A1539

FAXED May 30/03

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:	**Yvonne MacNeill**	Fax:	873-0625
		Fax:	
Re:	**Response to Justice Canada's March 18th Letter - Reasons for Decision on Round 3 IRs**		

NOTES:

Yvonne:

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

Regards,
Glenda

Our File EA01-004

May 30th, 2003

Ms. Yvonne MacNeill
Legal Counsel
Department of Justice Canada
2nd Floor Diamond Plaza
5204 – 50th Avenue
P.O. Box 8,
Yellowknife NT
X1A 2N1

Dear Ms. MacNeill:

RE: De Beers Canada Mining Inc. Snap Lake EA -
Reasons for Decision on Round 3 Information Requests

The Mackenzie Valley Environmental Impact Review Board (Review Board) is now in receipt of your letter dated March 18th, 2003 and addressed to Gordon Wray, Alternate Chair. The original letter was not received by this office however we did receive your fax with the letter attached on May 22nd, 2003. I am uncertain why this correspondence did not reach our system. I trust that the delay in providing this response will not have unnecessarily inconvenienced you.

You have raised several concerns arising from the Mackenzie Valley Environmental Impact Review Board (Review Board) treatment of your department's information requests in round 3 of the IR process for the above captioned Environmental Assessment (EA) process.

The Department of Fisheries and Oceans (DFO) has also questioned the Review Board's treatment of its Information Requests (IRs). As I pointed out in my letter of May 30, 2003 to Ms. Dahl, the Review Board's interpretation of its Rules of Procedure (Rules) varies from yours. I don't wish to engage in detailed argument about the interpretation of Rules 41 to 45 at this time. We have noted the apparent difficulties raised by the wording of these Rules and they will be addressed by the Review Board in due course.

The Review Board has, nonetheless, as does any administrative tribunal, the authority to manage and control its own process. The Review Board's interpretation of the Rules and its practice with respect to IRs has been that it has the discretion to modify or refuse to issue any IR. In the De Beers proceeding, for example, the IRs received were circulated to the parties

upon receipt, with the understanding that the Review Board would review them and that direction to answer them would follow.

You are correct to point out that the authority to refuse is not explicitly outlined in our Rules. It is the Review Board's position, however, that this authority is implied from a reading of Rules 44 and 45, in conjunction with the general authority vested in administrative tribunals referred to above. To hold otherwise could open the Review Board's process up to irrelevant, frivolous or vexatious IRs and to other abuses of the Review Board's process. We do not consider it proper or efficient to await a dispute raised by an IR before considering its acceptability.

We are not suggesting that DIAND's IRs fell into these categories. The Review Board depends on the participation of government authorities and representatives of Responsible Ministers in order to complete the analyses necessary in its proceedings. In the De Beers EA, however, the sheer volume of IRs resulted in some decisions by the Review Board to defer questions which would clearly be dealt with in detail in subsequent regulatory proceedings. As I understand the Review Board's decision, the DIAND IRs fell into that category.

I am not in a position to provide "the specific factual basis" for the Review Board's decision as their reasons must speak for themselves.

I trust that this information will be of use to you and your client.

Yours truly,

Vern Christensen
Executive Director