

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

In the Matter of: **The DeBeers Canada Mining Inc.**
 Snap Lake Diamond Project
 Environmental Assessment
And In the Matter of: **A Decision to Refuse to Issue Certain**
 Information Requests Submitted by
 Parties to the Proceeding

REASONS FOR DECISION

Background:

As part of its Environmental Assessment (EA) proceeding for the De Beers Canada Mining Inc. Snap Lake Diamond Project, the Mackenzie Valley Environmental Impact Review Board (Review Board) authorized the use of written information requests (IRs) pursuant to Rules 41 to 49 of the Review Board's De Beers Rules of Procedure¹ (Rules). Three rounds of IRs were issued. The IRs are prepared and submitted to the Review Board for consideration. Approved IRs are, pursuant to Rule 44, issued under the Review Board's authority. These Reasons for Decision address the Review Board's refusal to issue some of the Round 3 IRs submitted to the Review Board by the parties to the EA in August 2002.

Application of the Rules:

The Rules make it clear that all IRs are issued by the Review Board and that the decision to authorize the issuance of any IR question is discretionary.

Analysis:

The exercise of the Review Board's discretion to approve an IR is subject to certain threshold tests. First, the IR must be relevant to the proceeding. The IR must assist the Review Board to make a determination under section 128 of the *Mackenzie Valley Resource Management Act*. The IR must be consistent with and must address issues within the scope of the development and the terms of reference for the proceeding. Second, the IR must not be frivolous, vexatious, argumentative or prejudicial to the party being questioned. It is the responsibility of the party posing a question to make sure that it is clear, respectful and properly framed. Open-ended

¹ Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings (draft, dated March 21, 2001). The Review Board adopted these Rules on September 17, 2001 as the *De Beers Snap Lake Diamond Mine Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings*.

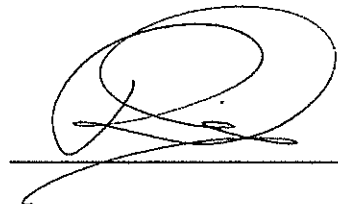
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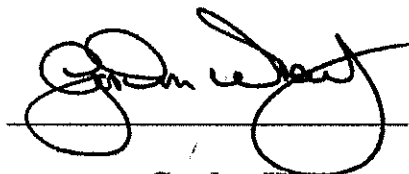
questions, statements in the form of questions, and questions based on assumed facts are not helpful and may not be approved. Third, the purpose of IRs is to develop a better understanding of the developer's assessment report which, in most cases, has already been determined to be in conformity with the EA's terms of reference. Testing of the developer's assessment report can usually be done without the need for additional field studies. If the developer's assessment report is deficient, the Review Board will have to consider whether the developer has met its onus in the proceeding. Consequently, IRs which would require new field studies will generally not be approved. Fourth, IRs that address matters, which in the Review Board's view, are more properly addressed in regulatory proceedings, may also be disallowed. Finally, the Review Board has no obligation to issue IRs that are received after set deadlines; and will not do so when issuing the IRs would raise issues of fairness.

Decision:

The analysis above outlines the context within which the Review Board reviewed the third round of IRs. As a consequence, a number of IRs were not approved and were not issued to the developer.

Signed this 4th day of March, 2003 on behalf of the Mackenzie Valley Environmental Impact Review Board:


witness


Gordon Wray
Alternate Chairman

