

***Independent Environmental Monitoring Agency
67th Meeting of the Board of Directors
Yellowknife, NWT
December 2-3, 2009
Summary of Discussion***

Revised: January 11, 2010

Directors

Tim Byers
Audrey Enge (Dec. 3)
Laura Johnston
Jaida Ohokannoak
Tony Pearse
Kim Poole
Bill Ross

Guests

Kathy Racher, Wek'eezhii Land and Water Board

Staff

John Morrison, Environmental Analyst
Kevin O'Reilly, Manager

AGENCY BUSINESS

Information Updates

Bill—Attended the Canadian Society of Environmental Biologists workshop in Edmonton and gave a presentation on cumulative effects monitoring.

Kim—Involved in the ongoing Agency-EMAB-SLEMA joint letter on the diamond mine wildlife effects monitoring program review.

Tim— Participated in discussions with Lutsel K'e Wildlife, Land and Environment staff regarding the incidents at Ekati where three caribou were entangled in the airport fence. Tim and Kevin gave a presentation to Akaitcho Treaty 8 Impact and Benefit Agreement (IBA) Directors on Agency function and mandate. Rita Catholique is the new staff member at the Akaitcho Treaty 8 IBA office. The IBA Directors want to engage more with the Agency and BHPB. They would also specifically like to see the Agency meet with elder committees.

Laura—Kept up with regular Agency business.

Tony—Reviewed the Beartooth option study that was provided to the Agency in confidence by BHPB. Tony also stated he had provided an affidavit for the Akaitcho Territory Government as part of its lawsuit against the proposed drilling project by North Arrow. No concerns were raised about any potential conflict of interest.

Jaida—Assisted with the corrections to the Agency’s financial statements for 2008-09 whereby numbers were reversed for the amounts repayable to DIAND and BHPB in Note 8.

Kevin—With Tim, delivered an update for the Akaitcho Treaty 8 Impact and Benefit Agreement Directors. Reviewed the draft diamond mine wildlife monitoring program review workshop report and sent comments back to consultant Rob Marshall. Sent letter out to governments and BHPB on concerns raised during the Agency’s visit to Gameti and on the EIR 2009. The Agency’s risk management plan was finalized. Preparations are under way for the Agency’s Annual General Meeting. Brochures on Agency’s 2008-09 Annual Report and the Gameti visit were completed and distributed (the latter to Tlicho communities only). No feedback to date. Agency promotional items were ordered, with some still to arrive. Christmas open house preparations were completed. A reservation was made for The Lady MacDonald in Canmore for Agency’s Annual Report writing session May 11-13, 2010. Kevin also attended the Geoscience Forum and noted presentations by the WLWB on a community-based monitoring program for the Marion Lake watershed given concerns over potable water for Behchoko.

John—Prepared for Board meeting, AGM, and drafted the Gameti brochure.

During a discussion of incoming mail items, the Directors indicated that only Tony, Laura and Tim should receive the monthly Surveillance Network Program (SNP) monitoring data submitted by BHPB pursuant to its water licence. There was a request for staff to track the data for contaminants of concern.

Action Item #1 John to review the monthly SNP data reports to identify potential items of concern and to graph contaminants of concern (e.g. molybdenum, nitrate and chloride).

Financial Report

The Agency expenditures to date and a variance report were reviewed. Agency expenses allocated to the Separate Fund have already exceeded \$40k for the current year

Action Item #2 Bill Ross to informally mention to BHPB staff that the Agency may make an additional funding request for the Separate Fund for expenses related to the judicial review.
--

Jaida and Kevin reported that a small error in the 2008-09 financial statements has been corrected (repayable amounts to DIAND and BHPB were reversed in Note 8). The proper amount has since been paid to DIAND and the amount from BHPB will be reconciled at year end as part of the audit. Letters correcting the error were sent from the auditor directly to BHPB and DIAND.

Agency Annual General Meeting Preparations

The list of confirmed participants in the Agency's Annual General Meeting (AGM) was reviewed. The Directors had no objections to a request by a graduate student, Morgan Boyco, to attend as an observer and Bill will check with those present to see if there are any objections from Society members.

The materials for the AGM were discussed including ways to allow sufficient time for feedback from the Society members on the SENES external review recommendations.

ENVIRONMENTAL IMPACT REPORT 2009

A meeting tentatively scheduled for December 4, 2009 to discuss comments made by various parties, including the Agency, on the EIR 2009 was postponed. BHPB does not yet have a letter from DIAND indicating the Minister's decision on the adequacy of the EIR 2009. DIAND staff passed all the comments received on the EIR 2009 to BHPB on November 30, 2009. This did not provide enough time for BHPB to properly prepare for a December 4 meeting and it has now been tentatively rescheduled for December 16.

The Directors agreed that Bill and Kevin should attend the meeting. Agency positions on the EIR 2009 will be raised and discussed, including the need for consultations in advance of distribution of the next EIR. The form and content of a formal response by BHPB to Agency comments and a possible Minister's Report from DIAND are also likely to be discussed and any progress is to be reported back to Directors for final agreement.

Action Item #3 Bill and Kevin to represent the Agency at the proposed December 16, 2009 meeting to discuss comments submitted on the EIR 2009. Any progress made is to be reported back to the Directors for final approval.
--

REVIEW OF USE OF BEARTOOTH PIT AS A MINEWATER SUMP

The Agency requested and received an internal Beartooth pit options study from BHPB on the understanding that it would be kept confidential. Tony reviewed the report and presented a summary along with his observations.

The Agency remains concerned with the adequacy of the information that the WLWB had available to it when making the decision to approve the use of Beartooth pit as a sump. A number of supporting documents that had been identified in BHPB's application to use Beartooth as a minewater sump had apparently not been reviewed by the WLWB in making its decision to approve the application. Given that the approval has already been made, the Agency will continue to pursue concerns regarding the use of Beartooth pit as a sump, through the Interim Closure and Reclamation Plan (ICRP) and the updated Wastewater and Processed Kimberlite Management Plan due on or before December 31, 2009.

PANDA DIVERSION CHANNEL MONITORING

Tim reviewed the 2008 Panda Diversion Channel (PDC) monitoring program report and noted a continued decline in fry production and that the numbers of spawning fish being captured in the PDC are also declining. BHPB has not offered any substantive explanation for these declines. The ten-year period for monitoring of the PDC ended in 2008 and it is unclear what further monitoring BHPB may carry out. BHPB has committed to conduct a ten year review of its monitoring program but no date has been specified for distribution.

Bill suggested that it may be a good idea to ask Bill Tonn at the University of Alberta to review the PDC monitoring results. It was also suggested that Bruce Hanna be invited to the next Agency Board meeting to discuss this matter.

Action Item #4 Kevin to e-mail BHPB to ask when the 10-year PDC report may be available and to inquire about PDC monitoring plans for 2010.

MVLWB DRAFT GUIDELINES FOR WASTE MANAGEMENT

Laura had a brief look at the document distributed by the Mackenzie Valley Land and Water Board (MVLWB). The draft focused on the subject of waste but not on some critical factors such as site selection for waste disposal locations. There are few references to existing work or documents such as the guidelines for sumps prepared by the NWT Water Board, very little guidance on incineration and few references to best practices. Laura will prepare review comments for distribution to the Directors for the December 18, 2009 submission deadline. Kevin will pass on the draft guidelines to air quality specialists including Dave Fox (Environment Canada) and Julian Kanigan at DIAND who is working on updating land use guidelines.

Action Item #5 Laura to review the MVLWB Guidelines for Waste Management.

Action Item #6 Kevin to send the MVLWB Guidelines for Waste Management to other potentially interested parties.

MEETING WITH KATHY RACHER, WLWB

Kathy reviewed some of the ongoing BHPB related matters. The court date for the judicial review has now been set as February 3, 2010. The WLWB is awaiting BHPB's proposal for the three-year review of the Aquatic Effects Monitoring Program (AEMP) due December 15, 2009. The WLWB has retained Don Hart and Neil Hutchinson as technical advisors for the AEMP review. BHPB has indicated an interest in reducing the sampling frequency. BHPB is also now revising the Reclamation Research Plans in the ICRP due in February 2010 pursuant to the direction from the WLWB. There will be a trial pit at Pigeon this winter to test mining at this location.

In response to questions from the Directors, Kathy stated that the draft water quality policy being developed by the MVLWB working group will probably be distributed for comment in January 2010. She mentioned that there has been a lot of cooperation and

coordination with DIAND behind the scenes to make sure that this effort is coordinated with earlier work on water quality standards. In discussion with the Directors, Kathy agreed to review how the WLWB staff responded to comments made on the proposal by BHPB to use Beartooth pit as a sump.

[Following the meeting, Kathy sent an e-mail that summarized the staff response to comments on the proposal to use Beartooth pit as a sump. Without getting into a lengthy debate about the decision by the WLWB in this instance, and to help the Agency with future submissions, further clarification should be sought on what may be needed in terms of the burden of proof and evidence.]

Action Item #7 Kevin to follow-up by e-mail with Kathy on how to improve the clarity of future Agency submissions to the WLWB.
--

The WLWB staff along with technical advisors Don Hart and Neil Hutchinson, have reviewed the comments submitted on BHPB's Watershed Adaptive Management Plan. Further direction will be sent to BHPB and the name of this initiative may be changed to something like a 'response framework' as the intention is to better understand how the company deals with the results of its aquatic monitoring programs.

Kathy stated that there is work going on now to combine MVLWB Closure Plan Guidelines with DIAND's Closure and Reclamation Guidelines. As there are now other major landowners in the Mackenzie Valley, there will be some efforts to involve those parties in the preparation and review of the combined guidelines. The WLWB will also likely send a letter to DIAND requesting clarification on how enforcement of any guidelines will be carried out and how security will be returned to operators.

The Agency's preliminary comments on the MVLWB Guidelines on Waste Management were passed on to Kathy. The Agency committed to file written comments before the submission deadline.

Kathy reviewed some staff changes at the WLWB and mentioned that the Government of the NWT had recently nominated George Mackenzie, former Tlicho Grand Chief, to the WLWB and that the DIAND Minister has made the formal appointment.

TOWARDS SUSTAINABLE MINING

John presented his report on the Towards Sustainable Mining initiative of the Mining Association of Canada. It consists of a set of self-assessment protocols around tailings management, energy use, external outreach, crisis management, Aboriginal relations (under development), and biodiversity (under development). Information about the external outreach protocol was presented.

The Directors expressed some interest in learning more about BHPB's performance. John indicated that the Mining Association of Canada has the raw numbers regarding performance but these are not on the website.

Action Item #8 John to obtain further information on BHPB's performance under the Towards Sustainable Mining initiatives from the Mining Association of Canada and BHPB.

FOLLOW-UP ITEMS

BHPB Judicial Review

An in-camera discussion took place regarding the BHPB judicial review. The staff will get clarification on what the steps are leading up to the court hearing date of February 3, 2010.

Action Item #9 Kevin to obtain information on steps in the judicial review leading to the court hearing on February 3, 2010.

AEMP Review

Tim indicated his availability and interest in participating in the AEMP review and especially the BHPB-sponsored technical workshop planned for mid-January 2010. Laura also indicated an interest in the AEMP review. When the proposal from BHPB is received, it will be distributed to all Directors.

Diamond Mine Wildlife Monitoring Program Review

The letter from the Agency to follow-up on the September 2009 workshop to review the diamond mine wildlife monitoring programs evolved into a joint Agency-EMAB-SLEMA letter. This letter has been approved by SLEMA, and was very recently approved by EMAB.

Action Item #10 Kevin to distribute the joint IEMA-EMAB-SLEMA follow-up letter on the diamond mine wildlife monitoring program review.

While the joint letter focuses on caribou as the example for how a systematic approach to the review should be undertaken, the comments prepared on the other species will now be submitted from the Agency alone. The Directors were of the view that a letter from the Agency signed by Kim Poole was an appropriate way to convey these ideas to interested parties.

Action Item #10 Kim and Kevin to prepare and send a letter to interested parties with further ideas for consideration in the diamond mine wildlife monitoring program review.

Cell E Fish Study

BHPB has now released the Cell E fish study to follow-up on the hydrocarbon metabolites found in the livers of whitefish and trout in Leslie Lake found during the

2007 AEMP. The WLWB has distributed the study without a request for comments but indicated that it may be of interest for the upcoming AEMP review.

Tim noted that there are some inconsistencies in the Executive Summary regarding whether or not the mine had any bearing on tapeworms found in slimy sculpin. Slimy sculpin may not be a suitable fish species for monitoring and there was some discussion of whether lake chub may be more appropriate. It was agreed that Tim should further review the Cell E fish study prior to the AEMP review.

Action Item #11 Tim to review and report on the Cell E fish study prior to the AEMP review workshop in January 2010.

North Slave Metis Alliance Assistance Request

Sheryl Grieve with the North Slave Metis Alliance had requested the assistance of the Agency in reviewing an application for a scientific research licence for BHPB to continue to carry out the AEMP.

The Directors discussed the request and the actual application itself. There is very little detailed information about the AEMP in the application. It was felt that the three-year AEMP review would be the best forum for reviewing, changing and improving the AEMP rather than the scientific research license process. The part of the NSMA request dealing with Aboriginal involvement and training is outside the mandate of the Agency.

Agency staff are to convey the above response to the NSMA with an offer to work with the organization, and any other Society member, during the three-year review of the AEMP.

Action Item #12 Kevin to respond to the NSMA request indicating that the Agency is prepared to assist NSMA, and other Society members, during the three-year AEMP review.

Caribou and Ekati Airport Fencing Incidents

The Directors reviewed the November 10, 2009 letter sent out by BHPB on the three caribou deaths at the Ekati airport fence during 2009. Tim and Kevin also reported on how this issue was raised by the Lutsel K'e First Nation Wildlife, Lands and Environment Committee. Kevin discussed the issue with BHPB staff who indicated that a letter was in preparation. The company was encouraged to directly engage communities in resolving the concerns and in working towards a longer term solution. It was noted that the Agency has not received any wildlife incident reports from BHPB since about 2005. The Agency will continue to encourage BHPB to work with communities on this issue as part of the diamond mine wildlife monitoring program review. A broader discussion of the need for improved communications with the Agency also took place.

Action Item #13 Kevin to draft an e-mail to remind Environmental Agreement signatories of the 1998 Communications Protocol.

DEBRIEFING FOLLOWING THE AGM

The Agency Directors met briefly following the AGM to consider the election of officers.

Motion: That the current slate of Officers (Bill Ross, Chairperson; Tim Byers, Vice-Chairperson; and Jaida Ohokannoak, Secretary-Treasurer) serve again until the 2010 Agency AGM.

Moved by Tony Pearse. Seconded by Kim Poole. Adopted by consensus.

The Directors were pleased with the input from the Society members with regards to the SENES external review recommendations dealing with communications. It was agreed to add this item to the agenda for the next Board meeting.

FUTURE BOARD MEETINGS

The dates of the future Agency Board meetings were reviewed and approved as follows:

January 19-21, 2009 (with departures on the last day)

March 30-31, 2009 (with departures to ensure travel home for the Easter weekend)

May 11-13, 2009 (Agency Annual Report writing session, Canmore, Alberta)

MEETING TERMINATED at 3:00 pm

Summary of Discussion Approved by
Jaida Ohokannoak, Secretary Treasurer.