



August 5, 2002

Vern Christensen
Executive Director
Mackenzie Valley Environmental Impact Review Board
Box 938, 200 Scotia Centre
Yellowknife NT X1A 2N7

Dear Mr. Christensen;

**Re: De Beers Snap Lake Diamond Project Environmental Assessment (EA) –
Indian and Northern Affairs Canada (INAC) Request for Ruling**

Thank you for allowing De Beers to comment on the INAC submission requesting a ruling under subsection 50 of the Rules of Procedure that the MVEIRB amend the February 22, 2002 work plan for the Snap Lake environmental review. De Beers would like to comment on three issues of concern raised by the INAC submission:

1. The request to have technical sessions precede the preparation and submission of the technical reports.
2. The presumption that Technical Hearings will be necessary.
3. The inferred creation of what is in effect a two stage approach to the public technical sessions: a technical session to identify outstanding issues and a public hearing to address more complex technical issues.

On the first issue, De Beers is in agreement with the process represented in the Board's work plans of September 2001 and January 2002. In those work plans, technical reports from the Board's experts and government departments are obliged to provide the Board with information necessary for its review (together referred to herein as "advisors") prior to a technical session and public hearing taking place. We feel this sequence is logical and do not support the ruling requested.



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The sequence of submission of technical reports in relation to the holding of a technical session is important in assisting the Board to carry out its duties. In order for the Board to host a meaningful technical session, it is essential for the Board to have in hand the reports of its advisors. It is the content of these reports that will inform the Board as to whether its advisors have detected any significant issues associated with the applicant's EA; and whether, after a thorough exchange of information with the applicant, any of those issues remain unresolved. The reports are both a planning tool for the Board as well as substantive evidence of the advisor's assessment, opinions and recommendations in relation to the applicant's EA documentation.

The advisors' reports are equally important to the applicant because they provide feedback on the issues and concerns raised and the effectiveness with which the applicant has been able to address those concern during the formal and informal exchange of information. The advisors' reports provide the applicant with insight into the advice being presented to the Board and constitute the "case being made against them" or the "case that must be met" during any subsequent public technical session or hearing. In the absence of the reports from Board advisors we have no means of knowing the case we have to meet in any subsequent public forum.

On the second issue, since the Snap Lake EA documentation was submitted to the Board in February, 2002, there have been several exchanges of information to address questions and concerns expressed by parties to clarify information submitted in the EA. Those exchanges have consisted of;

- regular meetings;
- meetings on specific issues related to the EA, for example water quality;
- informal responses to requests for information made by parties via telephone, meetings, or site visits;
- a technical session for the public hosted by De Beers in April 2002; and
- completion of two rounds of Information Requests with a third round imminent.

Throughout these exchanges De Beers has made a genuine effort to ensure its responses are as complete as possible and to ensure the project, its potential effects and the measures by De Beers to manage and minimize negative effects is clearly presented and broadly understood. Moreover, where technical questions have identified oversights, De Beers has undertaken to rectify the gap. While the IR process is not yet complete and parties have

experienced some frustration with timing associated with responding to the sheer volume of IRs submitted, the range of information represented in the exchange of written requests and responses has been extensive. De Beers anticipates that, upon completion of the IR rounds, the responses provided will address all of the queries and concerns raised to date.

We note that the information exchanged in the IR process has covered much of the content that would otherwise have been addressed in the course of a hearing. It has taken a significantly longer period of time to process and administer the exchange of information in a written format than it would have taken to respond to similar questions orally in a hearing/public meeting format. De Beers' Snap Lake application should not be prejudiced because the timelines required to administer the written IR process has overlain the timelines initially proposed for the Board's technical review.

The third issue addresses what is in effect a two stage approach to the public technical sessions: a technical session to identify outstanding issues and a public hearing to address more complex technical issues. We would suggest that the IR process was designed for and has already accomplished the former. The advisors' assessment of all of the information on the public registry after round 3 will provide the Board with the nature and magnitude of the advisor's concerns inclusive of the outstanding issues that should be addressed at a technical session. De Beers is opposed to a request for what is in essence two public hearings on technical issues. Firstly, the IR process has indicated that the number of technical issues of concern is limited. Secondly, two separate public hearings on technical issues, several months apart, would be neither efficient nor effective.

De Beers suggests that, given the comprehensive nature of the information exchange during the IR process, there is no need to have a technical session separate and apart from a public hearing. Given that many of the technical issues are already on the public record, the public hearing could combine a technical and a general component. In the event advisors are of the opinion serious issues remain after the technical session, the Board has a number of options available. The door is not closed. Section 43 of the Board's Rules of Procedure allow for the Board to "authorize additional information requests by any party after the completion of the technical review phase of a proceeding." Unresolved issues could also be addressed at a public hearing just as they would have been in the absence of either an Information Request or a technical session. De Beers is concerned that by opening up the process to a two staged technical hearing now, a proposition that does not appear to have any substantive basis, the time frame of the MVEIRB review of the Snap Lake EA will be susceptible to

unlimited extension. It will be much easier to expand the process if the need arises than to tighten the time lines once they have been extended.

In summary, De Beers recommends:

- The Board maintain the original sequence of the Work plan.
- The Board carefully examine the need for and the purpose of a technical session in light of the extensive written exchange of questions and answers conducted to date. De Beers is of the opinion that the IR process has been detailed, thorough, close to exhaustive and has not identified any significant substantive technical matters that have not been resolved. The Board's advisors and the government departments in advisory positions to the Board have sufficient information in front of them now, or will have by the end of Round 3 to prepare and finalize their reports. If there are any outstanding significant matters, those matters should be identified so that the Board can determine whether they need to be addressed and if so how and when.
- The Board require technical advisors to identify any significant outstanding matters they wish to probe further in a technical session so the Board can determine whether they need to be addressed and if so how and when.
- The Board consider that in the event a technical session is deemed necessary, with information from the advisors in hand, the administrative job of setting an agenda should be relatively straightforward and a task that would not require a separate pre-hearing conference.
- The Board fully examines the purpose and nature of a public hearing in light of the extensive participation in the IR process to date. If there are only a limited number of outstanding technical issues identified there is an opportunity for the Board to hold a single public hearing to address remaining technical issues as well as issues of concern to the general public. A combined session could allocate specific times to particular matters identified by the technical review as requiring further attention.

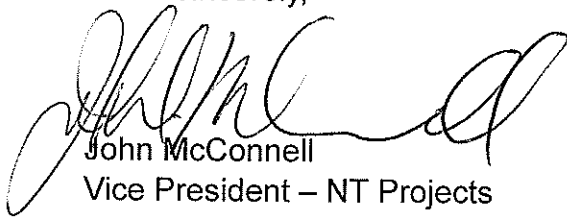
In addition to the above, De Beers is also concerned that the remaining IR process be managed in an efficient manner. With the 3rd round, "part b" of Information Requests on the horizon, De Beers requests that the Board focus Round 3b IRs on requests that are supplementary to rather than in duplication of responses to earlier IRs. In order to reduce the unnecessary burden to all parties to the proceedings who are struggling to manage the flow of paper generated by the IR process, we would appeal to the Board to direct the remaining stages of the review process, including public sessions/hearings, to matters of significance



and of significant concern. This would serve to concentrate the resources of the Board, the advisors, the communities and of course De Beers, on the issues of importance and concern.

We would like to thank you again for the opportunity to comment on the INAC submission. If you have any question or would like our comments further clarified, please contact me.

Yours sincerely,



John McConnell
Vice President – NT Projects