

**ACTS AMENDMENT  
(MOUNT GOLDSWORTHY,  
McCAMEY'S MONSTER AND  
MARILLANA CREEK IRON ORE  
AGREEMENTS) ACT 1994**

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**No. 29 of 1994**

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**AN ACT to amend the —**

- *Iron Ore (Mount Goldsworthy) Agreement Act 1964;*
- *Iron Ore (McCamey's Monster) Agreement Authorization Act 1972; and*
- *Iron Ore (Marillana Creek) Agreement Act 1991.*

*[Assented to 8 July 1994.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Acts Amendment (Mount Goldsworthy, McCamey's Monster and Marillana Creek Iron Ore Agreements) Act 1994*.

### **Commencement**

2. This Act comes into operation on the day on which it receives the Royal Assent.

**PART 2 — IRON ORE (MOUNT GOLDSWORTHY)  
AGREEMENT ACT 1964**

**Principal Act**

**3.** In this Part the *Iron Ore (Mount Goldsworthy) Agreement Act 1964\** is referred to as the principal Act.

[\* Act No. 97 of 1964.

*For subsequent amendments see 1992 Index to  
Legislation of Western Australia, Table 1, p. 104.]*

**Section 3 amended**

**4.** Section 3 of the principal Act is amended —

- (a) by deleting the full stop at the end of the section and substituting a semicolon; and
- (b) by inserting at the end of the section the following definition —

“  
    **“the second Variation Agreement”**  
    means the agreement a copy of which  
    is set out in the Third Schedule.  
”.

**Section 4B inserted**

**5.** After section 4A of the principal Act the following section is inserted —

“

**Second Variation Agreement**

**4B.** (1) The second Variation Agreement is ratified.

(2) The implementation of the second Variation Agreement is authorized.

(3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the second Variation Agreement shall operate and take effect notwithstanding any other Act or law.

”

### **Third Schedule added**

6. After the Second Schedule to the principal Act the following Schedule is added —

“

#### **THIRD SCHEDULE**

[section 3]

**THIS AGREEMENT** is made the 31st day of March 1994

**B E T W E E N**

**THE HONOURABLE RICHARD FAIRFAX COURT** B.Com., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part **AND BHP IRON PTY. LTD.** ACN 008 852 784 (formerly called CGF Iron Holdings Pty. Ltd.) a company incorporated in the State of Western Australia and having its registered office at Mt Newman House, 200 St George's Terrace, Perth, **BHP AUSTRALIA COAL PTY. LTD.** ACN 010 595 721 (formerly called BHP-UTAH Coal Limited) a company incorporated in the State of the State of Queensland and having its registered office situate at 20th Floor, 167 Eagle Street, Brisbane, **CI MINERALS AUSTRALIA PTY. LTD.** ACN 009 256 259 a company incorporated in the State of Western Australia and having its registered office at 22nd Floor, Forrest Centre, 221 St George's Terrace, Perth and **MITSUMI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 a company incorporated in the State of Western Australia and having its registered office at

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24th Floor, Forrest Centre, 221 St George's Terrace, Perth  
(hereinafter called "the Joint Venturers") of the other part.

**WHEREAS:**

- (a) the State and the Joint Venturers (pursuant to certain assignments) are now the parties to the agreement (as amended from time to time) approved by the Iron Ore (Mount Goldsworthy) Agreement Act 1964 (hereinafter called "the Principal Agreement");
- (b) the State and the Joint Venturers wish to vary the Principal Agreement.

**NOW THIS AGREEMENT WITNESSES -**

- 1. Unless the context otherwise requires the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2. The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1994 or such later date as may be agreed between the parties hereto.
- 3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until -
  - (a) the Bill to ratify this Agreement as referred to in Clause 2; and
  - (b) Bills to ratify the following agreements of even date herewith, namely:-
    - (i) an agreement between the State of the one part and BHP Minerals Pty. Ltd. of the other part called the Iron Ore Processing (BHP Minerals) Agreement;
    - (ii) an agreement between the State of the one part and BHP Minerals Pty. Ltd., Mitsui Iron Ore

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Corporation Pty. Ltd. and  
CI Minerals Australia Pty. Ltd. of  
the other part to vary the Iron Ore  
(Marillana Creek) Agreement; and

- (iii) an agreement between the State  
of the one part and BHP Iron  
Ore (Jimblebar) Pty. Ltd. of  
the other part to vary the  
Iron Ore (McCamey's Monster)  
Agreement

are passed as Acts before 31 December 1994 or  
such later date if any as the parties hereto may  
agree upon.

- (2) If before 31 December 1994 or such later agreed  
date the said Bills have not commenced to  
operate as Acts then unless the parties hereto  
otherwise agree this Agreement shall then  
cease and determine and no party hereto shall  
have any claim against any other party hereto  
with respect to any matter or thing arising out  
of, done, performed, or omitted to be done or  
performed under this Agreement.

- (3) On the said Bills commencing to operate as  
Acts all the provisions of this Agreement shall  
operate and take effect notwithstanding the  
provisions of any Act or law.

4. The Principal Agreement is hereby varied as follows -

- (1) Clause 10(a) -

by inserting after "generate" the following -

"or purchase their electricity requirements from  
generating facilities established under the  
agreement (as amended from time to time)  
ratified by the Pilbara Energy Project  
Agreement Act 1994".

(2) Clause 12 -

- (a) in the marginal note, by deleting "and Secondary Processing";
- (b) by deleting subclauses (1), (2) and (3) and substituting the following subclauses -

"(1) In this clause -

**"aggregate project cost under the Processing Agreement"** means the sum of \$400,000,000 (June 1993 dollars) which is agreed or determined for the purposes of Clause 27 of the Processing Agreement to have been expended on the establishment of facilities for further processing or alternative investments pursuant to that Agreement;

**"approved production limit under this clause"** means the production level (if any) of tonnes of iron ore per annum for transportation from the third mineral lease consented to by the Minister pursuant to subclauses (3a) or (3b) of this clause or such higher number of tonnes per annum as may be consented to from time to time by the Minister pursuant to subclause (8) of this clause and become the subject of proposals approved or deemed to be approved pursuant to subclause (9) of this clause;

**"BHP"** means BHP Minerals Pty. Ltd. and its successors and assigns who are parties with the State to the Processing Agreement;

**"combined limit"** means the aggregate of -

- (i) any approved production limit under this clause;

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- (ii) the approved production limit under clause 11 of the Marillana Creek Agreement; and
- (iii) any approved production limit under clause 11A of the McCamey's Monster Agreement

PROVIDED THAT if any of the approved production limits referred to in paragraphs (i), (ii) or (iii) exceeds 15,000,000 tonnes per annum then in calculating the combined limit such approved production limit shall be treated as being 15,000,000 tonnes per annum;

**"EP Act"** means the Environmental Protection Act 1986;

**"laws relating to traditional usage"** means laws applicable from time to time in Western Australia in respect of rights or entitlements to or interests in land or waters which rights, entitlements or interests are acknowledged, observed or exercisable by Aboriginal persons (whether communally or individually) in accordance with Aboriginal traditions, observances, customs or beliefs;

**"Marillana Creek Agreement"** means the agreement (as amended from time to time) ratified by the Iron Ore (Marillana Creek) Agreement Act 1991;

**"McCamey's Monster Agreement"** means the agreement (as amended from time to time) the execution of which was authorized by the Iron Ore (McCamey's Monster) Agreement Authorization Act 1972;

**"Processing Agreement"** means the agreement (as amended from time to time) ratified by the Iron Ore Processing (BHP Minerals) Agreement Act 1994;

**"the third mineral lease"** means the mineral lease granted pursuant to subclause (4) of this clause.

- (2) The Joint Venturers shall in respect of mining area 'C' -
  - (a) continue their field and office engineering, environmental, market and finance studies and other matters necessary to enable them to finalise and to submit to the Minister the detailed proposals referred to in subclause (3c) of this clause; and
  - (b) keep the State fully informed in writing not more frequently than once in every two years as to the progress and results of their operations under paragraph (a) of this subclause.
- (3) Prior to submitting any proposal pursuant to subclause (3c) of this clause the Joint Venturers shall obtain the consent in principle of the Minister to an approved production limit under this clause. When requesting a consent under this subclause the Joint Venturers shall furnish to the Minister an outline of their proposals in respect to production of iron ore from the third mineral lease (including the matters mentioned in paragraph (a) - (k) of subclause (3c) of this clause).
- (3a) The Minister shall advise the Joint Venturers within two months of receipt by the Minister of a request under subclause (3) of this clause whether or not he consents in principle to the proposed production limit PROVIDED THAT the Minister shall consent in

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principle to the proposed production limit -

- (a) if the aggregate project cost under the Processing Agreement has been expended; or
  - (b) if the aggregate project cost under the Processing Agreement has not been expended and:
    - (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
    - (ii) the proposed production limit would not result in the approved production limit under this clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum.
- (3b) If the aggregate project cost under the Processing Agreement has not been expended and:
- (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
  - (ii) the proposed production limit would result in the approved production limit under this clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum,

the Minister may consent in principle to the whole or part of a proposed production limit or withhold his approval, of the proposed production limit. The

Minister shall give reasons for his decision if he withholds his approval, but his decision shall not be referable to arbitration under this Agreement or otherwise be the subject of challenge by the Joint Venturers.

- (3c) Subject to and in accordance with the EP Act, the laws relating to traditional usage and the provisions of this Agreement, the Joint Venturers shall on or before the 31st day of December 1999 submit to the Minister to the fullest extent reasonably practicable their detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to the mining of iron ore for transportation from the land to be the subject of the third mineral lease up to the approved production limit under this clause which proposals shall make provision for the necessary workforce and associated population required to enable the Joint Venturers to mine and recover iron ore from the third mineral lease and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely -

- (a) the mining and recovery of iron ore from the third mineral lease including mining crushing screening handling transport and storage of iron ore and plant facilities;
- (b) roads;
- (c) housing and accommodation for the persons engaged in the development and/or mining of the

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third mineral lease and associated activities including the provision of utilities, services and associated facilities;

- (d) water supply;
  - (e) power supply;
  - (f) iron ore transportation;
  - (g) airstrip and other airport facilities and services;
  - (h) any other works, services or facilities desired by the Joint Venturers;
  - (i) use of local labour professional services manufacturers suppliers contractors and materials;
  - (j) any leases licences or other tenures of land required from the State; and
  - (k) an environmental management programme as to measures to be taken, in respect of the Joint Venturers' activities at the mining area for rehabilitation and the protection and management of the environment.
- (3d) The proposals pursuant to subclause (3c) of this clause may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of that subclause.
- (3e) The proposals relating to any of the matters mentioned in subclause (3c) of this clause may with the agreement of the Minister and that of any third parties concerned instead of providing for the

construction of new facilities of the kind therein mentioned provide for the use by the Joint Venturers upon reasonable terms and conditions of any existing facilities of such kind.

- (3f) Subject to the EP Act and laws relating to traditional usage in respect of each proposal pursuant to subclause (3c) the Minister shall -
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
  - (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (3c) of this clause not covered by the said proposals; or
  - (c) require as a condition precedent to the giving of his approval to the said proposals that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable and in such a case the Minister shall disclose his reasons for such alterations or conditions

**PROVIDED ALWAYS** that where implementation of any proposals hereunder has been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Joint Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

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- (3g) The Minister shall within two months after receipt of proposals pursuant to subclause (3c) of this clause or, if applicable, within two months of service on him of an authority under section 45(7) of the EP Act or satisfaction of the requirements under laws relating to traditional usage (as the case may be) give notice to the Joint Venturers of his decision in respect of the proposals.
- (3h) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (3f) of this clause the Minister shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (3i) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (3f) of this clause and the Joint Venturers consider that the decision is unreasonable the Joint Venturers within two months after receipt of the notice mentioned in subclause (3f) of this clause may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision **PROVIDED THAT** any requirement of the Minister pursuant to the proviso to subclause (3f) of this clause shall not be referable to arbitration hereunder.
- (3j) An award made on an arbitration pursuant to subclause (3i) of this clause shall have force and effect as follows -
  - (a) if by the award the dispute is decided against the Joint Venturers then, unless the Joint Venturers within 3 months after delivery of the award give notice to the Minister of their acceptance of the

award, then the proposals submitted pursuant to subclause (3c) shall be deemed to be withdrawn by the Joint Venturers, PROVIDED THAT if the date of expiration of that period of 3 months occurs after 31st December 1999 then this clause and the Joint Venturers' rights under this clause shall cease and determine and neither the State nor the Joint Venturers shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this clause; or

(b) if by the award the dispute is decided in favour of the Joint Venturers the decision shall take effect as (and be deemed to be) a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(3k) Notwithstanding that under subclause (3f) of this clause any proposals of the Joint Venturers are approved by the Minister or are deemed to be approved as a consequence of an arbitration award, unless each and every such proposal and matter is so approved or deemed approved within 12 months of the date of the submission of the last of the proposals pursuant to subclause (3c) or by such extended date or period if any as the Joint Venturers shall be granted or entitled to pursuant to the provisions of this Agreement, then the Minister may give to the Joint Venturers notice that unless before the expiration of a further period of 12 months all the said proposals and matters are so approved or deemed to be approved then the said proposals shall

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be deemed to be withdrawn by the Joint Venturers and the proviso to paragraph (a) of subclause (3j) of this clause shall apply mutatis mutandis.

(3l) Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Joint Venturers shall, subject to paragraph (a) of subclause (3j) of this clause, implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.

(3m) The periods set forth in subclause (3k) of this clause will be extended (in addition to any extension granted pursuant to clauses 23 or 24) upon request of either the Joint Venturers or the State for such reasonable period or periods as may be necessary from time to time to enable either of the parties hereto to comply with laws relating to traditional usage.

(c) subclause (4) -

by deleting "(hereinafter referred to as "the third mineral lease")".

(d) by deleting subclauses (5), (6), and (7) and substituting the following subclauses -

"(5) (a) Subject to subclauses (6) to (9) of this clause if the Joint Venturers at any time during the continuance of this Agreement desire to produce more than the approved production limit under this clause or to significantly modify expand or otherwise vary their activities within the third mineral lease beyond those specified in any proposals approved or deemed to be approved under this clause they

shall give notice of such desire to the Minister and within two months of the giving of such notice shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (3c) of this clause as the Minister may require.

- (b) The provisions of subclauses (3d) to (3i) and subclause (3m) of this clause shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause with the proviso that the Joint Venturers may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that they shall not be proceeding with the same.
- (c) If the Joint Venturers do not withdraw their proposals or give notice pursuant to paragraph (b) of this clause, then subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Joint Venturers shall implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.
- (6) The Joint Venturers shall not produce iron ore from the third mineral lease for transportation in any calendar year in excess of the approved production limit without the prior consent in principle of

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the Minister and, subject to that consent, approval of detailed proposals in regard thereto in accordance with this clause.

(7) If the Joint Venturers desire to increase the approved production limit under this clause they shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of their proposals in respect thereto (including the matters mentioned in paragraphs (a) to (k) of subclause (3c) of this clause).

(8) The provisions of subclauses (3a) and (3b) of this clause shall apply to a notice under subclause (7) of this clause but with the substitution in subclause (3a) of -

(i) "notice under subclause (7)" for "request under subclause (3)"; and

(ii) "proposed increase" for "proposed production limit", wherever it occurs; and

with the substitution in subclause (3b) of "proposed increase" for "proposed production limit" wherever it occurs.

(9) (a) If the Minister consents in principle to a proposed increase the Joint Venturers must within three months of that consent submit to the Minister detailed proposals in respect thereof otherwise that consent shall lapse.

(b) The provisions of subclause (5) of this clause shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause."

(3) By deleting clauses 13, 14, 15, 16 and 17.

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IN WITNESS WHEREOF this Agreement has been  
executed by or on behalf of the parties hereto the day and  
year first hereinbefore mentioned.

SIGNED by **THE HONOURABLE** )  
**RICHARD FAIRFAX COURT** in ) **RICHARD COURT**  
the presence of - )

Colin Barnett  
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of )  
**BHP IRON PTY. LTD.** was )  
hereunto affixed by ) **C.S.**  
authority of the )  
Directors - )

Director R J Carter

Secretary Ada Lian Davies

Signed by **BHP AUSTRALIA COAL** ) **BHP AUSTRALIA**  
**PTY. LTD.** by Richard John ) **COAL PTY. LTD.**  
Carter its duly authorised ) by its Attorney  
Attorney who declares that )  
he has no notice of the ) **R J Carter**  
revocation of the Power of )  
Attorney dated 16 July 1993 )  
under the authority of which )  
he signed this Deed at Perth )  
this 30th March 1994 in the )  
presence of: )

Claire Medhurst

Secretary M Appelbee

Secretary J MacKenzie

"

**PART 3 — IRON ORE (McCAMEY'S MONSTER)  
AGREEMENT AUTHORIZATION ACT 1972**

**Principal Act**

7. In this Part the *Iron Ore (McCamey's Monster) Agreement Authorization Act 1972*\* is referred to as the principal Act.

[\* Act No. 104 of 1972.

*For subsequent amendments see 1992 Index to  
Legislation of Western Australia, Table 1, p. 104.]*

**Section 4 amended**

8. Section 4 of the principal Act is amended, in subsections (1), (2) and (3), by deleting "Variation" in each place where it appears and substituting the following —

" first Variation ".

**Section 5 inserted**

9. After section 4 of the principal Act the following section is inserted —

"

**Second Variation Agreement**

5. (1) The agreement (in this section called "**the second Variation Agreement**"), a copy of which is set out in Schedule 3, is ratified and its implementation is authorized.

(2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the second Variation Agreement shall operate and take effect notwithstanding any other Act or law.

(3) Without limiting section 3, on the commencement of the *Acts Amendment (Mount Goldsworthy, McCamey's Monster and Marillana Creek Iron Ore Agreements) Act 1994*, the Principal Agreement, as amended by the first Variation Agreement and the second Variation Agreement, shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.

”.

### **Schedule 3 added**

**10.** After Schedule 2 to the principal Act the following Schedule is added —

“

#### **SCHEDULE 3**

[section 5]

**THIS AGREEMENT** is made the 31st day of March 1994

**B E T W E E N :**

**THE HONOURABLE RICHARD FAIRFAX COURT** B.Com., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part **AND BHP IRON ORE (JIMBLEBAR) PTY. LTD.** ACN 009 114 210 (formerly called Hancock Mining Limited) a company incorporated in the State of Western Australia and having its registered office at Level 18, 200 St George's Terrace, Perth (hereinafter called "the Company") of the other part.

**WHEREAS:**

- (a) the State and the Company (pursuant to certain assignments) are now the parties to the agreement (as amended from time to time) the execution of which was authorized by the Iron Ore (McCamey's Monster) Agreement Authorization Act 1972 (hereinafter called "the Principal Agreement");
- (b) the State and the Company wish to vary the Principal Agreement.

**NOW THIS AGREEMENT WITNESSES -**

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1994 or such later date as may be agreed between the parties hereto.
3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until -
  - (a) the Bill to ratify this Agreement as referred to in Clause 2; and
  - (b) Bills to ratify the following agreements of even date herewith, namely:-
    - (i) an agreement between the State of the one part and BHP Minerals Pty. Ltd. of the other part called the Iron Ore Processing (BHP Minerals) Agreement;
    - (ii) an agreement between the State of the one part and BHP Iron Pty. Ltd., BHP Australia Coal Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. of the other part to vary the Iron Ore (Mount Goldsworthy) Agreement; and
    - (iii) an agreement between the State of the one part and BHP (Minerals) Pty. Ltd., Mitsui Iron Ore Corporation Pty. Ltd. and CI Minerals Australia Pty. Ltd. of the other part to vary the Iron Ore (Marillana Creek) Agreement

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are passed as Acts before 31 December 1994 or such later date if any as the parties hereto may agree upon.

- (2) If before 31 December 1994 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

4. The Principal Agreement is hereby varied as follows -

(1) **Clause 1 -**

in the definition of "**approved proposal**", by inserting after "Clause 8", where it secondly occurs, the following -

"and includes proposals approved or deemed to be approved under Clauses 9 or 11A".

(2) **Clause 9(1) -**

by deleting "If" and substituting the following -

"Subject to Clause 11A, if".

(3) **Clause 9(2)**

by deleting "or if as a consequence of their submitting detailed proposals pursuant to Clause 33 the Minister requires further detailed proposals to be submitted on any of the said matters mentioned in paragraphs (a) - (m) of

subclause (2) of Clause 7" and substituting the following -

"or Clause 11A".

(4) **Clause 11A**

by inserting after Clause 11 the following clause -

**Limits on mining**

"11A.(1) In this Clause -

**"aggregate project cost under the Processing Agreement"** means the sum of \$400,000,000 (June 1993 dollars) which is agreed or determined for the purposes of Clause 27 of the Processing Agreement to have been expended on the establishment of facilities for further processing or alternative investments pursuant to that Agreement;

**"approved production limit under this Clause"** means the production level (if any) of tonnes of iron ore per annum for transportation from the mineral lease which has been consented to from time to time by the Minister pursuant to subclauses (5) or (6) of this Clause and which is the subject of proposals approved or deemed to be approved pursuant to subclause (7) of this Clause;

**"BHP"** means BHP Minerals Pty. Ltd. and its successors and assigns who are parties with the State to the Processing Agreement;

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**"combined limit"** means the aggregate of -

- (i) any approved production limit under this Clause;
- (ii) the approved production limit under Clause 11 of the Marillana Creek Agreement; and
- (iii) any approved production limit under Clause 12 of the Mount Goldsworthy Agreement

PROVIDED THAT if any of the approved production limits referred to in paragraphs (i), (ii) or (iii) exceeds 15,000,000 tonnes per annum then in calculating the combined limit such approved production limit shall be treated as being 15,000,000 tonnes per annum;

**"Marillana Creek Agreement"** means the agreement (as amended from time to time) ratified by the Iron Ore (Marillana Creek) Agreement Act 1991;

**"Mount Goldsworthy Agreement"** means the agreement (as amended from time to time) approved by the Iron Ore (Mount Goldsworthy) Agreement Act 1964;

**"Processing Agreement"** means the agreement (as amended from time to time) ratified by the Iron Ore Processing (BHP Minerals) Agreement Act 1994.

- (2) After the 1st day of April 1994, except for the production of iron ore in accordance with the approval of

the Minister of the 5th day of March 1993 the Joint Venturers shall not produce iron ore under this Agreement unless there is an approved production limit under this Clause.

- (3) Where there is an approved production limit under this Clause, the Joint Venturers shall not produce iron ore under this Agreement for transportation in any calendar year in excess of the approved production limit without the prior consent in principle of the Minister and, subject to that consent, approval of detailed proposals in regard thereto in accordance with this Clause.
- (4) If the Joint Venturers desire to establish or increase an approved production limit under this Clause they shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of their proposals in respect thereto (including the matters mentioned in paragraphs (a) - (m) of subclause (2) of Clause 7).
- (5) The Minister shall advise the Joint Venturers within two months of receipt by the Minister of a notice under subclause (4) of this Clause whether or not he consents in principle to the proposed limit or increase PROVIDED THAT the Minister shall consent in principle to the proposed limit or increase -
  - (a) if the aggregate project cost under the Processing Agreement has been expended; or

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- (b) if the aggregate project cost under the Processing Agreement has not been expended and:
  - (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
  - (ii) the proposed limit or increase would not result in the approved production limit under this Clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum.
- (6) If the aggregate project cost under the Processing Agreement has not been expended and:
  - (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
  - (ii) the proposed limit or increase would result in the approved production limit under this Clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum,

the Minister may consent in principle to the whole or part of a proposed limit or increase or withhold his approval of the proposed limit or increase. The

Minister shall give reasons for his decision if he withholds his approval, but his decision shall not be referable to arbitration under this Agreement or otherwise be the subject of challenge by the Joint Venturers.

- (7) (a) If the Minister consents in principle to a proposed limit or increase the Joint Venturers must within three months of that consent submit to the Minister detailed proposals in respect thereof otherwise that consent shall lapse.
- (b) The provisions of Clause 7 (other than subclauses (1) and (6)) and Clause 8 shall apply to detailed proposals submitted pursuant to this subclause with the proviso that the Joint Venturers may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award, by notice to the Minister that they shall not be proceeding with the same.
- (c) If the Joint Venturers do not withdraw their proposals or give notice pursuant to paragraph (b) of this subclause then, subject to and in accordance with the Environmental Protection Act 1986 and any approvals and licences required under that Act, the Joint Venturers shall

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implement proposals approved or deemed to be approved pursuant to this Clause in accordance with the terms thereof."

(5) Clause 22 -

(a) by deleting the subclause designations (1), (2), 2a), (3), (4), (5) and (6) and substituting respectively the subclause designations (2), (3), (4), (5), (6), (7) and (8);

(b) by inserting as the first subclause the following -

"(1) The Joint Venturers may purchase their electricity requirements from generating facilities established under the agreement (as amended from time to time) ratified by the Pilbara Energy Project Agreement Act 1994 and may transmit power to and within the areas of their mining operations or elsewhere subject to the provisions of the Electricity Act 1945 and the approval and requirements of the State Energy Commission pursuant to any Act.";

(c) in subclause (2), as renumbered by paragraph (a) of this clause, by deleting "For the purposes of facilitating integration of electricity generation and transmission facilities in the areas where the Joint Venturers carry on operations under this Agreement" and substituting the following -

"Subject to subclause (1),";

(d) in subclause (3), as renumbered by paragraph (a) of this subclause, by

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deleting "subclause (1)" and substituting  
the following -

"subclause (2)";

- (e) in subclause (4), as renumbered by  
paragraph (a) of this subclause, by  
deleting "subclause (2)" and substituting  
the following -

"subclause (3)";

- (f) in subclause (6), as renumbered by  
paragraph (a) of this subclause, by  
deleting "subclause (3)" and substituting  
the following -

"subclause (5)".

- (6) By deleting Clauses 33, 34, 35, 36, 37 and 38.

IN WITNESS WHEREOF this Agreement has been  
executed by or on behalf of the parties hereto the day and  
year first hereinbefore mentioned.

SIGNED by **THE HONOURABLE** )  
**RICHARD FAIRFAX COURT** in ) R F COURT  
the presence of - )

Colin Barnett  
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of )  
**BHP IRON ORE (JIMBLEBAR)** )  
**PTY. LTD.** was hereunto ) C.S.  
affixed by authority of )  
the Directors - )

Director R J Carter

Secretary Ada Lian Davies

".

**PART 4 — IRON ORE (MARILLANA CREEK)  
AGREEMENT ACT 1991**

**Principal Act**

11. In this Part the *Iron Ore (Marillana Creek) Agreement Act 1991*\* is referred to as the principal Act.

[\* Act No. 2 of 1991.]

**Section 3 amended**

12. Section 3 of the principal Act is amended —

- (a) in the definition of “Agreement” by deleting “the Schedule” and substituting the following —

“      Schedule 1      ”;

- (b) by deleting the full stop at the end of the section and substituting a semicolon; and

- (c) by inserting at the end of the section the following definition —

“      **“Variation Agreement”** means the agreement a copy of which is set out in Schedule 2.      ”.

**Section 4A inserted**

13. After section 4 of the principal Act the following section is inserted —

“      **Variation Agreement**

**4A.** (1) The Variation Agreement is ratified.

(2) The implementation of the Variation Agreement is authorized.

(3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Variation Agreement shall operate and take effect notwithstanding any other Act or law.

”.

### **Schedule amended**

14. The Schedule to the principal Act is amended by deleting “SCHEDULE” and substituting the following —

“ **SCHEDULE 1** ”.

### **Schedule 2 added**

15. After Schedule 1 to the principal Act the following Schedule is added —

“

### **SCHEDULE 2**

[section 3]

**THIS AGREEMENT** is made the 31st day of March 1994

**B E T W E E N**

**THE HONOURABLE RICHARD FAIRFAX COURT**  
B.Com., M.L.A., Premier of the State of Western Australia,  
acting for and on behalf of the said State and its  
instrumentalities from time to time (hereinafter called “the  
State”) of the one part **AND BHP MINERALS PTY. LTD.**  
ACN 008 694 782 a company incorporated in the State of  
Western Australia and having its registered office at  
Level 18, 200 St George’s Terrace, Perth, **CI MINERALS**  
**AUSTRALIA PTY. LTD.** ACN 009 256 259 a company  
incorporated in the State of Western Australia and having  
its registered office at 22nd Floor, Forrest Centre,

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221 St George's Terrace, Perth and **MITSUI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 a company incorporated in the State of Western Australia and having its registered office at 24th Floor, Forrest Centre, 221 St George's Terrace, Perth (hereinafter called "the Joint Venturers") of the other part.

**WHEREAS:**

- (a) the State and the Joint Venturers (pursuant to an assignment dated 10 June 1991) are now the parties to the agreement ratified by the Iron Ore (Marillana Creek) Agreement Act 1991 (hereinafter called "the Principal Agreement");
- (b) the State and the Joint Venturers wish to vary the Principal Agreement.

**NOW THIS AGREEMENT WITNESSES -**

- 1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1994 or such later date as may be agreed between the parties hereto.
- 3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until -
  - (a) the Bill to ratify this Agreement as referred to in Clause 2; and
  - (b) Bills to ratify the following agreements of even date herewith, namely:-
    - (i) an agreement between the State of the one part and BHP Minerals Pty. Ltd. of the other part called the Iron Ore Processing (BHP Minerals) Agreement;

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- (ii) an agreement between the State of the one part and BHP Iron Pty. Ltd., BHP Australia Coal Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. of the other part to vary the Iron Ore (Mount Goldsworthy) Agreement; and
- (iii) an agreement between the State of the one part and BHP Iron Ore (Jimblebar) Pty. Ltd. of the other part to vary the Iron Ore (McCamey's Monster) Agreement

are passed as Acts before 31 December 1994 or such later date if any as the parties hereto may agree upon.

- (2) If before 31 December 1994 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

4. The Principal Agreement is hereby varied as follows -

- (1) Clause 11 -

by deleting Clause 11 and substituting the following clause -

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**Limits on mining**

"11.(1) In this Clause -

**"aggregate project cost under the Processing Agreement"** means the sum of \$400,000,000 (June 1993 dollars) which is agreed or determined for the purposes of Clause 27 of the Processing Agreement to have been expended on the establishment of facilities for further processing or alternative investments pursuant to that Agreement;

**"approved production limit under this Clause"** means a production level of 10,000,000 tonnes of iron ore per annum for transportation from the mining lease or such higher number of tonnes per annum as may be consented to from time to time by the Minister pursuant to subclauses (5) or (6) and become the subject of proposals approved or deemed to be approved pursuant to subclause (8);

**"approved mine workforce"** means a mine workforce of 100 persons or such higher number as may be consented to from time to time by the Minister pursuant to subclause (4) and become the subject of proposals approved or deemed to be approved pursuant to subclause (8);

**"BHP"** means BHP Minerals Pty. Ltd. and its successors and assigns who are parties with the State to the Processing Agreement;

**"combined limit"** means the aggregate of -

- (i) the approved production limit under this Clause;
- (ii) the approved production limit under Clause 11A of the McCamey's Agreement; and
- (iii) the approved production limit under clause 12 of the Mount Goldsworthy Agreement

PROVIDED THAT if any of the approved production limits referred to in paragraphs (i), (ii) or (iii) exceeds 15,000,000 tonnes per annum then in calculating the combined limit such approved production limit shall be treated as being 15,000,000 tonnes per annum;

**"McCamey's Agreement"** means the agreement (as amended from time to time) the execution of which was authorized by the Iron Ore (McCamey's Monster) Agreement Authorization Act 1972;

**"Mount Goldsworthy Agreement"** means the agreement (as amended from time to time) approved by the Iron Ore (Mount Goldsworthy) Agreement Act 1964;

**"Processing Agreement"** means the agreement (as amended from time to time) ratified by the Iron Ore Processing (BHP Minerals) Agreement Act 1994.

- (2) The Company shall not produce iron ore under this Agreement for transportation in any calendar year

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in excess of the approved production limit nor shall the total number of the mine workforce exceed the approved mine workforce without the prior consent in principle of the Minister and, subject to that consent, approval of detailed proposals in regard thereto in accordance with this Clause.

- (3) If the Company desires to increase the approved production limit under this Clause or the approved mine workforce it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including the matters mentioned in paragraphs (a) - (m) of subclause (1) of Clause 7).
- (4) In respect of a notice relating to a proposed increase in the approved mine workforce the Minister shall advise the Company within one month of receipt of the notice by the Minister whether or not he consents in principle to the proposed increase.
- (5) In respect of a notice relating to a proposed increase in the approved production limit under this Clause the Minister shall advise the Company within two months of receipt of the notice by the Minister whether or not he consents in principle to the proposed increase PROVIDED THAT the Minister shall consent in principle to the proposed increase -
  - (a) if the aggregate project cost under the Processing Agreement has been expended; or

- (b) if the aggregate project cost under the Processing Agreement has not been expended and:
  - (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
  - (ii) the proposed increase would not result in the approved production limit under this Clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum,
- (6) If the aggregate project cost under the Processing Agreement has not been expended and:
  - (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
  - (ii) the proposed increase would result in the approved production limit under this Clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum,

the Minister may consent in principle to the whole or part of a proposed increase or withhold his approval of an increase. The Minister shall give reasons for his decision if he withholds his

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approval, but his decision shall not be referable to arbitration under this Agreement or otherwise be the subject of challenge by the Joint Venturers.

- (7) A consent in principle by the Minister under this Clause in relation to a proposed increase in the approved mine workforce may be given subject to conditions including a condition requiring variations of or additions to this Agreement PROVIDED THAT any such condition shall not without the consent of the Company impose an obligation for further processing of iron ore or for an alternative investment under this Agreement or require variations of -
- (a) the term of the mining lease or the rail spur lease or the rental thereunder;
  - (b) the rentals payable under any other lease or licence hereunder;
  - (c) the rates of or method of calculating royalty; or
  - (d) Clause 23.
- (8) (a) If the Minister consents in principle to a proposed increase in the approved production limit or approved mine workforce the Company must within three months of that consent submit to the Minister detailed proposals in respect thereof, and, in respect of a consent in relation to a proposed increase in the approved mine

workforce, in accordance with any conditions of that consent, otherwise that consent shall lapse.

- (b) The provisions of subclause (2) of Clause 10 shall apply to detailed proposals submitted pursuant to this subclause."

**(2) Clause 18 -**

- (a) by deleting the subclause designations (1), (2), (3) and (4) and substituting respectively the subclause designations (2), (3), (4) and (5);

- (b) by inserting as the first subclause the following -

"(1) The Company may purchase its electricity requirements from generating facilities established under the agreement (as amended from time to time) ratified by the Pilbara Energy Project Agreement Act 1994 and may transmit power within the mine site and for the operations of the rail spur subject to the provisions of the Electricity Act 1945 and the approval and requirements of the State Energy Commission pursuant to any Act.";

- (c) in subclause (2), as renumbered by paragraph (a) of this clause, by deleting "For the purposes of facilitating integration of electricity generation and transmission facilities in the areas where the Company carried on activities under this Agreement" and substituting the following -

"Subject to subclause (1),";

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- (d) in subclause (3), as renumbered by paragraph (a) of this subclause, by deleting "subclause (1)" and substituting the following -

"subclause (2)";

- (e) in subclause (4), as renumbered by paragraph (a) of this subclause, by deleting "subclause (2)" and substituting the following -

"subclause (3)".

(3) **Clause 21 -**

in subclause (2) paragraph (a), by deleting "tonnages or workforce" and substituting the following "the approved production limit or the approved mine workforce".

- (4) By deleting Clause 24.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by **THE HONOURABLE** )  
**RICHARD FAIRFAX COURT** in ) **RICHARD COURT**  
the presence of - )

Colin Barnett  
MINISTER FOR RESOURCES DEVELOPMENT

**THE COMMON SEAL of** )  
**BHP MINERALS PTY. LTD.** )  
was hereunto affixed ) **C.S.**  
by authority of the )  
Directors - )

Director R J Carter

Secretary Ada Lian Davies

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Iron Ore Agreements) Act 1994*

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THE COMMON SEAL of                   )  
CI MINERALS AUSTRALIA               )  
PTY. LTD. was hereunto               )  
affixed by authority of the           )  
Directors in the presence of:       )

C.S.

Director Y Kowata

Secretary M Appelbee

THE COMMON SEAL of                   )  
MITSUI IRON ORE                       )  
CORPORATION PTY. LTD.               )  
was hereunto affixed by               )  
authority of the Directors             )  
in the presence of:                   )

C.S.

Director N Hinohara

Secretary J MacKenzie

”  
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