

FAXED
FAXED

Facsimile

Mackenzie Valley Environmental Impact Review Board

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From Louie Azzolini

MVEIRB

P.O. Box 938

Yellowknife, NT X1A 2N7

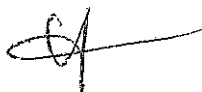
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Town of Hay River
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Derek Chubb Ekati™ BHP Mines Diamond Mine Inc.
NWT Chamber of Mines
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920-2145
873-4174

Date: Friday August 24, 2001
From: Luciano Azzolini, Environmental Assessment Officer
Pages: 9 including these two cover pages
File: EA01-004 De Beers Snap Lake Diamond Project
Subject: Review Board Acknowledges letters from INAC and CARC



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From Louie Azzolini
MVEIRB
P.O. Box 938
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Phone (867) 873-9189
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Mackenzie Valley Environmental Impact Review Board

August 24, 2001

Box 938
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Yellowknife, NT X1A 2N7
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Our file: EA01-004

David Livingstone
Director
Environment and Conservation
Department of Indian Affairs and Northern
Development (INAC)
P.O. Box 1500
Yellowknife, NT X1A 2R3

Kevin O'Reilly
Research Director
Canadian Arctic Resources Committee
(CARC)
#3-4807 49th Street
Yellowknife NT
X1A 3T5

RE: De Beers Snap Lake Diamonds Project Request for Ruling on Public Hearings

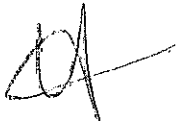
Dear Mr. Livingstone and Mr., O'Reilly,

On August 24, 2001, INAC and CARC provided the additional supporting information requested by the Review Board on August 16, 2001, regarding the question of having public hearing(s) and/or formal scoping session(s) for the De Beers environmental assessment Terms of Reference. The Review Board intends to consider your letters at its next meeting. I am also taking this opportunity to inform CARC and other interested parties that the Review Board will judicially ensure the fairness of the environmental assessment process. To that end, De Beers has until 5:00 pm, August 28, 2001, to respond to the respective submissions.

Regarding the use of the draft *Rules of Procedures for Environmental Assessment and Environmental Impact Review Proceedings* (Rules), INAC notes it would be inappropriate to use the rules, but does not explain why. Therefore, INAC is asked to provide the Review Board its legal, policy or practicality considerations in support of its assertion that use of the rules is inappropriate.

If you have any questions about the Review Board's decision please feel free to contact Louie Azzolini at (867) 873-9029.

Sincerely,



Luciano Azzolini
Environmental Assessment Officer

C: Distribution list.



PO Box 1500
YELLOWKNIFE, NT X1A 2R3

EA01-004

Your file Votre référence

BY FACSIMILE: (867) 920-4761

Our file Notre référence
7292-7-A2-12-3

August 24, 2001

Vern Christensen
Executive Director
Mackenzie Valley Environmental Impact Review Board
Box 938
YELLOWKNIFE, NT X1A 2N7

Dear Mr. Christensen:

I am writing in response to your letter dated August 16, 2001, requesting a rationale for our recommendation to the Mackenzie Valley Environmental Impact Review Board (Review Board) to conduct a public hearing for the De Beers Snap Lake Diamonds Project environmental assessment (De Beers EA).

The Department did not recommend that the Review Board conduct a public hearing or formal scoping meetings for De Beers EA as CARC had requested a formal ruling on this matter. Rather the Department recommended that the Review Board conduct public hearings early in the proceedings of future environmental assessments. These hearings should be established for larger projects in a forum that enables interested parties to present their concerns with the draft Terms of Reference (TOR) and any new information to the Review Board. Without a public hearing early in the proceedings, the Review Board does not have the opportunity to clarify its EA process and may be unable to consider new information that would assist it in designing sound TOR.

The Review Board has decided to use the draft *Rules of Procedures for Environmental Assessment and Environmental Impact Review Proceedings* for the De Beers EA. Under section 30 of the MVRMA, the Review Board must publish a Gazette notice of its intent to validate the proposed Rules and invite interested parties to submit written representations to the Board. As this hasn't been done, I would like to reiterate our position that it would be inappropriate for the Board to use these Rules for the purposes of this EA.

Canada

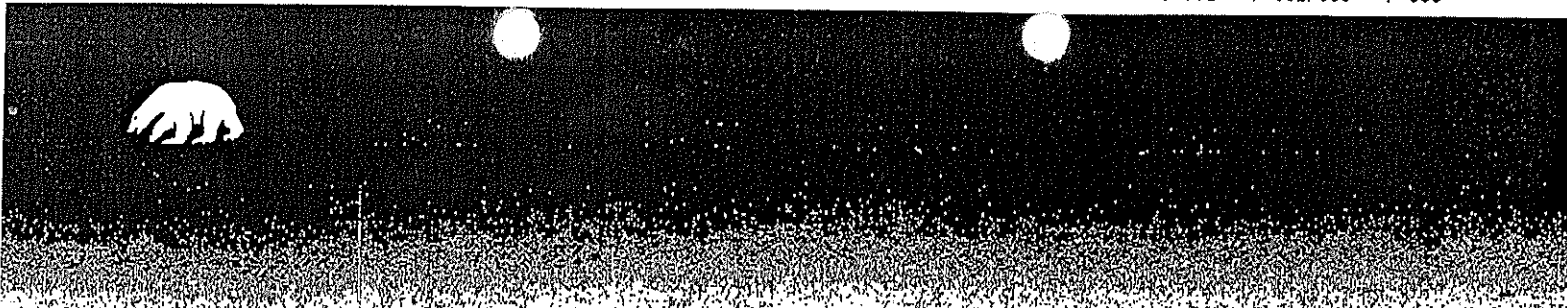
Please feel free to call should you wish to discuss this further.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'D. Livingstone', written in dark ink.

David Livingstone, Director
Renewable Resources and Environment

cc: Kevin O'Reilly, Canadian Arctic Resources Committee



#3-4807 49th Street
Yellowknife NT
X1A 3T5

August 23, 2001

Gordon Lennie
Chairperson
Mackenzie Valley Environmental Impact Review Board
Box 938
Yellowknife NT X1A 2N7

Re: De Beers Snap Lake Diamond Project Environmental Assessment

Dear Mr. Lennie

I acknowledge receipt of a letter dated August 16, 2001 from your Environmental Assessment Officer, Louie Azzolini.

I note from this letter that it appears to be the intention of the Board to apply the draft *Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings* to this environmental assessment. While CARC supports certainty and clarity in any regulatory process, the draft *Rules* have not undergone any formal public consultations as required under s. 30(2) of the *Mackenzie Valley Resource Management Act*.

In our letter dated July 30, 2001 to you, CARC objected to the use of the draft *Rules* as they "would appear to create at least four classes of participants" and "this represents a significant departure from the practice in most environmental assessments or regulatory processes in the NWT." I further stated that CARC does not believe it is necessary or desirable to create these distinctions amongst participants. I also noted that "several key steps outlined in the procedures for environmental assessment have already passed making it difficult to see how the entire package can now be applied."

CARC continues to object to the application of the draft *Rules* for this environmental assessment until the proper consultation process is completed and our concerns are addressed.

... 2

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info@carc.org
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xcarc@ssimicro.com

-2-

In any event, CARC offers the following in an attempt to provide further substantiation of our request in our July 30, 2001 letter for a ruling on the necessity of conducting formal scoping meetings or hearings for this environmental assessment.

Statement of Relevant Facts

The De Beers Snap Lake Diamonds Project is a 'greenfield' development, that is a proposed new mine in a previously undisturbed area. It has the potential to become the fifth operating mine (after Ekati, Lupin, Diavik, and Jericho) in the Slave Geological Province and the range of the Bathurst caribou herd. The proposed development is in a new watershed (the Aylmer Lake system) previously undisturbed by industrial activities.

The project is to be located in an area of unextinguished Aboriginal title. There are no land use plans for this area nor are there any legal provisions for such processes in this region. There are no protected areas in the Slave Geological Province other than the East Arm land withdrawal. It is not clear if there will be an environmental agreement for this project, socio-economic agreements, or impact and benefit agreements.

A cumulative effects assessment and management framework for the NWT and an action plan for the Slave Geological Province were terms and conditions for the approval of the Diavik Comprehensive Study Report by the federal Minister of the Environment in November 1999. This framework and action plan was supposed to be implemented by April 1, 2001 and it is nowhere near completion or implementation.

The Lutsel K'e Wildlife, Lands and Environment Committee in an e-mail dated August 15, 2001 stated that "public meetings with the Chief and Council, WLEC [Wildlife, Lands and Environment Committee], technical expertise and the public are an essential component of our procedures for scoping community issues with regards to the ToR [Terms of Reference]."

Decision Being Sought

CARC requests that the Board hold formal scoping meetings or hearings for this environmental assessment to directly gather public input into concerns with the project and its potential effects to formulate appropriate terms of reference for the developer.

Rationale

It is our understanding that your staff are not permitted to attend or participate in any discussion of the draft terms of reference for this environmental assessment. Given the quasi-judicial responsibilities of your Board, we understand this approach.

... 3

-3-

CARC does not believe that it is appropriate that public participation in scoping the Snap Lake project should be based solely on written submissions. Northern communities rely on personal relationships and communications, often where English is not the preferred language.

Sound environmental assessment requires time and effort in defining the scope of the project (s. 117 of the *MVRMA*). This step must involve the public and this may take several forms depending on the potential for adverse environmental effects and public concern. CARC does not foresee the need to conduct public meetings or hearings for scoping of every development that requires an environmental assessment pursuant to s. 125 and 126 of the *MVRMA*. Given that it is not possible to take a development in the Mackenzie Valley straight to an environmental impact review, your Board is stuck with conducting an environmental assessment of all major projects unless the *Canadian Environmental Assessment Act* applies or there are transboundary effects.

Your Board needs to determine which developments require some public scoping processes beyond written interventions, as early as possible in the environmental assessment process. This must necessarily involve a determination on a case-by-case basis but guidelines may also be helpful. These guidelines could include factors such as public concern, potential for significant environmental effects, whether the project is in a new watershed, whether there is active resource harvesting in the potentially affected area, whether there are rare or endangered species in the area, where there is high uncertainty about the potential effects of a project or there is uncertainty in the regulatory context for a development.

For smaller projects, scoping can be conducted through written interventions but for larger projects public meetings and/or hearings are a better avenue for ensuring public input. Time and effort invested up-front in the process should reduce the possibilities of delays and additional information requirements later on.

Under the *EARP Guidelines Order* and the *Canadian Environmental Assessment Act*, it is our view that there would have been a strong possibility that the De Beers Snap Lake project would have been subjected to a panel review. Public scoping sessions would have been required under this legislation if the Snap Lake project went to a panel review. This suggests the need for the Board to approach this environmental assessment cautiously to ensure adequate public involvement.

Recently, BHP stated that they are encountering difficulties in hiring and retaining Northerners and Aboriginal people for their Ekati mine. Once Diavik is in full production and should other projects get underway (e.g. Tahera's Jericho project, a Mackenzie Valley Pipeline and others) the promised benefits from projects such as De Beers Snap Lake development will be subject to increasing uncertainty. Northerners are beginning to question the need for further development, the scale and pace of resource development, and how benefits can better be retained.

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Given the magnitude of this project, its location, its potential effects, uncertainty in the legal and regulatory context and public interest in this development, we feel it would be more appropriate for the Board to hold public scoping meetings consistent with s. 114(c) and 115 of the *MVRMA*. This should in no way affect the need for rigorous technical review of this development that will likely require public hearings at a later date in the environmental assessment.

Sincerely,



Kevin O'Reilly
Research Director

cc. Hon. Robert Nault, Minister of Indian Affairs and Northern Development
Hon. Ethel Blondin-Andrew, MP Western Arctic
Hon. Joe Handley, Minister of Resources, Wildlife and Economic Development
Chief Archie Catholique, Lustel K'e First Nation
Chiefs Rick Edjericon and Peter Liske, Yellowknives Dene First Nation
Clem Paul, President, North Slave Metis Alliance
Robin Johnstone, Senior Environmental Manager, De Beers

Louie Azzolini

From: Louie Azzolini

Sent: Friday, August 24, 2001 3:51 PM

To: Brett Hudson (E-mail); Bridgette Larocque; Buddy Williams (E-mail); CARC Kevin (E-mail); Chamber of mines ED (E-mail); CPAWS (E-mail); Dechi Laot'i First Nation (E-mail); Doug Soloway (E-mail); EAO2; Ecology North (E-mail); Health Canada 2 (E-mail); John Donihee (E-mail); John Ramsey (E-mail); Julie Dahl (E-mail); LKDFN Wildlife Lands Environment Ctte (E-mail); Lutsel K'e Dene First Nation (E-mail); Mark Dahl (E-mail); Mark Lange DFO (E-mail); Mary Tampsell (E-mail); MVLWB Permit (E-mail) (E-mail); NSMA Bob Turner (E-mail); Nunavut Impact Review Board (E-mail); Paula Pacholek [Yel] (E-mail); Robin Johnstone (E-mail); Roland Semjanovs; Roland Semjanovs (E-mail); Sierra Legal Defence Fund (E-mail 2); Stephen Harbicht (E-mail); Tamara Hamilton (E-mail); Tim Byers (E-mail); Vern Christensen; Wha Ti First Nation (E-mail); William (Bill) Carpenter (E-mail); WWF - Peter J. Ewins (E-mail); WWF Tony Y. (E-mail); YK Chamber of Commerce (E-mail)

Subject: Acknowledge CARC and INAC letters

Review Board Acknowledges receipt of letters from INAC and CARC and asks INAC to provide its legal, policy or practicality considerations in support of its assertion that use of the rules is inappropriate.

By facsimile: (867) 669-2701 and (867) 873-3654
Our file: EA01-004

David Livingstone
Director
Environment and Conservation
Department of Indian and Northern Affairs Canada (INAC)
P.O. Box 1500 Yellowknife, NT X1A 2R3

Kevin O'Reilly
Research Director
Canadian Arctic Resources Committee (CARC)
#3-4807 49th Street, Yellowknife NT X1A 3T5

RE: De Beers Snap Lake Diamonds Project Request for Ruling on Public Hearings

Dear Mr. Livingstone and Mr., O'Reilly,

On August 24, 2001, INAC and CARC provided the additional supporting information requested by the Review Board on August 16, 2001, regarding the question of having public hearing(s) and/or formal scoping session(s) for the De Beers environmental assessment Terms of Reference. The Review Board intends to consider your letters at its next meeting. I am also taking this opportunity to inform CARC and other interested parties that the Review Board will judicially ensure the fairness of the environmental assessment process. To that end, De Beers has until 5:00 pm, August 28, 2001, to respond to the respective submissions.

Regarding the use of the *draft Rules of Procedures for Environmental Assessment and Environmental Impact Review Proceedings* (Rules), INAC notes it would be inappropriate to use the rules, but does not explain why. Therefore, INAC is asked to provide the Review Board its legal, policy or practicality considerations in support of its assertion that use of the rules is inappropriate.

If you have any questions about the Review Board's decision please feel free to contact Louie Azzolini at (867) 873-9029.

Sincerely,

8/24/2001

Luciano Azzolini
Environmental Assessment Officer

C: Distribution list.

Luciano Azzolini,
Environmental Assessment Officer,
Mackenzie Valley Environmental Impact Review Board,
Box 938, Yellowknife, NT. X1A 2N7
Phone (867) 873-9189; Fax 920-4761;
mveirb.nt.ca

Louie Azzolini

From: Louie Azzolini

Sent: Friday, August 24, 2001 2:46 PM

To: Brett Hudson (E-mail); Bridgette Larocque; Buddy Williams (E-mail); CARC Kevin (E-mail); Chamber of mines ED (E-mail); CPAWS (E-mail); Dechi Laot'i First Nation (E-mail); Doug Soloway (E-mail); EAO2; Ecology North (E-mail); Health Canada 2 (E-mail); John Donihee (E-mail); John Ramsey (E-mail); Julie Dahl (E-mail); LKDFN Wildlife Lands Environment Ctte (E-mail); Lutsel K'e Dene First Nation (E-mail); Mark Dahl (E-mail); Mark Lange DFO (E-mail); Mary Tampsell (E-mail); MVLWB Permit (E-mail) (E-mail); NSMA Bob Turner (E-mail); Nunavut Impact Review Board (E-mail); Paula Pacholek [Yel] (E-mail); Robin Johnstone (E-mail); Roland Semjanovs; Roland Semjanovs (E-mail); Sierra Legal Defence Fund (E-mail 2); Stephen Harbicht (E-mail); Tamara Hamilton (E-mail); Tim Byers (E-mail); Vern Christensen; Wha Ti First Nation (E-mail); William (Bill) Carpenter (E-mail); WWF - Peter J. Ewins (E-mail); WWF Tony Y. (E-mail); YK Chamber of Commerce (E-mail)

Subject: For your information

Provided for your information

File: 01-004

August 24, 2001 VIA FAX
ORIGINAL VIA MAIL

Chairperson
Mackenzie Valley Environment Impact Review Board
PO Box 938
Yellowknife NT X1A 2N7

Attention: Mr. Gordon Lennie

Dear Mr. Lennie:

SUBJECT: SNAP LAKE DIAMOND PROJECT

De Beers advises that an error was made in our letter to you on August 22, 2001.

Paragraph 2 states that:

"We further note that while reference is made to Rules 50-54 of the Review Board's draft Rules of Procedure, the request that INAC and CARC provide the Review Board with a clear and concise statement of the relevant facts, the decision being sought and rationale for making the recommendation and request, is a use of the words found in Rule 48."

We have confirmed that Rules 50-54 of the Review Board's draft Rules of Procedure are the applicable rules as originally stated in the Review Board's letter of August 16, 2001 to Mary Tapsell of the Department of Indian Affairs and Northern Development ("INAC") and Kevin O'Reilly of the Canadian Arctic Resources Committee ("CARC").

Sincerely,

SNAP LAKE DIAMOND PROJECT

Robin Johnstone, PhD
Senior Environmental Manager

RJ/hb

8/24/2001

Louie Azzolini

From: Louie Azzolini

Sent: Friday, August 24, 2001 2:58 PM

To: Brett Hudson (E-mail); Bridgette Larocque; Buddy Williams (E-mail); CARC Kevin (E-mail); Chamber of mines ED (E-mail); CPAWS (E-mail); Dechi Laot'i First Nation (E-mail); Doug Soloway (E-mail); EAO2; Ecology North (E-mail); Health Canada 2 (E-mail); John Donihee (E-mail); John Ramsey (E-mail); Julie Dahl (E-mail); LKDFN Wildlife Lands Environment Ctte (E-mail); Lutsel K'e Dene First Nation (E-mail); Mark Dahl (E-mail); Mark Lange DFO (E-mail); Mary Tampsell (E-mail); MVLWB Permit (E-mail) (E-mail); NSMA Bob Turner (E-mail); Nunavut Impact Review Board (E-mail); Paula Pacholek [Yel] (E-mail); Robin Johnstone (E-mail); Roland Semjanovs; Roland Semjanovs (E-mail); Sierra Legal Defence Fund (E-mail 2); Stephen Harbicht (E-mail); Tamara Hamilton (E-mail); Tim Byers (E-mail); Vern Christensen; Wha Ti First Nation (E-mail); William (Bill) Carpenter (E-mail); WWF - Peter J. Ewins (E-mail); WWF Tony Y. (E-mail); YK Chamber of Commerce (E-mail)

Subject: For your information

Please note the way the letter from CARC is structured, it provides a clear summary of relevant facts and a clear summary of how those facts apply to CARC's request for ruling. Keep this method in mind as the EA progresses.

#3-4807 49th Street
Yellowknife NT
X1A 3T5
August 23, 2001

Gordon Lennie
Chairperson
Mackenzie Valley Environmental Impact Review Board
Box 938
Yellowknife NT X1A 2N7

Re: De Beers Snap Lake Diamond Project Environmental Assessment

Dear Mr. Lennie

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I note from this letter that it appears to be the intention of the Board to apply the draft Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings to this environmental assessment. While CARC supports certainty and clarity in any regulatory process, the draft Rules have not undergone any formal public consultations as required under s. 30(2) of the Mackenzie Valley Resource Management Act.

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CARC continues to object to the application of the draft Rules for this environmental assessment until the proper consultation process is completed and our concerns are addressed.

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8/24/2001

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Decision Being Sought

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Rationale

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FACSIMILE TRANSMISSION

DIAND

**David Livingstone, Director
Renewable Resources and Environment
P.O. Box 1500, Yellowknife NT X1A 2R3**

Internet: livingstoned@inac.gc.ca

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Date: August 24, 2001

To: Vern Christensen, Executive Director
MVEIRB

Fax: 920-4761

Pages: 3, including cover

Comments:

