to the investor community if we were to pick things to say 'No' to just to make a point." A federal environmental panel hasn't yet issued a decision on Pacific Booker's project, but Lake said the provincial government considers the current mine proposal finished. If the company wants to continue to pursue the mine, it would have to reapply and start the process over again with a new proposal. "Obviously it would have to look substantially different than this one in order to provide the confidence that it could work." Lake said several of the nearby First Nations had also raised concerns about conservation of habitat and fish in the area if the mine was approved. The B.C. Liberals made speeding up the permitting process for new mines part of their jobs strategy announced last fall. The government said then that it had a goal of giving eight new mines the go-ahead by 2015, however, the operations were not named. B.C. Premier Christy Clark said Monday the rejection shows the province has a rigorous environmental process. "I hear our critics talking about how our environmental process approves everything and that's just simply not true."

Brian Morton, Vancouver Sun on Oct. 1, 2012: Plans for a copper and gold mine in the province's northwest have been rejected by the B.C. government because it could endanger salmon in the Skeena River. The decision came as a surprise to the nearby Babine Lake First Nation, which had raised concerns that the mine would impact habitat and fish in the area. "We're very happy," said Chief Wilf Adam of the decision, which was announced Monday. "It's about time government listened to us. It's all about the protection of the salmon. "We're not against development, but if it will affect us severely in the resources we depend on, like salmon, we have to take a stand. I was very surprised. I was bracing for a fight with the government." However, Environment Minister Terry Lake and Energy, Mines and Natural Gas Minister Rich Coleman refused to issue an environmental assessment certificate, saying the government's environmental assessment of the project found the mine could affect sockeye salmon populations as well as water quality in the lake, and that the long-term environmental risks of the mine outweighed the potential benefits to the province.

Vaughn Palmer, Vancouver Sun columnist, October 18, 2012: "There just wasn't enough information and a confidence level that would allow us to go forward on it," Lake told me during an interview on Voice of B.C. on Shaw TV after the decision was made public. "I think we owe it to a company like that to give them a clear no, rather than give them a whole list of conditions that are very, very difficult to meet."

Les Leyne, The Victoria Times Colonist on October 10, 2012: Lake said Sturko considered the EAO document, but took other reports into account as well, as he is expected to do. He said it came down to not having a high degree of confidence that all the mitigation efforts devised during the years the mine was in the approval process would work. Lake said some of the measures - like a five-square-kilometre membrane on the bottom of a lake - were "way outside the box," and he associated it with "mining on the moon. "He found that despite all the study, there were still unanswered questions. Sturko was named deputy minister of agriculture soon after, a move Lake said arose out of a coincidental deputy shuffle.

Fasken Martineau Environmental Bulletin (Morrison Copper/Gold Mine project refused Environmental Assessment Certificate) November 26, 2012: While it was not clearly stated, the nature of the Proponent may also have been a factor in the agencies' concern regarding environmental liability. MEM's preliminary analysis of the reclamation, closure and environmental liabilities for the proposed project was in excess of $300 million. MEM indicated that given the risk to the province associated with a liability like this, the full costs of the liabilities would likely have to be covered by bonding requirements under the Mines Act. This would be a significant challenge for any proponent, let alone a company the size of Pacific Booker.

Shortly after the decision announcement, the EAO came to meet with PBM and said that the only option available to PBM was to start the Environmental Assessment process again. After 10 years and millions of dollars spent, that was not an option for PBM, mostly because there was no indication that the process would be any different than already experienced. After many attempts to address the misinformation that resulted in the negative decision, the only method left to address the unfairness of the decision was the courts.

pbm

EXCERPTS from the Transcripts
Court Days--August 7 to 9, 2013

MR. HUNTER: This is a judicial review application brought by Pacific Booker with respect to an environment assessment that was done a couple of years ago and which resulted in the denial of a certificate for a mine. There are two interveners both representing First Nations. LBN council brought intervention application a few weeks ago and was granted limited intervener status and with respect to the Gitxsan, they came in rather late, but in all the circumstances we just consented to the intervention. Now, to open a mine of course one needs a certificate under the environmental assessment procedures and statutory provisions in British Columbia and so Pacific Booker applied for that environmental assessment many years back and has worked on that assessment for the better part of a decade, and as you probably know, the way the assessment works is the environment assessment office sets some terms of reference, then there are meetings back and forth with the proponent, the environmental assessment office indicates concerns they have, the proponent is invited to try to satisfy the environmental assessment office that it can meet those concerns and on it goes back and forth, and this happened in this assessment process, as you will hear in a few moments in some detail, for many, many years at the cost of about $10 million by Pacific Booker to go through this assessment and to address all of the issues that the EAO raised. At the end of that process the environmental office issued an assessment and under the statute an assessment is to be, must be made and then must be given to the two ministers who make the decision as to whether the certificate is issued, so at the end of this process an assessment was issued and it was an assessment that -- and the issue for the assessment is, are there any material adverse effects, will there be any material adverse effects, environmental effects from this project that cannot be mitigated by the proponent and the proponent's plans, and often in these assessments at the end of it all there will maybe be one, maybe there will be two and then there will be a question of whether the mitigation can be altered or changed or whether they are acceptable effects in the total scheme of things. In this particular case, the environmental assessment office concluded there were **no adverse effects** that could not be reasonably mitigated by the plans that the proponent had, and the proponent, Pacific Booker, was made aware of that assessment as it was going to the ministers and obviously that was a source of some satisfaction because with no material adverse effects that cannot be reasonably mitigated, one would expect, unless there was **some other kind of policy concern of the ministers that lay right outside the environmental world**, which is possible, the ministers have a broad discretion, but what one would expect with having gone through that process and achieved that, what I call a clean report because yes, there will be effects, yes, they have to be mitigated, but the environmental assessment office has looked at it and said these are reasonable mitigations, there should be no material adverse effects, one would expect to get the certificate. The statute says that the assessment has to be provided to the ministers by the executive director of the environmental assessment office and the executive director can also provide recommendations to the ministers and reasons for his recommendations. He doesn't have to, has to provide an assessment, has the option of providing recommendations as well, and our position is that's there for ambiguous assessments. If an assessment comes in and says there will be two material adverse effects one might say, well, how serious are they, should we give them a certificate anyway, should we hold the certificate. The executive director might say these aren't really that serious, so you should issue the certificate, in my view that's my recommendation, or no, they are very serious, you shouldn't. **Here there's a clean environmental assessment, no adverse effects and yet it turned out that the executive director recommended against issuing a certificate**. The executive director has given an affidavit and said, well, I wasn't really satisfied, I thought there were other concerns that I had and issues, and Ms. Glen will take you through his letter because he does give some reasons for this, and Pacific Booker never saw that recommendation, never had an opportunity to address these concerns that the executive director said he had notwithstanding the clean assessment that his own office has provided. The statute in fact says it has to be an assessment prepared by the executive director that goes to the ministers. He doesn't have to prepare it personally obviously, but it's his responsibility, it's his assessment, **so he sends an assessment up to the ministers and says there will be no adverse effects that can't be mitigated and at the same time he sends a recommendation saying but I recommend against.** $10 million on this assessment, this process back and forth making changes all up in smoke. The ministers' decision is flawed, either because they relied upon, understandably because it was put before them, a recommendation which was **ultra vires** for the executive director to make in these circumstances or because they are the end part of a process that was procedurally unfair to Pacific Booker and in either case we don't ask Your Lordship to issue the certificate, although we wouldn't turn it down, but we recognize that's not available through judicial review, we ask that it be turned back to the ministers and depending on which route is taken either to the ministers directly to consider without this flawed recommendation or back to the EAO and the executive director, to provide an opportunity for Pacific Booker to deal with the issues that are raised in this negative recommendation before it goes to the ministers so the ministers have a proper information base to make a decision. That's what we're seeking in this application. You will hear a lot about First Nations concerns in the assessment because they weren't overlooked, they were dealt with in great, great detail and at the end of the day the assessment is as clean as it can be for someone who wants to start a mine, and yet the executive director took it upon himself, I say completely beyond the scope of his statutory responsibilities and authority, to recommend against.

MS. HORSMAN: The Morrison Lake mine proposal envisioned the operation of an open pit copper, gold, molybdenum mine which was to be constructed about 200 meters from the banks of Morrison Lake, and Morrison Lake is in the Skeena watershed, it's a spawning ground to a population of genetically unique salmon which in turn contribute to the salmon population of the Skeena River, so an area of high ecological value. So the concern was not so much with whether the Morrison mine proposal on technical review demonstrated adverse effects assuming successful implementation of mitigation measures, because that's what the assessment report assumed, the concern was with the magnitude of the potential environmental liability risk if mitigation measures failed, because if mitigation measures failed in this case the result could be the irremediable contamination of the Skeena watershed and that was an ongoing concern.

THE COURT: All right. What is troubling me at the moment, and I'll express my mind on this so you can respond to it, is that what appears so far from what I've heard from the petitioner is that it went through an elaborate, expensive process over many years which involved a great deal of consultation with others and the result of all that was that there was an environmental assessment which, from the point of view of the petitioner, was entirely satisfactory, that is, it had met the test imposed by the Environmental Protection Act in the circumstances that it found itself, at least that's the way it appears at the moment. Then it knows that notwithstanding it has met the test that the ministers have the ultimate decision on what's going to happen, but the petitioner reasonably expects, and you may tell me this was not a reasonable expectation, but the petitioner reasonably expects that what the executive director has determined is that the risks, I'm putting this rather loosely, that the risks and benefits can be adequately -- that the benefits outweigh the risks, to use a rather loose expression, that the environmental mitigation overcomes the significant problems. Then the executive director, notwithstanding that, tells the ministers that they should decide against the petitioner. Now, putting aside the petitioner, as your friend Mr. Hunter says, didn't have an opportunity to respond to what the executive director had to say to the ministers, it appears that the petitioner went through **an elaborate process, satisfied all the environmental concerns that needed to be satisfied and then a decision is made against it not by the ministers, but by the executive director who had been engaged with them entirely throughout the process and it looks like a sham**, they've been drawn into something in which they've done everything they are supposed to do and they still, they are handed the [indiscernible]. So, on the surface it looks like a sham. You can tell me why that's not so.

MS. HORSMAN: Now, My Lord, when we left off yesterday afternoon, it was with Your Lordship's suggestion to me that the submissions made to you may have left the impression that the environmental assessment process had been -- a sham was, I think, the way Your Lordship put it. It was a suggestion that, frankly, took me by some surprise, for a number of reasons, apart from what I know about the process, but also because I didn't understand my friends were making the allegation that the EAO assessment process was a sham.

THE COURT: Now, just before you do that. 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 that -- 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 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. And, no doubt, you're going to get to that.

MS. HORSMAN: With your comment about they jumped through all the hoops, they hadn't jumped through all the hoops, because the most important hoop is to get the certificate from the ministers. And that's an entirely separate statutory decision making under the Act. And my concern with the way my friend has framed the argument and with the notion that having achieved a favourable assessment report that ends any consideration of the environmental, economic, social, heritage impacts, effectively collapses the ministers' policy making decision into a technical review and their conclusions of the technical review report.

THE COURT: Well, as I understand your friend's position in respect of the, I suppose, what might be called the first issues that -- I'll characterize it as the jurisdictional issue, the question of the vires of what the executive director did, I think your friend's position is that once the conclusion had been reached that any adverse environmental effects could be adequately mitigated it wasn't open to the executive director then to recommend against the project. The minister might look at a variety of factors and decide the project wasn't going to go forward, but the executive director was more confined in what he could do. There has to be some limit within the statutory scheme to his authority and he did not have authority to, I suppose your friend would say, simply ignore the information that he had, which was proper mitigation, and recommend against the project.

MS. HORSMAN: First of all, Mr. Sturko, by no stretch, can be taken to have ignored the conclusions of the environmental assessment report. Most of his recommendation report summarizes it. If there's any doubt as to what the environmental assessment report concluded, it's not in doubt when you read Mr. Sturko's recommendation document.

THE COURT: Ignored is not the best word that I could have used to characterize your friend's position. I think Mr. Hunter says that once Mr. Sturko had reached the conclusion that mitigation could be successful, that he then had no basis to make the recommendation that he did.

MS. HORSMAN: I expect no further right of replying to the interveners or my friends, but I just had a word or two to say about the interveners' submissions. I just wanted to make the point, 'cause I expect my friends will have submissions to make to you about the government's consultation duty when it comes to First Nations and their involvement in these kinds of environmental assessment review processes. And, in my submission, this is not a case that concerns constitutional consultation and Your Lordship doesn't need to deal with that very difficult area. **The assessment report found that the consultation duty had been met.** The ministers didn't reach any contrary conclusion. They just pointed to the fact that consultation had demonstrated the strength of the First Nation claims and their opposition to the project as factors to be considered in the public interests, as they were entitled to do. There's no purpose in referring this project back as it is, because the ministers have already decided it's not in the public interest to allow it to proceed in this form.

Interveners --(Ms. Nouvet spoke for the Lake Babine Nation and Ms. Friesen for the six Gitxsan hereditary chiefs). Both provided information in regards to their traditional territories, use of salmon and other fish for sustenance and ceremonial purposes and about the Crown's constitutional duty to consult with and provide reasonable accommodation in respect of asserted s.35 rights. They stated that this judicial review will not determine whether the Crown met its consultation obligations, nor will it determine whether the Crown's rejection of the mine was an appropriate accommodation. Both parties requested that if the court does quash the ministers' decision and order a reconsideration of the project, Pacific Booker should be directed to make its additional submissions to the EAO rather than to the ministers. And the EAO will then have an opportunity to manage the process and insure that appropriate analysis of the proponent's information is carried out.

REPLY SUBMISSIONS BY MR. HUNTER

THE COURT: That takes me to asking you about the remedy that you seek. Just to be certain that I understand what you are asking for, you want the question of the application for the certificate to be sent back to be reconsidered by whom?

MR. HUNTER: By the ministers. My preferred remedy is that it be sent back to the ministers for consideration based upon the assessment and anything else they regard as relevant, tracking the language of the statute, but not this recommendation document, that not be before them. I should just add there was much said about, well, if it goes back we have to be able to make submissions and they're no doubt going to make submissions and there will be a lot of different things to say. My preferred remedy Sur-Reply by Ms. Horsman avoids all of that. I say we should carve out the offending part of this process, which is the executive director's recommendations, take the assessment, give it to the ministers, and then the ministers deal with it, and no one makes any more submissions. The secondary remedy, if we're on the secondary point, would take it to the EAO and involve more back and forth, I suppose. But the preferred remedy is that it go to the ministers for decision on proper materials, namely the assessment that's been done and such other materials they regard as appropriate but not, specifically not the executive director's document, the recommendation document.

SUR-REPLY BY MS. HORSMAN

THE COURT: Thank you. Well, thank you, counsel. You've given me a great deal to think about. Judgment will be reserved. We will adjourn.

(full text of transcript available at http://www.pacificbooker.com/pdf/combined-transcript-Aug7-9,2013.pdf)

EXCERPTS from Reasons for Judgment
December 9, 2013

For several years the petitioner, Pacific Booker Minerals Inc., has been working towards obtaining an environmental assessment certificate (a "certificate") pursuant to the Environmental Assessment Act, S.B.C. 2002, c. 43 (the "Act") to enable it to construct and operate a copper/gold and molybdenum mine adjacent to Morrison Lake, 65 kilometres northeast of Smithers (the "project"). In August 2012 the Ministers of Environment and of Energy, Mines and Natural Gas ("the ministers") received a "final assessment report" from the executive director of the Environmental Assessment Office ("EAO") which concluded that although the project "would not result in any significant adverse effects with the successful implementation of mitigation measures and conditions", the executive director nevertheless recommended the ministers refuse to issue the certificate. In September 2012 it was rejected. The petitioner applies for judicial review of the ministers' decision on two grounds namely: a) the executive director's recommendation was ultra vires the statutory scheme laid down in the Act; and b) the petitioner was not given notice of or an opportunity to respond to the recommendation of the executive director and therefore was not afforded procedural fairness. The petitioner seeks the following relief: a) a declaration that the executive director's recommendation was ultra vires; b) an order in the nature of certiorari quashing the ministers' decision; and c) an order requiring the executive director to issue a new recommendation consistent with the petitioner's interpretation of the statutory requirements. Alternatively the petitioner seeks: a) a declaration that the process of obtaining the ministers' decision failed to comport with the common law requirements of natural justice and procedural fairness; b) an order in the nature of certiorari quashing the ministers' decision; and c) an order remitting the petitioner's application for a certificate to the ministers for reconsideration with directions from the court.

The Position of the Petitioner on the Facts

The petitioner owns mineral tenures on Morrison Lake in an area claimed as traditional territory by the Lake Babine First Nation ("Babine Nation"). A proposed power transmission line would travel over a portion of territory claim by the Yekooche First Nation. The project would be an open pit mine extracting daily about 30,000 tonnes of ore to produce annually about 130,000 tonnes of copper and gold concentrate. Molybdenum concentrate would also be produced.

Decision on the Statutory Interpretation Question

The executive director's interpretation of the authority given to him to make recommendations pursuant to s. 17(2) of the Act is revealed by the recommendations themselves. The executive director clearly took the view that he was authorized to make recommendations that went beyond the environmental assessment and were not limited merely to passing on the assessment report to the ministers. The executive director considered he was entitled to make a recommendation against the issuance of the certificate even though the environmental assessment report indicated that the project, with successful mitigation measures, would have no significant adverse effects. The question I must answer is not whether that interpretation was correct but whether it was reasonable. It is not necessary that this Court on a judicial review agree with the decision under review. The goal when interpreting any statute is to determine the intention of the Legislature by reading the statute in its context, grammatically and harmoniously as a whole in order to discern its object.

The ultimate task of the ministers was to make a decision about the certificate after taking into account the technical analysis of environmental effects conducted by the EAO; the views of those affected by the project, prominent among which was the objections of First Nations; the risk of long term environmental damage and very substantial remediation costs if mitigation measures were not entirely successful, as well as the benefits to the people of this province of an employment and wealth generating project. They were then to weigh the risks against the benefits and decide whether it was in the public interest that the risks were worth taking. It should not be a surprise that the executive director recommended a "risk/benefit" analysis. The standard of review by which this Court is to measure the executive director's interpretation of his home statute leads to consideration of whether it can be rationally supported. In my view it can.

Decision on the Question of Procedural Fairness

The petitioner complains that it was given no notice of the executive director's recommendations prior to their referral to the ministers, nor before the ministers made their decision. Unlike judicial review of a tribunal's interpretation of the authority conferred on it by its home statute, judicial review of the common law obligation of procedural fairness does not require consideration of the appropriate standard of review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation. The duty to comply with the rules of natural justice and to follow rules of procedural fairness extends to all administrative bodies acting under statutory authority. Within those rules exists the duty to act fairly, which includes affording to the parties the right to be heard, or the audi alteram partem rule. The nature and extent of this duty, in turn, "is eminently variable and its content is to be decided in the specific context of each case". Here, the scope of the right to be heard should be generously construed since the Judicial Council proceedings are similar to a regular judicial process; there is no appeal from the Council's decision; and the implications of the hearing for the respondent are very serious. The respondents submit that the ministers' decision was legislative in nature and therefore not subject to the requirements of procedural fairness. Under the Act, the Legislature has empowered the Executive Director to determine the scope and content of the opportunity to be heard. Common law duties of procedural fairness were supplanted by the scheme of the Act. The process for the assessment provided by the order issued under s. 11 of the Act in this case did not entitle the petitioner to notice of the Executive Director's recommendations. The respondents argue that s. 11 of the Act gives the executive director power to determine "the scope of the required assessment" as well as the procedures and methods for conducting the assessment, and the Act thus eliminates the common law right that might be given to the petitioner to be informed of the executive director's recommendations before they were referred to the ministers. The respondents submit that if such a right is conferred on the petitioners in respect of unfavourable recommendations, other participants would be similarly entitled leading to a "lengthy spiral" of what they characterize as "last-word" submissions to provide fairness to all participants.

Remedy

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. Each of the interveners will be entitled to respond to any written submission made by the petitioner on the executive director's recommendations.

The petitioner is entitled to costs on scale B.

(full text of Judgement available at http://www.courts.gov.bc.ca/jdb-txt/SC/13/22/2013BCSC2258.htm)

Reconsideration Process--2014 and beyond

On January 13, 2014, PBM announced that the 30 day period for the BC Government to challenge the BC Supreme Court decision had ended without challenge. During this 30 day period there was no acknowledgement of the judgement in favour of PBM or of the decision not to challenge the judgement.

Our first communication with the BC Government representatives was on January 24, 2014, when PBM received (SENT VIA EMAIL) a letter from Doug Caul, Executive Director, EAO, as follows: I write further to the December 9, 2013 decision of the British Columbia Supreme Court in Pacific Booker Minerals Inc. v. British Columbia (Environment), 2013 BCSC 2258. In that decision, the Court: • confirmed that the Executive Director of EAO had the statutory authority to make the recommendations he did on August 21, 2012 and September 20, 2012 with respect to the proposed Project; • indicated, however, that PBM should "have been allowed to provide a written response to the executive director's recommendations" and should not have been prevented from "learning at least the substance of the recommendations and thereafter [being] entitled to provide a written response"; • contemplated that in conjunction with the provision of an opportunity to respond to Pacific Booker, "the working group, including the interveners" also be "permitted to respond to the recommendations and to PBM • granted "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" together with "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" and • stipulated that: On the reconsideration PBM 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. Each of the interveners will be entitled to respond to any written submission made by PBM on the executive director's recommendations. By cover of this letter, I formally provide you with a copy of the September 20, 2012 Recommendations of the Executive Director and invite Pacific Booker to respond. As contemplated by the Court in its December 9, 2013 judgment, I will also invite the members of the Working Group, including Lake Babine Nation and the representatives of Gitxsan and Gitanyow Nations, to respond to the Recommendations and to Pacific Booker's forthcoming response to the Recommendations *(there is no mention of the working group in the court judgement, only the interveners (Lake Babine Nation and Gitxsan hereditary chiefs).*

On March 12, 2014, PBM announced that it had submitted a response to the letter from Doug Caul (ADM/ED BCEAO). Klohn Crippen Berger prepared a report that clarifies the remaining concerns of the EAO regarding the Project. This information should allow the EAO and the Ministers to make an informed decision with respect to supporting the conclusion 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 the draft EA Certificate".

On March 12, 2014, Chris Hamilton emailed the EAO Working Group as follows: As you are aware on December 9, 2013 the BC Supreme Court quashed the October 2012 decision of the Ministers declining to issue an environmental assessment certificate for the proposed Morrison Copper Gold Mine Project. The court found that the proponent Pacific Booker should have had the opportunity to provide a response to the September 20, 2012 recommendation of the Executive Director of the EAO against issuance of a certificate. The court ordered that the matter should be remitted back to the EAO to allow for that opportunity of response by Pacific Booker. The EAO has established a process with the proponent Pacific Booker *(process was decided by BC Government without consultation with PBM)* and the First Nations intervenors to govern this remittal process. The process is described in the letter of January 24th from the EAO to Pacific Booker and the Lake Babine and Gitxsan First Nations, which some minor modifications to timelines as set out in subsequent correspondence with is also attached. As you can see, the timelines anticipated that Pacific Booker would provide its response to the Executive Directors recommendations by March 10th, following which members of the Working Group would have an opportunity to comment on any material received from Pacific Booker *(there is no mention of the working group in the court judgement, only the interveners)*. Pacific Booker has now provided our office with its response to the Executive Director's negative recommendation. In accordance with the court's direction, members of the Working Group now have the opportunity of comment on the report provided by Pacific Booker by way of response to the Executive Director's negative recommendation. Without placing restrictions on input, I note it would be helpful if members of the Working Group could focus on the implications of Pacific Booker's response, if any, for the risk/benefit factors highlighted by the Executive Director at page 32 of his September 20, 2012 recommendation.

On July 16, 2014, PBM received a letter by email from Doug Caul (ADM/ED BCEAO) advising that the application for the EAC for the Morrison Project was referred to the Minister of Environment and the Minister of Energy and Mines for reconsideration on July 4, 2014.

On August 19, 2014, Mary Polak, Minister of Environment, suspended the environmental assessment pending the outcome of the Independent Expert Engineering Investigation and Review Panel in relation to the tailings dam breach at the Mt. Polley mine.

On February 26, 2015, PBM received a letter from Doug Caul (ADM/ED BCEAO) providing the opportunity to comment on the Mount Polley Investigation and Report, focusing on the potential implications of the recommendations to Morrison and effects relating to its proposed tailings management facility. He had provided that same opportunity to the Lake Babine Nation, the Gitxsan Treaty Society and the Gitanyow Hereditary Chiefs, stating "any materials provided by them will be forwarded to you, with a short opportunity to respond. The same opportunity to respond to your submissions will be provided to them."

On March 23, 2015, PBM submitted a report to the BCEAO, MEM and MoE in response to the Mount Polley Independent Technical Review Board Panel Report Recommendations. The report, prepared by Harvey McLeod of Klohn Crippen Berger Ltd., continues to support the opinion that the Project has been designed using Best Available Practices and can be safely constructed, operated, and closed to protect the environment. It also states that the design of the Tailings Storage Facility uses Best Available Technologies that are appropriate for the conditions.

On May 11, 2015, PBM submitted a response in response to the Aboriginal groups' comments on both the Mount Polley Independent Technical Review Board Panel Report Recommendations and Pacific Booker's response.

On June 10, 2015, Minister of Environment, Mary Polak, lifted the suspension of the Environmental Assessment. The time period remaining for the decision is 30 days, ending on July 9, 2015.

On July 8, 2015, Minister of Environment and Minister of Energy & Mines ordered that the Project undergo further assessment.

On July 21, 2015, PBM met with the BCEAO and had subsequent meetings with Ministers and Deputy Ministers of the MEM and MOE. The purpose of these meetings were to have preliminary discussions on the potential path forward and to understand the potential expectations of the Regulatory agencies.

On December 23, 2015, PBM submitted a response to the July 2015 decision that the Project undergo further assessment. The response says "A key consideration in development of the SAIR is clarifying the requirements for baseline data and analyses which are part of an EA, whose main objective is to be able to conclude that there are "no risks of significant adverse effects". The document was been acknowledged as received by Kevin Jardine, BCEAO, but no other response has been made.

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