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May 30/03
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Mackenzie Valley Environmental Impact Review Board

Box 938 , 5102-50th Avenue, Yellowknife, NT. X1A 2N7

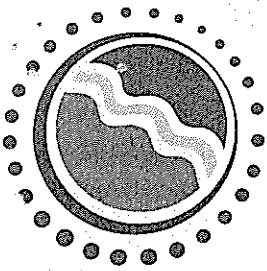
From:	Glenda Fratton	Fax:	(867) 766-7074
		Phone:	(867) 766-7052
Date:	May 30, 2003	Pages:	3 including this page
To:	Julie Dahl	Fax:	669-4940
		Fax:	
Re:	Letter on Issuance of IRs – Snap Lake Diamond Project		

NOTES:

Julie:

Please see the attached letter regarding the above noted subject. The original letter will be forwarded to you.

Regards,
Glenda



May 30th, 2003

Ms. Julie Dahl
Area Chief, Habitat
Fish Habitat Management
Department of Fisheries and Oceans
Suite 101, 5204 – 50th Avenue
Yellowknife, NT
X1A 1E2

Dear Ms. Dahl:

RE: Snap Lake Diamond Project – Issuance of Information Requests (IRs)

Thank you for your letter of May 15th, 2003 in which you raise several concerns arising from the Mackenzie Valley Environmental Impact Review Board's (Review Board) treatment of your department's information requests in round 3 of the IR process for the above captioned Environmental Assessment (EA) process. As you have pointed out, the Review Board's reasons for decision are included in the document released on March 4th of this year. I am not in a position to elaborate on the Review Board's reasons. They speak for themselves.

I am, however, able to provide some observations, assisted by counsel, on the IR process set out in the Review Board's Rules of Procedure, in response to the more general questions raised in your letter.

First, we appreciate the participation and analysis contributed by your department to Review Board proceedings. The Department of Fisheries and Oceans (DFO) plays an important role in the environmental impact assessment process outlined in part 5 of the *Mackenzie Valley Resource Management Act* (MVRMA) and, of course, we recognize your department's role as a regulator and your Minister's role, in matters where this jurisdiction is engaged, as a Responsible Minister and decision-maker.

We should also point out that DFO's mandate as a regulator based on the *Fisheries Act* may at times be distinct from its role as a participant in the Review Board's part 5 processes. The MVRMA environmental impact assessment process is intended to serve a variety of explicit goals set out in sections 114 and 115 of the Act. The Review Board exercises independent authority based in the MVRMA and it structures

and manages its proceedings to serve those goals. My point is simply that the Review Board uses its IR process to serve these goals and to meet the information needs of its proceedings.

While we recognize the importance of the regulatory issues and questions which must be resolved by your department, we agree with your observation that the "IR process is not the only option for responsible ministers to seek information or clarification from the developer...". DFO has other means and opportunities to secure information from a developer aside from the Review Board's IR process. For example, DFO might utilize its regulatory role set out in section 35 of the *Fisheries Act* or its "no net loss" fish habitat policy; both of which provide the ability to secure the additional information it requires to be satisfied there is a sufficiently minimal impact on the environment.

We have reviewed Rules 41 through 49 of the Snap Lake Rules and our reading of Rules 44 and 45 clearly implies that IRs are issued subject to the Review Board's authority. In other words, if the Review Board decides not to issue an IR it has the authority to withhold it. The Review Board is the master of its own proceedings and these Rules were established by the MVEIRB to serve its procedural needs pursuant to section 30 of the MVRMA. We do not agree that the Review Board is compelled to issue any IR, irrespective of the source. Such an interpretation of the Rules is not consistent with the practice of other administrative tribunals and could easily lead to abuse of the IR process. With respect to your argument about paragraph 117(2)(e), we point out that your Minister did not consult with the Review Board during the development of the Snap Lake EA terms of reference or at any time in the process. Such direction to the Review Board is possible if the statutory requirements are met. In this case they were not.

In the case of the IRs put forward by DFO and not approved by the Review Board, I can report that the Board made no attempt to determine whether the questions were within your Minister's legislated mandate. In our respectful view, that question is irrelevant. The main consideration in reviewing a prospective IR is whether the question will assist the Review Board in making one of the determinations necessary under section 128 of the MVRMA.

I believe that I have addressed each of the questions raised in your letter. Please feel free to contact me directly if further clarification would be of assistance.

Yours truly,



Vern Christensen
Executive Director

