

ABOVE THE LAW: ROXBY DOWNS & BHP BILLITON'S LEGAL PRIVILEGES

Introduction

BHP Billiton is planning a massive expansion of the Roxby Downs (Olympic Dam) uranium/copper/gold/silver mine in South Australia.

The mine operates under the South Australian Roxby Downs (Indenture Ratification) Act 1982, which contains numerous legal privileges, exemptions and overrides and effectively exempts Roxby Downs from key environmental and Aboriginal heritage laws that apply everywhere else in SA.

The mine should be subject to standards at least as rigorous as those that apply to smaller projects but there has been no indication from the SA Labor Government that it will repeal the privileges, nor any indication from BHP Billiton that it is prepared to relinquish them and to call for their repeal.

The Roxby Downs Mine Expansion

It is expected that an Environmental Impact Statement for the mine expansion will be released in April 2009 with final approvals expected in early 2010. The Indenture Act is expected to be modified in the first half of 2010.

The scale of the planned expansion is extraordinary - BHP Billiton plans to make Roxby the largest open-cut mine in the world. Export of uranium is expected to increase from an average of 4000 tonnes per year to 19,000 tonnes per year. Copper production is expected to increase from 180,000 tonnes per year to 750,000 tonnes per year, and production of gold and silver is also expected to increase.

The environmental challenges include radioactive tailings management, water consumption and electricity supply.

Tailings: The production of radioactive tailings, stored above ground, will increase to 70 million tonnes annually. Currently, tailings are produced at a rate of 10 million tonnes annually and the stockpile amounts to 100 million tonnes. The tailings contain a toxic, acidic soup of radionuclides and heavy metals. There have been numerous spills and leaks – most significantly in 1994, when it was revealed that three billion litres had leaked from the tailings dams over two years.

Tailings management has continued to be problematic and contentious. Large numbers of bird deaths have been recorded in the vicinity of the dams - over 100 deaths in one four-day period in 2004. Mining consultants Advanced Geomechanics noted in a 2004 report that radioactive slurry was deposited "partially off" a lined area of a storage pond at Roxby Downs, contributing to greater seepage and rising ground water levels; that there is no agreed, accurate formula to determine the rate of evaporation of tailings and how much leaks into the ground; and that cells within a tailings pond covered an area more than three times greater than recommended, requiring "urgent remedial measures".

Water: BHP Billiton proposes an increase in water consumption from 35 million litres daily (from the Great Artesian Basin) to 150 million litres daily (up to 42 million litres from the Great Artesian Basin, the remainder from a proposed desalination plant at Port Bonython). The water take from the

Great Artesian Basin has had adverse impacts on the precious Mound Springs, and while there is no current plan to increase the rate of water usage from the Basin, nor is there any intention to reduce it.

Electricity: Electricity demand for the mine will increase from 120 megawatts to 690 megawatts - equivalent to 42% of South Australia's current total electricity consumption. Electricity will be supplied from the SA grid and/or an on-site gas-fired plant, with no government requirement for any electricity to be supplied from renewable energy sources.

The Roxby Downs (Indenture Ratification) Act 1982

The Roxby Downs mine operates under the Indenture Act, which provides for wide-ranging exemptions and overrides from environmental and Aboriginal heritage protection laws that apply elsewhere in the state.

The Indenture Act provides BHP Billiton the legal authority to override important state legislation including the:

- * Aboriginal Heritage Act 1988
- * Environmental Protection Act 1993
- * Freedom of Information Act 1991
- * Natural Resources Act 2004 (incorporating water management issues)
- * Development Act 1993
- * Mining Act 1971

An indication of the sweeping nature of the legal privileges is the statement in the Indenture Act that:

- "(1) The law of the State is so far modified as is necessary to give full effect to the Indenture and the provisions of any law of the State shall accordingly be construed subject to the modifications that take effect under this Act.*
- (2) Without limiting the generality of subsection (1), in the case of any inconsistency between the provisions of any Act or law and of the Indenture, the provisions of the Indenture shall prevail ..."*

The Aboriginal Heritage Act 1988 is the key law aimed at protecting Indigenous heritage in South Australia. However, under the Indenture Act, BHP Billiton is in a legal position to determine what consultation occurs with Traditional Owners, who is consulted, and nature of any consultation. The company decides the level of protection that Aboriginal heritage sites receive and which sites are recognised. BHP Billiton claims that it fully complies with Aboriginal heritage legislation even though it is not required to do so – if so, the company ought to be willing to relinquish the legal privileges.

Under confidentiality clause 35 of the Indenture Act, BHP Billiton has veto power over public release of information relating to activities undertaken within the 1.5 million hectares covered by the Indenture Act, and related matters such as government/company negotiations. Monash University environmental engineer Dr. Gavin Mudd notes that: "until the Indenture Act is revoked entirely there can be no truly independent, external environmental assessment of the impacts of Olympic Dam."

It is expected that the Indenture Act will be modified in the first half of 2010 as part of the planned mine expansion.

The legal privileges enshrined in the Indenture Act were highly contentious when they were introduced in 1982 and are still more inappropriate as the legislative framework for the proposed expansion of the Roxby Downs mine. They are unprecedented and inconsistent with modern

environmental regulation and social governance practices.

The SA Labor Government has refused to commit to repeal the legal privileges although they are clearly inconsistent with the Government's policy of applying the "strictest environmental standards" to uranium mining.

Nor has there been any indication from BHP Billiton that it will relinquish the privileges although they are inconsistent with the company's policy of meeting "internationally recognised standards". Roxby Downs does not have to comply with South Australian standards let alone international standards. BHP Billiton Chairman Don Argus said in November 2006 that "we will apply the highest standards ... we are acting within the law." However, Roxby Downs does not operate within the law that applies everywhere else in SA.

The proposed expansion of the Roxby Downs mine ought to be subject to legislative and regulatory controls and standards at least as rigorous as those that apply to smaller projects. To apply considerably weaker standards is indefensible.

Please write to the federal and SA Governments and BHP Billiton

Please contact federal Environment Minister Peter Garrett, SA Premier Mike Rann, and BHP Billiton calling for the repeal of the legal privileges in the Roxby Downs Indenture Act.

Peter Garrett MP
Minister for the Environment
PO Box 6022, Parliament House, Canberra ACT 2600
Ph: (02) 6277 7640 Fax: (02) 6273 6101
Email: <Peter.Garrett.MP@aph.gov.au>

Mike Rann
Premier of South Australia
GPO Box 2343, Adelaide SA 5001
Ph: 08 8463 3166 Fax: 08 8463 3168
Email: <premier@saugov.sa.gov.au>

Marius Kloppers
BHP Billiton
180 Lonsdale Street, Melbourne, Victoria, 3000.

More information

Peter Burdon, 'Above the law? Roxby Downs and BHP Billiton's Legal Privileges',
<www.foe.org.au/anti-nuclear/issues/oz/mining/roxby>

Roxby Downs (Indenture Ratification) Act 1982:
<[www.legislation.sa.gov.au/lz/c/a/roxby downs \(indenture ratification\) act 1982.aspx](http://www.legislation.sa.gov.au/lz/c/a/roxby%20downs%20(indenture%20ratification)%20act%201982.aspx)>.

Friends of the Earth <www.foe.org.au/anti-nuclear/issues/oz/mining/roxby>.

*This statement was written by Friends of the Earth, Australia
Anti-Nuclear & Clean Energy Campaign
Contact: Jim Green <jim.green@foe.org.au> 0417 318368*