



Canadian Arctic Resources Committee

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CLOSING STATEMENT ON THE DE BEERS SNAP LAKE PROJECT TO THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

**By
The Canadian Arctic Resources Committee
Yellowknife NT**

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Introduction

We wish to thank the Board for the opportunity to participate in the public hearings on the Snap Lake project. The public hearings were efficiently and fairly run. We were pleased to see that all parties were treated respectfully and that there was flexibility to ensure that presentations and questioning relevant to the proceedings was encouraged. The decision by the Board to retain its own technical expertise is most commendable given the complexities of this environmental assessment.

Our compliments to De Beers for their professional and courteous demeanour throughout the hearings. We appreciated that DIAND secured the assistance of several independent technical consultants and we hope that the necessary funds are found to continue this practice. The same can be said for the Aboriginal governments in these proceedings although they were much more limited in their capacity. We believe that it is very important that Aboriginal governments and others, have the necessary resources to ensure that they can meaningfully participate in the environmental assessment of a project such as Snap Lake. We hope that our limited participation has added some value to these hearings.

We would like to summarize what we feel are the duties of the Board at this point, and offer some further observations and recommendations.

Duties of the Mackenzie Valley Environmental Impact Review Board

Part 5 of the *Mackenzie Valley Resource Management Act (MVRMA)* establishes the Board as the main instrument for environmental assessment in the Mackenzie Valley. The Board is to "ensure that the impact on the environment of proposed developments receives careful consideration before actions are taken in connection with them" and "to ensure that the concerns of aboriginal people and the general public are taken into account" (s. 114). The guiding principles are found in s. 115 that states the process shall be carried out in a "timely and expeditious manner and shall have regard to the protection of the environment...and the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley".

The first two tasks of the Board as this environmental assessment concludes, are to determine whether there is likely to be a significant adverse impact on the environment, and whether there is significant public concern. If there is likely to be a significant adverse impact on the environment, the Board must also determine whether the impact can be prevented with imposed measures. Clearly monitoring is not a preventative measure in itself, as it is the management capability and response that counts.

Significant Public Concern Determination

We believe it would be fair to say that virtually all of the interveners at the public hearings have expressed concerns with the project or how government will manage the development. Without making an assessment of the significance of these concerns at this point, we offer the following as some thoughts on how significance might be considered:

- the level and extent of public concern about the project;
- the evidence of widespread public concern about the project and interest in an impact review, as reflected in submissions to the Board, through the media, and at these hearings;
- the potential to mitigate specific concerns with known technology or proven methods;
- the likelihood of further resolution of concerns through an impact review; and
- the potential for further changes to the project that would address concerns expressed by the public and whether an impact review is the appropriate manner to secure such changes.

Significant Adverse Impact Determination

CARC is not in a position to independently assess the likelihood of significant adverse impacts to the environment from the potential Snap Lake diamond mine. There are obviously conflicting views as to whether the appropriate baseline information is available to analyze and predict what the impact of the development may be on the environment and people. There are also conflicting views as to whether the impacts have been identified in all cases and whether they have been properly assessed.

These issues have been raised by the directly affected Aboriginal parties, GNWT, DIAND and the Board's own experts, particularly in the areas of socio-economic, wildlife, water and cumulative effects. We were surprised to learn that De Beers did not assess or predict what the effects may be of their use of the winter road for wildlife and possibly other valued ecosystem or socio-economic components. We further note that there does not appear to have been any analysis of the potential impacts on the Ahik caribou herd by De Beers.

It is clear that some of the potential impacts of this development are adverse (e.g. loss of terrestrial habitat from the mine site footprint). In our view, there appears to be considerable uncertainty over the impacts and their predictions that should not be left to monitoring and adaptive management. Environmental assessment is the place that these differences should be sorted out, not the regulatory or monitoring phase as some have suggested.

Options for the Board's Environmental Assessment Report

The Board will shortly have to choose one of five options set out in s. 128(1) of the *MVRMA*:

1. Determine that the development is not likely to have any significant adverse impacts on the environment or to be a cause of significant public concern and thus an environmental impact review is not needed.

2. Determine that the development is likely to have a significant adverse environmental impact and order an environmental impact review.
3. Determine that the development is likely to have a significant adverse environmental impact and recommend approval subject to the imposition of measures to prevent the significant adverse impact.
4. Determine that the development is likely to be a cause of significant public concern and order an environmental impact review.
5. Determine that the development is likely to cause an adverse impact on the environment so significant that it cannot be justified and recommend that the proposal be rejected without an environmental impact review.

We certainly do not envy the Board in making these difficult determinations. Does the Board have the necessary information to decide whether all the impacts have been properly identified and assessed? If the Board finds that the development is likely to cause a significant adverse impact, can that impact be prevented and how?

It will be necessary for the Board to know with some certainty what the mitigation measures are and how effective they will be in preventing an impact (e.g. the lack of details on the partnership arrangements crucial to many of the socio-economic impact mitigation measures). Many of the parties to this environmental assessment have spoken of the importance of the environmental, socio-economic, and impact and benefit agreements as mitigation measures. Is it sufficient for the Board to recommend that such agreements be negotiated? What of their timing and relationship to regulatory approvals that allow the construction and/or operation of the mine? What level of detail should the Board have in making the determination of whether the preventative measures can mitigate the significant adverse impact?

While impact and benefit agreements are often confidential as a contractual arrangement between two parties, the same is not true of environmental and socio-economic agreements. For both the BHP Ekati and Diavik diamond mines, both of these agreements are public documents and contain commitments, processes for the design and review of monitoring programs and management systems. It is difficult to understand how there can be much certainty over measures to prevent adverse impacts in the absence of such agreements.

We note that in De Beers' technical memo "Overview of Project Milestones and Monitoring and Management Programs for the Snap Lake Project" (public registry item #626) indicates that the socio-economic and impact and benefit agreements are to be completed on or about June 3, 2003. This could be as little as a week after the public registry is now scheduled to close for this environmental assessment. There would appear to be a lot of merit in having such agreements on the public registry prior to the Board making a determination on whether mitigative measures can prevent significant adverse impact from the Snap Lake mine.

Observations

We have reviewed the relevance of our recommendations from our opening statement and firmly believe that they have been supported or reinforced through the submissions and questioning at these hearings. We have fine tuned some of our recommendations.

Participant Funding

We note that some of the Aboriginal parties at the hearing did not want to be questioned given their limited capacity or inability to bring forward their technical advisors. This is a clear demonstration of the need for participant funding in this type of proceeding.

Recommendation

1. The Mackenzie Valley Environmental Impact Review request supplemental funding for an arms-length participant funding program from the Department of Indian Affairs and Northern Development. The participant funding program could be modelled after the current program of the Canadian Environmental Assessment Agency, with additional public consultation in the Mackenzie Valley. In the event that the Board does not wish to pursue supplemental funding, the Board should ask the Minister of Indian Affairs and Northern Development to appoint a senior representative to report on options for participant funding within six months of the release of the report for this environmental assessment. Opportunities for cost-recovery, including participant funding, from proponents should be examined.

Cumulative Effects and Integrated Resource Management

We have made available smaller version of the maps we presented on the opening day of these hearings. We note that there is one additional map that we have filed that shows a high induced development scenario for the Slave Geological Province that was also referred to in our opening statement. This map was just completed by our contractor. We provide these maps in the hope that they may assist the Board in understanding the regional context and the potential for regional cumulative effects.

It should be clear to the Board that there is significant concern around the issue of cumulative effects in the Slave Geological Province and that this has been an on-going issue since the BHP environmental assessment panel. There is a critical need for thresholds or limits of acceptable change to be developed collectively by all the stakeholders to ensure that there are no irreversible and undesirable adverse cumulative effects from the development boom currently under way in the Slave Geological Province.

There are unfulfilled commitments on the part of the government in relation to cumulative effects. While some of the challenges may be technological, methodological, and jurisdictional in nature, we heard yesterday that there are financial hurdles too. No funds have been identified this year for the Cumulative Effects Assessment and Management Framework and other critical components of this work and there is no commitment to long-term funding.

We highlight again the need for land use planning on the NWT side of the Slave Geological Province. We also support the call by the Dogrib Treaty 11 Council for more effective, fully-staffed and publicly reported inspection and enforcement by DIAND on permits and licences in the NWT. We wish to draw to the Board's attention DIAND's current non-disclosure policy on inspection reports where there is any instance of non-compliance. This does not promote accountability and thwarts public knowledge of what is happening on any given land use permit or water licence. We note also that there are no reclamation standards for mine closure in the NWT although there is a vague commitment in the June 2002 DIAND Mine Site Reclamation Policy.

Recommendation

2. The Mackenzie Valley Environmental Impact Review Board strongly urge the federal government to publicly re-commit to the timely and effective implementation of both the Cumulative Impact Monitoring Program and Cumulative Effects Assessment and Management Framework through dedicated multi-year funding. The Board may also wish to consider what specific commitment or support from De Beers is appropriate for the timely and effective implementation of these measures.

Fair Return to the Crown and Fair Distribution of the Revenues

Our recommendations on fair return and fair distribution of revenues stand from the opening statement. We have heard little convincing evidence that governments have seriously considered how to make an inherently unsustainable practice, namely diamond mining, contribute towards sustainable development and diversification of our economy without building up a dependence on diamonds.

Recommendations

3. The Mackenzie Valley Environmental Impact Review Board recommends a public review of the mineral royalty and taxation regime for its equity and fairness.
4. The Mackenzie Valley Environmental Impact Review Board recommend that a portion of government revenues from non-renewable resource development, including the Snap Lake project, be set aside for economic diversification and to promote more sustainable development.

Socio-economic and Environmental Agreements and Impact and Benefit Agreements

We used the hearings to elicit responses from most of the potential parties to environmental, socio-economic, and impact and benefit agreements on the issue of timing. We heard overwhelming support for completion of these agreements before construction and operation of the mine. Some ventured to say that these agreements should be before the Board in advance of the report on this environmental assessment.

Recommendation

5. At a minimum, the Mackenzie Valley Environmental Impact Review Board should find pursuant to s. 128(1)(b)(ii) of the MVRMA that the Snap Lake project is likely to have a significant adverse impact on the environment subject to mitigation measures, and that such measures include environmental, socio-economic and impact and benefit agreements. These agreements should be in place before any approvals are issued that would allow construction or operation of the development to proceed. We request that the Board consider making an amendment to the scheduled closure date for the public registry to allow for the filing of the socio-economic agreement and environmental agreements prior to the issuance of its report on the environmental assessment.

Climate Change

From our review of the Environmental Assessment report submitted by De Beers and our understanding of the NWT Greenhouse Gas Emissions, the Snap Lake project alone will result in a 10% increase in such emissions from the baseline year 1990. It may be understandable that an assessment of the Snap Lake project in light of the Kyoto Protocol commitments made by Canada did not occur as our ratification of this international agreement took place during the course of the environmental assessment.

Recommendation

6. The Mackenzie Valley Environmental Impact Review Board request that the Responsible Ministers assess the Snap Lake project in light of Canada's ratification of the Kyoto Protocol and that procedures be developed to ensure that all future developments in the Mackenzie Valley receive similar consideration.

Determination Under s. 128(1) of the MVRMA

Given the public concerns expressed by CARC and others at this hearing, particularly those from the directly affected Aboriginal parties, it would be difficult to conclude that these issues and concerns are not significant. Furthermore, the GNWT and some other parties have raised issues around the adequacy of baseline information on which to predict impacts, the need to test impact hypotheses, and the lack of details on mitigation measures. Based on this, we conclude that there is a high level of uncertainty regarding the impacts from this project and their probability or likelihood. We feel there is substantial evidence to support such a finding simply on the basis of some of the predicted impacts by De Beers let alone the uncertainties identified by most of the parties. In the face of this uncertainty, we think it prudent that the Board exercise the precautionary principle and determine that a significant adverse impact is likely from this project.

Recommendation

7. The Mackenzie Valley Environmental Impact Review Board order an impact review of the Snap Lake project based on a finding of significant public concern and the likelihood of a significant adverse environmental impact.

We thank the Board for the opportunity to appear before you today and to make this closing statement.

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