

***Independent Environmental Monitoring Agency  
48<sup>th</sup> Meeting of the Board of Directors  
Yellowknife, NWT  
February 3<sup>rd</sup> – 6<sup>th</sup>, 2006  
Summary of Discussion***

Revised: March 30<sup>th</sup>, 2006

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Directors

Bill Ross

Tony Pearse

Sheryl Grieve

Tim Byers

Jaida Ohokannoak (via speakerphone)

Staff

Sean Kollee

Kevin O'Reilly

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*Added to agenda*

Director conflict of interest

Site visit planning

*Information Updates:*

In addition to routine Director responsibilities such as review of reports and intra-Agency communications:

Bill participated in the mediation process.

Tim participated in the mediation process, visited Lutsel K'e (upon request of Monica and Florence) to observe BHPB's reclamation consultation efforts and to assist community people with understanding concepts and terminology, and participated in the BHPB led environmental impact report series of preliminary meetings in Yellowknife. He also reviewed the Pit Lakes studies for Task 1 and 2.

Tony met with the mediator to discuss the mediation process and with Helen Butler (BHPB) to discuss reclamation and closure related topics.

Sheryl reviewed background material as an Agency director including reclamation, impact reports and consultation. She also had an Ekati site visit with NSMA and a NSMA community meeting requested by BHPB that was not well attended. She is NSMA's environmental coordinator as well as Agency Director.

Jaida recently regained internet access and email. Her physical rehabilitation progress is coming along well. She expects to be able to head back to Cambridge Bay in next couple of months.

Kevin announced that both general liability and office contents insurance is now in place (as required under the office lease) after a difficult and lengthy search for a provider. Agency filings under the *Societies Act* had, inadvertently, not been carried out for several years but they have been taken care of now and the Agency is once again in good standing. An IACT meeting took place in November and another planned meeting was postponed due to the EIR meetings that took place. Staff attended the Geoscience Forum and following this a CANMET session on reclamation technology in mining. Bill Price, who has been used as a consultant by the Agency, is also part of CANMET – a section of NRCan where expertise can be made available to industry and other organizations. Staff spent time working on the upcoming Agency reclamation workshop. He also discussed a winter exploration document distributed by BHPB that may involve on-land sumps and the dates of upcoming meetings related to Ekati.

Sean discussed recent agency staff ventures and meetings both past and pending.

*Financial Report-* Kevin discussed the Agency cash flow to the financial year-end and other financial projections with the directors. Upcoming events and workshops were discussed in view of ensuring availability of funds for sufficient director participation. Approval was given for the expenditures outlined in the cashflow to year-end. A draft budget and work plan for 2006-7 and 2007-8 was reviewed with only a few minor changes suggested. These items will be reviewed again at the March 2006 meeting for final approval.

*Conflict of Interest -* A potential conflict between Sheryl's responsibilities as an employee of NSMA and as a Director of Agency with regards to the Ekati project was discussed at Sheryl's request. It was noted that the NSMA remains free to support a different position on matter relating to the Ekati Mine from the those positions that may be expressed by the Agency. In accordance with past practice, the Agency may not direct Sheryl to engage in activities outside of her role as a Director but it offered advice. Methods used to avoid conflict positions in the past were discussed including the case where a Director employed by a non-governmental organization was relieved of responsibility of working on the Ekati project while serving as a Director for the Agency. Another Director was invited to appear at public hearing by a Society Member and on behalf of the Agency, but avoided any conflict when the Society member decided not to participate in that hearing. Tim also noted that he does not work on Ekati mine matters while contracted by the Yellowknives Dene First Nation and that the Yellowknives made this decision when they and Lutsel K'e First Nation appointed him to the Agency. The rationale for the exclusion of government and BHPB employees as Directors for the Agency was also discussed and it was noted that this exclusion does not apply to employees of an Aboriginal organization (i.e. the Agency is a watchdog of BHPB and the regulators but not of the Aboriginal Society members).

Sheryl was urged to avoid conflict of interest situations and that, due to overlapping duties related to Ekati in her job with the NSMA and her role as an Agency Director, at a minimum she should be very careful to clarify what group she represents prior to making any public comments related to Ekati. She should also disclose any matters that may lead

to an apprehension of conflict of interest to the Directors for a full and open discussion as has been the past Agency practice.

*Mediation* - Directors noted they are pleased with outcome and performance of the mediator and resolution of major issues of disagreement relating to annual budgets. In 2005-06 the Agency received approximately \$530k plus other in-kind contributions. In 2006-07 the Agency will receive a slightly greater amount based on inflation. A separate \$40k fund is to be used to support Agency participation in matters related to article 4.2(d) (interventions in regulatory and other legal processes) of the EA. For research and monitoring, additional funds can be requested by the Agency and a response procedure is defined for BHPB. In the event the decision is not acceptable to the Agency there is a means of resolving this by involving all the parties to the EA. The same process applies for intervention funding requests. Two annual meetings of the Agency, BHPB and governments will now be held to assist with implementation of the EA.

*Letter to DIAND re intervenor funding*-In response to a letter received from EMAB and concerns raised by our Aboriginal Society members, Kevin was instructed to draft a letter that identifies a need for more effective funding to support public involvement in regulatory processes related to Ekati.

Action Item #1 – Kevin to draft letter on intervenor funding and circulate to Directors.

*BHPB annual report 2005* – Directors suggested that BHPB should report in its next and future Annual Reports, under the EA, the issues raised during community consultations and responses from the company.

Action Item #2 – Draft letter to BHPB regarding a consultation section of its Annual Report under the EA.

*Interim Closure and Reclamation Plan (ICRP) Working Group* – Directors decided to appoint Tony and Bill (alternate) to the MVLWB ICRP working group. All directors were instructed to email comments to the staff for preparation of a draft submission on BHPB's draft ICRP prior to February 15<sup>th</sup>.

*Staff Evaluation* – Directors agreed that the staff evaluation should be undertaken of the Manager and the Manager should conduct the Environmental Analyst evaluation.

*BHPB Pit Lake Study for Sable, Pigeon and Beartooth* – The Directors discussed their review of task 1 and 2 of the BHPB pit lake study. The literature review and data gaps and requirements work to date will be reviewed but important questions remain outstanding and will be covered in the subsequent reports. The requirement for the Pit Lakes studies arises from the Sable, Pigeon, Beartooth water licence. Comments will be pulled together by the staff for a letter to the MVLWB.

*IAIA workshop* – Kevin described the upcoming IAIA workshop on wildlife and environmental assessment in Yellowknife. He mentioned that the Agency had been

invited to deliver a brief presentation discussing the Agency mandate and the most interesting aspects of wildlife monitoring at Ekati. The Directors were of the view that this invitation was clearly within the mandate of the Agency for effective dissemination of information and suggested that the content would focus on: wolverine impacts, monitoring and management; caribou monitoring on the claims block and recent regional studies; and the use of TK in wildlife monitoring.

Action Item #3 – Staff to assist Bill in developing presentation for the IAIA conference.

*Workshop on AEMP hosted by DIAND* - Tim participated in a preliminary survey on this topic with DIAND's consultant. He provided information and views on best practices in aquatic effects monitoring programs for both the operational and post closure phases. He included some of the findings from the Zajdlik report such as the need for trend analysis, trophic level investigation versus coarser biomass measurements, and multivariate analysis versus compartmentalized studies looking at individual parameters or contaminants. He used an example of multivariate analysis that included linkages between water quality changes and zooplankton.

He also suggested there is a need for comparable protocols amongst AEMPs that allow for cumulative effects studies by those that are responsible for such work. Directors noted that the responsibilities for ensuring monitoring programs are helpful for cumulative effects management remain with the regulators and this workshop is contributing towards DIAND fulfilling its responsibility. Some features must be project specific and local, and others (related to regional cumulative effects) standardized. Regulators should impose some regulation to ensure this is done. TK incorporation was discussed and input from past environmental workshops mentioned as well as accessing local fish eggs for use in a nitrate toxicity study. This workshop is viewed as a preliminary step towards the development of guidelines for better AEMPs and there is a commitment to further consultations and opportunities for the use of TK.

The Agency's position that TK and science both have the ability to contribute to environmental management programs was reiterated. Issues of primacy or equality of either knowledge system are a difficult matter to define. Both TK and science have offered useful information and the Agency should attempt to recognize the contribution of both. As long as DIAND is planning to develop or incorporate TK into AEMPs then this is sufficient at this time. It is valid to get confirmation in the workshop to comment on the process of eventual TK incorporation rather than engaging a debate on principles of TK.

*Environmental Impact Report (EIR) 2006* – The Directors discussed the two meetings that took place related to the EIR. The purposes of the meetings were to discuss the terms of reference of the report and the community meeting to be held at Ekati. Key issues of discussion were:

- The number of participants that could attend from each organization (this was increased by BHPB due to unanimous concern). The Tlicho government

representative also advised BHPB that it would be key for a larger number of Agency Directors to attend the workshop at site.

- Concern with the proposed focus on changes over the last three-year period versus trends from baseline.
- Preliminary technical meetings for air, water and wildlife were agreed to and will be hosted by BHPB (though it could not confirm whether technical reports for the monitoring program results in 2005 would be distributed in time for the sessions).

The Directors discussed the Agency point of view that the last three years are part of the EIR but there should be emphasis on the entire life of the project from the baseline conditions research to the current development. Techniques to link current results back to the baseline include trend analysis and this was made clear by the regulators present. Directors also noted that BHPB should be commended for more consultation than in 2003 or 2000. The EIR technical sessions and commitments for additional community visit are an advantage over previous years' efforts. BHPB was urged to find accommodation at the site to provide for all the relevant experts and community representatives.

Action item #4 – Kevin draft an e-mail requesting clarification of the nature of the technical sessions and what information is to be provided in advance.

### *Agency Annual Report*

A preliminary set of issues was identified for inclusion in the Agency's Annual Report. This list will be reviewed again at the March 2006 Board meeting. It was decided to have the Board report-writing session at Mayne Island with Tony coordinating the logistics.

### *Upcoming Meeting Schedule*

The following is a list of Agency activities and the directors assigned to them.

<b>Date</b>	<b>Event</b>	<b>Director</b>
Feb 14 – 16	Board Closure workshop	All
Feb 24	EIR aquatics session	Tim and Bill
Feb 27	EIR wildlife session	Bill and Sheryl
Feb 28 – Mar 2	Bathurst Caribou workshop	Francois or Staff
Mar 7	EIR air	Jaida and Sheryl
Mar 9-10	IAIA Conference	Bill
Mar 23	Closure working group meeting	Tony and Bill (alternate)
Mar 24-27	Board meeting and possible site visit	All
April 11 – 12	AEMP guidelines workshop	Tim and Sheryl
April 18 – 20	Workshop on Annual Report	All
May 29-30	Canadian Institute mine reclamation conference	Sheryl (approved by Directors to fund conference costs)

June 2006	B.C. mine reclamation symposium	??
June 13-14	Agency Board Meeting	All
June 15-18	EIR 2006 Information Sessions at Ekati mine site	To be determined
Sept. 21-23	Agency Board Meeting in a community (Wekweti?)	All, but location to be confirmed
Oct. 25-27 or Nov. 1-3	Agency AGM and Board Meeting	All

## MEETINGS WITH OTHERS

### *Meeting with BHPB - David Scott, Brent Murphy, Jane Howe*

*Mediation* - The Directors asked the BHPB representatives if they had any reflections on the outcome of the mediation and resolution. BHPB viewed the mediator as very successful and the company appreciates funding certainty and the engagement of the other signatories to the EA. In the view of BHPB, governments have been overly “hands off” and the resolution agreement will involve them better in implementing the EA. The annual meetings for broad goal and direction setting of the Agency will enable collective focus and prioritization of actions under the EA. BHPB supports the Agency AGM process in addition to the meeting of signatories where clear direction can be provided to the Agency for its consideration.

*New Agency Director Appointments* – BHPB mentioned that DIAND has been trying to organize a meeting on this topic. At the mediation session Doris, Lionel and Jane entered into a discussion but BHPB would like to see a meeting on the subject. Sheryl was given an opportunity to discuss her background in Aboriginal issues and environmental science as a means of considering expertise currently on the Agency Board. BHPB mentioned it supports Laura Johnson as a director on the Agency. Jane mentioned that BHPB did not believe that the Agency requires any further wildlife expertise considering that Tim Byers is on the Board. Tim clarified that he has very little wildlife expertise other than some research experience with marine mammals. The process of consultation with Aboriginal Members was reviewed (Aboriginal Members are invited to review preferred candidates that are agreeable to the signatories).

*EIR meetings and report* - Directors asked about the agenda for the technical meetings and availability of AEMP, PDC, WEMP and Air Quality reports. Brent replied that the WEMP is under revision and the PDC will be out fully by end of February. The summary of the AEMP may be out by the end of February. BHPB must agree with what is contained in the reports and BHPB is committed to focussed technical workshops where changes to the programs could be proposed. Brent stated that agendas would be out within the next 10 days.

Directors requested clarity on nature and scope of the EIR 2006. BHPB replied that effects would be looked at over the past three years. Directors commented that the purpose of the EIR is to compare current conditions to baseline conditions. BHPB agreed but stated the focus would be on the past three years as shown in its interpretation of the EA. Directors stressed that the focus of the EA is to review the cumulative effect of the mine rather than just any three-year interval. BHPB commented that meetings on the ToR of the EIR have already occurred. At these sessions BHPB committed to technical pre-meetings in order to address concerns of the regulators that technical issues could not properly be addressed at a community site visit. BHPB mentioned that all parties would have the opportunity to review the EIR 2006 and comment on it at the site visit meeting.

Sheryl mentioned the EA states that there is a 45 day review period for the Agency and others to review the EIR and if the report was delivered April 30<sup>th</sup> and the site visit is June 15<sup>th</sup> then timelines would be very difficult to submit comments prior to the June meetings. In her view community members would have to tour the site and then discuss their findings with leadership following the site visit. BHPB requested written comments be provided prior to the site visit so BHPB can respond at its best venue – the site visit. Sheryl noted the difficulty in reviewing a document where they need to visit the site before commenting. BHPB replied that many community members have already visited Ekati. BHPB reiterated that the site visit is not part of the review of the EIR 2006; it is a venue to distribute the results in a better way.

*Agency Site visit* – Directors suggested that they would like to accept BHPB’s offer of site visits during non-peak times and that a site visit in late March after the next proposed Board meeting would be desirable. BHPB suggested that a site visit might work best after March 27<sup>th</sup> but would confirm with the Agency.

*BHPB operational highlights* – BHPB provided a detailed presentation on site activities, personnel changes, ore production, underground mining, awards received, environmental audits, upcoming operations, environment department highlights, archaeological tours, reports submitted and under preparation, waste rock temperature monitoring, and other upcoming activities such as wind power planning. BHPB’s presentation is available upon request to Brent Murphy (BHPB).

A few of the key points are summarized below:

- BHPB is using all of its waste oil from the mine site to heat the underground operations;
- The AN building containment is now complete;
- Construction of the incinerators is to be finished in March or April;
- A revised Wastewater and Processed Kimberlite Management Plan is to be submitted in the next week or two;
- A number of internal and external audits were completed including the ISO 14001 certification, the Mining Association of Canada’s Towards Sustainable Mining audit, and others;
- A feasibility study is under way for wind power generation on site;

- The additional \$56 million security due under the new water licence has been slightly delayed due to increased information requirements from BHPB's bankers;
- There was a recent wolf incident at the mine site but GNWT was unable to assist;
- The LLCF water quality report, waste rock temperature monitoring report, chloride risk assessment, the risk assessment for metals uptake into vegetation, and a few other reports are being worked on; and
- BHPB has not been successful in scheduling meeting with the Tlicho or Yellowknives Dene First Nation on the issue of mine closure and reclamation planning.

*Agency annual report* – Directors requested BHPB provide feedback on what it considers should be contained in the Agency annual report. BHPB replied that key issues from 2005 included much improved waste handling, including financial incentives for workers on site. The general public has a misconception that waste is not handled well and wildlife is attracted to the site. Directors replied that ENR has told the Agency that BHPB manages waste well. BHPB also would like to encourage an orderly transition to the new Wekeezhii Land and Water Board (WLWB) to understand the business requirements of a mining company and external requirements. This includes a triple bottom line approach and any decision made by a regulator affects the company. The northern boards training initiative process is important for building capability and for Board members to understand areas they regulate. Directors requested comment on activities at the site BHPB may consider to be problems. BHPB replied that issues are solvable while problems are not and BHPB has avoided problems at the site. BHPB has had a good year in 2005 other than recurring staff changes. Closure planning remains a challenge and site waste management is an ongoing education issue. The root cause of Ammonium Nitrate building problems have been mitigated by recent improvements. The company is becoming more proactive and anticipating issues that could develop. A fuel spill in Desperation Pond was managed well and immediately by BHPB staff.

#### *Meeting with DIAND – Ed Hornby*

Ed called to say he was occupied with other business but did provide a brief update on the vacant Ekati inspector position. Scott Stewart has now been hired to work half-time on the Ekati file. Ed toured the site in December and has not finished writing up his inspection report. He will be returning to the site shortly.

#### *Meeting with MVLWB - Sarah Baines*

Sarah reminded the Agency to select a representative and alternate member for the ICRP working group. The Directors replied that Tony was selected to serve on this working group, and that Bill will be the alternate.

*Reclamation working group update* – Sarah confirmed that comments are due Feb. 15<sup>th</sup> for BHPB's Draft ToR. Remaining firm on deadlines is one of the lessons learned from

the MVLWB's Jaques-Whitford report. BHPB will have three weeks to respond to reviewer comments and following this the reviewers will have seven days to examine BHPB's responses for adequacy. The working group will meet on March 23<sup>rd</sup> and following the meeting there will be a week provided to consider what happened at the meeting and to submit any final comments. The ICRP approved in 2002 that was submitted in 2000 is the currently approved version and prevents major changes to the plan that stakeholders do not agree to.

The structured working group process should keep the Board informed of progress. It will be chaired by Sarah with Lynn Carter. Directors requested some clarification that distinct Agency positions could be expressed to the MVLWB outside of the ICRP working group process. Sarah replied that this approach was fine. Advisory documents sent to the MVLWB would reflect the concerns of the group, consensus reached, and outstanding issues. BHPB can also be asked to leave working group sessions if necessary to provide greater comfort for critiquing BHPB proposals.

Sarah also mentioned that she will be distributing the 2005 Seepage report from BHPB shortly and that comments on the Pit Lakes studies should be submitted to her before February 14<sup>th</sup>.

*Wekeezhii Land and Water Board (WLWB)* – Sarah updated the Agency on the transboundary issue that has yet to be addressed by the MVLWB. If the Ekati project is not viewed as transboundary the Wekeezhii LWB will be managing the file. After the transition process, the WLWB will relocate to Wekweti (Snare Lake). Employees of the new WLWB will job shadow the current MVLWB staff.

#### *Meeting with Snap Lake Environmental Monitoring Agency - Jim Cunningham*

The Directors welcomed Jim and mentioned past collaborations with EMAB. Jim discussed the organization of SLEMA and presented an organizational chart. The board of directors for SLEMA consists of Aboriginal organization appointees and there is a separate science panel. Jim is the executive director and is interviewing for an environmental analyst. The emphasis of SLEMA is on community involvement in the environmental management process. Identifying a reference lake for Snap Lake that would be monitored in 2007 is becoming a troubling issue. SLEMA will also be writing a letter to DeBeers and MVLWB discussing the shortfall of TK incorporation. Tony Pearce, Don MacDonald, Colin MacDonald and Pehri Mehling sit on the science panel. One member sits on the TK panel from each Society Member. A liason committee has yet to begin functioning. Directors mentioned that governments are being brought back into the implementation of the Ekati EA in a more formal way through two annual meetings of the signatories and the Agency.

SLEMA had a workshop to develop a work plan and to identify studies and activities the Aboriginal governments would like to see carried out. This work includes looking at water flows, caribou food surveys and winter road contamination. The SLEMA board and TK panel will be inspecting the winter road on March 3<sup>rd</sup> – 5<sup>th</sup>. Some concerns about

collaring caribou have been expressed and there is a desire for less intrusive tracking techniques and to ensure tracking does not assist in hunting success.

Jim requested the Directors discuss the role of a monitoring agency with respect to cumulative effects. The Directors replied that the Agency has some role in monitoring the Ekati contribution to cumulative effects. The Agency has recommended changes from monitoring on BHPB's claim block to outside of its claim block to determine if caribou behaviour is affected. The Agency has also requested consistency of monitoring protocols so results of caribou monitoring could be compared. Wolverine monitoring using genetics is a collaborative example of cumulative effects monitoring the Agency has supported.

*Meeting with DIAND - David Livingstone and Lionel Marcinkoski*

Directors invited comments on the mediation process, director appointments, MPEMA, environmental audit and the recently released reclamation guidelines from DIAND.

*Mediation Process* - David thanked the Agency Directors and the mediator for their effective participation in the mediation. Reimbursement of costs for agency participation in mediation would likely occur through a contribution agreement.

*Director Appointment* - Lionel had no developments to report on the appointment of replacement Directors other than a recent call from Jane Howe (BHPB) regarding setting up a meeting to discuss the issue. BHPB is of the view that additional wildlife expertise is not required on the Board but DIAND is not willing to compromise on this issue. David mentioned the Aboriginal parties will be advised of the candidates and they will be able to object if they view it as necessary.

*NWT Environmental Audit* - The new DIAND minister will have to approve the NWT environmental audit. It also must be translated in its entirety into French although the report can be released with just a French summary. The summary will be translated into Aboriginal languages and audiotapes of the contents will also be produced.

*Reclamation Guidelines* - David mentioned the DIAND guidelines are a rolling draft and this approach makes sense as the guidelines will be updated as needed. David thanked Rebecca for her hard work and patience on the challenging task. Incorporation of comments from elders was also viewed as a success. DIAND anticipates holding a workshop on the guidelines in the fall of 2006.

*AEMP workshop* – This event to be hosted by DIAND on April 11<sup>th</sup> – 12<sup>th</sup> will attempt to reduce the gap in understanding and expectations among proponents. Developing guidelines is expected to be a long and iterative process not unlike the reclamation guidelines.

*Security at Ekati* – DIAND mentioned that BHPB has requested an extension on the \$56M it owes as a security deposit. A fundamental difference on financial security

remains between the company and the DIAND estimates with regards to revegetation of waste rock piles.

*Meeting with EMAB - John McCullum*

John mentioned that his recent focus has been on the Diavik water licence renewal. EMAB contracted three technical reviews of the Diavik AEMP, air quality and dust monitoring programs, and the abandonment and reclamation (A&R) plan. Many recommendations and concerns were noted. North-South Ltd. did the AEMP review and SENES did the reclamation and the air quality reviews. Many other process comments were involved in EMAB's review. EMAB suggested a final A&R plan be submitted no less than 2 years prior to closure and Diavik replied that this could be done within five years of closure. EMAB received positive feedback related to the quality of its comments on the licence.

John noted that technical sessions hosted by the MVLWB may not have contributed to clarity and reducing outstanding issues. EMAB recommended the MVLWB assign the redesign of the AEMP to the Diavik Technical Committee. DIAND commissioned a report by Barry Zajdlik and he criticized the baseline data and noted that the AEMP could only detect catastrophic changes.

EMAB's intervenor funding campaign has continued and involved media articles and advertisements. The outgoing DIAND Minister has made some improvements in this area although resources for the upcoming Diavik licence participation appear unlikely.

*Next Meeting*

March 24-26, 2006 in coordination with a potential Ekati site visit or ICRP working group meeting.

Meeting was adjourned.

*Summary of Discussion Approved by*

Jaida Ohokannoak, Secretary-Treasurer