

Summary of Discussion from the Special Meeting
of the Society of the
Independent Environmental Monitoring Agency
Held on
March 25, 2014
at IEMA Boardroom, Yellowknife, NT

Participants

Tlicho Government

Marjory Matheson Maund [in person]
John B. Zoe [teleconference]
Bertha Rabesca Zoe (legal counsel) [teleconference]
Nuri Frame (legal counsel) [in person]

Kitikmeot Inuit Association

John Donihee (legal counsel) [in person]

Akaiicho Treaty 8: Lutsel K'e Dene First Nation

Mike Tollis [teleconference]
Roy Desjarlais [in person]

Akaiicho Treaty 8: Yellowknives Dene First Nation

Todd Slack [in person]

North Slave Metis Alliance

Matt Hoover [in person]

Government of Canada

Robert Jenkins [in person]
Lindsay Armer [in person]
Lionel Marcinkoski [in person]
Martin Saidla (legal counsel) [in person]

Government of the Northwest Territories

Ray Case [in person]
Joel Holder [in person]
Mike Reddy (legal counsel) [in person]

Dominion Diamond Ekati Corp. (DDEC)

Bob Overvold [in person]
Eric Denhold [in person]
Sean ? (legal counsel) [in person]

Meeting opened at 1:35 pm.

WELCOME AND AGENDA REVIEW

Bill Ross welcomed everyone to the Special Meeting of the Society. The meeting was called pursuant to the Agency's by-laws to discuss the changes proposed by Aboriginal Affairs and Northern Development Canada (AANDC), Government of the Northwest Territories (GNWT) and Dominion Diamond Ekati Corp. (DDEC) to the Environmental Agreement as a result of devolution.

Kevin O'Reilly reviewed safety and logistics considerations for those meeting in person in Yellowknife.

Those involved in the meeting introduced themselves and their affiliation. Bill requested that all speakers

state their name before making any comments as many participants were involved in the teleconference.

Bill indicated that the Agency would produce and distribute a summary of the meeting. The agenda for the meeting was reviewed and no changes were suggested. Bill said that he would serve as chairperson for the meeting unless anyone objected. There were no objections.

PRESENTATION ON THE PROPOSED CHANGES TO THE ENVIRONMENTAL AGREEMENT

Ray gave the presentation on behalf of GNWT and AANDC that was distributed by e-mail shortly before the meeting.

He thanked the Agency for organizing the meeting. The two governments appreciated the timely review and comments from the Agency on the proposed changes to the Environmental Agreement and the expedient arrangements for the Special Meeting of the Society members.

He indicated that a huge amount of work has been done in preparation for devolution. He said that he was encouraged to see everyone willing to quickly find the time to meet on the subject of the proposed changes to the Environmental Agreement.

On April 1, the federal government will transfer administration and control of lands and water from AANDC to GNWT. The authority to design, deliver and administer public land programs will be transferred. GNWT is to collect and keep a portion of the royalties from the use of public lands. Along with legislative changes to implement devolution, the federal government will assign GNWT a large number of the AANDC roles and responsibilities in this area. Included are those activities around the management of the environmental assessment, including land and water impacts related to the Ekati Diamond Mine.

The objectives of the Environmental Agreement will not change as a result of devolution. GNWT remains committed to effective environmental management of the Ekati Mine. The proposed changes put forward are to assure the primary land and water manager continues to administer the Ekati Environmental Agreement. GNWT and AANDC want to ensure that the Agency can continue to fulfill its mandate under the Environmental Agreement.

AANDC has a number of roles in the Agreement, but next week ENR will have the identical roles. The proposed changes will ensure that GNWT Environment and Natural Resources (ENR) as the land manager has the ability to undertake those functions under the Environmental Agreement. GNWT does not believe that the proposed changes are substantive, but simply editorial to recognize the changes to jurisdiction.

The Agency has raised specific concerns with the changes proposed. The Agency is concerned about the implications for other federal departments and agencies. A number of articles in the Environmental Agreement were identified where federal agencies were implicated or mentioned. The amendments proposed continue to recognize the engagement of other federal departments. GNWT will take on the responsibility of coordinating both the new territorial and federal agencies under the Environmental Agreement. GNWT will provide the Agency reports and correspondence to those other agencies. GNWT have not seen any reason to believe that these other agencies including Fisheries and Oceans (DFO), Environmental Canada (EC), or the new territorial Lands Department will not cooperate with the Agency or respond to its recommendations.

The Agency identified transboundary issues as a concern and that there may be effects on the Kitikmeot Inuit Association, or other groups. Existing Aboriginal rights are recognized in the Environmental Agreement. The federal role with regard to transboundary waters will continue with or without the changes to the Environmental Agreement. GNWT is already involved in transboundary water issues. GNWT also feels that the proposed changes do not impact the fiduciary obligations of the federal government to Aboriginal peoples.

The Agency has expressed a concern over the number of Directors being reduced from 7 to 6 in the proposed changes to the Environmental Agreement. The governments recognized that the reduction could

impact the Agency's current processes and have agreed to maintain the membership at 7.

The Agency also identified that the Resolution Agreements that came out of mediation processes in 2006 and 2008 should be updated to reflect the new roles and responsibilities with devolution. GNWT and AANDC agreed. GNWT is committed to working with the Agency and DDEC to come up with an approach that is fair and transparent.

The governments share the interest of the Agency in maintaining its mandate and effective environmental management at Ekati. The governments do not see any substantive changes being proposed to the Environmental Agreement that will affect the Agency's mandate. The issues raised can be cooperatively addressed.

Next week GNWT will become the primary land and water manager. GNWT will have the staff and experience to administer the Environmental Agreement and to fulfill all of the obligations that AANDC currently has under the Environmental Agreement.

GNWT and AANDC came to prepared to answer any questions and to jointly find a way forward on this very important matter of changing the Environmental Agreement.

AGENCY VIEWS OF THE PROPOSED CHANGES

Bill Ross said that the reason the Agency called this meeting is to proceed with any changes to the Environmental Agreement in a transparent fashion with all of our Society members. The Agency recognizes that the Diavik and Snap Lake Environmental Agreements are different in that the Aboriginal governments are direct signatories. The Agency wanted to receive input from all of its Society members, not just the three signatories to the Environmental Agreement, before we take any further action. The Aboriginal Society members frequently have good ideas that have been shared with us.

Bill summarized the points from the Agency's March 17 letter that indicated a number of concerns with the proposed changes to the Environmental Agreement. The Agency thanked AANDC, GNWT and the company for the meeting held on March 13, which provided for a helpful exchange of views. The Agency then provided a preliminary response in the form of the March 17 letter.

The first priority for the Agency is to promote the effective environmental management of the Ekati Mine. This means that the Agency needs to be able to continue to fulfill its mandate under the Environmental Agreement.

Bill noted that the Agency was originally told that the changes to the Environmental Agreement would simply be administrative in nature. The Agency was surprised to learn later that Canada is seeking to withdraw from the Environmental Agreement. The Agency has flagged that other federal agencies such as DFO and EC will continue to have significant responsibilities for the effective environmental management at Ekati. The Agency wants these relationships to continue and cited obligations under the current environmental agreement to consider recommendations, respond to them, and to cooperate with the Agency.

The Agency wants to be very clear that we have not suggested that these departments are planning to stop cooperating, but to point out that there are obligations in the Environmental Agreement that will cease with the proposed changes.

The Agency is also concerned that Canada will no longer have any obligations under the Environmental Agreement with regard to transboundary issues in Nunavut. This may be a theoretical issue but a significant one nonetheless because some of the effects of the Ekati Mine are felt in Nunavut, the reason why the Kitikmeot Inuit Association is a Society member. Canada has obligations in Nunavut and if it withdraws, the Agency has concerns about the ability to resolve and deal with transboundary issues.

A lesser point for the Agency was the change in number of Directors, which appears to have been amicably resolved with a commitment to retain the current number. The Resolution Agreement concerns also appear

to have been addressed.

DISCUSSION, QUESTIONS AND ANSWERS

Each of the Aboriginal Society members was provided an opportunity to make any statements and to ask questions.

Tlicho Government: Bertha Rabesca indicated that the Tlicho Government needs time to conclude its internal review of the proposed changes to the Environmental Agreement but will advise all the other parties. Bill asked how much time might be required for the internal review. Bertha replied that there are a lot of moving pieces with regard to devolution and the Tlicho Government is working as quickly as possible to deal with all of these devolution issues.

Nuri Frame indicated that the Tlicho Government shares a number of concerns as expressed in the Agency letter. The Tlicho understand that a number of changes to the Environmental Agreement may be needed in light of devolution but that may not require the complete withdrawal of Canada. This has implications for Tlicho rights going forward. It has raised a 'red flag' for the Tlicho Government if the federal government is no longer involved in this and other projects in the NWT.

Kitikmeot Inuit Association (KIA): John Donihee stated that KIA has not yet responded to the AANDC letter on the proposed changes to this Environmental Agreement. There are capacity issues for KIA, and a Nunavut Tungavik Inc. meeting in Cambridge Bay this week. He said that it was fair to say that any urgency regarding devolution in the NWT is less important for Nunavut and KIA. There is no clear direction yet from the KIA leadership on this Environmental Agreement. KIA has responded to proposed changes to the Diavik Environmental Agreement and will probably say much the same about the Ekati Environment Agreement. That letter stated that these agreements are a part of a broad social contract negotiated at the behest of Canada with the full involvement of GNWT. Regardless of who was allowed to ultimately sign those agreements, the Aboriginal governments, including KIA, did participate directly in the negotiations for the Agreements, including this one on the Ekati Mine. If one were to take a narrow legal review and response, these agreements would not even exist and are not really necessary. The Agreements were above and beyond the environmental assessments, and were concluded to address the concerns of the Aboriginal peoples, to serve a broader purpose as a social contract. Taking a narrow, legal approach at this point is not helpful.

KIA raised the same concerns as the Agency with regard to transboundary issues. These concerns may be hypothetical but that does not mean they are not important to KIA. Water is an obvious example of a transboundary issue for KIA. Wildlife also migrates across the border, caribou in particular, which is an ongoing concern for KIA. The concern is what obligation does GNWT have on the Nunavut side of the border? What options does KIA have with GNWT to actually do anything if there was a real problem? What can KIA ask of GNWT? What remedy is there for KIA with GNWT? Notwithstanding all of the strike-outs of Canada in the proposed changes, federal duties to Aboriginal peoples survive in this Agreement. This is recognized in the Agreement and that is helpful but a stronger clause would be better.

In summary, KIA shares many of the concerns expressed by the Agency. KIA will be looking more closely at these proposed changes to the Ekati Environmental Agreement and will likely provide its comments. Finally, it is not clear why these proposed changes have to be made before April 1.

Yellowknives Dene First Nation: Todd Slack stated that the starting point for YKDFN is the authority of the GNWT is not well recognized. The Yellowknives never surrendered their land. YKDFN has spoken to this issue in the devolution processes. In terms of the substance of the proposed changes to the Environmental Agreement, YKDFN is less assured and comfortable that other federal agencies will continue to respond to the Agency and in the ability of GNWT to coordinate those responses. The Yellowknives have been involved in the last three major environmental assessments; they have not been effectively coordinated by GNWT, although there is some hope this will improve. It is questionable if federal departments will respond to the Agency if not compelled or obligated to do so. For example, Health Canada was absent in the Giant Mine environmental assessment, DFO is undergoing a significant down-sizing, EC may appear, but at the end of the day, after devolution, these agencies will still have an important role to play in the NWT. Having a

fallback position for those federal agencies in the Environmental Agreement will be very useful in today's changing regulatory environment. Retaining those federal obligations under the Environmental Agreement will be tremendously useful. If all goes well and it works, that is fine but that is not the reason we have Environmental Agreements. Agreements provide clarity for when things do not work. This is why it is important to maintain the obligations established under those Agreements.

Lutsel K'e Dene First Nation: Mike Tollis indicated that Lutsel K'e has just started its review of the proposed changes to the Environmental Agreement. He committed to get comments to the Agency soon. Lutsel K'e shares the same concerns as the Yellowknives with regard to not recognizing GNWT's jurisdiction over lands and water within Akaitcho Territory. Lutsel K'e also does not perceive any ability for GNWT to effectively coordinate federal or territorial involvement in the Environmental Agreement. Lutsel K'e certainly has concerns with the proposed changeover from AANDC to GNWT in the Environmental Agreement. It is a busy time for Lutsel K'e right now but Mike hoped to get the issue of proposed changes to the Ekati Environmental Agreement on the Band Council agenda as soon as possible, hopefully within the next month.

North Slave Metis Alliance: Matt Hoover stated that NSMA has the same capacity issues as the other Aboriginal governments. NSMA wants clarity with the proposed changes to the Environmental Agreement, but is not overly concerned at this point. NSMA supports the idea that decisions on environmental management are locally controlled. NSMA needs to spend more time to look at the proposed changes but agrees with many of the points in the GNWT presentation.

Aboriginal Affairs and Northern Development Canada: Robert Jenkins thanked everyone for expressing their concerns with the proposed amendments to the Agreement. He reiterated that the federal government is not proposing substantive amendments. On April 1 AANDC will no longer be the primary land and water manager in the NWT and for the Ekati Mine. With the transfer of authority over lands and water to GNWT, there will no longer be any need for federal obligations.

There have been over 125 job offers to AANDC employees with essentially 100% acceptance on those offers. AANDC staff, responsibilities and knowledge on these files are moving over to the GNWT so it will have the capacity to administer the Environmental Agreement and carry out governmental obligations.

AANDC heard the concerns of KIA over transboundary issues in relation to the changes to the Diavik Environmental Agreement and proposed a non-derogation clause to protect Aboriginal rights. The same language is not yet proposed for the Ekati Environmental Agreement. The two governments are not opposed to including it in this Agreement.

AANDC heard the capacity issue raised by several participants. After April 1, AANDC will no longer have much, if any, capacity to deal with the Environmental Agreements as virtually all of the regional staff will move over to the GNWT.

As for next steps, it was suggested that the Aboriginal governments could submit comments to the Agency, which can then be circulated to all Society members. The governments look forward to responding to these comments. Robert concluded that the proposed amendments to the Environmental Agreement are not substantive.

GNWT: Ray Case said that GNWT is pleased that the capacity for the Environmental Agreements will be moving over. GNWT recognizes that the loss in capacity at AANDC will make any responses there difficult. GNWT recognizes that the Environmental Agreements were part of the social contracts for the diamond mines. GNWT looks forward to the opportunity to take on those roles in that context and looks forward to upholding those arrangements. GNWT also recognizes the transboundary nature of many of the activities north of Yellowknife. GNWT is highly aware of upstream activities in the context of transboundary water issues with Alberta. KIA can anticipate holding GNWT's collective feet to the fire. Transboundary issues such as water and caribou can be worked out. GNWT looks forward to receiving feedback and input from the Aboriginal Society members on the proposed changes to the Environmental Agreement. GNWT also recognizes that some arrangements will not be in place by April 1.

DDEC: Bob Overvold said that the company appreciated the opportunity to sit in on this meeting and to listen. DDEC has been involved in the process to date and looks forward to the comments from others. DDEC has no concerns with what was presented by GNWT and AANDC, which seems to go a long way to addressing many of the concerns raised to date.

Discussion

Tony Pearce asked some questions. He noted the timing issues raised by KIA and wondered whether it would be possible to get some sort of a delay in changing the Environmental Agreement to allow a number of the Society members to respond to the proposed changes.

Ray Case stated there is a strong desire to have this wrapped up soon. There will be difficulties because the staff working on this for AANDC will be moving over to GNWT as of April 1. It is not clear how AANDC will be able to participate in these discussions going forward. GNWT recognizes that the Society members may need more time to carefully consider the proposed changes, and GNWT is willing to extend this process beyond April 1. There may be some capacity issues for AANDC after April 1.

Tony indicated that he understood that there is some urgency but asked if it was fair to say that nothing would fall apart if the changes are not made by April 1. Ray responded by stating that GNWT is committed to take on the discussions of the amendments and that it will work with the Agency Executive Director to keep things rolling.

Bertha Rabesca stated that she is involved in the Devolution Implementation Planning Committee for the Tlicho Government as part of the Devolution Agreement. She has been personally involved in devolution negotiations and implementation for years. Bertha stated that she will raise the issue of the proposed changes to the Ekati Environmental Agreement with this Committee when it meets in Yellowknife next week. She is concerned that the proposed changes to the Environmental Agreement are being rushed at the very last minute. Bertha also agreed with others who said that there is a bigger issue of how these Environmental Agreements were negotiated. The proposed changes seem to go beyond the spirit and intent of the Agreements and are not simply administrative in nature. While some changes may be necessary for devolution, this should be done with full information and consultation. These issues will be raised with the Committee next week.

Todd Slack asked if the federal and territorial governments are open to maintaining Canada as a party to the Environmental Agreement. He said that now GNWT serves in a subsidiary role and would become the primary government with lands and resources responsibilities, but Canada will retain a significant role after April 1, much like the role that GNWT plays right now. He questioned what role Canada might continue to play in appointing Directors.

Ray Case replied by stating that GNWT and the company would jointly appoint three Directors after devolution. There is no need to change the number of Directors. GNWT could also commit to consult with other federal departments in making those appointments. Ray was not sure this was the response that was requested.

Todd reiterated his question of whether there is a way to ensure that other federal agencies remain involved in the Environmental Agreement and maintain their obligations to be involved, as part of the broader social contract that others have indicated was the purpose of the arrangement. Is there some way forward or some sort of a compromise possible?

Ray Case responded by stating that Canada's authority under the Environmental Agreement will be transferred to GNWT. GNWT is prepared to look at ways to provide comfort on the concerns raised over the continuing involvement of federal agencies and how they can be engaged in the future.

Bill Ross asked if there is a way forward that maintains Canada as a signatory or a party to the Environmental Agreement.

Robert Jenkins responded by stating that Canada's obligations are largely with AANDC. AANDC does not see the need for any obligations for Canada after April 1. Federal departments and agencies will respond if contacted by the Agency. The Agency can write federal ministers after April 1 and they will respond, the work will be done. Any specific obligations for other federal agencies under the Environmental Agreement have already been fulfilled so there is no need to continue any further obligations. AANDC does not see a need to keep Canada as a signatory to this Agreement.

Tony Pearce said that he could imagine a situation where a federal agency, for example, DFO may not be carrying out regular inspections at the Ekati Mine. If the Agency wanted to raise this issue, as it stands today, it can write to the Minister and there is an obligation to respond. Will GNWT respond to these types of inquiries or recommendations after April 1? Anyone can write a federal Minister, any time, but after April 1 the Agency will be in the same position as any other interest, without the protection of the Environmental Agreement. How can the Agency ensure that federal ministers will respond after April 1?

Robert Jenkins stated that the Agency can still write federal ministers after April 1, presenting its concerns, and there will be a response so there is no difference if Canada is no longer a party to the Environmental Agreement.

Ray Case remarked that GNWT will be in a position to lend its support to the Agency in securing responses from federal ministers after April 1. GNWT has done this in the past by calling on AANDC to assist in getting responses from other federal ministries.

Robert Jenkins asked the Agency if there are other obligations in the Environmental Agreement beyond responses to Agency recommendations.

Tony Pearce responded by stating that the Agency is not an enforcement body and that its only recourse is to write Ministers. That ability and obligations to respond from the federal government will be gone with the proposed changes to the Environmental Agreement. The Agency could write GNWT after April 1 but it cannot force federal ministers to respond. The Agency has no other "big stick".

Robert Jenkins stated that no one needs an agreement to write to a federal minister. He indicated that he was struggling with why the Agency feels it cannot write to federal ministers and get responses after April 1. Why is an agreement necessary?

Tony Pearce replied by stating the under the current arrangement, Canada is required to respond to the Agency. In his view, the proposed changes are substantive and would eliminate that obligation.

Ray Case stated that the implication of that position is that the AANDC Minister can force another federal minister to respond now under the current arrangement. Not sure if that is how it works, but if there were to be an internal federal disagreement, there would be little that could be done from the outside. GNWT would not have the same constraints as the federal government and could use a variety of means including publicity to sort out such disputes. GNWT can also be called upon to get responses from the proponent. GNWT will also be holding all the licences and securities and would have that leverage to remedy a situation.

CLOSING REMARKS

Bill Ross asked if there were any closing remarks from any of the participants.

Todd Slack remarked that the Environmental Agreement does not really provide for a 'big stick' approach but a 'little stick'. The obligation for responses to Agency recommendations is all we have when it comes to government. For example, with Gacho K'ue there was a commitment or measure to develop a cumulative effects framework. That work is decades away. Losing the obligations under the Environmental Agreement will be unfortunate and not consistent with the notion of a social contract. The Agreement was part of the arrangement for the Ekati Mine to go into production and this is not the way to change that contract.

Bill Ross thanked all the Society members for responding quickly to the request for a Special Meeting and for

the input on the proposed changes to the Environmental Agreement. He indicated that the Agency will likely have additional comments to make to the parties to the Environmental Agreement. The Agency will likely need to have some further internal discussions but will make best efforts to provide any further comments in a timely manner, hopefully within several days. These will be shared with all Society members. The Agency may also indicate that Society members should be provided a reasonable opportunity to provide their comments to the parties to the Environmental Agreement.

Meeting adjourned at 2:55 pm.