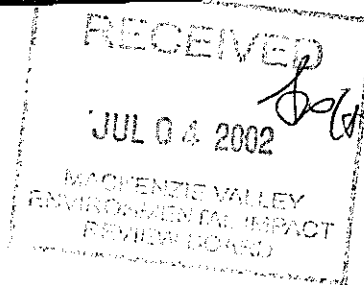


CHAMBERLAIN HUTCHISON+*Barristers and Solicitors*

*Andrew J. Chamberlain, LL.B.
 *Janet L. Hutchison, LL.B.
 *Katharine L. Hurlburt, B.Sc., LL.B.
 Katrina M. Haymond, LL.B.



1310 Merrill Lynch Tower
 10025 - 102A Ave nue
 Edmonton, Alberta T5J 2Z2
 Telephone (780) 423-3661
 Fax (780) 426-1293
 E-mail jhutchison@nucleus.com

Our File: 51163 JLH

TELECOPIER COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: LUCIANO AZZOLINI

FIRM: MVEIRB

TELECOPIER NUMBER: (867) 920-4761

FROM: JANET L. HUTCHISON

DATE: July 3, 2002

NUMBER OF PAGES: 14 INCLUDING COVER PAGE
 (If you do not receive all pages, please call 423 3661 as soon as possible)

RE: DEBEERS SNAP LAKE DIAMOND PROJECT ENVIRONMENTAL ASSESSMENT

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CHAMBERLAIN HUTCHISON+*Barristers and Solicitors*

*Andrew J. Chamberlain, LL.B.
*Janet L. Hutchison, LL.B.
*Katharine L. Hurlburt, B.Sc., LL.B.
Katrina M. Haymond, LL.B.

1310 Merrill Lynch Tower
10025 - 102A Ave nuc
Edmonton, Alberta T5J 2Z2
Telephone (780) 423-3661
Fax (780) 426-1293
E-mail jhutchison@nucleus.com

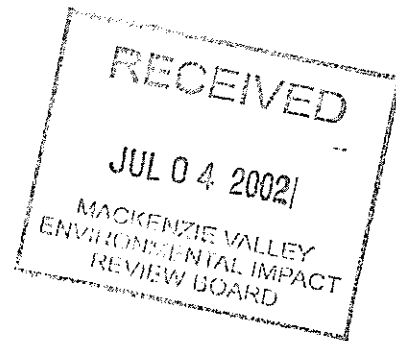
Our File: 51163 JLH

July 3, 2002

SENT BY FAX ONLY

Mackenzie Valley Environment Impact Review Board
Box 938
Yellowknife, NWT X1A 2N7

ATTENTION: LUCIANO AZZOLINI,
Environmental Assessment Officer



Dear Sir:

Re: Comments on Proposed Workplan- De Beers Snap Lake Diamond Project

Thank you for your letter of June 24, 2002 with the proposed workplan and attachments A-C. Your letter causes us grave concern on a number of points.

Lack of Response

We feel that our ability to respond to the proposed amended workplan has been negatively affected by the lack of response from the Board on the matters raised in our letters of May 27, 2002. I have attached copies of our two letters dated May 27, 2002. The letter of May 27, 2002 expressing concerns on process was particularly important. The NSMA is now being required to comment on the proposed workplan without the benefit of the Board minutes and other information requested. I note that I could not locate the fax confirmation sheet on the shorter May 27, 2002 letter. If it was not forwarded to you, please accept my apologies and provide us with an immediate reply.

We were advised in your email of May 28, 2002 that the Board would consolidate all IR's and

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decide which IR's would actually be issued. That decision has yet to be made. As a result, we are being asked to comment on the proposed amended workplan without knowing the scope of the Round Two IR's. Obviously, with this level of uncertainty surrounding IR's, we cannot effectively comment on appropriate timelines.

Unequal Treatment of Parties/Breaches of Procedural Fairness

I was extremely disturbed by the contents Attachment A-C of your June 24, 2002 fax. Based on those letters, it appears that the Board has met with INAC on at least two occasions, being May 27th and June 13th, 2002. Further, it appears that government authorities are being informed about the agendas at Board meetings and being given an opportunity to provide comments and input in advance of Board meetings. To our knowledge, none of the other parties to this proceeding were notified of these Board meetings, given notice of the Board Agenda or given an opportunity to make submissions to the Board on the issues before the Board at its meetings. Finally, it appears that some parties are communicating directly with the Board, rather than with the Executive Director or a designated environmental assessment officer.

I wish to remind you of your *Rules of Procedure*:

Preamble:

"The common law duty of procedural fairness applies to all decision-making by and proceedings of the Review Board."

"4. Subject to Rule 21, any party or member of the public may provide written information or comments to the Review Board at any time during a proceeding. Parties to a proceeding shall be given the opportunity to respond to such information or comments before the conclusion of the proceedings."

"15. All Requests, filing of information and contact in relation to a proceeding shall be made through the Executive Director of the Review Board or the Environmental Assessment Officer designated by the Executive Director."

“19. Copies of written submissions shall be made available to all parties in a proceeding by the Review Board and the parties will be given an opportunity to respond to the written submissions. In the case of an oral presentation, parties will be allowed to ask questions of the person who made the presentation.”

(Emphasis added.)

In the process thus far, the Board has violated its Rules of Procedure, committed at least three blatant violations of procedural fairness, and there are indicators of a bias against the NSMA. For example:

1. The Board has been meeting directly with INAC without notifying or including other parties (contrary to Rules 4, 15 & 19).
2. Some parties (apparently government authorities) are receiving information that is not being forwarded to the other parties.
3. The NSMA provided a letter on May 27, 2002 expressing concerns about the Board process and making specific requests for a revised workplan. Other parties' submissions on the revised workplan were considered. Based on the June 24, 2002 correspondence, it appears the NSMA's submissions were not considered.
4. The Board failed to respond to the NSMA's letters of May 27, 2002.
5. The NSMA's non-conformity concerns, while substantially the same as the GNWT's, were rejected as conformity issues and treated as IR's. Overall, NSMA's submissions seem to be disregarded, as noted in point #3 and #4.
6. The NSMA was advised in an April 24, 2002 meeting with Mr. Azzolini that he viewed their involvement as politically motivated. He implied he did not view their involvement as being motivated by substantive concerns.
7. Mr. Azzolini has insisted on limiting discussions with the NSMA (specifically refusing to discuss Mr. Thom's concerns) on the basis that, as an extension of the Board, he cannot discuss any issues that would come before the Board. However, it appears that the Board itself is discussing such issues directly with other parties.

I wish to advise that NSMA takes the position that the Board's actions, described above, have seriously tainted these proceedings. Our client's further participation in the process will be without prejudice to the ability to argue that the entire Board process is invalid due to breaches of procedural fairness and natural justice and due to bias.

Also, please confirm that in the future:

- the Board will refrain from meeting with any parties without first notifying all other parties of the meeting and giving all parties an opportunity to make submissions;
- if any party is advised of a Board meeting and agenda and given an opportunity to make submissions, all other parties will receive notice of the meeting and the agenda and will be given an opportunity to make submissions; and
- if any party makes submissions to the Board on any issue, those submissions will be distributed to the other parties and they will have an opportunity to make responding submissions before the Board considers and decides the matter.

Comment on the Proposed Workplan

We have reviewed the letters attached to your June 24, 2002 letter. We agree entirely with the submissions that it is not possible to set specific milestone dates under the current circumstances. The NSMA agrees that the manner in which IR process has been handled has created considerable uncertainty about the amount of time required for each step. We wish to remind the Board that s.30 of the Act requires "reasonable" time limits. In this case, we submit that all the surrounding circumstances must be considered in determining what is reasonable. Given the large volume of IR's and anticipated IR responses, the IR stage of the process should not be rushed. The fact that the Board has chosen to allow the conformity stage to run concurrently with the technical analysis stage, also dictates a more liberal approach to the deadlines relating to IR's.

Overall, we take the position that an effective and workable revised workplan cannot be implemented until the parties have had at least two weeks to review the IR responses and assess the extent of the additional IR's that will be required.

Our specific comments and concerns with the proposed workplan are as follows:

- We wish to reiterate the comments and concerns with the workplan as set out in our letter of May 27, 2002.
- There is no deadline for DeBeer's response to the deficiency statement in the proposed workplan. The workplan should require a deficiency statement response at least 30 days before the closing date for the last round of IR requests.
- The Board's entire IR process is becoming unclear. The Board has a responsibility to ensure its process is open, transparent and understandable. Your letter of May 21, 2002 referred to the IR's which closed on May 27/02 as Round 3 IR's (Round 2 for the intervenors and directly affected parties). The letter promised additional rounds of IR's due to the fact responses to IR's had not been received. The new workplan appears to reopen Round Two IR's (although it is not clear whether the proposed workplan will even be effective by the July 17/02). However, no further IR's are provided for.
- The Board has deleted provision for Round Three IR's. In your email of May 21, 2002 and in your discussion with Ms. Demarco (our researcher) on May 22, 2002, we were assured that because Round 2 IR's had closed before DeBeer's responses were received, the Board would adopt a flexible approach to future rounds of IR's. Your email specifically states that the amended workplan would recognize the need for additional or supplemental IR's. Despite the expectations your correspondence created, the Board now proposes to eliminate Round 3. In our submission, the current proposed workplan should provide for Round 3 IR's, at a minimum. Further, Round Three should not close until at least 30 days after a response to the deficiency statement and 90 days after the parties receive responses to all other rounds of IR's.
- There is no provision for Round Three IR's arising from the responses to the May 27, 2002 IR's. There is no deadline for DeBeers to respond to the May 27, 2002 IR's but it appears parties will not be allowed further IR's once responses are received. This is entirely inappropriate.

- The parties will only have 3 weeks to prepare further IR's based on DeBeer's first round of responses. The NSMA submits that at least 90 days should be given for review of the responses to the Round One IR's and for submission of further IR's arising from that review. The deadline of July 17, 2002 to review the Round One IR responses and provide final (Round Two) IR's is entirely unreasonable given the large of information to review and assess in the June 28, 2002 response and the fact the May 27, 2002 IR's have not been answered.
- There is no provision in the workplan for Community Hearings or sessions pursuant to Rules 73-77 of the Rules of Procedure. The NSMA has raised numerous concerns about inadequate consultation in the course of this process (many of which are found in the April /02 non-conformity submission). These concerns have not been fully addressed. The NSMA takes that position that such hearings or sessions are necessary to ensure adequate consultation with affected First Nations. The NSMA requests that provision for such community hearings or sessions be added to the workplan.
- We are extremely concerned that the total time for the technical sessions and Board hearing has been cut in half. The volume of IR's and number of parties involved are indicators that more time than was originally scheduled is required. At minimum, the Board should allocate 20 days for the technical sessions and hearings.
- Overall, the revised timelines appear to favor DeBeer's and place the other parties at a disadvantage. DeBeers received an extension of approximately 60 days to respond to IR's. In total, DeBeers had over three months to respond to Round One IR's. The parties will have less than three weeks to review the responses and prepare linked IR's. Further, of the five months provided for "linked" Round Two IR's, only three weeks take place after the deadline for DeBeers to respond to Round One IR's.
- The NSMA submits that the technical sessions should occur before the final expert reports are provided.

- We wish to note that while the June 17, 2002 letter to Mr. Catholique indicates that your Traditional Knowledge ("TK") coordinator has made several trips to communities, Ms. MacArthur does appear to have met with the NSMA or its members. Provision for further TK work with the NSMA by the Board's TK coordinator must be provided for in the workplan.
- The Board's letter of June 17, 2002 refers to a TK workshop to determine how TK will fit into the EA process. The NSMA submits that the workplan should be revised to provide for that workshop and that the workshop should occur at least 45 days before the last round of IR's closes.
- The current workplan does not appear to address timelines for disclosure of information and evidence, as contemplated by Rule 33 of the Rules of Procedure.
- Rule 37 of the Rules of Procedure allows IR's by right during the technical review phase. The Board's Rules of Procedure are unclear as to whether the technical review phase concludes before or after the Technical Sessions. The NSMA takes the position that the workplan must provide for a further round of IR's after the Technical Sessions or a community hearing. In order to ensure the Board's process allows for adequate consultation with affected First Nations, there must be provision for a consultation process after they receive the technical information. If the Board insists on setting the deadline for submission of expert reports prior to technical sessions, the NSMA requests a period of time for submission of IR's or a community hearing between receipt of the technical reports and the technical sessions.

Finally, the NSMA takes the position that given Rule #4 and #19 of the Rules of Procedure, all parties should have a further opportunity to comment on the submissions of the other parties regarding the proposed amended workplan. We would suggest a deadline of **July 12, 2002** for responding submissions is appropriate.

We look forward to hearing from you with respect to the concerns raised in this letter.

Yours truly,

CHAMBERLAIN HUTCHISON

PER: JANELL HUTCHISON

JLH/vla

cc: client

CHAMBERLAIN HUTCHISON+*Barristers and Solicitors*

*Andrew J. Chamberlain, LL.B.
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1310 Merrill Lynch Tower
10025 - 102A Avenue
Edmonton, Alberta T5J 2Z2
Telephone (780) 423-3661
Fax (780) 426-1293
E-mail jhutchison@nucleus.com

Our File: 51163 JLH

May 27, 2002

COPY**SENT BY FAX ONLY**

Mackenzie Valley Environment Impact Review Board
Box 938
Yellowknife, NWT X1A 2N7

ATTENTION: LUCIANO AZZOLINI,
Environmental Assessment Officer

Dear Sir:

Re: De Beers Snap Lake Diamond Project

I am writing in relation to your correspondence regarding the May 27, 2002 deadline for Round 2 I.R.'s. I understand that your current intention is to issue IR's from the Board based on your interpretation of the NSMA's submission dated April 13, 2002. I have several concerns regarding the current process and the content of the IR's you forwarded on May 24, 2002.

Our comments on the proposed IR's, sent out on May 24, 2002, are being provided on the following basis. My client remains very concerned regarding the apparent reclassification of their April 13, 2002 non-conformity submission to an IR submission. We will be forwarding a letter later in the week addressing that issue in more detail. Nothing in this letter or any discussions about IR's based upon my client's April 13, 2002 submission constitutes a waiver of my client's rights to contest any reclassification that has occurred.

Our first comment on the proposed IR's relates to the source. You have listed the Board as the source of the IR's. Other directly affected parties who raised concerns were listed as the source for the information requests subsequently issued. Presumably, the party credited with the IR would have more input than another party regarding whether the IR has been responded to in a satisfactory

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manner. By not crediting these concerns to the NSMA, I am concerned that the Board has further limited my client's future input on whether DeBeers has satisfied the concerns raised in their April 13, 2002 submission. Accordingly, while my client remains of the view that these initial concerns should have been treated as non-conformities, if the Board insists on reclassifying the NSMA's concerns to IR's, the NSMA should be listed as the source.

Our preliminary concern with your proposed IR's is the extremely short timelines given to NSMA to comment. We expect this to be a factor in considering any future requests by NSMA to issue further IR's. In relation to the text of the IR's, we take the position that as NSMA's April 13, 2002 submission is the basis for the IR's the phrasing of these proposed IR's must be acceptable to NSMA. It is our understanding that other party's IR's have been issued using the verbatim wording provided by the party. We can see no reason for treating NSMA differently from other directly affected parties in this regard. The NSMA does have some concerns about the phrasing and content of the proposed IR's. Accordingly, we have attached supplementary wording for your proposed preambles and requests. The supplementary wording should be added to the IR's before they are issued to DeBeers.

Finally, I wish to draw your attention to the NSMA's concerns about some aspects of the current process. As I understand it, DeBeers has not yet responded to the deficiency statement. Despite this, the process has progressed to Round 3 IR's. It is NSMA's position that responses to the deficiency statement and to Round 1 and 2 IR's are required to make Round 3 IR's meaningful and effective. Indeed, as defined by the TOR, all IR's are to be "very specific and focused requests". This can only occur if the EA contains the required information and a response to the deficiency statement has been received. Further, for Round Three IR's to be focused and specific, the parties should have responses to Round One and Two IR's. The original workplan contemplated responses from DeBeers on very short timelines after Round One and Two and before Round Three. We are not aware of any reason for extending these timelines for DeBeers. Further, continuing this stage of the process without any responses from DeBeers is not consistent with the purpose of the Environmental Assessment Process. We are extremely concerned that the process has advanced to this stage without any responses from DeBeers. I would appreciate hearing from you with regard to the reasons for extending DeBeer's time to respond and for continuing the process in the absence of

responses from DeBeers. I would expect copies of any relevant Board minutes where the Board address those matters would accompany your response.

Under the circumstances, NSMA is making a formal request for the Board to revise its workplan immediately. Specifically, the timelines for items 12-22 must be revised. As well, the workplan should now include provision for further rounds of IR's from the directly affected parties, to occur a reasonable time after DeBeers responds to Rounds One-Three. Given all the circumstances, a liberal approach to acceptance of future IR's and generous timelines to review and comment on the considerable volumes of information that can be expected to be generated by the deficiency statement and over 140 pages of IR's would be appropriate. Specifically, the NSMA requests that the revised workplan establish:

- 1.) A deadline for DeBeer's response to the deficiency statement.
- 2.) A deadline for DeBeer's responses to Round One IR's.
- 3.) A deadline for DeBeer's responses to Round Two IR's.
- 4.) A deadline for DeBeer's responses to Round Three IR's.
- 5.) A minimum of 30 days for NSMA to comment on the adequacy of DeBeer's response to the deficiency statement.
- 6.) A minimum of 90 days for NSMA to respond to the answers to Round One, Two and Three IR's and submit additional IR's.

Should you have any questions or require further information on the issues raised in this letter, please do not hesitate to contact me directly.

Yours truly,

CHAMBERLAIN HUTCHISON

PER: JANET L. HUTCHISON

JLH/vla

cc: client

cc: J.Donahee

CHAMBERLAIN HUTCHISON+*Barristers and Solicitors*

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1310 Merrill Lynch Tower
10025 - 102A Avenue
Edmonton, Alberta T5J 2Z2
Telephone (780) 423-3661
Fax (780) 426-1293
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Our File: 51163 JLH

May 27, 2002

COPY**SENT BY FAX ONLY**

Mackenzie Valley Environment Impact Review Board
Box 938
Yellowknife, NWT X1A 2N7

ATTENTION: LUCIANO AZZOLINI,
Environmental Assessment Officer

Dear Sir:

Re: Conformity Decision on the Environmental Assessment Report (EAR) for the De Beers Snap Lake Diamond Project

Thank you for the copy of the May 21, 2002 letter sent to NSMA regarding the above noted matter.

On review of that letter, I am unclear as to what the Board's actual decision was. You state that the Board concluded that the NSMA's concerns warrant further investigation. However, it is not clear to me whether the Board actually decided that contents of the April 13, 2002 letter from NSMA did not fall within the category of non-conformity concerns. Further, if that was their decision, there is no indication as to the Board's reasons for reclassifying the NSMA's letter from a non-conformity submission to an IR submission.

On an additional matter, my understanding of the IR process is that IR's submitted by directly affected parties cite that party as the source and are sent out using the wording originally used by the party. Certainly, that appears to be the procedure that has been applied in relation to IR's submitted by other directly affected parties. Please advise why the Board has chosen to cite itself as the source of the IR's based on NSMA's April 13, 2002 letter rather than cite NSMA as the source.

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When responding, please provide me with copies of the minutes of the Board meetings that dealt with these issues.

Thank you for your attention to this matter.

Yours truly,

CHAMBERLAIN HUTCHISON

PER: JANET L. HUTCHISON

JLH/vla

cc: client