

MEETING NOTES

Mackenzie Valley Environmental Impact Review Board

Subject: De Beers Work Plan Session
Date: July 20, 2001 from 9:00 a.m. – 4:00 p.m.
Prepared by: Joe Acorn and Louie Azzolini
Location: 7th floor of the YK Centre Mackenzie Valley Land and Water Board. Board room

Attendees

Rick Schryer, Golder
Robin Johnstone, De Beers
Joe Acorn, MVEIRB
Louie Azzolini, MVEIRB and chair
Florence Catholique, Lutsel K'e First Nation
Kevin O'Reilly, CARC
Marc Lange, DFO
Paula Pacholek, EC
Steven Harbicht, EC
Tamara Hamilton, DIAND
Mary Tapsell, DIAND
Brett Hudson, DIAND
Darren Campbell, MVLWB
Lionel Marcincoski, RWED

Teleconference:

Tim Byers, Yellowknives Dene First Nation
John Ramsey, NRCAN
Scott Clausen, NRCAN

Agenda

Meeting began at 9:40 AM due to teleconferencing difficulties.

A general Mackenzie Valley Environmental Impact Review Board (MVEIRB) perspective about the purpose and objectives of the meeting was presented, and people introduced themselves.

Attendees then presented and any additional items they wanted on the. The following is a summary of the discussions; original meeting notes are on file on the public registry.

1. Contact with first nation organizations	Ms. Catholique asked what efforts were made to include fns and if the Dogrib were explicitly contacted. Louie Azzolini responded indicating he faxed, phoned and emailed the fns and there was little interest in participating.
2. Akaitcho Interim Measures Agreement (IMA)	Ms. Catholique noted Treaty 11 signed an Akaitcho IMA and that Treaty 11 was going to be developing a process of land and water permitting. She noted that the final form of the body not established but that the process currently engaged in had to respect the IMA.

3.Consultations	<p>Ms. Catholique indicated that she expected De Beers to summarize its consultation process, and that, as FNs the impacted communities required secured financing to participate in the process.</p> <p>The discussion then focused on funding for adequate consultation and the need for FNs and government to comply with the IMA and the role of government and FN in coordinating or sharing their participation efforts in the environmental assessment (EA).</p> <p>Mr. Azzolini noted the Review Board (RB) was responsible for undertaking quality, timely and responsible environmental assessments and that the RB was not responsible for implementing obligations between the government of Canada and FNs because it was a non-partisan, neutral, adjudicator.</p> <p>The role and responsibility of government and FNs then was a question that remained unanswered. Ms. Tapsell noted that IRMA funding was available for the communities to gather their own information for the EA but that the RB was responsible for doing its own EA related consultations at its own cost.</p> <p>Ms. Catholique then asked if the EA would be translated and Mr. Azzolini said it is a RB decision and that if you wanted the EA translated that she should ask the RB as they had final say in all EA matters. Mr Byers indicated that DIAND should fund communities and the RB for translation and related EA costs. Mr. Azzolini noted the RB was not funded to provide intervenor funding and that the issue of such funding was on going.</p> <p>Mr. O'Reilly then asked where the money was for interveners. To which Mr. Azzolini said the RB had no money and DIAND indicated that current legislation did not provide for intervenor funding and as such DIAND would not provide intervenor funding.</p> <p>Mr. O'Reilly noted that CEAA would soon provide intervenor funding at a comprehensive screening level based on legislation currently before Parliament but not in proceedings in the Northwest Territories where the level and rate of activity was outstripping the resources of all Non-profit groups to effectively participate in democratic processes because they lacked support.</p> <p>There was a brief discussion about how the Akaitcho IMA would manage any intervenor activities, if it would be community based or under an umbrella funding arrangements.</p> <p>Mr. O'Reilly requested that copies of the IMA be provided to the group. The MVLWB made copies and distributed them at the meeting.</p>
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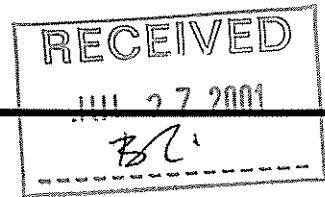
<p>RB Staff participation in technical discussions.</p>	<p>Mr. Harbicht asked Mr. Azzolini to explain why RB staff would not participate in any technical discussion regarding the Draft Terms of Reference (ToR).</p> <p>Mr. Azzolini noted that the RB was an independent body, and its staff could not participate in discussions that would exclude opportunities for full public review. As a non-partisan adjudicator, he noted the importance of keeping fairness high on the agenda and that if the members wanted to put anything on the registry that they were more than welcomed to do so.</p> <p>Ms. Tapsell indicated she thought staff was the RBs eyes and ears to which Mr. Azzolini indicated that all evidence had to be presented in a public manner. To which Ms. Tapsell indicated that meeting minutes would make it public. To which Mr. Azzolini noted the non-partisan nature of the RB and its mandate to be objective, impartial and to ensure it decisions are based on the contents of the public registry and that having closed door or non-advertised public meetings was not fair. He indicated that if anyone had comments that they should be placed on the public registry.</p> <p>Mr. O'Reilly said that it seemed the RB was giving staff clear direction and that as a scoping session keeping the discussions informal and loose especially when discussing draft ToR was valuable. Respecting staff limitations, Mr. O'Reilly suggested formal hearings to undertake a proper scoping. Ms. Tapsell included that much EA work is iterative and needed some open discussion.</p> <p>Ms. Tapsell indicated that she expected the information to be presented as it was presented given staff acted as the Board's eyes and ears. She also expressed concern about communities and their preference for oral processes and that returning to a formalized decision making process was a step back and that a closed RB acting without the benefits of discussion was missing the iterative nature of the process.</p> <p>Another participant noted that they were unsure how to prepare submission for the RB as they were uncertain how the RB made its decisions. To which Mr. Azzolini noted the RB made decisions on the weight of the evidence presented and Mr. Acorn added that therefore the more detailed and clear.</p>
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<p>Staff role and responsibilities in EAs</p>	<p>Mr. Azzolini noted that the Review Board would request the identification of those preparing the technical component of government technical submissions to ensure accountability with respect to what is put on the public registry.</p> <p>Ms. Tapsell suggested taping the meetings all the meetings to avoid disputes down the road about what was said. Mr. Harbicht added that the RB was stepping back in time and that it was important to sit around and discuss things with RB staff. To which Ms. Tapsell added that submissions did not always have to be unanimous.</p> <p>Mr. Harbicht indicated he was upset the RB was dumping the coordinating work on others and not taking its responsibility for coordinating experts when they met to discuss technical matters and have participate. To which Mr. Azzolini noted that there were many opportunities for experts to meet and that his or other RB staff presence was not mandatory for meetings to occur informally.</p> <p>Mr. O'Reilly noted that if they could not have informal meetings then public scoping sessions were needed and that if necessary the EA should have as much a panel process as possible including public meetings with Board present to the extent possible.</p> <p>Mr. Harbicht noted that with the MVRMA new process and procedures were happening and that it was reasonable to start introducing some of those new processes in the De Beers EA. Mr. Azzolini noted the revised RB guidelines were on the web site. To which Mr. Harbicht noted the web was not the best way to communicate with everyone. The discussion then moved onto the Draft guidelines and Rules for Procedure. Ms. Tapsell indicated that comments provided over the years on those documents was not provided so that it was impossible to track the changes in the document to reflect input. At 10:40 AM, De Beers was asked to present. The De Beers presentation concluded at 12:00</p>
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Identification of professional input from government experts	<p>At 12:00 before Mr. Ramsey asked to present his points on having to release information about his expert team. There was general concern from participants about how the information would be used, that the information was not relevant to the weight of information in decision-making. Ms. Tapsell noted that her Personnel department indicated that the information being requested was confidential to employees.</p> <p>Mr. O'Reilly noted that during BHP proceedings those presenting information had to submit their qualifications to do so.</p> <p>Mr. Azzolini noted that in discussions with legal counsel, it was concluded that the name, title and position of the expert provided had to be disclosed.</p> <p>There was subsequent concern from NRCan that it would not know who was involved and that the employees submitted documents as NRCan and not as experts while the GNWT noted that experts submissions were provided from the GNWT not from experts. Mr. O'Reilly emphasized the right to know the qualification of those presuming to have expertise.</p> <p>Mr. Azzolini said that the RB had less then desirable way of securing information it wanted, and that to the extent possible, a shared respectful approach to sharing information was preferred.</p> <p>Mr. Ramsey was adamant that releasing the name of experts at NRCan was not acceptable.</p> <p>The Session broke at 12:30 PM for one hour.</p>
1:40 PM	New Attendees: Andy Swiderski, Terriplan Consultants and Marie Adams, DIAND
De Beers Consultations	<p>Before moving into the afternoon session, Mr. Azzolini asked if there were any carryover items to discuss. Mr. O'Reilly asked about consultations De Beers was doing as requested by the RB in the letter than accompanied the Draft ToR to De Beers. O'Reilly indicated he wanted to see the plan of consultations. Mr Johnstone referred to an issue matrix De Beers had developed and that it would be available for comment.</p> <p>Mr. Azzolini noted that De Beers had not initiated broad public awareness about the draft ToR as requested by the Review Board.</p>
Informal Responsible Minister (RM) working sessions	<p>De Beers suggested that it was willing to help bring about any meetings that were or assistance to participants but Mr. O'Reilly was concerned that 6th meetings would replace any possible RB Hearings, if any, on the draft ToR for scoping purposes. To which Mr. Azzolini noted the RB draft ToR work plan made allowances for a public hearing on the Draft ToR if necessary and that if he thought they were needed to let the RB know that. There was no closure to the offer, but it appeared that participants were amenable to the idea as long as it did not compromise possible RB hearings.</p>

Review of De Beers EA work plan	Mr. O'Reilly suggested deleting one of the development descriptions because it really confused matters and Mr. Harbicht suggested making the development description more general and activity based instead of detailed and descriptive and possibly missing a project component.
	<p>Ms Tapsell suggested getting rid of any repetitious parts of the work plan such as repeating the decommissioning of the existing facilities and the new proposed mine. Mr Williams added that being overly descriptive was not advantages and that an activity based development description was preferable.</p> <p>Mr. O'Reilly wanted to make sure the winter road, the De Beers winter access road from the Lupin winter road and the spur road to the esker was included in the development description.</p>
	Mr. Williams asked if activities authorized under existing land use permits such as the exploratory camp etc...needed assessment if they were not already covered under that permit. Mr. Azzolini noted that any modifications of existing facilities etc... could result in impacts that were linked to the principle development and that it was prudent to spit the projects up. There were additional questions about linking changes to the existing camp and underground development to the proposed development as attendees felt the existing development was addressed under the existing permitting structure. Mr. O'Reilly noted that the Metis should be included as a FN for the purposes of the EA.
	<p>Mr. Hudson said that the purpose and the principles of the RB needed to be included in the work plan. Mr. O'Reilly wanted the work plan to clearly stipulate that all consultant reports would be on the public register.</p> <p>Ms Tapsell indicated that the work plan should not include action items that were completed, to simplify the EA, and to allow for a more accurate budget forecast. Mr. Azzolini noted that detailed budgeting exercises were underway for the EA also.</p>
	Mr. O'Reilly wanted to know which government departments had self identified as Responsible Ministers. Mr. Azzolini could not respond but indicated he could provide Mr. O'Reilly the information. He said it was not necessary.
	Mr. Harbicht noted that the term Regulatory Authority (RA) did not apply in the MVRMA and that it should be expunged from the work plan and replaced with Responsible Minister (RM) as appropriate.

Louie Azzolini



From: Buddy Williams [williamsb@inac.gc.ca]
Sent: Friday, July 27, 2001 12:33 PM
To: eao1@mveirb.nt.ca
Cc: Brenda Becker; Tamara Hamilton; Annette McRobert; Michael Roesch
Subject: DeBeers Snap Lake Diamond Project

Good Day Louie.

Further to our discussion last week, and as an addendum to the dept's letter dated June 7, 2001, we would confirm that Land Administration DIAND, as a regulatory authority for Crown Land, be included on the MVEIRB's distribution list for the DeBeers Snap Lake Project. The Manager of Land Administration will be the official contact, however we would ask that all correspondence distributed by the Board, be forwarded to me on behalf of Lands.

For future distribution of project related material, we would request two copies. Emails, etc can be also be forwarded to me for distribution in Lands. At this time, we are looking for a hardcopy (original) of the Project scoping document for our records. If you can let me know if any are available, that would be great.

Thanks, Louie.

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	<p>Mr. Schryer asked if a more detailed work schedule was available. Mr. Azzolini responded that each line item in the work plan table had number of days expected to completion, but that for simplicity sake only the start and stop dates for the major sections of the EA were included. Mr. Harbicht suggested not placing fixed dates on the work plan but simply applying anticipated windows of time needed to complete components of the work plan. Mr. Johnstone suggested that both the date and time based work plan would be workable. Ms. Tapsell indicated satisfaction with the present method of presenting work plan dates but that dates should not be set in stone and that the RB should be open to amending them as necessary in consultation with affected parties.</p> <p>Ms. Tapsell suggested providing a defined period for undertaking or preparing a deficiency statement and ensuring a reasonable amount of time for people to put more information on the public registry.</p>
	<p>Mr. Azzolini asked what was a reasonable amount of time from the submission of technical reports to the close of the public registry. Ms. Tapsell indicated that it should remain open for as long as necessary for the RB to get any clarification it might need. Mr. Byers added that he experienced a problem in the BHP EA where there was not enough time between technical or other submissions onto the registry and opportunities for public response. Mr. Azzolini pointed out that the Draft Rules or procedure made allowances for just such occurrences, and that it enabled government to place "clarification" information on the registry after getting permission from the RB to do so.</p>
	<p>Mr. Campbell asked if the RB would consider the IMA in its decision to which Mr. Azzolini said he did not think so but that he would look into it. Mr. Azzolini suggested that anybody could advance any point of view they wanted. It was even better if there was support or backup for that point of view. He suggested that the IMA could provide backup to a view they were trying to advance. Ms. Adams noted the RB had asked for clarifications in the past.</p>
	<p>Mr. O'Reilly noted he found the work plan table confusing, that more detail on the times would be appreciated and knowing how much time was expected at each of the steps would be more helpful. The current layout did not work well.</p> <p>Mary Tapsell noted that the time line needed to allow slippage in the schedule. Mr. Azzolini committed to reworking the work plan table for the next meeting on July 27, 2001. Some attendees noted that just having the milestone dates was preferable, while others noted the need for more detail including the anticipated amount of time needed to complete each activity</p>

	<p>Ms. Tapsell requested that the RB clarify conformity and that if it was simply a checklist Review Board Staff could conclude that activity. However, if experts identify gaps during their review of the EA they should either contactor prepare an IR right away. Mr. Azzolini explained that the RB authorized staff to send out non-contentious IRs, that medium IRs were at the discretion of the Executive Director and that potentially contentious ones were at the RBs discretion, but that all IRs went out under the RBs authority. Ms. Tapsell added that the need to prepare IRs could be eliminated all together by talking to the proponent right away.</p> <p>Mr. Azzolini noted that anyone at anytime could request a ruling from the RB on the actions of any of its staff, particularly in the case of conformity. Therefore, the staffs' conclusions on conformity were challengeable.</p> <p>There seemed to be consensus that the RBs staff would complete conformity and that the experts would focus on the technical analysis. There was concern that not having informal meetings with the developer could result in too many IRs and the reluctance of the RBs staff to coordinate informal working sessions between experts and the developer and to attend such meetings.</p>
	<p>Ms. Tapsell noted that RBs staff should undertake to ensure all the items requested in the ToR and the EA have been adequately addressed by an expert. Mr. O'Reilly wanted to make sure that the entire expert input from government employees or consultatants was placed on the public registry and that there was reasonable time to comment on that information. Mr. Acorn noted that Gartner Lee Ltd. (GLL) was the only consulting firm on retainer presently. Mr. Azzolini then explained the RBs practice of putting out call for standing offer agreements and how the RB secured consulting services in the BHP EA.</p>
	<p>Mr. Johnstone emphasized that the winter road in 2003 was deemed a critical element in the planning and development of the proposed Snap Lake Diamond Project. Mr. O'Reilly asked the RBs staff rework the timelines on the comments provided for the next meeting on July 27, 2001. Ms. Tapsell asked that hearings be built into the schedule earlier on so that there would be no unexpected surprises.</p>
	<p>Ms. Catholique explained that any reworking of the timelines needed to take into account the time requirements of Lutsel K'e and their generally accepted consultation methodology including adequate translation, communication, age and gender based communications and discussions. To which Ms. Tapsell noted the community should let the RB know its concerns.</p>
	<p>There was discussion about the number of copies of electronic material and paper material experts needed. The GNWT noted that it needed 12 copies of each and Mr. O'Reilly asked for 2 of each. Mr. Azzolini asked to use the list he had used in the BHP EA to guide the number copies needed. That seemed acceptable. Mr. O'Reilly noted that in the Tahara EA currently underway there was significant emphasis on the corporate history and environmental record of accomplishment of the developer. He requested the same for the Snap Lake EA. Ms. Tapsell added that DIAND asked for the information on the Tahara project.</p>

Key issues:

- Financing of non-governmental, non-FN interveners
- Consideration of Interim Measures Agreement with the Akaiteho Treaty 11
- Adequate funding for FN participation
- The RBs staff role in the EA, especially facilitating informal working meetings with the developer.
- Structure of the work plan timetable
- Development description descriptiveness
- De Beyer's 2003 winter road schedule
- Willingness of government experts to provide the RB relevant information on contributions to any technical submissions including name, department/division and role.

Adjourned 4:00 PM