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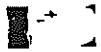
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MACKENZIE VALLEY  
ENVIRONMENTAL IMPACT  
REVIEW BOARD

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SEND TO / ENVOYER À		FROM / DE	
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<b>Comments / Commentaires:</b> <p>Glenda, as per our conversation, attached is the letter to which I referred. We look forward to receiving a reply from the Board in due course.</p>			
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Our File  
Your file

2-73899

BY HAND

March 18, 2003

Mackenzie Valley Environmental Impact Review Board  
P.O. Box 938  
5102 - 50th Avenue  
Yellowknife, Northwest Territories  
X1A 2N7

Attention: Gordon Wray  
Alternate Chairman

Dear Sir:

Re: **DeBeers Canada Mining Inc./ Snap Lake Diamond Project Environmental Assessment; Reasons for Decision – March 4, 2003**

I am writing on behalf of my client, the Department of Indian Affairs and Northern Development ("DIAND"). We reviewed the Reasons for Decision, dated March 4, 2003, with respect to the Review Board's "refusal to issue" some of the Round 3 Information Requests ("IRs"). Three of the IRs that were not forwarded to the proponent were submitted by DIAND.

You indicate that the Rules of Procedure governing the proponent's environmental assessment "...make it clear that all IRs are issued by the Review Board". With respect, we do not agree with this statement. Rule 42 states:

Parties to a proceeding may seek and exchange information by way of information requests at any time until completion of the technical review phase of a proceeding.

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And, Rule 44 provides that:

All information requests are issued under the Review Board's authority.

The foregoing does not indicate that "all IRs are issued by the Review Board" but that the IRs of parties are issued under the Review Board's authority.

The Review Board's mandate includes the gathering of all necessary information during the assessment process so that it may make its determination after consideration of such information. Pursuant to the provisions of the *Mackenzie Valley Resource Management Act*, the Review Board has the authority to require a proponent to provide information to it. This legal authority to require that information be provided does not extend to other parties to the proceedings. Although a party may request information from a proponent there is no corresponding legal obligation placed on the proponent to provide any information to the party. By providing that IRs are issued under the Review Board's authority (being the authority to seek and obtain information, including the production of documents), the legal obligation to provide the information sought is extended to include those IRs that are submitted by other parties. This is the reason why the IRs of the participants in an environmental assessment are issued under the authority of the Review Board. In other words, parties that submit IRs do so under the authority given to the Review Board because, otherwise, there is no legal requirement for the proponent to provide any information to any party but the Review Board. However, this does not result in the Review Board "issuing" the parties' IRs. Rather, the IRs are submitted under the cover of the Review Board's legal authority so as to require the proponent to provide the information and documentation necessary for the conduct of a complete environmental assessment.

The Reasons for Decision also state that the Review Board's Rules indicate that "...the decision to authorize the issuance of any IR question is discretionary". Unfortunately, no specific Rule was cited as the legal authority underlying this statement and we have not found any such authority in the Rules. Rule 45 does provide that:

Any dispute over the need for or the relevance of information requested in the information request shall be resolved by the Review Board.

This Rule does provide the Review Board with the power to resolve "any dispute" involving IRs. It seems logical that, in order for a dispute to even arise concerning the need for or relevance of an IR, the IR would first have to be forwarded to the party of whom the information is requested. Should that party then refuse to answer the IR for specific reasons, it may then be said that a "dispute" has arisen. The dispute arises between the party seeking the information and the party refusing to provide the information sought.

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In the case of the three DIAND IRs, there is no evidence on the record that the IRs were submitted to the proponent. There is also no evidence on the record that the proponent provided reasons for its refusal to answer the IRs. In fact, it appears that it was the Review Board that decided the need for or the relevance of the information requested without even submitting the IRs to the proponent. Therefore, the "dispute" seems to have arisen between the party submitting the IRs and the Review Board. Obviously, the Review Board cannot both be a party to a dispute and also be the decision-maker with respect to that dispute. Rule 6 states that the duty of procedural fairness applies to all decision-making by and proceedings of the Board.

With respect, we submit that the just and fair way to deal with IRs is for the Review Board to forward all IRs to the party to whom the IRs are addressed. If the receiving party refuses to answer the IRs then it should provide its reasons for the refusal in writing. The written reasons for refusal to answer the IRs should then be forwarded to the party that submitted the IRs. The submitting party may disagree with the reasons for the refusal to answer the IRs and should be allowed the opportunity to refute the position of the other party. It is only then that the Review Board may be in a position to resolve the dispute that has arisen in an unbiased and fair manner.

Lastly, we respectfully submit that the Reasons for Decision issued by the Review Board do not address the question posed by DIAND's regarding why its IRs were not submitted to and answered by the proponent. Reasons for Decision are made up of two components, being the decision itself and the reasons for that decision. The decision should set out what the decision-maker determined as being the facts in a particular situation. The reasons should set out the basis on which the decision-maker determined those facts as such. The general Reasons for Decision that were issued by the Review Board fail to inform any party of what specific facts were determined by the Review Board that resulted in its decision relating to any particular IR. Because the Reasons themselves are vague they are not helpful and they will not assist any of the parties when submitting future IRs.

Although it is apparent that the IR process during this environmental assessment was flawed, we still wish to be informed of the objections to the information that was sought by way of DIAND's IRs. Accordingly, my client again requests that it be advised in writing of the specific factual basis for the Review Board's refusal to forward the three DIAND IRs to the proponent.

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We thank you for your attention hereto and look forward to hearing from you.

Sincerely,

Original signed by  
YVONNE M. MACNEILL

Yvonne MacNeill  
Legal Counsel

cc: David Livingstone  
Director, Renewable Resources and Environment  
Indian and Northern Affairs Canada