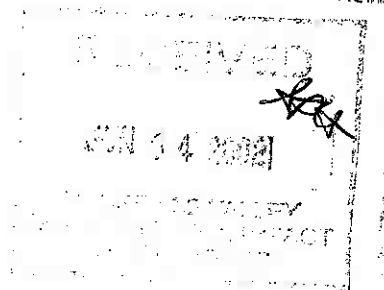


BY FACSIMILE: (867) 920-4761

June 3, 2002

Mr. Louie Azzolini
Environmental Assessment Officer
Mackenzie Valley Environmental Impact
Review Board
Box 938
200 Scotia Centre
YELLOWKNIFE, NT X1A 2N7



Dear Mr. Azzolini:

**Re: Indian and Northern Affairs Canada Response to the Mackenzie Valley
Environmental Impact Review Board's Information Request #1.1.69 - 1.1.71,
Snap Lake Diamond Project Environmental Assessment**

Please find attached Indian and Northern Affairs Canada's response to the above-noted information request. I trust that the information provided will be of assistance to the Mackenzie Valley Environmental Impact Review Board (Review Board) in its deliberations. If the Review Board has any further questions or requires additional clarification with respect to the information provided, please contact me at 669-2616 at your earliest convenience.

Sincerely,

Tamara Hamilton
Environmental Scientist
Environment & Conservation

**Mackenzie Valley Environmental Impact Review Board
Information Request #1.1.69 - 1.1.71
Snap Lake Diamond Project Environmental Assessment
INAC's Response dated June 3, 2002**

- Subject:** Consultation with Affected First Nations
- Source:** 1.1.69: Mackenzie Valley Environmental Impact Review Board
- Time Limit:** Provide response by June 3, 2002
- Reference:** Directed to Government and reference to information included in the EAR is not pertinent to the question.
- Preamble:** Government has a legal obligation to "consult" with first nations whose rights may be infringed by approvals related to the development. The developer does not have a legal obligation to consult equivalent to that of government but should ensure the early notification and involvement of affected first nations in a participation process intended to assist the company, the MVEIRB and RAs to identify, avoid or mitigate impacts on the environment.
- Request:** Please provide the Review Board with a detailed summary of your government, department or agency's efforts to ensure effective consultation with first nations and Metis groups affected by the proposed development. Provide dates, and places of meetings, correspondence and details of other efforts to ensure adequate consultation. Indicate any plans for ongoing consultation efforts as the regulatory process unfolds.

INAC Response:

- I. Indian and Northern Affairs Canada has examined the request from the Review Board and has the following response:
 - a.. It is INAC's position that the Review Board and the Mackenzie Valley Land and Water Board are the primary vehicle for effective environmental assessment consultation with First Nations and Metis groups impacted by the proposed development. The *Mackenzie Valley Resource Management Act*

(MVRMA) has established institutions of public government (IPGs) to undertake environmental assessment and environmental impact review of developments. The Review Board is to ensure that the concerns of aboriginal people and the general public are taken into consideration during these processes, including an opportunity for public participation in the environmental assessment process.

- b. With respect to the preamble statement "Government has a legal obligation to "consult" with first nations whose rights may be infringed by approvals related to the development," INAC disagrees with this statement. INAC is aware of recent lower court decisions that deviate from the principles set out by the Supreme Court of Canada decisions, and the federal Crown will continue to follow the principles set out in the decisions of the Supreme Court of Canada relating to aboriginal consultation.
- c. Upon receipt of a land application for Crown Lands, Lands Administration, INAC's process is to distribute it for review and comment to what is called a Lands Advisory Committee. This Land Advisory Committee comprises interested parties, including First Nations and communities, who may submit comments for our consideration in the review of the application. Crown land applications for the Snap Lake Diamond Project have not been submitted by DeBeers Canada Mining Inc. to date.
- d. Given that the Review Board's environmental assessment process for the Snap Lake Diamond Project is currently underway and the regulatory process has not yet begun, INAC will await the conclusions of these processes before making a decision on aboriginal consultation related to this development.
- e. Should a First Nation asserts an infringement of an aboriginal or treaty right, it will be dealt with by INAC according to its fiduciary obligations as outlined by the Supreme Court of Canada.

Subject: Post Approvals Monitoring

Source: 1.1.70: Mackenzie Valley Environmental Impact Review Board

TOR Line: 573-574

Time Limit: Provide response by June 3, 2002

Reference: Directed to Government and reference to information included in

the EAR is not pertinent to the question.

Preamble: After the BHPB and DDMI environmental impact assessment and regulatory approvals processes were completed; the Minister of DIAND required the negotiation of environmental agreements, which provided for the establishment of a monitoring framework addressing both regional cumulative effects and project effects. These monitoring frameworks are now overseen by the IEMA and EMAB respectively. The Review Board wishes to secure the views of the participants in these other project specific monitoring processes on the need (if any) and appropriate form for the post approvals monitoring framework for the De Beers development.

Request: (1) Please provide your agency or organization's comments on the effectiveness and contribution made by the post-approvals monitoring systems set up by the BHPB and Diavik Environmental Agreements to the mitigation of the development's impacts on the environment, including both project specific impacts and regional cumulative impacts.
(2) Please indicate whether your agency or organization foresees the need for a similar arrangement, including specifically the need for an environmental agreement to contribute to the De Beers' development's post-approvals monitoring process.

INAC Response:

As a point of clarification, in the Mackenzie Valley Environmental Impact Review Board's preamble, it is stated that "After the BHPB and DDMI environmental impact assessment and regulatory approvals processes were completed; the Minister of DIAND required the negotiation of environmental agreements." With respect to the Diavik project it was not only the Minister of DIAND who required the Environmental Agreement, but rather the recommendation of the Diavik Comprehensive Study (Page X) in order to ensure implementation of mitigation measures under *Canadian Environmental Assessment Act*.

Environmental agreements are legally binding contracts between parties to ensure mitigation measures and monitoring provisions for a development project are implemented to prevent adverse environmental effects. The parties to these types of Agreements always include the proponent and the government authority approving the project, and may also include other governments or other parties (i.e. Aboriginal groups).

For clarification purposes, these Agreements provide a forum and process for ongoing dialogue among the Parties to the Agreements and a schedule for Security Deposits. They also provide for the establishment of independent monitoring organizations [Independent Environmental Monitoring Agency (BHP) and Environmental Monitoring Agency Board (Diavik)] that are focused on project effects. These organizations were not given a mandate by the Parties for cumulative effects monitoring beyond project impacts.

The monitoring organizations have increasingly allowed for the meaningful participation of effected aboriginal communities in both monitoring and project management, especially if it relates wildlife and aquatic habitats. While project specific impacts on valued ecological components such as caribous are addressed, these organizations have not been tasked to date with looking at the full range of cumulative effects.

DIAND has developed six environmental agreements over the past twenty years to deal with mitigation and monitoring measures for large scale development projects to ensure that significant adverse environmental effects did not occur. These larger projects have required a wide variety of mitigation and monitoring measures to be implemented and some of these requirements have not “fit” well into regulatory authorizations. Environmental agreements have been used to deal with these other requirements and have provided a more flexible environmental management tool than regulatory authorizations for implementing certain project mitigation measures. Regulatory authorizations have defined statutory limits regarding the matters they can address, whereas environmental agreements do not.

The six environmental agreements DIAND has been signatory to were developed for three reasons:

- 1) to respond to the Environmental Assessment and Review Process Guidelines Order (EARPGO) and Canadian Environmental Assessment Act (CEAA) “superadded” requirements to ensure that necessary mitigation measures are implemented when a project is allowed to proceed;
- 2) to address a proponent’s concern that an extensive set of mitigation and monitoring measures that may not directly relate to their land use and occupancy would be included in, and then encumber, their land tenure instruments (i.e. surface leases, right-of-way agreement); and
- 3) to provide a comprehensive framework for the environmental management requirements for a project.

With respect to the project specific environmental agreements, the BHP Billiton Environmental Agreement was signed on January 6, 1997 and the Diavik Environmental Agreement was signed on March 8, 2000.

Environmental agreements have also been used to address follow-up monitoring requirements. A comprehensive and integrated follow-up monitoring program is important to implement for larger, more complex projects where there is uncertainty with respect to the predicted environmental effects and the respective mitigation measures. At least two of the environmental agreements (BHP and Diavik) establish a comprehensive, integrated follow-up monitoring program.

Environmental agreements have evolved most recently as a way of providing, in one agreement, a comprehensive framework of the environmental conditions for project implementation. The most comprehensive environmental agreements are the two for the BHP and Diavik diamond mining projects in the NWT. These agreements include provisions for environmental management plans, environmental monitoring, reclamation and closure, security, and enforcement measures for taking action if the environmental agreement is not complied with. These agreements also involved aboriginal groups in the development of final environmental measures and created public advisory bodies to monitor the long-term environmental management of the mining projects. As such, they provide for ongoing adaptive management in relation to the project.

As you are aware, INAC conducted an independent review of project-specific environmental agreements in the context of an innovative and rapidly evolving framework for natural resource and environmental management that has emerged in the Northwest Territories. INAC contracted the Canadian Institute of Resources Law in July 2001 and finalized the discussion paper in early January 2002. The discussion paper titled "Project-Specific Environmental Agreements in the NWT: Review of Issues and Options" has been attached for your review. This discussion paper was submitted to all participants as outlined in the report. The objective of the discussion paper is twofold:

1. to assist INAC in its consideration and consultation with other interested parties to determine whether or not environmental agreements should be negotiated for future projects; and
2. to provide an opportunity to INAC to improve on the BHP and Diavik agreements in the future.

The paper concluded that many participants expressed that there is still a need for environmental agreements in some form or another in the Mackenzie Valley.

Others suggested that other regulatory instruments or options may be available to house the functions of an environmental agreement. It was also expressed if project-specific environmental agreements are to be used in the future that they will have significant implications for an evolving regulatory regime in the Mackenzie Valley.

INAC Headquarters is developing a Pan Northern Policy Framework that will provide policy direction to IPG's, regulators, public monitoring boards, and co-management boards throughout the Yukon, Nunavut and NWT. The main objective of this new policy framework is to provide a generic blueprint for future environmental agreements; however, this policy will not likely be in place in time for Snap Lake Diamond Project. The federal Minister reserves the right to use Environmental Agreements as an environmental management tool for major proposed developments in the Northwest Territories.

The NWT Mine Site Reclamation Policy includes environmental agreements as one option among other environmental management tools for long-term follow-up monitoring and adaptive management of a project. DIAND considers the development of a Northwest Territories Mine Site Reclamation Policy an important new step in the process of developing a comprehensive strategy for sustainable mineral resource management. This policy serves three main objectives:

1. reducing the environmental liability that will fall to government;
2. providing industry and the public with a clear signal of government's expectations; and
3. building positive and supportive relationships with the new regulatory authorities coming into operation in the North.

The policy will also inform the resource management boards of the Minister's expectations in terms of their work and what the Minister will approve in regulatory instruments. One of the main components of an environmental agreement is financial security for the life of the project. Financial security requirements related to reclamation should be clearly set out in water licences, land leases, and other regulatory instruments, though there may be circumstances where security requirements may be more appropriately dealt with through an agreement such as environmental agreements. INAC supports the development of an Environmental Agreement for the Snap Lake Diamond Project Environmental Assessment, as well as an associated independent "regional" monitoring board or agency.

Subject: Ecologically Representative Areas - Regulatory Authorities and Responsible Ministers

Source: 1.1.71: World Wildlife Canada

Time Limit: Provide response by June 3, 2002

Reference: De Beers Snap Lake Diamond Project Environmental Assessment Report:
Section 6.4.1.1 – Ecologically Representative Areas
Section 6.4.2.3 – Key Question RU-2: What Impacts Will the Snap Lake Diamond Project Have on the Potential to Establish Protected Areas.

ToR Lines: 418-420, and 446-449

Preamble: The impact analysis (Section 6.4.2.3.3) does not consider the identification of ecological diversity within ecoregion # 66, the Coppermine River Upland, using the NWT landscape unit methodology.

Request: "What impacts will the De Beers Snap Lake Diamond Project have on options to complete a network of ecologically representative areas? Specific questions to pursue in answering this question are:

1. "Is there an adequate network of existing ecologically representative areas?"
 - 1.1 YES - "Will the Project impact the integrity of the network?"
 - 1.2 NO - Go to 2.
2. "Are there existing candidates that have been identified to complete a network of ecologically representative areas?"
 - 2.1 YES - "Will the Project impact the integrity of the network?"
 - 2.2 NO - Go to 3.
3. "Does the Project impact on options to complete a network of ecologically representative areas?"
 - 3.1 - "Is there an existing classification of ecological

diversity for the affected ecoregion?"

3.2 - "What elements of ecological diversity are directly and/or indirectly affected by the Project?"

3.3 - "Is the level of impact on the affected element of ecological diversity high enough to eliminate remaining options to represent the element in a network of ecologically representative areas, for example, by an analysis of 'rarity' (limited range) or threat (existing degree of fragmentation)?"

INAC Response:

Indian and Northern Affairs Canada and the Government of Northwest Territories have examined this request from the Review Board and has the following response:

I. The ecoregion should be Ecoregion #68, not Ecoregion #66 as noted in the above preamble.

II. 1. "Is there an adequate network of existing ecologically representative areas?"

1.1 YES - "Will the Project impact the integrity of the network?"

1.2 NO - Go to 2.

Response:

The NWT Protected Areas Strategy (NWT-PAS) was approved in September 1999 to guide the completion of a network of ecologically representative protected areas in the Northwest Territories. Responsibility for implementing the NWT-PAS is shared by the federal and territorial governments working in partnership with communities, regional organizations and land claims bodies. Specifically, one of the PAS goals is to protect representative core areas within each ecoregion of the NWT, however, the identification of new areas to complete a network of ecologically representative protected areas is still at an early stage.

2. "Are there existing candidates that have been identified to complete a network of ecologically representative areas?"

2.1 YES - "Will the Project impact the integrity of the network?"

2.2 NO - Go to 3.

Response:

Ecoregion 68 contains portions of the proposed national park for the East Arm of Great Slave Lake, where lands have been withdrawn pursuant to the *Territorial Lands Act*. Ecoregion 68 also contains

portions of two proposed areas of interest identified through the NWT-PAS, namely the Mohwi Trail, and Waters of Desnedhe Che (Fig. 1). The areas of interest have formal support from communities and/or regional organizations, but have no definitive boundaries and no restrictions on land access as a result of being identified through the NWT-PAS process. All three areas could contribute to ecological representation; however, the areas of interest, Mohwi Trail and Waters of Desnedhe Che, are at an early stage of the NWT-PAS, so the degree to which they may contribute cannot be determined at this time.

3. "Does the Project impact on options to complete a network of ecologically representative areas?"

Response: It is possible that the project will have an impact on options to complete a network of ecologically representative areas. See responses 3.2 and 3.3 below.

3.1 - "Is there an existing classification of ecological diversity for the affected ecoregion?"

Response: The NWT-PAS uses a combination of soil characteristics and topography, called *landscape units*, to describe the ecological diversity of NWT ecoregions (Fig. 2). The *National Ecological Framework for Canada* and the *Soil Organic Carbon Digital Database of Canada*, which is part of the *Canadian Soil Information System (CanSIS)*, are used as the basis for determining landscape units. The intent is to identify representative core areas in each ecoregion that will protect portions of a wide variety of landscape units in inverse proportion to their size. By protecting portions of landscape units, the landforms, habitats and many plants and animals linked to those habitats will also be protected.

Initial locations of representative core areas are determined through a GIS-based selection model that identifies portions of ecoregions that most efficiently capture the unrepresented diversity of landscape units within the minimum accepted size for core areas. The model assigns values within 400,000 hectares roving 'windows' for the size of landscape units in an ecoregion, area of landscape units currently protected, and proportion of unrepresented landscape units that fall within the 'window'. The values are combined into total 'window' scores that are mapped to display the optimal initial location of core areas (Fig. 3).

RWED has previously conducted a conservation suitability assessment of a portion of the Slave Geological Province, including parts of Ecoregion 68 and Ecoregion 41. This study demonstrated a GIS-based procedure to determine

areas of high conservation potential based on ecological (habitat and carnivore distribution) and geological (mineral potential/occurrence) values. These values were combined into a ranked matrix describing the 'potential for protection', and mapped as areas where protection was both desirable and feasible.

3.2 - "What elements of ecological diversity are directly and/or indirectly affected by the Project?"

Response: The northern portion of the project's RSA abuts on an area of high landscape unit diversity at MacKay Lake (Fig. 3), and thus may affect a variety of 'elements of ecological diversity', as well as limit options for an optimal representative core area in the region. Also, the project may affect aquatic diversity, as the RSA is located within the MacKay/Aylmer Lake/Artillery Lake drainage. The community of Lutsel K'e has identified "Waters of the Desnedhe Che' as an area of interest encompassing Aylmer Lake, largely out of concern to protect waters flowing into Great Slave Lake. Moreover the RSA is located within the overlap fall-winter range of Bathurst/Beverly barren-ground caribou and their associated predators (e.g., wolves, wolverines and grizzly bears).

3.3 - "Is the level of impact on the affected element of ecological diversity high enough to eliminate remaining options to represent the element in a network of ecologically representative areas, for example, by an analysis of 'rarity' (limited range) or threat (existing degree of fragmentation)?"

Response: There are 10 different landscape units in Ecoregion 68; the project's 300,000+ ha RSA lies entirely within one of these units - M/4/m/w (Fig. 2). This large landscape unit occurs as two areas separated by Artillery Lake, and totals approximately 3,900,000 hectares. As such, proportional representation guidelines under the NWT-PAS suggest that at least 10%, or close to 400,000 hectares of its total area should be identified for protection. Given the relatively small percentage of this landscape unit that may be affected by the project (7.7%), and the current lack of other major mining developments in this ecoregion, the Snap Lake Diamond Project by itself should not significantly affect landscape unit M/4/m/w or limit options for alternative core areas in Ecoregion 68. However, as stated in 3.2 above, the project RSA lies adjacent to an area of high landscape unit diversity, and thus will limit options for designating an optimal representative core area bordering Ecoregion 68 and Ecoregion 41. The Snap Lake Diamond Project, when added to already existing mines and mining interests in the larger region, will make it

increasingly difficult to designate ecologically viable protected areas in the Slave Geological Province.