

***Independent Environmental Monitoring Agency
43rd Meeting of the Board of Directors
Yellowknife, NWT
February 1st - 6th, 2005
Summary of Discussion***

Revised: April 26, 2005

Directors

Jaida Ohokannoak	Tim Byers
Bill Ross	Tony Pearse
Dave Osmond	François Messier

Staff

Carole Mills	Sean Kollee
Kevin O'Reilly	

Information updates

In addition to the regular Agency business:

François – carried secretary-treasurer duties up to the AGM and kept up with Agency correspondence.

Dave – participated in water licence renewal process and reviewed candidates for the Agency manager position. He also announced his retirement from Gartner Lee on January 7, 2005.

Jaida – was involved in recruitment and negotiation for Agency manager position and has resigned from her former position with Nunavut Tourism. She intends to rejoin Parks Canada as a warden.

Tim – reviewed traditional knowledge guidelines from the MVEIRB, participated in interviews for the manager position and attended meeting two of the LLCF multiple accounts analysis (MAA) process.

Tony – participated in LLCF MAA process and was interviewed as the Agency spokesperson on CBC radio related to the Ekati water licence renewal process.

Bill – also participated in the LLCF MAA process and in hiring the new Agency manager.

Carole – met with Jim Lahey, Associate Deputy Minister of DIAND, responsible for the Northern Strategy that intends to provide better coordination of federal involvement in the North. She also attended a November 2004 mine reclamation workshop in BC, that was useful for gathering contacts when planning the Agency reclamation workshop.

Kevin – has been learning about the Agency, particularly the financial system, from Carole and would like to upgrade some of his skills related to software and computers.

Sean - participated in a training session on dispute resolution and negotiation in December and assisted the planning committee in organizing the reclamation workshop.

REPLACEMENT AGENCY MANAGER

The Directors welcomed Kevin O'Reilly as the new Agency manager. During his probationary period the Directors decided his performance would be evaluated on the following criteria:

- Management of Agency Financial year
- Good communication and exchange with Agency Society members
- Delivery of environmental workshop
- Effective communication with Board
- Working with staff

Jaida agreed to circulate a more formal list of evaluation criteria to other Directors, to provide greater clarity to the new Manager.

MEETINGS WITH OTHERS

Meeting with BHPB (David Scott, Chris Hanks and Jane Howe)

Chris reported on the status of a number of reports as follows:

- AEMP available third week of February 2005
- WEMP available by the end of February 2005
- Review of Aerial Survey Techniques for caribou monitoring available now and Chris agreed to have one delivered to the Agency in the next day or two
- Seepage Report by the end of February 2005
- Reclamation Research will be reported on in the Annual Report for March 31, 2005
- Water Licence Annual Report will be part of the Annual Report for March 31, 2005,
- Panda Diversion Channel report by mid-February 2005
- Annual Report, including a plain language version, for March 31, 2005

Francois asked about the status of the air quality and snow monitoring work. Chris responded by stating that BHPB finally has the data from Environmental Canada but need to decide on a model which Rescan is working on. Snow monitoring should begin this year.

Chris also indicated that there would be revisions to the OEMP over the next year including changes arising from the LDCF process by summer or the early fall and that this will require the approval of the MVLWB. The waste rock management plan also

needs to be revised in light of the Misery operation going into care and maintenance over the next 4-5 months and the Fox pit possibly going deeper.

David Scott stated that BHPB is about half way through a major revision to the mine plan. This may involve shelving the Misery operation until after the Fox pit, for about 4-5 years. Drilling is currently under way at Fox to calculate resource values and whether the pit should be made larger. A final decision should be made by this time next year. Koala pit operations will be finished around the freshet this year. The underground operations at Panda have started and will cost approximately \$200 million CAN. A second underground operation at Koala North is at the feasibility stage. There are no changes in the Beartooth operation. There is a “last gasp” exploration program under way in the entire claims block although a large low-grade find has been made near Lac du Sauvage. BHPB is not sure about future use of Sable and Pigeon pipes as the current water licence would not allow the economical operation of these pits. BHPB is considering requesting changes to that water licence but only after the current 1616 process is completed.

Chris indicated that there is a small open pit at Pigeon for bulk sampling but that BHPB does not want to trigger another Fisheries authorization. Tony suggested that if there is to be no mining at Pigeon, it might present a good test site for adaptive environmental management for pit backfilling or other monitoring.

In response to a question about changes to the WEMP, Chris responded that the only changes would come from the recently completed review of the aerial survey techniques and that RWED had been consulted and was in agreement. It will be necessary to ensure that data sets are comparable.

Chris mentioned that a new water licence will likely require an adaptive management plan, changes to the AEMP and to the ARD/chemical characterization plan. The adaptive management plan would use a risk management approach to discharge criteria. For example, NEC20 limits and how that would trigger a management response. There would also be some details on tracking changes and trends, core guidelines that are already being used internally by BHPB.

Chris stated that BHPB will start its own process to put together an Abandonment and Restoration Plan that will be at a conceptual level, and at the feasibility stage for parts of the Mine where possible. David Scott remarked that an Australian team from BHPB headquarters had recently completed a performance review of EKATI and that 45 minutes were spent at a high-level meeting on closure to review stakeholder expectations, a budget and work plan. Helen mentioned that BHPB has internally scoped out the tasks and a team. A final plan is expected in June or July 2006. There is still a fair amount of design work remaining, for example, options for the Panda Diversion Channel. BHPB is still prepared to have the security adjusted while the plan is in preparation. The final plan will require the approval of the BHPB corporate Board as the \$100 million US closure cost internal policy threshold will have been exceeded.

Bill asked how the Agency could assist BHPB with the A&R Plan. Helen responded by saying that people need to realize it will take time to complete the plan. The Agency's view was put forward that it was more important to get it right than to do it quickly. Chris committed to providing a more detailed presentation on the closure planning for the next meeting. He will be the lead on this issue while Jane will handle security. David Scott indicated that BHPB expects to have a consultation process with stakeholders like the approach on the LLCF changes. BHPB intends to take the stakeholders through each of the mine components in detail as they want to establish some buy-in.

Chris mentioned that BHPB had sent out a letter on the declining dissolved oxygen at Cujo Lake. This is not a new phenomenon but it appears to be happening earlier and at deeper levels. It took two days to plough off the snow on the lake but there was still not enough light getting through the ice. Oxygen levels started to increase at the 4 m level but aerators have been ordered from Ontario and should be on site February 11. Kodiak Lake is still being aerated but oxygen levels seem to be getting better.

Chris discussed the Long Lake Containment Facility and stated that filling of Cell A with processed kimberlite would begin in February. To prevent ice lenses from forming, the spigots are moved to keep tailings deposition down to 1.5 m in thickness. Jane remarked that meltwater can be pumped off Cell E to assist with overall water management.

Chris mentioned a few other recent events including that four wolverines had been removed from the Mine by RWED. The Misery wasterock pile will have some capping work done in April or May as that operation will be on care and maintenance. Geotechnical drilling is to be done in the area between Beartooth and Panda. Water sampling is under way at Long Lake to look at water chemistry and closer coordination of the SNP and AEMP for mid-2005. The attempted atomization system at Misery will be moved over to Long Lake. The Panda Diversion Fisheries authorization expires in 2007, so work is under way to examine options for final closure.

Bill raised the issue of the Agency core budget and work plan and stated that it would be submitted to BHPB in a week or two. As mentioned at the AGM, the budget request would be in the order of over \$600k. David Scott replied that this would be good timing as BHPB is preparing its own budgets. Bill also stated that the Agency would be submitting a request for the previously agreed upon \$30k and the additional \$4,800 for Agency involvement in the LLCF process. No concerns were raised by BHPB regarding these requests. Chris replied by stating that he had informed DIAND that there was no need for an arbitrator at this point as BHPB and the Agency had resolved prior budgetary issues. Bill stated that the Agency had also passed along the same message to DIAND. It was agreed that Chris and Bill would have a discussion on the Agency core budget and work plan after it was submitted but both sides did not anticipate any great difficulties.

Bill also stressed the urgency in finding another Director as the last nominee had recently declined the appointment.

Meeting with EMAB (John McCullum)

John mentioned the joint cumulative effects letter that had been drafted by EMAB and the Agency for submission to DIAND. It was agreed that a letter with a few minor amendments to reflect Agency issues should be sent out shortly. He also discussed EMAB's view of the MVLWB relating to the Diavik amendment to its water licence, the mediation process, and the functioning of the Diavik technical advisory committee. The MVLWB does not appear to have any interest in reviewing or approving the annual reports under the AEMP. EMAB has also expressed some concerns over the fisheries habitat compensation proposal to create habitat by deepening some previously undisturbed lakes. Diavik is doing a review (contracted to Golder) of its WEMP to determine whether predicted impacts are actually occurring. RWED is concerned about delays in the submission of the WEMP results. Diavik will be submitting a protocol for fencing of the tailings area and a contingency plan to avoid wildlife impacts from fencing.

John provided an update on the EMAB community engagement process. EMAB has been to three of eight communities it intends to visit including Lutsel K'e and Kugluktuk. EMAB presented how it accomplishes its mandate and asked community members about priorities for monitoring (caribou, fish and water). Participants were pleased with Traditional Knowledge related initiatives and eager to see more direct community involvement in monitoring. They also affirmed that at community meetings, results of monitoring programs should be communicated and there should be at least annual visits by Diavik and EMAB.

EMAB and IEMA have been requested to undertake joint consultation in the Tli Cho communities. EMAB is proposing the weeks of May 16, 23 and 30 for such visits. Bill suggested that such a schedule would result in unforeseen travel costs for IEMA and that it would likely be more cost effective to charter for a consolidated community tour. It was agreed that the Tli Cho community visits should be coordinated jointly by staff of EMAB and IEMA.

Meeting with MVLWB (Bob Wooley and Heather Mills)

Bob provided an update on the status of the board. Stephen Nielsen was re-appointed as the acting chairperson so a quorum of the initial group that heard the Ekati licence hearing remains. Floyd Adlem (former Chair of EMAB) has also been appointed.

Bob also mentioned that the MVLWB has received a letter from the DIAND Minister accepting an extension of a one-year term for licence N7L2-1616. Gartner Lee has been hired to assist the Board in finalizing the new licence by consulting with intervenors to clarify their positions and interventions. The MVLWB thinks it is a workable licence and it has addressed most of the concerns of BHPB such as constraints on its ability to do its job. The MVLWB intends to have communication with BHPB that does not compromise the hearing process. Bob also noted that the transitional provisions in the Tli Cho Agreement implementation legislation allow for a six-month period for the MVLWB and

Wekeezhii Land and Water Board to work out an orderly transfer of jurisdiction over any matters including any ongoing licencing. BHPB is trying to initiate a process to amend the Tlicho agreement to allow for transition so MVLWB can complete licence if it is not done before Tlicho water board is in operation.

Bob stated that no technical working group will be formed related to the water licence and that the public record was closed as of the hearing. One option available to the MVLWB is to simply impose the licence as it stands. Whether there will be one more draft of the water licence is likely dependent on legal advice. The Board hopes to complete the new licence process by the end of April 2005.

Directors remarked that any change in a new licence that was influenced by a consultant report could be construed as new information and unfair process to be potentially subject to a judicial review. Bob noted that the MVLWB is uncomfortable about sending out drafts.

Directors discussed the upcoming schedule of MVLWB related events and the likelihood of public hearings related to Ekati to aid in developing the Agency workplan. Bob replied that he is not certain that any hearing would occur in 2005.

On the subject of mine closure, one of the Directors noted his concern that the project could be licenced without a conceptually viable closure plan. Bob replied that this is why the *A&R* process was split off the water licence renewal process. He further noted that this process could be handed off to the Wekeezhii Board.

Kevin asked if there would be any further efforts at Mackenzie Valley-wide guidelines like the proposed security policy and template. Bob mentioned the independence of the regional boards and the difficulty in imposing policies and procedures especially for those regional boards established prior to MVLWB. The Directors also pointed out that Sable, Pigeon and Beartooth licence has not been implemented and that BHPB has expressed concern with effluent criteria.

Meeting with DIAND (David Livingstone and Tamara Hamilton)

Reclamation Workshop Follow-up

The Directors thanked DIAND for providing the funding for the Agency to host the mine reclamation and closure workshop held February 1-3, 2005. Directors viewed the workshop as very successful.

DIAND views the need for a TK workshop on reclamation on how to drive goals and objectives based on community interests as a key learning of DIAND from the workshop. Community involvement in planning for mine closure was a dominant theme of the workshop as was the success of the Colomac process. DIAND also views that advice from Aboriginal people on specific mine component closure can be gained through this sort of process. DIAND is also interested in documenting issues related to mine reclamation from elders.

Directors informed DIAND that the Agency was not pleased to have to cover honoraria differences because the maximum DIAND honorarium is lower than the Agency honoraria. The Agency objected to not having full coverage of costs when hosting DIAND-sponsored workshops. The DIAND representatives undertook to look into this situation.

Regional Monitoring

David mentioned that a steering committee meeting on the multi project monitoring agency (MPEMA) has occurred and a sub committee established to work on the MPEMA terms of reference by refining those contained in the Snap Lake environmental monitoring agency (SLEMA). The steering committee as a whole meets in March to determine the status of the MPEMA. One outstanding issue is the makeup of the board of directors and the inclusion of government and industry on it. There was no consensus amongst the MPEMA steering committee to bring the functions of CIMP or WKSS into MPEMA. A Treasury Board submission on CIMP is expected soon.

Tamara is also issuing a contract to provide advice on funding MPEMA. The Directors agreed to provide advice to MPEMA on funding issues encountered over the years such as the recent difficulty in negotiating funding with the Company and being allowed a carryover of funds from year to year. DIAND welcomed comments on the terms of reference for MPEMA from the Agency and will send out the MPEMA principles.

It was also noted that the WKSS secretariat function would stay with Terriplan so there was no further need for Agency involvement.

Snap Lake Environmental Monitoring Agency (SLEMA)

SLEMA has been established and currently consists of a board and core group plus a scientific panel. It is looking for an executive director as well as staff and office space.

Water Licence

One of the Directors mentioned his concern with the water licence renewal process and that a licence valid until the end of the mine could be issued without a viable closure plan. It was also noted that the Tlicho Agreement does not contain a provision for the MVLWB to continue to licence the Ekati project upon establishment of the Wekeezhii Land and Water Board. DIAND has sent a letter to the MVLWB outlining some of its concerns with the BHPB licensing process.

Security Deposit

The Directors requested DIAND discuss the implication of a water licence extension to the perceived security deposit shortfall. DIAND replied that the current gap is \$35 million for the *Environmental Agreement* and \$6-7 million for water licence. DIAND may send a letter to the MVLWB to separate the term from the security deposit. DIAND is recommending the average between the Brodie and Komex estimate be used on an interim basis.

Meeting with Senes Consultants (Gerd Wiatzka)

Gerd mentioned that Senes has received the contract to conduct the environmental audit under the Mackenzie Valley Resource Management Act. The team has been charged with looking at the CIMP and CEAMF documents on gap identification and solutions, what is the state of environment for the Mackenzie Valley, any trends, and how management system is functioning. The Agency was invited to provide assistance in helping Senes understand how the Agency was formed, about its mandate and what the Ekati project is doing relative to the environment. The Directors agreed to provide whatever assistance they could to Senes, within the mandate of the Agency.

AGENCY WORKPLAN AND BUDGET

The Directors discussed the workplan and budget in order to deliver a proposal to BHPB for funding of Agency operations in 2005-6 and 2006-7. It was agreed that the workplan would be provided in more detail than in the past to BHPB but a requirement for flexibility remains to adjust to changing circumstances of importance. Future projections to be added to the workplan for likely public hearings and large changes to Ekati monitoring programs were considered.

The Directors debated a proposal to invite one Aboriginal person to attend each Agency board meeting for one day. The objective of this proposal is to have each Aboriginal Society member over time see what the Agency does. It was agreed to proceed with this project in some fashion by contacting the Aboriginal members to provide feedback. Directors also discussed the prospect of producing a DVD on the Agency and its work.

Approval was given to expend funds in the fourth quarter according to a cashflow projection developed by the staff. This included expenditures on the environmental workshops and promotional items for the Agency.

BHPB MONITORING PROGRAM COMMITMENTS

Directors noted that re-doing the risk assessment of revegetation of kimberlite to wildlife appears to be a low priority for the company despite earlier recommendations from the Agency and the Aboriginal members.

Extra monitoring of dust around cell B of the LLCF was also requested by the Agency and an immediate concern of the Aboriginal members.

A detailed discussion ensued regarding tracking of Agency effectiveness and outcome of Agency recommendations. The Directors agreed that staff should look at Agency recommendations over time, effectiveness of those recommendations (outcomes), and to what extent those recommendations are made due to Society members concerns. The objective of this would be to provide information about the Agency performance and to inform the Society members.

The Directors also decided to consider the delay of BHPB monitoring program reports and their effect on opportunities for adaptive management and the Agency's ability to do its work, as an annual report recommendation.

Action Item #1 – Staff compare Agency recommendations to BHPB/regulator actions over time.
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West Kitikmeot Slave Study (WKSS)

The Agency has been invited to be a member of the West Kit Slave Society (WKSS). Directors noted that BHPB has not supported Agency involvement in WKSS, and EMAB has not agreed to be a part of the WKSS. WKSS has funding and is reviewing proposals related to cumulative effects. A benefit of participating in the WKSS is input on the sort of projects that will receive research funding. Directors commented that while they have considerable interest in the activities of WKSS the Agency lacks the mandate and the time and resources to participate. Directors decided not to pursue the WKSS secretariat role and to defer a decision on any Agency involvement in the WKSS until there was further information available.

RECLAMATION WORKSHOP FOLLOWUP

The Directors agreed to support Agency staff in assisting the consultant, through the planning committee, regarding the completion of the workshop final report. They also noted possible future workshop topics such as closure criteria, security and TK. TK input is needed on how Aboriginal people conceptualize reclamation and mine closure. The Agency view is that Aboriginal communities should lead such a workshop and the Agency would be pleased to facilitate such an initiative if requested.

The Directors also noted that the reclamation workshop did not make it to the matrix of issues, options, and measures of success due to time constraints and the length of presentations, and question and answer sessions. A potential next step is that the material that was discussed could be put together prior to the next workshop.

ENVIRONMENTAL WORKSHOP PLANNING

The Directors initiated planning and delegation of responsibility for the Agency hosted Ekati environmental workshop to be held March 16th and 17th. They authorized staff to incur the expenses related to hosting the event.

Action item #2 – Draft agenda for workshop and indicate that the workshop will address wildlife, aquatics and provide a significant opportunity for community input from elders.
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Action item #3 – Clarify the AEMP recommendation in the last annual report as raised by DIAND at the AGM.

Action item #4 – Determine if Anne Gunn and Chris Johnson are available to do a

presentation on regional scale caribou monitoring.

Action item #5 – Distribute environmental workshop presentations from last year’s event to Directors.

Action item #6 – Request from BHPB a new collection of air photos.

Action item #7 – Invite BHPB to Ekati environment workshop and request participation as occurred last year, additionally request BHPB to present its findings from 2004 environmental monitoring programs.

MVEIRB TRADITIONAL KNOWLEDGE GUIDELINES

Tim provided an overview of the draft MVEIRB TK guidelines for the use of TK in environmental assessment. He felt it to be a useful document because it recognizes the value of community knowledge and that it distinguishes between local and traditional knowledge. It also advises proponents about context of information in interpreting TK, confidentiality, and advises MVEIRB when an acceptable use of TK has been achieved. Directors provided comments on Tim’s analysis of the TK guidelines document and agreed to send a letter to the MVEIRB with a few modifications and to thank MVEIRB for its efforts.

LLCF MULTIPLE ACCOUNTS ANALYSIS PROCESS

Directors agreed that the Agency position should be primarily driven by effective closure. It was further agreed that there is a need to distinguish between effective mine closure and early opportunities to do progressive reclamation. The knowledge of water chemistry within the LLCF is not understood well enough at this time to make decisions for closure.

As far as weighting of accounts, Directors decided that environmentally sound closure is the most important factor, along with avoiding deposition of waste into cell D, increasing the capacity of the LLCF and retaining flexibility to allow for pit backfill—all are more desirable than progressive reclamation work on cell B.

Agency 2005-2006 Schedule Planning:

The Agency meeting schedule is as follows:

1. March 14-15 and 18th for the 44th Board Meeting, 16th–17th Ekati environmental workshops
April 11-13th workshop on annual report planning.
2. June – 9th to 12th, annual site visit and 45th Board Meeting, alternative is the following week.
3. September – community meeting potentially in Dettah and 46th Board Meeting.
4. October 24th – 27th (alternate is a time late in the month) 47th Board Meeting and AGM.

5. January or February 2006 – 48th Board Meeting.
6. March 2006 – 49th Board Meeting.

Summary of Discussion Approved by

-ORIGINAL SIGNED BY-

Jaida Ohokannoak, Secretary-Treasurer