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July 9, 2002

Ms. Janet L. Hutchinson
Chamberlain Hutchinson
Barristers and Solicitors
1310 Merrill Lynch Tower
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By FAX Only

RE: Your Letters of July 3rd, 4th and 8th, 2002 on De Beers EA Process Issues

Dear Madam:

I am responding on behalf of the Mackenzie Valley Environmental Impact Review Board (the Review Board) to some of the issues raised in the above captioned correspondence addressed to Mr. Azzolini. More specifically, I am responding to the concerns you raised with respect to your perceptions of the unequal treatment of the North Slave Metis Association (NSMA) and to your questions about the Review Board's process in the De Beers proceeding.

Your July 3rd letter also included a series of comments with respect to the proposed changes to the De Beers work plan. Thank you for this submission. The NSMA's comments and the information and argument you provided have been reviewed and will be included with comments provided by other parties to the environmental assessment (EA) when the results of the consultation on proposed changes to the work plan are presented to the Review Board for its decision.

You also wrote on July 4th asking about any instances in the EA process when the Review Board has issued directions on procedure. There have been no directions issued to date in the De Beers EA proceeding.

As you are aware, the IR process is in progress. The Review Board's initial IRs were issued to De Beers on March 25, 2002 and responded to by De Beers on June 12, 2002. The next round of IRs, also referred to as "open IR Round #1" was issued to De Beers on May 1, 2002. De Beers has yet to respond to this round of IRs. The Review Board has

consolidated additional IRs from the parties to the EA for “open IR Round #2” but not yet issued them. The Review Board outlined its intention to extend open IR Round #2 in its amended June work plan. The NSMA has had the opportunity to comment on the amended work plan. This extension will allow the submission of “supplementary” questions by the parties to the EA.

This extension is being considered by the Review Board as a result of delays in the submission of answers to its IRs and to IRs in open round #1. If the amended work plan is approved by the Review Board and the extension is included, subsequent rounds of IRs will not be necessary because the parties to the EA will have the time to consider the De Beers response before submitting their final “supplementary” IRs as part of “open round #2”.

The IR process is intended to allow the parties to test the evidence submitted by De Beers, to ensure that the EA Report is complete and that the matter is ready to proceed to the technical meeting or hearing stage. The Review Board has decided that the three rounds of IRs currently included in the work plan will be sufficient to meet these objectives.

Your letter indicated your concern that the Review Board has met directly with INAC without involving other parties. The Review Board has not met with any party to this proceeding. Review Board staff have met with government technical agencies at the government’s request. Government agencies play unique roles in the EA process. They participate as parties but they also have obligations under section 22 of the MVRMA to provide the information necessary for the Review Board’s proceedings. The Review Board has on occasions sought such information from government but any such meetings are also public. It is worth noting that staff of the Review Board also met with NSMA staff in order to discuss the EA process.

You also suggest that some parties are receiving information that other parties are not. This is simply not accurate. All information received is placed on the Public Registry. Any correspondence related to this EA from the Review Board and staff is also placed on the Registry. There is no selective access to information in this EA.

The NSMA letter of May 27, 2002 was specifically considered by the Review Board. I am not certain which June 24, 2002 correspondence caused your concerns but the NSMA’s views, expressed in your May 27 letter, were put to the Review Board. I note as well that a final decision on the work plan has yet to be made and that your concern with regard to the fate of your submissions may be premature. In any event, all of the NSMA’s submissions on the work plan will be considered when the MVEIRB makes its decision.

You expressed concern that the Review Board did not respond to your July 27th letter. The Review Board does not respond individually to every submission it receives. The Review Board will respond to all the comments it received on the work plan through its decision on the amendment of the plan.

The Review Board carefully considered the conformity issues raised by the NSMA. It was decided that the additional information highlighted as being necessary in your

conformity submission could be secured by way of IRs. The choice of the appropriate procedure for securing this information is within the discretion of the Review Board. The conformity stage in the EA has not yet been closed since DeBeers has not yet responded to the deficiency statement issued by the Review Board. Upon receiving and reviewing DeBeers' response to the deficiency statement, the Review Board will take the steps necessary to ensure that all of the information that was requested has been provided.

I have discussed your interpretation of the April 24th meeting between the NSMA and Review Board staff with Mr. Azzolini. Other staff of the Review Board was present at the meeting. They do not share your understanding of what was said or your views on the meeting. In any event, the Review Board is treating the NSMA in the same way as the other parties to this process. The NSMA has been granted directly affected party status in recognition of the significance of their interests in this process. We recognize the substantive interests of the NSMA with regard to the De Beers project and trust that it will continue to participate in the EA.

Mr. Azzolini and other Review Board staff do not engage in direct discussion of the merits of the issues in the EA with participants in the proceeding. Our staff are instructed to limit such exchanges. These instructions are consistent with the requirements of natural justice. If Mr. Thom was raising such matters as a way to bring them to the attention of the Review Board, then our staff may unfortunately have limited their discussion with him. Mr. Thom may of course address these matters to the Review Board in writing so that they may find their way on to the Public Registry. The NSMA could also seek a ruling on such an issue if it is important enough to warrant such action.

I note your position with respect to the proceedings. The NSMA is of course free to take any position it wants. The Review Board will continue to conduct the proceeding with a view to fully satisfying its obligations to be fair.

Finally, with respect to your July 8th letters, I trust that any confusion about where materials relevant to the EA proceeding are to be forwarded has been resolved. Unfortunately, we have no description of the format for the "technical sessions" to forward you. We will be scheduling a prehearing conference at a date to be announced later to discuss these matters. I trust that the NSMA will be participating.

Yours truly,

John Donihee
Board Counsel

cc Public Registry