

Insert Date

The Minister
Department of Mines and Petroleum
Mineral House
100 Plain Street
EAST PERTH WA 6004

Dear Sir

Application for Exemption from Partial Surrender Exploration Licence 77/1000

Big Mining Company ('BMC') makes this application to the Minister of Department of Mines and Petroleum's ('DMP') for the exemption from the partial surrender requirements of section 65(1)(a) (b) [delete what is not applicable] of the *Mining Act* 1978 ('Mining Act') [delete what is not applicable] at the expiration of the 3rd 4th year of the term of Exploration Licence 77/1000.

BMC requests that the Minister allow under section 65(1a) of the *Mining Act* 1978 and section 19 of the *Mining Amendment Act* 2004 this application to be made within a shorter period than stipulated. [delete if before the one month before anniversary]

BMC makes this application under section 19 of the *Mining Amendment Act* 2004 and section 65(1a)(b) because exploration was delayed on E77/1000 for a period of 5 months, for reasons which the Minister may grant an exemption from partial surrender that are consistent with section 65(1a) of the *Mining Act* 1978 and section 19 of the *Mining Amendment Act* 2004. The delays to BMC's exploration drilling are as follows:

1. the Programme of Work ('PoW') was lodged with DMP on 6 October 2006 and approved by DMP on 7 December 2006;
 2. the time of commissioning a botanical survey, which was undertaken by Western Botanical on 15 and 16 November 2007 and completed in January 2007; and
 3. a heritage survey was commissioned in December 2006 and the report completed in February 2007, after which drilling commenced.
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1. Under the *Mining Act* a person can not conduct exploration without completing and submitting a PoW application to the Minerals Branch of DMP and receiving approval. BMC lodged the PoW with DMP on 6 October 2006 and approved by DMP on 7 December 2006. While this was being completed BMC's exploration programme was delayed for a period of 2 months (refer to the attached copy of the PoW and letter of approval). The delay is of a type that is consistent with those reasons under the *Mining Act* that the Minister may grant an exemption from the partial surrender requirements under section 65(1a). To quote; a person "*who satisfies the Ministers that (a) by reason of difficulties or delays ... (ii) arising from administrative, political, environmental or other requirements of governmental or other authorities... his exploration programme... could not be undertaken ...the Minister may, if satisfied that a ground for exemption exists, exempt the holder from the requirements of this section....*

Delay caused in Protecting the Environment

2. The conditions on the Licence state that:

"The licensee's attention is drawn to the Environmental Protection Act 1986 and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, which provides for the protection of all native vegetation from damage unless prior permission is obtained".

3. Department of Environment and Conservation defines *rare flora and priority flora* under the *Wildlife Conservation Act 1950 [WA]*; rare flora is defined as:

"Taxa which have been adequately searched for and are deemed in to be in the wild either, rare, in danger of extinction, or otherwise in need of special protection and have been gazetted as such"

Priority Flora is defined as flora under consideration for declaration as *rare flora* but further surveys are required (Priority One to Three) or require monitoring every 5-10 years (Priority Four). *Rare flora* species are gazetted under subsection 2 of section 23 F of the *Wildlife Conservation Act 1950 WA* and therefore it is an offence to "take" or damage rare flora without Ministerial approval. section 23F of the *Wildlife Conservation Act 1950 [WA]* defines "take" as "... to gather. pick. cut, pull up. destroy. dig up. remove or injure the flora to cause or permit the same to be done by any means".

4. The *Environment Protection and Biodiversity Conservation Act 1999* Clth lists Threatened Flora species which are considered of national environmental significance. A person must not take an action that has, will have, or is likely to have a significant impact on a listed threatened species or an ecological community, without approval from the Commonwealth Minister for the Environment, Water, Heritage and the Arts.
5. To avoid damaging *priority or rare flora* and to be able to submit a proposal pursuant to condition 7 of the Licence, BMC commissioned Western Botanical to conduct further botanical studies this spring to enable the identification of all flora species including the *rare and priority flora* over the proposed drill sites (see Figure 2) and access tracks Helen Smith and the Sharyn Smith commenced a 10 day survey on the 14 September 2009 and at the date of this letter are currently continuing the survey. Once the report is complete it is required to be submitted to the Director, Environment, DMP and approved.
6. Therefore, the delay to exploration while undertaking the botanical surveys and awaiting results is of a type that is consistent with those reasons under the Mining Act that the Minister may grant an exemption from the partial surrender requirements under section 65(1a). To quote; a person "*who satisfies the Ministers that (a) by reason of difficulties or delays ... (ii) arising from administrative, political, environmental or other requirements of governmental or other authorities ... his exploration programme... could not be undertaken ... the Minister may, if satisfied that a ground for exemption exists, exempt the holder from the requirements of this section....*"

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Delay caused by Heritage Requirements

7. The conditions on the E77/1000 state that: *'The licensee's attention is drawn to the provisions of the Aboriginal Heritage Act, 1972'. Under the Aboriginal Heritage Act a person must not disturb or destroy an Aboriginal site. Furthermore, the DMP's standard form Programme of Work states that if a person's exploration programme 'partly or wholly intersects the boundary of a registered site' that 'prior to submitting this Programme of Work to the DMP, you must consult with the Department of Indigenous Affairs'.*
8. To ensure that BMC avoided Aboriginal sites within the area of the proposed drilling, BMC commissioned Rory O'Connor in December 2006 to undertake a heritage survey of the area. The field survey was undertaken in January 2007 and the report was completed in February 2007. While the survey was being undertaken BMC exploration was delayed for a period of 3 months (refer to the copy of the front pages of the attached heritage report). The delay is of a type that is consistent with those reasons under the *Mining Act* that the Minister may grant an exemption from the partial surrender requirements under section 65(1a). To quote; a person *"who satisfies the Ministers that (a) by reason of difficulties or delays ...(ii) arising from administrative, political, environmental or other requirements of governmental or other authorities... his exploration programme... could not be undertaken ...the Minister may, if satisfied that a ground for exemption exists, exempt the holder from the requirements of this section..."*.

Recent Exploration on the Licence

9. Since BMC gained an interest in the Licence it has completed the following activities:
10. the Minister may grant an exemption from the partial surrender requirements under section 65(1a) *"... the Minister may, if satisfied that a ground for exemption exists, exempt the holder from the requirements of this section...."*

Should you have any queries relating to this matter please contact me.

Yours sincerely
BMC

Senior Tenement Advisor

#Enclosure

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#date

Prescribed circumstances under section 65(1a)

...the Minister may allow the holder of a licence –

who satisfies the Ministers that (a) by reason of difficulties or delays —

(i) occasioned by law;

(ii) arising from administrative, political, environmental or other requirements of governmental or other authorities, in the State or elsewhere; or

(iii) in obtaining requisite consents or approvals for exploration or for the marking out of a mining lease or general purpose lease in relation to any part of the land, arising from a requirement to conduct an Aboriginal heritage survey on the land to which the application for deferral relates [Regulation 22A(b)(iii)]

in gaining access to the relevant land because of unfavourable climatic conditions [Regulation 22A(b)(v)]

his exploration programme, or the marking out and application appropriate to a mining lease or general purpose lease in relation to the land, could not be undertaken or completed or is restricted in a manner that is, or subject to conditions that are, for the time being impracticable;

... the Minister may, if satisfied that a ground for exemption exists, exempt the holder from the requirements of this section....