

**Summary of Discussion from the Annual General Meeting  
of the Society of the  
Independent Environmental Monitoring Agency  
held on  
December 4<sup>th</sup>, 2008  
at the  
Agency Boardroom**

January 23, 2009 DRAFT (until approved at the 2009 AGM)

## **Participants**

### **Society Members**

Akaiicho Treaty 8 (Lutsel K'e First Nation):	Florence Catholique James Marlowe
Akaiicho Treaty 8 (Yellowknives Dene First Nation):	Todd Slack
Tlicho Government:	Jean Michel Louie Rabesca Francis Williah Eddie Erasmus Joline Huskey
Kitikmeot Inuit Association:	Kevin Tweedle Lena Adjun
North Slave Metis Alliance:	Ron Balsillie Shannon Hayden
Government of Canada:	David Livingstone, DIAND Lionel Marcinkoski, DIAND
Government of the NWT:	Claudia Haas
BHP Billiton Diamonds Inc.:	Laura Tyler

### **Agency Directors**

Bill Ross  
Tim Byers  
Jaida Ohokannoak  
Tony Pearse  
Brad Enge  
Laura Johnston  
Kim Poole

### **Agency Staff**

Kevin O'Reilly  
Scott Duguid

### **Interpreters**

Bertha Catholique (Chipewyan)  
Margaret Mackenzie (Tlicho)

## OPENING PRAYER

Jean Michel Louie Rabesca, an elder with the Tlicho Government, gave the opening prayer.

## REVIEW OF THE AGENDA

There were no additions or deletions to the agenda for the meeting.

## CHAIRPERSON'S ADDRESS

Bill Ross (Agency Chairperson) began the meeting with a round of introductions. Some background information on the Agency was reviewed. It was stated that this Annual General Meeting was really for the Society members and not the Directors, although the Directors would be presenting information on the activities and finances of the Agency over the last year.

## SUMMARY FROM 2007 ANNUAL GENERAL MEETING

*Motion:* To approve the summary of discussion from the 2007 AGM.

*Moved:* Laura Tyler (BHPB)

*Seconded:* David Livingstone (DIAND)

*Motion carried without opposition.*

## PRESENTATION OF THE 2007-08 ANNUAL REPORT

Tim Byers (Agency Vice-Chairperson) presented highlights from the Agency's 2007-08 Annual Report. The presentation is available on the Agency's website ([www.monitoringagency.net](http://www.monitoringagency.net)). He welcomed questions throughout the presentation from the Society Members.

The following is a summary of the questions and combined responses of BHPB and the Agency Directors.

James Marlowe (Lutsel K'e First Nation) asked which herds the caribou are from that are being monitored in the Wildlife Effects Monitoring Program (WEMP). Kim Poole (Agency Director) responded that of the caribou studied, 99% were from the Bathurst herd, and a very few may be from the Ahiak herd. Kim further stated that these results pertain to the aerial surveys conducted by the mine.

Laura Tyler (BHPB) commented that the wolverine survey will be conducted every second year by GNWT-ENR, and that BHPB will support this study.

Ron Balsillie (North Slave Métis Association) asked, how many caribou observations are needed to determine a trend in behaviour. Kim responded, that observations of about 50

groups of caribou are required to detect a trend mathematically. Ron queried as to which behaviours get analyzed? Tim replied that bedding, standing, walking, running, and feeding, and times spent on each type of behaviour are recorded and analyzed.

Laura Tyler commented that BHPB has moved the building containing the air quality monitoring station.

A question was posed regarding the composition of effluent to the Long Lake Containment Facility (LLCF) and in particular extra fine processed kimberlite (EFPK). Laura Tyler stated that EFPK is like clay, and that 35% of the volume refers to the volume including water in the EFPK.

Regarding the use of Traditional Knowledge (TK) in environmental management at Ekati, Laura Tyler stated that TK is not a requirement for inclusion in its Annual Environmental Report.

James Marlowe asked Laura Tyler why it appeared that there is limited Aboriginal participation in ICRP working group. Laura replied that the Wek'eezhii Land and Water Board (WLWB) put out invitations to everyone to participate, including Aboriginal communities, to take part in the Interim Closure and Reclamation Plan (ICRP) Working Group, but there has been inconsistent attendance. Laura added that the reason for poor attendance might be due to a lack of funding. Bill Ross confirmed that lack of funding is the issue. Todd Slack (Yellowknives Dene First Nation) suggested that lack of capacity is the issue related to poor attendance and that the Aboriginal organizations need a person to become better informed about the issues and attend meetings. He added that many of the issues surrounding the ICRP are hard to understand, and many of the Aboriginal communities are relying on the Agency to address the concerns. Florence Catholique (Lutsel K'e First Nation) agreed with Todd, and added that she has serious concern about a lack of support for Aboriginal governments to be involved. She added that it is not just an issue of capacity but also having a dedicated person to work on it. Florence also proposed that the lack of funding for participation is a barrier to participation by Aboriginal communities. Florence stated that there has been little or no progress in resolving the capacity issue from the Agency or BHPB. Laura Tyler responded that BHPB has offered to come out to Lutsel K'e to discuss closure planning but have received no response.

Florence Catholique reviewed the four concerns surrounding the ICRP, but inquired whether there was mention of the waste rock piles? Tim replied that there is mention of waste rock piles in the ICRP, but the Agency's four stated concerns are the most significant to the Agency. Florence suggested that the way the presentation reads, is that the four stated concerns are the only areas that should be further studied. [In fact the Annual Report is correct: the slide omitted the qualifier 'four key issues of concern']

Todd Slack questioned whether the scope of the cumulative effects modeling by GNWT on the Bathurst caribou was limited to just the NWT or whether it applied to the whole

range. Kim Poole replied that the modeling work included the herd throughout the entirety of the summer range within the NWT and Nunavut.

James Marlowe questioned why BHPB was just discussing the end use of the pit lakes with Department of Fisheries and Oceans (DFO) and not Aboriginal governments. Laura Tyler explained that BHPB has to deal with DFO from a legal basis, and a formal agreement was reached on the loss of fish habitat. BHPB is of the view that DFO is trying to change the terms and conditions of that authorization. She also mentioned that there were workshops held with all interested parties to help develop the ICRP. Bill stated from the Agency's point of view, the Directors wanted to see if DFO and BHPB could come to agreement first before deciding whether the agreement meets the needs of those involved in the ICRP.

Florence questioned whether there is any role for the Wek'eezhi Renewable Resources Board (WRRB) in the ICRP process. Laura Tyler advised that there is no current involvement of the WRRB as the ICRP process is done under the water licences. Laura then added that another avenue for Aboriginal participation is the Environmental Impact Report, where stakeholders are involved and changes that are made are done through consultation and consensus. Florence suggested that there seems to be some overlap or duplication with regard to closure planning but there is a weakness in that no responsible authority will be responsible for the wildlife component. David Livingstone stated that the mine is located on land that is leased, so it is DIAND as the land manager who has the final say on the condition of the land.

James Marlowe questioned the statement in the Annual Report that refers to better cooperation, and he pointed out that it appears there is not better cooperation with the Aboriginal governments. Tim clarified that the Agency working relationship with BHPB staff is much better than it used to be. Bill referred to the recent improvements and commitments on air quality monitoring as examples of better cooperation. Tim advised that he has not heard from Aboriginal communities that there are problems with BHPB environmental staff. He recommended that if there are problems to bring them to BHPB and then the Agency if there is no resolution. Tim stated that there is now more openness by BHPB environmental staff to suggestions and recommendations.

Florence requested an explanation of the Agency Separate Fund. Bill explained that in the first mediation agreement there was funding set aside for participation in regulatory and other legal processes. The question arose as to what constituted a regulatory and legal process and whether expenses could be allocated to the fund covering this work, and that the issue since been worked out. Florence suggested that it sounds like the Agency has separate funding sources. Bill further explained that Separate Fund is part of the core funding receives from BHPB. The two processes for 2008 where the Agency has allocated expenses to the Separate Fund are for the ICRP and the Sable, Pigeon and Beartooth water licence renewal.

James inquired about the status of the Fay Lake spill. Tim advised at this time the Agency wants to understand what happened and how it can be prevented from happening

again, basically the lessons learned. Laura Tyler reported that 90% of the spilled processed kimberlite was cleaned up and put back into the containment facility. The DIAND Inspector has issued a warning letter but has acknowledged the work that BHPB has done in the cleanup. BHPB has also received a written warning from EC. Laura mentioned that BHPB has had its own engineers review the design and operation of the LLCF to avoid future spills. Bill commented that the spill was an unfortunate event, but BHPB responded to this quickly and to the proper agencies including notifying Aboriginal leaders, and the response was good. James questioned whether there were any fish in the lake where the spill took place? Laura responded that fish do travel through Fay Lake but do not over winter there due to its shallowness.

## PRESENTATION OF THE FINANCIAL REPORT

Jaida Ohokannoak (Secretary – Treasurer) presented the Treasurers Report, which included the 2007-08 Audited Financial Statement.

The following contains the comments made and questions posed by Society Members.

James Marlowe inquired about the possibility of transfer to Society Members of unexpended funds that are destined for repayment to BHPB. Jaida replied that funds have to be used for the purposes of the Agency's mandate under the Environmental Agreement within the fiscal year, and cannot be provided for capacity building. Any surplus funds are deducted from future payments made by BHPB. Florence asked whether under the communications expenditure category, the Agency could provide information in the Dene languages. Florence suggested broadcasting information to communities on the local radio station. Bill commented that regarding surplus funds, the Agency tries to exercise its work plan in parallel with the budget. The Agency attempts to utilize the full budget to facilitate our work plan but sometimes things do not happen as planned, for example, the late delivery of the reports from the Aquatic Effects Monitoring Programs.

Florence wanted clarification on the Canada Revenue Agency (CRA) requirement for Directors to be treated as employees. Jaida advised that this decision was made on advice from the Agency's auditor and the CRA. The Agency Directors decided that they are employees and not consultants, thus there are deductions at source for taxes and Canada Pension Plan. This change required a switch from T4A's to T4's for income tax purposes.

Florence observed that in the operations expenditure category there is a decrease from last year. Jaida informed that the Agency spent less on office supplies and got a new insurance carrier, hence the decrease in operations expenditures.

*Motion:* A motion was made to appoint MacKay LLP as the auditor for the Agency for 2008-09.

*Moved:* Laura Tyler (BHPB)

*Seconded:* Eddie Erasmus (Tlicho Government)  
*Motion carried without opposition.*

A question was asked about whether the Agency Directors were satisfied with the work of MacKay and a positive response was provided.

## 2008–10 WORK PLAN AND BUDGET

Bill Ross (Chairperson) presented the 2008 – 2010 work plan and budget to the Society Members. The following is a summary of the discussions and questions that arose from this presentation.

James Marlowe posed a question regarding the process for requesting additional funding for the Agency. Bill responded that the Agency negotiates for extra funding with BHPB, if there is no agreement then the three signatories make a final decision by a majority vote.

Florence asked for a copy of the Environment Agreement, as she wanted clarification on the Agency mandate. Bill advised that the Environmental Agreement is posted on the Agency website and Kevin provided a copy to Florence. Bill added that the Agency mandate is not entirely set out in the Environmental Agreement; there are also the Resolution Agreements from the mediations that clarify some matters including funding.

James Marlowe commented that document review is a large expense. Bill responded by stating that there are many documents that the Agency reviews, and they are of importance in ensuring good environmental management. James questioned whether the documents are reviewed in consultation with Aboriginal Society Members. Bill advised that the Agency pays close attention to the advice given by Aboriginal Members through such forums as the Environmental Workshop, the Annual General Meeting and other forms of advice. Jaida added, that the Agency tries to get review of documents done and comments out to Aboriginal Members before the deadline, so that they can see what our concerns are and add their own if they have any other concerns. Tim further added that Directors give updates on the review of reports as part of the ongoing communications with Aboriginal Society members.

Florence suggested that the lack of written comments submitted to the WLWB is a good indicator of Aboriginal participation and the need for greater community capacity. She wondered how best to address this lack of capacity. She asked whether additional funding could be added into the Agency workplan to assist the communities. Florence went on to point out that the position of Agency and that of Aboriginal Society Members are not always the same, and that it is not clear how the Agency develops its position. She stated that the Agency should focus on how to improve Aboriginal Society members' ability to participate in review of plans and documents. She also suggested that there be an increase in the use of TK in reports and studies undertaken at the Ekati mine. Bill responded that the Agency encourages BHPB to use TK, and that TK is also a regulatory requirement under *Mackenzie Valley Resource Management Act*.

Florence thanked Tim and the Agency for visiting the community of Lutsel K'e. She went on to add, that when Tim has been requested to visit Lutsel K'e, the Agency has never refused. Florence did voice a concern with having to fund the community's expenses in meeting with Tim. Florence asked what the trigger was for securing and funding an environmental workshop in one community. Bill noted that the Agency would have to request additional funding for a community workshop, and that the Agency has attempted to respond to any request from communities, but the request must fall within our mandate. He also mentioned that the Agency generally tries to invite all interested parties, including the Aboriginal governments, to events that it sponsors because of the value in bringing everyone together to discuss issues.

Florence asked what current TK work BHPB is carrying out. Laura Tyler responded that BHPB is doing the Caribou and Roads Study, in which Lutsel K'e was originally a participant but withdrew about five years ago, and that the NSMA wants to be involved again. She added other initiatives are in place such as job shadowing at the mine, to improve capacity and get feedback. Further, there will be major research on how to incorporate TK into ICRP and how to use TK in engineering for the ICRP, but only after the plan is approved. She indicated that BHPB is open to other ideas too.

Florence suggested that she didn't hear how BHPB are doing TK studies, she heard that they are doing job shadowing. Laura Tyler mentioned that BHPB is looking at how to reinvigorate TK work and that some preliminary meetings have been held in this regard.

## MEMBERS PRESENTATIONS AND DISCUSSION

David Livingstone commented that he is pleased to hear that there are improved communications and a better working relationship between BHPB and the Agency. He stated that he would like to thank Laura Tyler for playing a large part in the improved communications. Regarding some of the concerns voiced about capacity and Aboriginal organization participation, he is frustrated as well. David suggested that communities need to be actively involved in environmental stewardship in their own backyard, and that there needs to be a minimum level of capacity before it is possible to improve capacity. He went on to state that communities need to clear up previous year's funding issues before applying for more funding, and that is not always being done. It needs to be a collective response, even if the primary responsibility belongs to government. He said that he tried to do this partially through the Multi-Project Environmental Monitoring Agency initiative but there has been no response from the Aboriginal organizations to the terms of reference completed in June 2008. DIAND is still working on the issue of participant funding. The federal funding system requires strong accountability and that this can sometimes hold up efforts. There may be a basic financial management capacity issue that needs to be addressed. David closed with the comment that he is pleased to see that there is a full slate of good Directors in place for the Agency.

Bill advised that this was likely David Livingstone's last AGM, and thanked him for his contributions. James Marlowe added thanks to Kevin O'Reilly for organizing the AGM.

Brad Enge commented that he is trying to get up to speed in his role as a new Director. He advised that he got to visit the Ekati mine site, and was impressed with BHPB's reaction to the Fay Lake spill and their overall approach to environmental stewardship. Brad further commented that he is pleased with the work that the Agency is doing, and is glad there are improved relations with BHPB due to Laura Tyler.

Laura Tyler commented that BHPB has worked hard to improve relationships. She added that she heard Florence's comments about improvements to TK, and committed that it is on her radar. Laura suggested that BHPB needs help from communities for TK work, and that world-class stewardship requires the contribution of land users. She stated that BHPB is committed to community participation and consultation, and that the Agency is doing a good job. She advised that BHPB does not always follow Agency advice, but it does respond and give reasons when advice is not accepted. She closed by adding that the Agency has improved its discussions with BHPB and that it makes sure the company stays honest and on time.

Bill Ross thanked everyone for their advice, and added that he hoped that the Agency had been helpful in letting Members know what it has been doing and what it plans to do in the future. He concluded by adding that the Agency does listen and does discuss the advice given.

#### CLOSING PRAYER

Jean Michel Louie Rabesca (elder with the Tlicho Government) gave the closing prayer.

MEETING ADJOURNED