

**"An Open Door Exists and. . . . We  
Need to Change and Improve  
from what we've learned."**

**Aboriginal Caucus Workshop On  
Environmental Monitoring Of Diamond Mines**

**FINAL REPORT**

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# 1 Introduction

The Independent Environmental Monitoring Agency (IEMA) sponsored a two day Aboriginal stakeholder's workshop (caucus). The primary purpose of the caucus was to make progress in moving environmental monitoring and management of large projects from small project-specific agencies to a broader regional agency. As well, IEMA wanted to obtain advice from its Aboriginal members on how they would like to see monitoring and management at Ekati improved. The caucus was initiated in response to BHPB's formal request to trigger the clause in its Environmental Agreement which can lead to the replacement of the Independent Environmental Monitoring Agency (IEMA) "with a Regional Agency with a similar mandate".

Indian and Northern Affairs Canada (INAC) was a major sponsor of the Aboriginal caucus. The timing of the caucus meeting was partially influenced by ongoing discussions regarding the development of an environmental agreement for the proposed Snap Lake Diamond Mine.

The caucus reached consensus on the principles for any future Regional Monitoring Agency (RMA) following discussions of the on the Environmental Monitoring Advisory Board (EMAB), the IEMA, and the background report entitled *Environmental Monitoring of Diamond Mines* included in Appendix 3. A content summary of the caucus discussion is provided in Appendix 1.

The caucus met on January 14 and 16 in the IEMA board room. The first day's meeting began with introductory comments by Dr. Bill Ross on the purpose of the meeting followed by a presentation by John McCallum, on EMAB. Dr. Bill Ross concluded with a presentation on the IEMA. Their presentations are included in Appendix 2. Following the presentations the caucus discussed the respective monitoring agencies and achieved consensus on the principles guiding the creation of a future RMA. On the 16<sup>th</sup> the caucus affirmed the future RMA's guiding principles and agreed on its key operating conditions.

The results of the Aboriginal caucus are presented in the following report beginning with a summary of the key principles guiding the development of a future RMA, followed by a summary the key operational conditions of a future RMA and concluding with follow-up actions needed to maintain the positive momentum of the caucus.

## 2 Caucus Meeting Results

### 2.1 Principles Guiding the Development of a Regional Monitoring Agency

The caucus agreed that the Regional Monitoring Agency had to embody the following principles.

1. The RMA shall be representative, independent, have 'teeth' and be more than advisory.
2. The RMA shall bring resources together that are currently dispersed between monitoring agencies (respecting that the Kitikmeot Inuit Association (KIA) is not

- participating in the Snap Lake Diamond Mine environmental agreement and has not participated in any Snap Lake Diamond Mine discussions).
3. The RMA should be geographically defined by the Slave Geological Province (SGP). It should recognize the SGP contains different Aboriginal peoples with their respective claim rights and that this shall be reflected in the composition of the RMA. For example, the KIA was invited to be part of EMAB and IEMA even though the respective projects were not in the KIA's political jurisdiction.
  4. The RMA shall address capacity issues by minimizing the number of monitoring agencies.
  5. The RMA shall develop its roles, responsibilities and operational procedures at a later date.
  6. The RMA shall be careful about the number of projects it is involved with. Therefore the scope of the Regional Monitoring Agency's scope should not be too broad.
  7. The RMA shall address items of common concern. For example, the KIA may not be involved in the Snap Lake diamond mine specifically, but it is involved and interested in the monitoring of caribou and air. Therefore the KIA would consider Snap Lake monitoring issues to the extent they affect caribou and air.
  8. The RMA shall engage other initiatives like the Bathurst Caribou Management Board.
  9. The RMA monitors on a project-by-project basis and is not the body responsible for Cumulative Effects Assessment and Management Framework (CEAMF).
  10. The RMA shall monitor wildlife affected by projects and not limit its scope of environmental monitoring to those species that reside in the SGP.
  11. The RMA shall have excellent communications with Aboriginal Peoples.
  12. Northerners, not outsiders, shall make RMA decisions.

## ***2.2 Key Elements Forming Part of any Future Regional Monitoring Agency***

The caucus agreed that the RMA shall have at least the following operating characteristics, and that any differences in views about the RMA's operating characteristics would be addressed at future caucus meetings.

### **2.2.1 Scope of a Future Regional Monitoring Agency**

- The RMA shall monitor diamond mines to start with but have the flexibility to include other projects in the future.
- The RMA shall combine diamond mine monitoring agencies into one Regional Monitoring Agency.
- The RMA's geographic scope shall be the Slave Geological Province (SGP), though it shall monitor environmental components that are not confined to the SGP e.g., caribou migrate into and out of the SGP.
- The detailed monitoring currently provided by the IEMA should not get diluted by a RMA. (Do not lose project specific focus).
- It is important that the RMA include transition provisions in the event it takes on a broader assessment and management protocol.
- The RMA should be able to monitor the effects of projects that are linked to the diamond mines such as the winter road until the CEAMF is operating.
- The RMA funding formula shall include provisions for additional funding resources as additional projects are added to the RMA's monitoring mandate.

- The RMA shall not take on the management of cumulative effects. That is a federal responsibility with a legislated requirement and dedicated resources.
- Cumulative effects management remains unaddressed. In the interim, until CEAMF is operating, the RMA may fulfill this function provided that the necessary funding is provided.

### **2.2.2 Independence of a Future Regional Monitoring Agency**

- The RMA needs independent experts and shall not obtain advice only from government or industry scientists.
- The TK panel needs independence from the western science panel.
- The RMA accepts that the independence question shall be carefully considered and addressed at each level in its organization during its formation and implementation.
- The RMA should not be totally independent, and there is a need for certain amounts of responsiveness to Aboriginal organizations, government, and industry.
- The RMA should be primarily composed of Aboriginal peoples.
- Industry and government should report to the RMA, not sit as members.
- The RMA shall have permanent technical support to ensure its members are getting balanced input and not being unduly influenced (especially if they are non-technical community members).
- Industry and government could participate in the RMA as observers, without the right to hold a vote. i.e., they participate in discussions but do not vote.
- The RMA shall decide what happens with the science and TK advice it receives. However, any advice it receives shall be placed on the RMA's public registry. Where proprietary, property and intellectual rights issues about TK exist it shall be available to the public to the extent possible.
- A permanent panel of experts is preferred to a team of consultants who are retained as necessary.

### **2.2.3 Technical Expertise of a Future Regional Monitoring Agency**

- The RMA's technical experts can be appointed to TK and western science panels and meet on a regular basis. The permanent panel members shall not be employees of government or the projects being monitored.
- The technical panels will have a diversity of expertise that is available to the RMA.
- Recommendations provided by the RMA shall be broadly distributed to all those capable of effecting the recommendation.
  - Elders see the land and water as a unified whole. Thus, future signatories to environmental agreements should reflect all those departments and agencies that are involved in the environment and not any one specific government department (e.g., Indian and Northern Affairs Canada).
- Panels should inform the RMA of alternatives and the consequences of the alternatives.
- It is productive to have experts debate their views and opinions in front of the RMA.
- The RMA should provide its advice and recommendations directly to the Ministers of government responsible, not to the Mackenzie Valley Land and

Water Board (MVLWB) which then provides its recommendation to the Minister. Alternatively, amendments to any existing licence, permit or other authorization should be reviewed by RMA signatories, with the RMA providing input on the requested amendments.

- The RMA should not act as an intervener in regulatory processes (e.g., intervene in water licencing amendments).
- The RMA is not a body that government, industry or other parties can consult for the purposes of satisfying Aboriginal consultation requirements.
- The TK and western science panels work together. If their recommendations differ it shall be up to the RMA to reconcile the different views and opinions.
- The RMA sets the Terms of Reference for the expert panels.
- Precise communications relationship and procedures between the TK and Western science panels need to be developed.
- The appointment structure/process for the TK and western science panels must ensure that individuals with the appropriate credentials and experience are retained.
- Each community could nominate members to the expert panels.
- The RMA appoints the scientists on the western science panel.
- It is desirable to have appointees on the expert panels come from affected communities.
- There should be a multiple layer of protection to ensure the independence of the expert panels. For example there should be consensus among all the signatories to the RMA regarding each representative appointed to each panel. The parties to the agreement (the signatories) should appoint the expert panel members.

#### **2.2.4 Decision Making of a Future Regional Monitoring Agency**

- The RMA is an advisor but needs to have greater authority.
- The RMA is not a regulatory authority, but it has strong advisory authority that should be taken seriously.
- Recommendations to government should not be filtered through existing government bodies. e.g., the MVLWB.
- The Minister of INAC should write to the MVLWB requiring it to accept the RMA's advice.
- Government's enforcement and monitoring persons should report to the RMA.
- The RMA could have its own independent inspectors.
- Information created/prepared by the expert panels shall be on the RMA's public registry.
- The linkage between advice, recommendations, and implementation requires effective community feedback so communities are part of the change process. This enables local organizations to adapt as changes occur.

#### **Community involvement, training, and communications**

- Having communities attend one RMA meeting at which all RMA matters are addressed is likely more efficient and effective than having three separate meetings, one for each mine.
- Having the RMA act as the point of contact and delivery for project monitoring is a definite advantage.
- Training for community members and monitors shall be undertaken.

- A RMA shall result in an equal and shared commitment by industry. It is possible that training commitments could be shared amongst companies.

### **2.2.5 Different Jurisdictions and a Future Regional Monitoring Agency**

- The RMA needs sufficient flexibility to accommodate Nunavut and NWT monitoring needs.
- The RMA is an acceptable model to include Nunavut projects.
- Nunavut wants resources dedicated to monitoring in Nunavut.
- Trans-boundary matters as they relate to the RMA require further discussion and shall eventually require resolution at a legal level.

### **2.3 Models for Environmental Monitoring of Diamond Mines**

The caucus' background report included (Appendix 3) provides five models of how the RMA could be structured. A brief review of the models by the caucus resulted in the following observations.

- Some members would prefer to develop a working model of any RMA with community members and then bring that model forward to the caucus.
- The caucus generally agreed that alternatives 'A' and 'C' as described in Appendix 3 looked difficult and did not improve the status quo monitoring.
- Alternative 'B' with some refinement was generally the preferred option.
- There was consensus that the caucus would get feedback from their communities before advancing a preferred model to government and industry.
- There was consensus that another caucus meeting was necessary to examine the models in more detail.

## **3 Follow-up Matters**

The following follow-up matters arose over the two days of discussion.

- Prepare work plan to advance the RMA creation and implementation process.
- Appoint someone to undertake the caucus; follow-up work and to meet with INAC regarding funding and the continuation of caucus initiatives.
- Create a caucus secretariat to facilitate the RMA development and implementation process.
- Honoraria issues need further discussion.
- Submit the caucus' meeting report to INAC and outline resource needs to complete negotiations on the De Beers environmental agreement and the RMA.
- Apply the results of the meeting to the DeBeers environmental agreement negotiations and the development of RMA implementation models.
- Continue including KIA in future caucus meetings regarding the RMA.
- The caucus next objective is the selection/development of a preferred model for the RMA.
- Get information about security and penalty clauses for companies whose environmental assessment predictions are inaccurate and consequently require amendments to their regulatory authorizations. The caucus wants industry to make the best possible predictions.

- Get information about mine reclamation including best practices, guidelines, standards, and acceptable industry practice.

## **4 Conclusion**

The caucus had a healthy and productive meeting and unanimously agreed to secure the necessary resources from INAC to enable further RMA implementation meetings. The Aboriginal caucus also wanted to communicate the results of the caucus meeting with their respective communities and to get their feedback for the next caucus meeting.



# APPENDIX 1

## ABORIGINAL CAUCUS WORKSHOP

### SUMMARY OF DISCUSSION

**Location** IEMA/EMAB Board Room, Yellowknife NT.

**Date** January 14, 2004

#### **Attendance**

Lawrence Goulet, Alfred Baillegeron - Yellowknives First Nation  
Bob Turner, North Douglas – North Slave Métis Alliance  
Bertha Zoe, John B. Zoe, Arthur Pape, Zabey Nevitt – Tli Cho  
Monica Krieger, Tsatayi Catholique – Lutsel K'e Dene First Nation  
Geoff Clarke – Kitikmeot Inuit Association  
Carole Mills – IEMA  
William (Bill) Klassen – Facilitator

**Date** January 16, 2004

#### **Attendance**

Zabey Nevitt, Bertha Rabesca Zoe – Tli Cho.  
Rachel Anne Crapeau, Lawrence Goulet, Antoine Michele – Yellowknives Dene First Nation.  
Florence Catholique, Tsatayi Catholique, Monica Krieger – Lutsel K'e Dene First Nation.  
Geoff Clark – Kitikmeot Inuit Association.  
Stewart Gilgby, Bob Turner, North Douglas, Fred Turner – North Slave Métis Alliance  
Louie Azzolini - Consultant  
William (Bill) Klassen – Facilitator.

#### **Meeting Objectives**

- Aboriginal groups to discuss strategies on monitoring.
- Advice to IEMA on monitoring of Diamond mines.
- Aboriginal caucus decided to get together again before the next De Beers negotiations meeting. (Question of resources and planning).

## **JANUARY 14 and 16 CAUCUS MEETING CONTENT SUMMARY<sup>1</sup>**

### **Scope of a Regional Monitoring Agency - Opportunities, Issues and Constraints**

- BHPB requested the dissolution of the IEMA and its absorption into the EMAB. There is a transition clause in BHPB's Environmental Agreement (EA) to enable a regional agency.
- BHPB set the process in motion by asking to become part of EMAB. BHPB wants to dump IEMA. Diavik disagreed. Government probably wants an agreement with DeBeers similar to Diavik's, focusing on community involvement and not on technical issues and not on a coordinated approach. This will this be going backwards not forwards.
- As part of the experimental adaptations, the monitoring agencies need to adapt.
- Timelines are important. The Mackenzie Valley Environmental Impact Review Board's (MVEIRB) Snap Lake decision states that an Environmental Agreement is to be negotiated before the water licence is issued, and that the Environmental Agreements for BHPB, Diavik and Snap Lake be consolidated within 24 months.
- Diavik implemented common protocols with other mines to monitor things like caribou, which helps deal with cumulative effects. We have a fairly good vehicle with EMAB, and we need to look at them to develop a vehicle for regional monitoring.
- A single regional monitoring agency is not supported necessarily.
- IEMA and EMAB are only advisory but their decisions can be overturned.
- The other stakeholders are those that hold shares in the companies. People from other countries make decisions on these mines. Maybe we need stronger agreements and advisory boards. We have to get at the root of problem, which is the exploration phase. Aboriginal Peoples need a way to know what's going on their land. We deal with large satellite companies from other provinces and countries.
- Can't keep adding agencies. Mines involve more than the holes but include exploration and roads.
- Even after mine closes we will still have caribou, fish, vegetation and water. With more bodies around the table we can take the strengths from existing agencies, we can do the work together. Working together will produce better study designs.

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<sup>1</sup> To respect the confidential nature of the discussions no attribution is provided and the discussion results are presented by topical area.

- If a new vehicle brings back something like the WKSS...the governments will need to provide the money. The old Land and Water Board had a technical committee but it changed. We could have a similar one to serve the Board and communities.

## **Decisions and Actions**

### **Scope of a Regional Monitoring Agency**

#### **Single Regional Project Specific Monitoring Agency**

- Agreement on the need for a single, regional, project specific, monitoring body (RMA).
- The RMA will only consider diamond mines to begin with in order to:
  - Respect existing environmental agreements.
  - Take into account previous meetings where the consensus was to look at diamond mines.
  - Start the RMA in a focused way and get it right from the start...

#### **Components / Scope of a Single Regional Monitoring Agency**

##### **Scope of Projects to Monitor**

- In the beginning the RMA shall only monitor diamond mines but have the flexibility to incorporate other developments that come along such a hydro-electric lines – expand to include other developments as development expands.
- No further action has been taken to meld established bodies into a single RMA.
- KIA – jurisdictional matters are problematic. For example, the Tahera mine total production is very small and represents, in total, one year of production from Diavik or BHPB. Tahera also has limited opportunities for expansion because of the small claim block.
- It is unrealistic to include additional small activities/projects in the Regional Monitoring Agency's mandate. The monitoring and management of cumulative effects is DIAND's responsibility.

##### **Geographic Scope to Monitor**

- The Slave Geological Province (SGP) is an acceptable area to monitor but the issue of what projects/activities to monitor in the SGP remains the challenge because the SGP is a geological definition of the area, while the environmental definition of the area for monitoring purposes is more important, i.e. caribou.

##### **Scope of Relationship between a Single Regional Monitoring Agency and a CEAMF body**

- It is important to have project specific monitoring to ensure the detail of analysis is appropriate. The current detailed monitoring should not get diluted by increasing the scale of the analysis to a broader scope. (Don't lose project specific focus). Let CEAMF take into account the 'big picture' environmental and cumulative effects questions.
- The RMA will need broader information from somewhere. For example re: caribou EMAB is looking to GNWT for broader territory wide information on Caribou.

- The Relationship between the RMA and CEAMF shall not be assumed to exist, or be adequate. Caution: eg. West coast fishery and east coast logging, and exponential nature of cumulative effects.
- The cumulative effects monitoring of winter roads for example, cannot be achieved with the current model project specific monitoring model. Perhaps, the RMA could include other activities and projects related to the diamond mines also.
- EAMF and the RMA need to have an environmentally based view of cumulative effects and not a jurisdictional (eg. DFO, Environment Canada) or western based view.
- Government and industry need to identify a permanent adequate source of funding for the RMA.
- The RMA partners need to include transition provisions to enable the RMA's monitoring protocol and mandate to evolve.
- The RMA partners need to ensure the RMA can accommodate additional projects and that there is a funding formula that takes into account the RMA's expanded role as it occurs.
- The RMA partners need to consider the Impact of devolution on any potential RMA financing formula.

## **Independence of a Regional Monitoring Agency- Opportunities, Issues and Constraints**

- IEMA cannot promote or advance individual members recommendations because they have others to listen to.
- Need secure funding adequate long-term funding. For example, when IEMA started, funding was free-flowing, now however funding is being cut back.
- You have to be able to trust the RMA. The RMA has to have one purpose only; to protect the land and water, no other mandates. (Independence, decision-making).
- Lutsel K'e wants a seat, not like BHPB's EA.
- I never went to school otherwise I could speak perfectly with you today. But I have at least the equivalent of Grade 12 in TK. I worked underground at a mine and saw how waste water was allowed to flow on the land. Because I worked for them I could not say what I saw. Diavik and others give us concerns about dollars going to communities and monitoring agencies. People are worrying about how money will be spent instead of on environmental impacts. The money makes us fight amongst us. We need to help the young people now; mines provide good jobs. Some people are geared to working on the land. The mines here did not benefit anyone. The non-Dene will not do good monitoring for us.

## **Decisions and Actions Independence of a Regional Monitoring Agency**

- Regional monitoring appointments.
  - The IEMA model does not foster good community communications.
  - The EMAB model has the Aboriginal groups pick their IEMA members and this enhances the connection between the board and the community;
  - The RMA's scientists need independence and the RMA should not use government or industry scientists. It needs external independent experts.
  - The RMA's TK panel needs to be equally independent as the science panel.
  - Aboriginal groups should appoint TK experts to the TK panel.
- The RMA's independence and the independence of its expert panels needs to get worked out at each level in the organization.
  - The RMA cannot be totally independent. There is a need for certain amounts of responsiveness to Aboriginal organizations, government, and industry.
  - Environmental agreements exist because of Aboriginal people's mistrust of government and its ability to manage the environment.
  - A RMA is independent of government and industry but not of the communities.
  - RMA members should not come from industry or government but from the primary land managers – The Aboriginal peoples.

- The RMA should not take on cumulative effects management. That is a federal responsibility.
- The RMA should not take on any cumulative effects work without the resources.
- CEAMF has a cost component that remains unaddressed and shall not be taken on by a single monitoring agency without transition and funding provisions.
- Should RMA Appointee's be employed by government or industry?
  - IEMA and EMAB have different membership appointments. IEMA has no government or industry representation; EMAB has.
  - There are benefits and costs to having industry and government members on the EMAB. For example, being able to develop joint monitoring protocol when necessary
  - Industry and government should have to report to the RMA, not sit on the RMA.
  - If each company has a representative on the RMA, then the more mines there are, the more mine members there are possibly resulting in an unfair representation the RMA. Perhaps industry should have one seat on the RMA.
  - If community people are the primary members of the RMA, they should have permanent technical support to ensure they are getting balanced input and not being swayed.
  - It is possible to have industry and government participate in RMA discussions but not vote on RMA decisions. They participate as observers but do not vote.
  - The RMA shall decide what happens with the scientist and TK input. The expert input shall be on the RMA's public registry to the extent possible given copyright and intellectual property rights. The RMA has to ensure it operates transparency and that its decisions are based on the best information available.
  - A permanent panel is preferred to a team of consultants retained as necessary.

## Technical Expertise: Traditional knowledge and western science of a Regional Monitoring Agency - Opportunities, Issues and Constraints

- IEMA has offered to respond to community requests on specific technical issues as capacity in communities to deal with environmental monitoring is stretched.
- EMAB is investigating the implementation of a technical support body. The independence of the scientific panel depends on EMAB.
- IEMA has been looking at regional monitoring and prepared a paper in 2001.
- There's a big push for Aboriginal people to be self-sufficient with respect to training and royalties. The goal is to extract resources for the benefit of the whole world. The benefit to the scientific world is great, to collect information on things that have never been looked at before. Working together is the goal but towards meaningful things. We need to improve. Lac de Gras used to be pristine. The animals and water did their natural things. But this country talks about economics and social change and need to finance that change.
- The benefit of TK has not been tapped into and the pristine environment is no longer there.
- Scientists and inspectors do not know what the region was like before the area was settled by non-Aboriginal people. Therefore their study scopes are different than those of people who have lived their lives in that area. Why do we have to work so hard to extract funds for TK studies? There is money for scientists to do their work, where is funds for TK?
- There is enough now to know that things aren't working completely right. The two mines are connected because they impact the same parts of the environment. All the Aboriginal groups have the same knowledge for both the mines. We need to develop a regional agency that can monitor the studies and effects and make sure there is a large, equal component built in for TK.
- Diavik implemented common protocols with other mines to monitor things like caribou which helps deal with cumulative effects. We have a fairly good vehicle with EMAB but we need to look at them to develop a vehicle for regional monitoring.
- Diavik has done more in TK than BHPB which has been around longer. BHPB depends more on science than TK.
- Need to make sure that both science and TK have clearing houses. Each expert view has strengths and weaknesses.
- Regulators are concerned with licences only. They hire community people to do individual projects yet those people aren't included in meetings. TK does not fit in with licence requirements.

- EMAB wants to set up two panels, one for TK. The TK members selected to sit on the TK panel will depend on the topic or issue EMAB is dealing with. Diavik has set up TK camp for the fish palatability study that could be used for other work as well.
- At the BHPB negotiations, they said they would do TK, yet IMEA has yet to deal with TK. Once the EA is signed, and they obtain their licences and permits they do not do anything more.
- When we saw ammonia was increasing at Diavik, the young guys who help us and know the science suggested the Diavik Technical Advisory Committee (DTAC) could help. Yet, when recommendations are made at the DTAC Diavik ignores them and continues to try and reopen the Water Licence to deal with the issue.
- We need to look at environmental monitoring programs more closely. The ammonia issue is a good example. Community people and independent scientists and some government scientists are concerned. Diavik's scientists say it is OK. Ultimately, it will go to the Mackenzie Valley Land and Water Board (MVLWB) to decide to change the Water Licence. This is just one example. The only way to be sure that MVLWB will do the right thing, is to get the TK component to really pull out what the community knows and get the independent scientists together to design a good program, then tell the MVLWB.
- When scientists work for companies and government they have to do what the company or government says. If government wants the tax revenue and the jobs, government will tell its scientists to be quiet. Where are the scientists who do not work for either and want to answer questions? We need them to work with Dene.
- The RMA shall have the funds to hire its own experts. The TK panel also needs its own funding. To date our involvement in studies and in development projects has resulted in significant community costs; especially when Aboriginals retain expert consultants. For example, Alfred and Lawrence went to Tahera hearings because it is just north of our lands. The trucks will go by winter road on our lands. Caribou will be affected. Air quality is an issue because of the diesel. Hunting has changed because of lack of access to caribou and changing migration times.
- IEMA conducts itself in a professional and scientific manner. Although it has poor communications with communities, IEMA is important. Question is can IEMA be brought into a single monitoring agency? Will it be as strong as it is now? How do we access the expertise in IEMA? Is BHPB in favour of a single agency now because the strong board (IEMA) they have now would fade away? With Diavik, it wanted a single agency but now it doesn't. Why did it change?
- There is no need to lose the IEMA knowledge and resources. If we have expert panels that meet irregularly we will be and lose our continuing knowledge. Scientific language is too technical for community members yet



we do not learn from each other. As signatories to environmental agreements Aboriginal Peoples can change an Environmental Agreement to reflect their needs; right now BHPB's does not need Aboriginal input.

## **Decisions and Actions**

### **Technical Expertise of a Regional Monitoring Agency**

- The technical experts can be appointed to the expert panel and meet on a regular basis. The expert panels shall be composed of permanent members
- Ensure the technical/expert panel has a diversity of expertise that is available to the RMA.
- Recommendations provided by the RMA shall be broadly distributed to all of those capable of effecting the recommendation. Elders see land and water as unified whole and future signatories to environmental agreements should reflect all the government agencies responsible for managing the environment, not only one specific government department. Presently, when EMAB recommends something to a department, it must go through the regional director general of DIAND.
- The Technical panel shall provide the RMA alternatives and consequences of choices it might take.
- Having technical debates between industry, government and RMA experts in front of the RMA would be productive.
- The RMA should provide its advice and recommendations directly to the Ministers of government responsible, not to the MVLWB for example, which then provides its recommendation to the Minister. Alternatively, amendments to any existing authority should be reviewed by all the parties as occurs under usual amendment processes and the boards contribute to those amendments and be provided the resources to participate in those amendment processes. For example when DDMI is considering a change to its licence it notifies EMAB and the MVLWB for a land or water authorization. However, the signatories and their community representatives need access to resources provide and receive community advice. There is also a problem in the artificial separation that exists between disciplines such as water monitoring and fish/aquatics.
- The RMA not intervene in regulatory processes.
- EMAB was asked by government to act as the consultative body for Aboriginal organizations but EMAB did not accept that speaking with EMAB constituted consultation with Aboriginal groups.
- It is important to have the TK and Western science panels work together. They could get together regularly, and if the recommendations they provide the RMA differ, it shall be up to the RMA to bring them together.
- The RMA shall set the Terms of Reference for the expert panels.
- Communication and working relationships between the TK and Western science panels need to be developed.
- The appointment structure/process for the TK and western science panels must include individuals with the appropriate credentials and experience.
- Each community could appoint a member to the panel.
  - EMAB is establishing a TK panel and shall rely on the EMAB community representative to identify the correct individuals to sit on the panel for the respective issues.

- On the science side, EMAB has standing offer agreements with scientists to provide advice. Once the panel is established, a more permanent group of people shall be selected. Community members submit people they believe have the expertise necessary. The Board selects the scientists on the western science panel.
- Appointments on the science panel that can come from affected communities are desirable. There should be a multiple layer of protection to ensure independence. For example, all the signatories should have to agree with each representative. The parties to the agreement (the signatories should appoint the expert panel members) no the RMA.

## Decision-making of a Regional Monitoring Agency- Opportunities, Issues and Constraints

- The RMA cannot have outsiders being ultimate decision makers.
- BHPB did not involve Aboriginal peoples at the beginning including the EA negotiations. With Diavik, Aboriginal peoples have pushed to have a bigger role.
- When we negotiated the EA (Diavik's EA) we thought we were close to what was required, but it requires a good driver.
- Who has ultimate authority over the RMA depends on the laws and acts in question. Ultimately, the Minister of INAC will side with industry more often than any Aboriginal party. Even MVLWB has to go to the Minister. There are too many laws and legislation, some without teeth.
- We requested that there be a split between the two seats of Akaitcho for IEMA but signatories did not listen. Government replied they would deal with it at an AGM but they still didn't give a seat. Tli Cho said if they got a seat, they'd want four seats. With us we have only one community to deal with. At last IEMA AGM it was said a regional board could allow for a Lutsel K'e seat. We wondered what we would give up.
- We learned our lessons in BHPB and Diavik negotiations. Today is an important step, to caucus together. If DeBeers does cooperate it will change what happens at the Water Licence hearings.

## Decisions and Actions

### Decision-making of a Regional Monitoring Agency

- The RMA should not only have an advisory role, it should have greater authority. Recommendations to government should not be filtered through existing government bodies. e.g., the MVLWB.
- The RMA is not a regulator, but has strong advisory recommendations that need to be taken seriously.
- The RMA should ask the Minister of INAC to provide written direction to the MVLWB to accept RMA advice.
- The caucus is concerned about the inspection capacity of enforcement agencies because they are the link between RMA advice and ultimate implementation. Perhaps the enforcement monitoring people can also report to the RMA.
- Perhaps the RMA can have its own independent inspectors.
- Information created by the expert panels should be on the public registry.
- The linkage between advice, recommendations, and implementation requires effective community feedback so they are part of the change process. This enables local organizations to adapt to changes occur.



## Community Involvement, Training, and Communications of a Regional Monitoring Agency- Opportunities, Issues and Constraints

- Annual workshops provide a forum for Aboriginal peoples, government, and industry to talk together. It's good for community people to hear about the mine, but if the mine goes to communities, more people can attend.
- Mines have changed the water, people now have to fish further away, they need trucked in water. There are also holes everywhere; all without compensation. Important to watch the mines to make sure nothing bad is happening.
- At the beginning, the mines said everyone, even kids, would know what was going on at the mines. Now, they've cut out workshops and want to go into the communities for one-hour presentations. We're not getting better, we're getting worse. The mining companies have taken over including how they will communicate. The agencies only report short-comings. If Snap Lake gets on stream, communities and resources will be stretched too much. Everyone around the table needs to work together.
- EMAB has community meetings including some Board meetings so everyone can attend. At the beginning, workshops were topic specific i.e. caribou so that communities could have regular opportunities to comment on programs, not in just one annual workshop. BHPB conducts site visits at different times, i.e. sometimes with caribou there sometimes not. They got five different perspectives and BHPB had them fighting.
- Diavik wants to amend its water licence. There is too much science and not enough community input. No balance. All the consultants make lots of money but elders get peanuts. Elders are not sent to Ekati and we all go separately. We are being duped into doing things because they do not listen to us. TK and science need to go hand-in-hand. If we feel under-valued why bother going to these workshops when we could use the resources like elders on other things.
- When we were negotiating Diavik, we repeated that changes to the environment affected everyone. If a mine was going to limit monitoring, communities get short-changed.
- In the BHPB EA we knew we wanted to protect our food source and water, so we formed a board (IEMA). The word independent in Chipewyan means "in control", but IEMA became independent of even us. I'm not complaining about them because they do a very good job. But with Diavik, we wanted to make sure we were doing the monitoring. The whole idea of being our own monitors is not there either; no training programs. I want a program within the agency that trains our people to participate fully in monitoring. The implementation of those findings, to make the project better and to reduce impacts to our water and land, would actually be done by us. We need a way to link dedicated funding for community monitoring to the environment agreement.

- There shall also be discussions on who has the responsibility for consulting with Aboriginal peoples because it costs money.
- Decision-making in communities takes time and resources.

### **Decisions and Actions Community Involvement, Training, and Communications of a Regional Monitoring Agency**

- The RMA will likely place less demand on communities to appoint members to monitoring boards. On the other hand communities will still need to consider all the projects affecting them. Therefore, the RMA may result in fewer resource demands on communities, but similar consultation demands.
- Having communities attend one RMA meeting is likely more efficient and effective than having three separate meetings, one for each mine.
- Having the RMA as one point of contact and delivery is a definite advantage.
- Training for community members and monitors. A RMA will result in an equal and shared commitment by industry. It is possible that training commitments could be shared amongst companies.
- The RMA needs to be cautious because companies must still be responsible for its monitoring.
- Take the best thing from each current monitoring agency.

## **Differentiated Commitments between Jurisdictions of a Regional Monitoring Agency- Opportunities, Issues and Constraints**

- I agree with the general principles, even if KIA is not there tomorrow.
- KIA recognizes the need to better bring resources together and not split them between numerous monitoring agencies, KIA is not part of Snap Lake environmental agreement and has not been part of Snap Lake discussions
- We need to commit to going in together and ending together.

## **Decisions and Actions**

### **Differentiated Commitments between Jurisdictions of a Regional Monitoring Agency**

- The models need sufficient flexibility to accommodate Nunavut and NWT monitoring needs.
- The RMA is an acceptable model to include Nunavut projects.
- The Nunavut General Monitoring Program (NGMP) should be implemented as CIMP is being implemented.
- Nunavut wants resources dedicated to monitoring in Nunavut.
- The RMA could be a trans-boundary monitoring agency.
- Need to keep discussion open on trans-boundary matters as they relate to the RMA and will eventually require resolution at a legal level.
- The Bathurst Management committee has equal representation and provides one plan for the caribou. The same approach could be applied to the RMA.

**APPENDIX 2**

**BACKGROUND REPORT ENVIRONMENTAL MONITORING  
OF DIAMOND MINES**

**Aboriginal Caucus Workshop**



# **ENVIRONMENTAL MONITORING OF DIAMOND MINES**

## **Aboriginal Caucus Workshop**

### **BACKGROUND REPORT**

**Prepared for:** **Carole Mills, Manager**  
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**Date: January 12, 2004**



# **1 Introduction**

There is an opportunity for Aboriginal people to determine how they want diamond mines monitored and managed.

Many people and substantial resources are presently being used towards environmental monitoring within the region of the diamond mines. There are currently two diamond mine monitoring boards, the Independent Environmental Monitoring Agency (IEMA) for BHPB and the Environmental Monitoring Advisory Board (EMAB) for Diavik. With the DeBeers application in the regulatory review stage, a third monitoring agency could be formed. The following initiatives exist within the same region: the Bathurst Caribou Management Committee; the West Kitikmeot Slave Study; The West Kitikmeot Land Use Plan; the Nunavut General Monitoring Program; and the Cumulative Impact Monitoring Program and the Cumulative Effects Assessment and Management Framework.

The increasing number of monitoring bodies is straining the capacity of regulators and communities to effectively participate on them and contributing to a fragmented approach to monitoring and management.

## **1.1 Objectives**

An Aboriginal Caucus will be held January 14 and 16, 2004 in Yellowknife hosted by the Independent Environmental Monitoring Agency. The objective of the caucus is to make progress in moving environmental monitoring of large projects from small, project specific agencies to a broader regional agency by building on the existing models in a forum that is specific to Aboriginal concerns and principles.

The objective of this background document is to provide information to the participants in advance of an Aboriginal Caucus to be held January 14 and January 16, 2004 in Yellowknife. This document could be used to gather thoughts and concerns to bring to the workshop.

## **1.2 Previous Initiatives**

Over the last two years, the Department of Indian Affairs and Northern Development (DIAND) has led discussions on the formation of a single regional monitoring agency. The single board would be responsible for coordinating and managing mines and regional monitoring initiatives within the region of diamond mining. Three discussion papers and three stakeholder workshops have led to the development of two “bare-bones” models for a future regional monitoring board.

The work of the Aboriginal Caucus will build on the models produced by exploring principles that must be incorporated into any model.

## **2 Principles for Environmental Monitoring of Diamond Mines**

Two major activities are required for effective environmental monitoring of industry:

- the review and monitoring of environmental performance of industry using western science and traditional knowledge; and
- the effective interaction with public and communities on environmental issues related to industry.

Initial multi-stakeholder initiatives identified the following principals and working assumptions for the formation of a single regional monitoring agency:

- cannot supercede Aboriginal/treaty rights and existing legislation
- must be inclusive and community based
- must be administratively efficient
- generally cannot impose additional financial burdens on BHPB or Diavik

(From “produced by Terriplan Consultants March 4, 2003)

Additional multi-stakeholder discussions identified these considerations and goals:

- Increasing efficiency and reducing the demand for participation
- Improving monitoring and research initiatives
- Establishing and maintaining the monitoring programs mandated by legislation
- Respecting the geographic boundaries of existing organizations
- Meeting the information needs of the regulatory and environmental assessment decision-making processes

(From a discussion paper “Functional Options for Regional Monitoring” produced by Terriplan Consultants on August 2003)

### **3 Existing Environmental Agreements**

There are Environmental Agreements for the Diavik Diamond Mine and one for the BHPB Ekati Diamond Mine.

The MVEIRB recommended one for De Beers. The Nunavut Impact Review Board could recommend one for Tahera's Jericho Diamond Mine. The Environmental Agreements are contracts between the Government of Canada, the Government of the Northwest Territories, and Aboriginal/Inuit peoples and governments.

Environmental Agreements recognize that individual mines, departments, organizations, and communities cannot, by themselves, assume responsibility for the management of environmental effects caused by mines. To overcome the challenges of dispersed environmental management and monitoring Environmental Agreements were instituted. Environmental Agreement was, in part, created to:

- maximize the effectiveness and coordination of environmental monitoring and regulation of the project
- facilitate effective communication about the project and to provide opportunity for community and public input;
- ensure that the mitigation measures arising from company commitments and from the Responsible Authorities' conclusions developed during the environmental review are appropriately implemented; and
- provide for monitoring to verify the accuracy of the environmental assessment of the project and the effectiveness of the mitigation measures.

#### **3.1 Next Steps**

In November 2003 BHPB agreed to amalgamate EMAB with the IEMA. The work of bringing them together has not started.

The Minister of Indian and Northern Affairs approved MVEIRB's recommendation that the Federal Government the GNWT, De Beers, Diavik, and BHP Billiton to work towards consolidating the Environmental Agreements for the developments within 24 months. The consolidation should result in a standard agreement which can be used for future mines in the Slave Geological Province. No work has started on implementing the Minister's decision.

#### **3.2 Next Steps**

The Federal government is taking the lead in implementing CEAM and its blueprint, but it is not acting alone because CEAM is about partnerships. The Federal government is working to create a joint Nunavut and NWT organizational partnership to manage CEAM. There is long-term stable funding for CEAM.

## 4 Previous Regional Monitoring Initiatives

DIAND and Environment Canada sponsored three workshops with stakeholders to facilitate the formation of a Regional Monitoring Agency (RMA).

- November 1, 2002 a discussion paper entitled “*Exploration of a Potential Regional Monitoring Agency for the Slave Geological Province*” prepared by Terriplan Consultants.
- November 13-14, 2002 Workshop entitled “*Towards a Single Regional Monitoring Agency for the Slave Geological Province.*” Workshop participants selected a small Advisory Group to provide direction on the development of a decision paper that would evaluate options with respect to project specific oversight and regional monitoring and research.
- August 2003 a discussion paper entitled “*Functional Options for Regional Monitoring.*” The paper provides key working assumptions and understandings about any possible Single Regional Monitoring Agency.
- October 22, 2003 the Advisory Group for Functional Options for Regional Monitoring in the SGP met to discuss and, if possible, agree upon an option (or a short list of options) for improving regional environmental and cumulative effects monitoring.
  - BHP Billiton agreed to amalgamate the BHPB Monitoring Board with the EMAB (the Diavik monitoring advisory body).

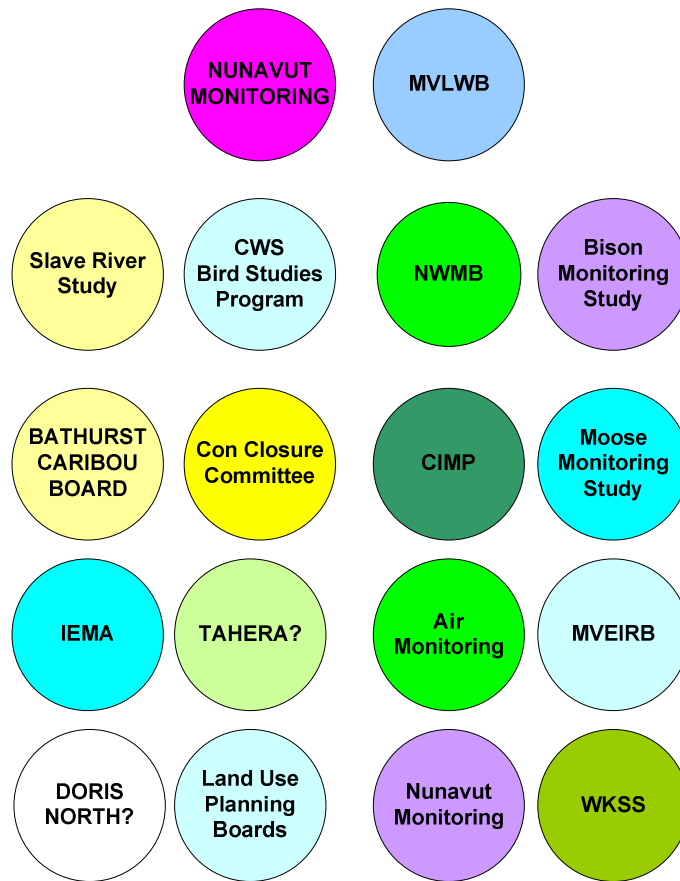
### 4.1 Next Steps

Two scenarios for regional monitoring put forward for further analysis and discussion.

## 5 Models for Environmental Monitoring of Diamond Mines

The models developed should include environmental monitoring at the project level and at the regional or cumulative level. The effects that individual projects have on the environment must be monitored as well as the combined effects of many mines and activities.

To date the diamond projects have been monitored individually. The regional and cumulative effects have been monitored using multiple boards and initiatives.

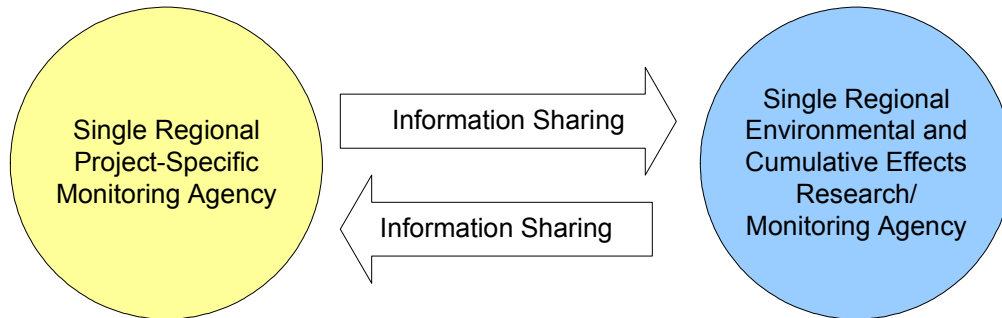


**Current Situation**

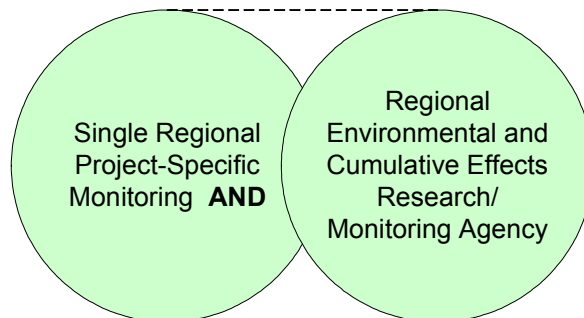
## 5.1 Current Model

Stakeholders tasked with developing functional options for regional monitoring met in October 2003 and agreed on two options for improving regional environmental and cumulative effects monitoring. The two options are illustrated below and assume that individual projects would be monitored under one agency.

### Option 1 - Two Discreet Bodies



### Option 2 - One Body



**Figure 1** Source: Terriplan Consultants December 2003, Summary Report on the Advisory Group Meeting for Functional Options for Regional Monitoring in the SGP

The following section adds detail to the options selected by the advisory group and includes a description of important components to consider, possible models and a preliminary description of each model.



## **5.2 Components to consider**

The following components provide a starting point and will be reviewed and revised at the workshop. The **questions highlighted in bold** will help determine the structure and reporting mechanisms of possible monitoring bodies, which in turn will help define the model.

Scope – The scope of the monitoring body must be determined. Ultimately, the impacts of specific projects must be included in the monitoring of the cumulative and regional impacts. A model that allows for an interim approach to accommodate a stepwise commitment to and implementation of the monitoring bodies may be appropriate to allow different parties to sign on as they feel comfortable.

**Should the monitoring body monitor diamond mines only?**  
**Should it include cumulative and regional impacts?**  
**Does the model allow for an interim approach?**

Independence – The capacity to play the “watchdog” role of independent review and public reporting has been identified as being important to Aboriginal Peoples and is the reason for the formation of the existing independent monitoring agencies for BHPB and Diavik. Independence can be achieved through the appointment and reporting processes for the monitoring bodies and the appointment and reporting of the technical bodies. Independence of the technical bodies allows for the identification of important areas that may not be identified by the larger monitoring body and ensures that technical recommendations are not filtered or revised based on political or other considerations.

**Should appointments made to the monitoring body be made by government, industry and Aboriginal Peoples?**  
**Should the appointments made to the technical bodies be made by government, industry and Aboriginal Peoples?**  
**Should appointees be restricted from being employees of government or industry?**  
**Should the technical bodies be able to report directly to the public, industry and government?**

Technical Expertise – The monitoring body should have full access to the technical expertise of both western science and traditional knowledge. The mandate of EMAB allows for the formation of ad-hoc technical bodies for western science and traditional knowledge, reporting to EMAB. Permanent technical bodies ensure a consistent and timely approach to the issues but require more resources. Ad-hoc bodies take time to construct but could be less costly and can focus on specific topics.

**Should technical panels be established permanently or on an ad-hoc, as-needed basis?**  
**Does the model contain a mechanism or body for considering western science and traditional knowledge together?**  
**Do both technical bodies require the same appointment and reporting structure?**

Decision-making – The role and membership of each body will affect the type of decisions it makes.

**Should decisions be made by a central monitoring body?**

**Should government and industry be included in decisions of all or some of the bodies?**

**Should the technical bodies be able to provide its recommendations directly to the parties for consideration?**

Community Involvement, Training, and Communications – The two diamond monitoring agencies have evolved from a technical non-community based agency in IEMA to a more community oriented agency in EMAB. Communities are interested in a model that increases the efficiency of their participation yet reduces the demand and level of their participation. Effective communications amongst the bodies and with aboriginal communities is important.

**Is the participation of communities more efficient and less demanding and complicated?**

**Is training of community members included?**

**Will communications and interactions with communities be maximized?**

Differentiated commitments between jurisdictions – The diamond mines impact the NWT and Nunavut, each having different legislated requirements including land claim obligations. A regional or cumulative body formed for the NWT may not meet the needs of Nunavut

**Does the model allow Nunavut members to handle regional monitoring commitments differently than NWT members?**

### 5.3 Alternative A

Alternative A shows a “board of chairs”. The chairs of each project/initiative/sub-committee would sit on a central monitoring and management board.



**Alternative A**

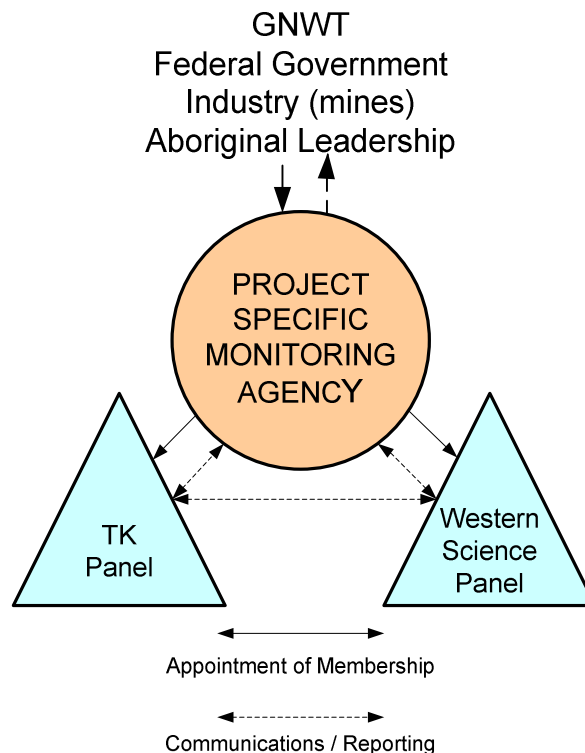
- Scope: Alternative A captures both specific projects and regional initiatives and allows for them to be dealt with independently but coordinated through a central body.
- Independence: Members of each contributing project would continue to be nominated and make decisions as they do now. Individual projects could continue to be managed independently.
- Technical Expertise: Traditional knowledge and western science would continue to be considered as they are now within individual projects.

- Decision-making: Decisions would be made as they are now, within separate project bodies. The central body could consider the decisions in relation to the other projects.
- Community Involvement, Training, and Communications: Communities would be expected to participate on the individual projects as well as the central body. Training and communications would be determined later.
- Differentiated Commitments between Jurisdictions: This model would allow parties to participate only on the projects/initiatives/sub-committees of importance to them.

## 5.4 Alternative B

Alternative 'B' is composed of a base model "B-1" with added components to create "B-2" and "B-3".

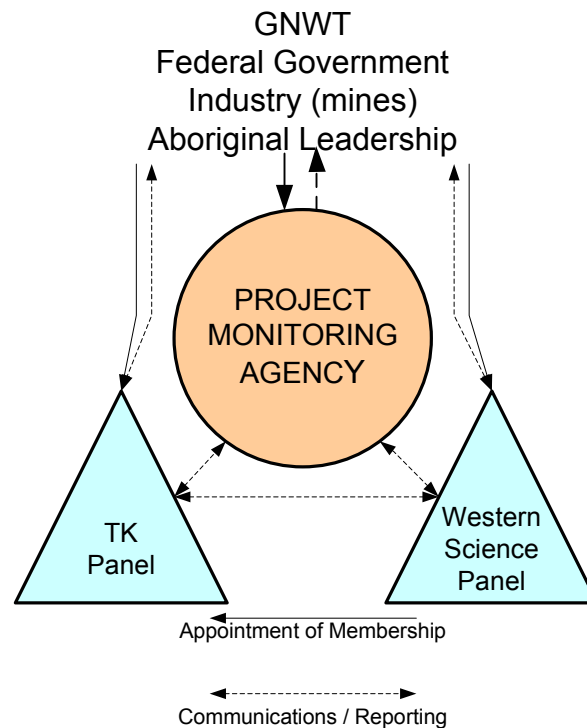
**Alternative 'B-1'** is in essence the Diavik Environmental Monitoring Advisory Board. It includes the project specific monitoring agency, the TK Panel and the Western Science Panel.



**Alternative B-1**

- **Scope:** Alternative B-1 can expand to cover the monitoring of all diamond mines or other projects but does not deal specifically with regional issues.
- **Independence:** Members of the monitoring agency can work for government or the mining company which may create a conflict of interest. The temporary TK and Western science Panels are not independent because their membership is appointed by the Agency and all information from the Panels flows through the Agency first.
- **Technical Expertise:** The Panels are created on an “as-and-when” needed basis. There is a clear functional and reporting relationship between Traditional Knowledge and Western science Panels and the Agency.
- **Decision-making:** The Agency is clearly tasked with the responsibility of considering input from both Panels when taking its decisions and providing its recommendations.
- **Community Involvement, Training, and Communications:** The Agency provides training for its members and has an effective communications network into communities. The single monitoring Agency for all diamond mines reduces the human resource demand on smaller communities.
- **Differentiated commitments between jurisdictions:** Model A-1 enables Nunavut to participate in project specific monitoring of any future diamond mine.

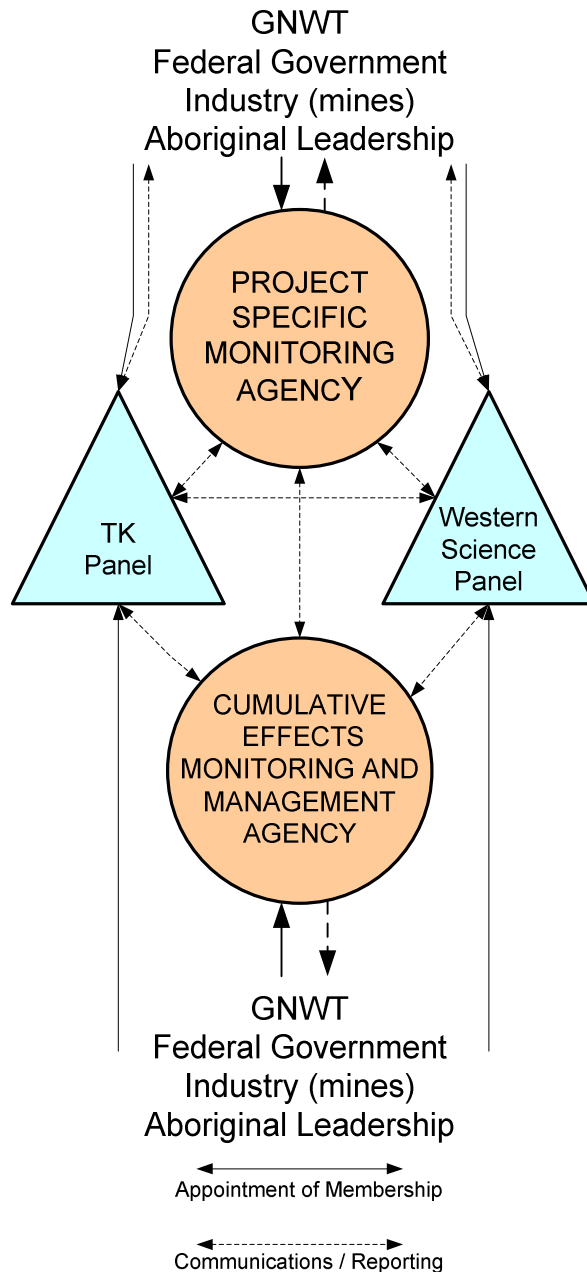
**Alternative 'B-2'** has Aboriginal leaders, government and industry appointing members to the Diamond Mines monitoring agency and has two independently appointed Panels, thus ensuring the functional independence of the support Panels. Alternative A-2 is similar to A-1 with the added benefit of having permanent independent support Panels to the Agency.



### **Alternative B-2**

- Scope: Alternative B-2 applies only to diamond mines.
- Independence: Membership can include diamond mine and government employees possibly creating conflicts of interest.
- Technical Expertise: The technical Panel members are appointed by the Agency's signatories and the Panels report directly to the signatories and the Agency i.e., the Panel's reports and are not examined by the Agency before public release.
- Decision-making: The Agency is clearly tasked with the responsibility of considering input from both Panels when taking its decisions and providing its recommendations.
- Community Involvement, Training, and Communications: Having Panels providing their reports directly to the public and signatory communities increases the amount of community and consultation time demanded. The Agency provides training for its members and has a good community and regulator communications through its membership.
- Differentiated commitments between jurisdictions: Alternative A-2 is flexible and enables signatory parties to have members on the Panels, the Agency, or both.

**Alternative 'B-3'** is the “full-meal-deal” and includes specific project monitoring as well as cumulative effects management and monitoring.



**Alternative B-3**

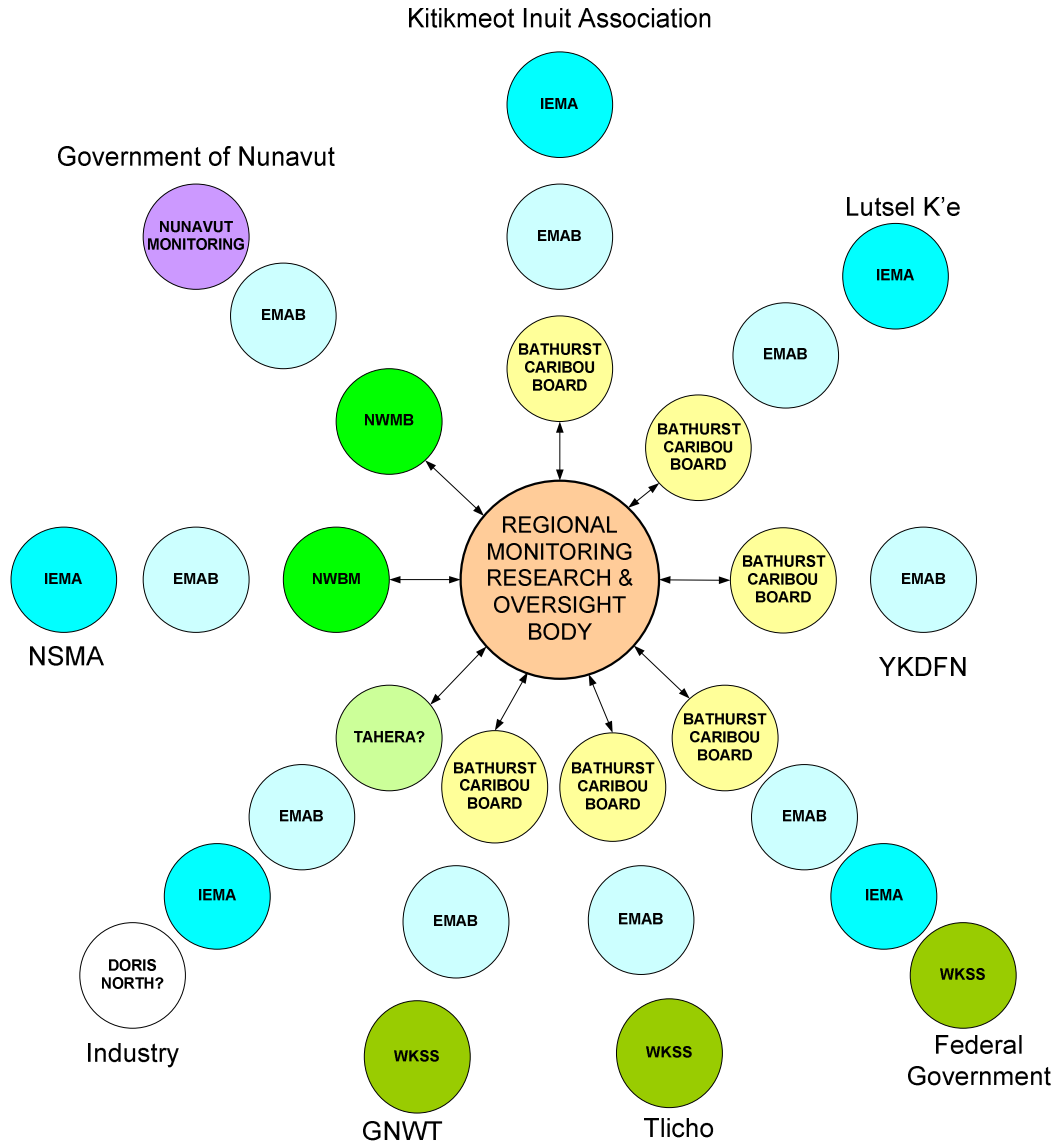
- Scope: Alternative B-3 provides 1) diamond mine or project specific only monitoring, and, 2) cumulative effects monitoring. It has the added benefit of being modular, and allowing the phased in development of the entire monitoring organization.

- Independence: The independence of the Panels is supported by having the stakeholder signatories directly appoint members to the permanent Panels, and by having the Panel's reports provided to the monitoring bodies and the public at the same time. Monitoring body membership can include mine and government employees possibly creating conflicts of interest.
- Technical Expertise: The Panels report to the respective agencies and are either ad-hoc or permanent.
- Decision-making: The Agencies are clearly tasked with the responsibility of considering input from both Panels when taking its decisions and providing its recommendations. B-3 benefits include a shared Panel structure, tight linkages between the diamond mine monitoring body and the cumulative effects monitoring body.
- Community Involvement, Training, and Communications: Communities would participate on both the monitoring bodies and their Panels. As with previous alternatives, there could be education and training components to the monitoring bodies.
- Differentiated commitments between jurisdictions: The organizational structure permits members from across stakeholder organizations to appoint members to either or both agencies and Panels creating multiple ways of participating



## 5.5 Alternative C

Alternative 'C' provides is the status quo with the added benefit of a centralizing monitoring management body. Each 'arm' represents individual members and each circle on the arm represents the initiatives they participate on.



**Alternative C**

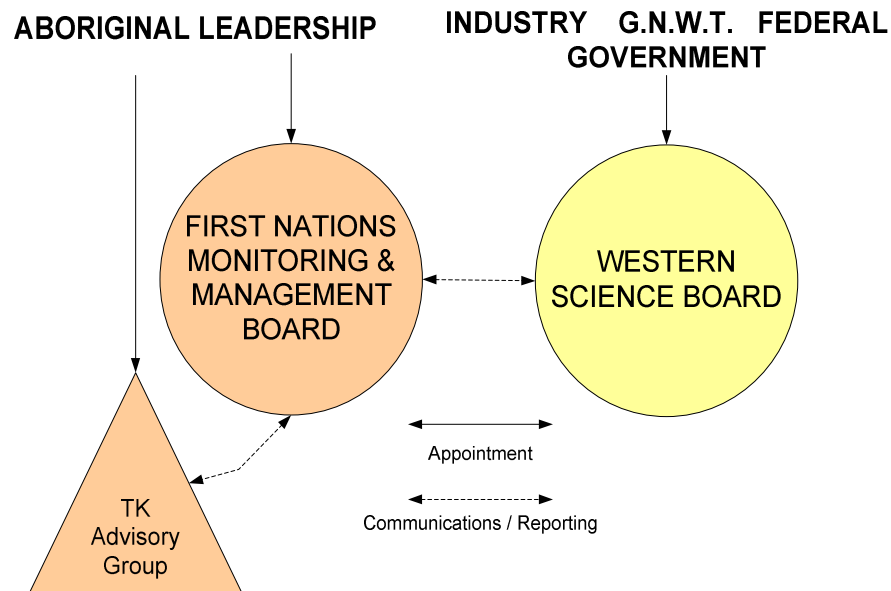
Note: This diagram is a representation only and does not reflect ALL initiatives that each group is dealing with.

- Scope: Alternative 'C' focuses on the scope of stakeholder involvement in monitoring and encourages stakeholders to collectively determine the scope of the environmental monitoring – project specific or cumulative.

- Independence: Each stakeholder group consists of individuals on various monitoring boards, and collectively, they shape their organizational knowledge about project specific and cumulative effects monitoring.
- Technical Expertise: Cumulative knowledge of monitoring information is provided through the organization’s representative on the oversight body. The organizational structure permits members from across stakeholder organizations to meet on specific projects, such as Diavik for example, thus enabling formal and informal monitoring management.
- Decision-making: Environmental Monitoring and management happens through central oversight body.
- Community Involvement, Training, Communications: Dependent on the oversight body.
- Differentiated commitments between jurisdictions: Fully differentiated with parties participating on initiatives they choose.

### 5.6 Alternative D

Alternative ‘D’ creates knowledge agencies to facilitate affects monitoring of diamond mines and regions. The knowledge agencies take monitoring information they receive and interpret it through their respective knowledge systems.

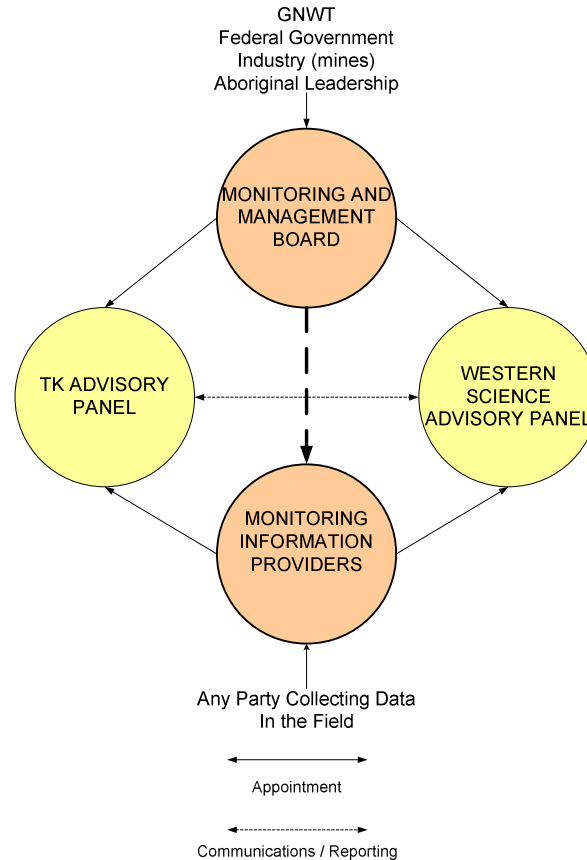


**Alternative D**

- **Scope:** The knowledge based bodies receive and consider mining specific monitoring information and cumulative monitoring information.
- **Independence:** The independence of the respective knowledge bodies is preserved by having Aboriginal leaders appoint members to the First Nations Monitoring Board and Government and Industry appoint members to the Western Science Board.
- **Technical Expertise:** The TK advisory is either permanent or ad-hoc.
- **Decision-making:** The two boards each make individual decisions on mine specific and cumulative monitoring matters. This could lead to differences between their interpretations of the monitoring information. Decision making between the boards and coordination between diamond specific and cumulative monitoring is likely challenging and fragmented.
- **Community Involvement, Training, and Communications:** The strong division between TK and Western Science provides a clear distinction for communities about their choice of involvement with either of the Boards. Communications with stakeholders is split between the two boards.
- **Differentiated commitments between jurisdictions:** Non-jurisdictional and open to all parties to participate.

## 5.7 Alternative E

Alternative 'E' is the idealized monitoring and management organization. It is a dedicated information gathering providers, a dedicated management Board, and there are permanent TK and Western Science support Panels.



### Alternative E

- **Scope:** Alternative 'E' combines diamond mine specific and regional monitoring management into one Board.
- **Independence:** The independence of the Board members depends on membership criteria.
- **Technical Expertise:** Panel members are selected by the Board and report back to the Board; and are therefore not independent. Panels are permanent, ad-hoc or a combination of both.
- **Decision-making:** The decision making, community involvement functions are not prescribed.
- **Community Involvement, Training, and Communications:** The decision making, community involvement functions are not prescribed.
- **Differentiated commitments between jurisdictions:** Having multiple Panels and a Board enables parties to choose where they can best contribute to the monitor

# APPENDIX A

## Regional Monitoring and Management Initiatives

### 1 MVEIRB DeBeers Environmental Agreement Recommendation

In its decision on the Snap Lake Diamond Mine Project MVEIRB said that:

1. Environmental Agreements provided a useful mechanism to ensure that commitments to environmental monitoring and adaptive management that could not be included in regulatory instruments were implemented and effective over the life of the project.
2. Reliance by government and industry on Environmental Agreements negotiated with individual developers does not provide for comprehensive environmental management, particularly for cumulative effects management in the Slave Geological Province.

The Minister of Indian and Northern Affairs Canada (INAC) accepted MVEIRB's recommendations, and agreed that:

- The Federal government take the lead in implementing a regionalized, multi-party response to the monitoring for and management of cumulative effects in the Slave Geological Province preferably under the umbrella of the CEAM Strategy and Framework.
- The Federal government, along with all other interested Parties, shall take immediate action to implement the Blueprint for the Cumulative Effects Assessment and Management Strategy and Framework in the NWT and its Regions. The Board further recommends that the Government of Canada allocate long-term, stable funding to this initiative for a term of no less than ten years.<sup>2</sup>
- The Federal government and the GNWT, De Beers, Diavik, and BHP Billiton shall work towards consolidating the Environmental Agreements for these developments within 24 months. The consolidation should result in a standard agreement which can be used for future mines in the Slave Geological Province. [Emphasis added]

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<sup>2</sup> MVEIRB, 2003. *Report of EA and Reasons for Decision on the De Beers Snap Lake Diamond Project*. Yellowknife

## **2 Bathurst Caribou Management Committee**

Caribou are very important to Northerners as BHP, Diavik, and De Beers know. They are very important to Dene, and non-Dene and Inuit. The Bathurst Caribou move from the NWT to calve in Nunavut and then return down into the NWT and parts of Nunavut.

There is no government department or agency that is responsible for the Bathurst Caribou. That is why there is a Bathurst Caribou Management Planning Committee. It includes representatives from the NWT and Nunavut including NTI, the NWMB, the Department of Sustainable Development and the Kitikmeot Hunters and Trappers Association. It has been working on a management plan for the herd for the last three years.

### **2.1 Next Steps**

The Bathurst Management Committee met in November 2003 and will have a Draft Management Plan prepared by January 2004 and a final plan in April 2004.

## **3 Cumulative Impact Monitoring Program (CIMP)**

CIMP is about getting information on the land and water and using that information. CIMP will help inform decision makers about what is happening to people, the land and the water.

CIMP exists because the Gwich'in, Sahtu and Tlicho First Nations negotiated it into their land claim agreements.

Nunavut has its own versions of CIMP called the Nunavut General Monitoring program, and is on its way to implementing it. CIMP will:

- Monitor the use of water and disposal of waste
- Fund to fill key gaps in monitoring
- Report on the state of the NWT environment
- Build community capacity
- Provide information to the independent audit

### **3.1 Next Steps**

Once every five years starting in 2003/04 CIMP will:

- Find out how and why the environment has changed
- Recommend improvements to CIMP

- Recommend improvements to land and water management

## **4 West Kitikmeot Slave Study (WKSS)**

The West Kitikmeot / Slave Study was conceived during the early stages of the diamond staking rush as the extent of exploration and possible development became clear. Many organizations and individuals, especially aboriginal and environmental groups, voiced concerns about the pace of exploration and possible effects of development. All parties, including industry and Governments, recognized the need for an improved information base in order to predict future changes, particularly information about the effects of multiple developments on the environment and the people in the area<sup>3</sup> in 1996 the WKSS partners developed a five-year research program to provide an information base necessary to examine the long and short term effects of development in the WKSS area.

### **4.1 Next Steps**

The WKSS research program ended March 31, 2001. In March 2001 the WKSS partners developed a proposal to hold workshops with a broader range of stakeholders for the purpose of proposing a new interim research and monitoring agenda and management structure to cover the transition period between the wind-up of WKSS and the operation of a permanent monitoring program in the WKSS area.

The outcome of the planning work was a proposal for a mechanism that could provide information needed as part of the Nunavut General Monitoring Program (NGMP) and the Mackenzie Valley Cumulative Effects Assessment and Management Framework (CEAMF). The CEAMF Working Group endorsed the planning process by WKSS as a way to support their work to develop a Regional Action Plan for the Slave Geological Province.

## **5 West Kitikmeot Land Use Plan**

The West Kitikmeot Land Use Plan is in its final round of revisions by the Nunavut Planning Commission, and once completed and approved by the Minister of Indian and Northern Affairs it becomes law.

### **5.1 Next Steps**

The West Kitikmeot Land Use Plan will be submitted to the Minister of Indian and Northern Affairs, and once approved, published.

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<sup>3</sup> West Kitikmeot Slave Study Society (2001). *West Kitikmeot Slave Study Society Final Report Includes Annual Report 2000-2001* p.4.

## **6 Nunavut General Monitoring Program**

The Nunavut General Monitoring Program is intended to identify changes in long-term state of health and act as an “early-warning system” for changes to the environment.

### **6.1 Next Steps**

The Nunavut Monitoring program being developed, and is not yet operational.

## **7 Cumulative Effects Assessment and Management Framework (CEAMF)**

CEAMF recognizes that individual decision makers, agencies, departments, organizations, and communities cannot, by themselves, assume responsibility for the assessment and management of cumulative effects. To overcome the challenges confronting management of cumulative effects CEAMF is created in order to link discrete functions and decision-making processes to form an integrated system. In order to identify the key components of that system, and the relationships between them, the CEAMF Steering Committee developed a CEAM Framework for the NWT. This Framework consists of nine components that capture the key functions necessary for CEAM and the principal linkages among them. These components are: Vision and Objectives; Land Use Planning; Baseline Studies and Monitoring; Research; Audit and Reporting; Project-Specific Screening, Environmental Assessment and Review; Regulation and Enforcement; Information Management; and Coordination.

CEAMF is about bringing together the different parts of governments (Inuit, Dene and non-Dene), and industry, and have them work together with a common environmental purpose. Government and industry are doing many things about the environment, but they are not necessarily working together.

MVEIRB’s De Beers decision included recommendations that were subsequently adopted by the Minister of Indian Affairs require:

1. The Government of Canada to take the lead in implementing a regional, multi-party response to the monitoring for and management of cumulative effects in the Slave Geological Province preferably under the umbrella of the CEAM Strategy and Framework.
2. The Government of Canada, along with all other interested Parties take immediate action to implement the Blueprint for the Cumulative Effects Assessment and Management Strategy and Framework in the NWT and its Regions. The Board further recommends that the Government of Canada allocate long-term, stable funding to this initiative for a term of no less than ten years.



## **7.1 Next Steps**

The CEAMF is finished along with a blueprint for implementing it. The next challenge is implementing CEAMF using the smaller or “mini” versions of CEAMF called Regional Plans of Action. There is a “mini” CEAMF for the Slave Geological Province but there is no single organization to lead and coordinate its implementation.

## APPENDIX B

### Summary Comparison of the Ekati and Diavik Environmental Agreements

This section compares the Diavik and BHPB Environmental Agreements, with a focus on the establishment and mandate of the monitoring agencies, followed by a comparison of other Environmental Agreement components.

It is important to emphasize that both EMAB and IEMA do not currently collect data. Their watchdog roles are really that of “monitoring those who are doing the monitoring”. Their primary role is oversight--providing an independent, public assessment of environmental management performance achieved at each diamond project. The analysis for this review is found in APPENDIX C.

<b>BHPB Ekati Environmental Agreement and IEMA</b>	<b>Diavik Environmental Agreement and EMAB</b>
<b>Establishment of the IEMA</b>	<b>Establishment of EMAB</b>
IEMA and EMAB have the same purpose and mandate.	IEMA and EMAB have the same purpose and mandate.
<b>Signatories to the IEMA Agency</b>	<b>Signatories to the EMAB Agency</b>
The IEMA has three signatories (Federal Government, GNWT, and BHPB)	EMAB has 8 signatories (Federal Government, GNWT, Diavik, Lutsel K'e, YKDFN, NSMA, Dogrib Treaty 11, and the KIA)
<b>Composition of IEMA</b>	<b>Composition of EMAB</b>
The three signatories to the BHPB EA appoint seven directors to the IEMA Agency.	The 8 signatories to the Diavik EA appoint 8 members to the EMAB agency, plus the Government of Nunavut retains a seat.

<b>BHPB Ekati Environmental Agreement and IEMA</b>	<b>Diavik Environmental Agreement and EMAB</b>
<p><b>Mandate of the IEMA</b> The IEMA and EMAB agencies have similar mandates.</p>	<p><b>Mandate of the EMAB</b> EMAB's mandate includes all of IEMA's plus the following.</p> <ul style="list-style-type: none"> <li>• Access for purposes of wildlife harvesting.</li> <li>• Participation of each of the Aboriginal Peoples and Affected Communities in training initiatives and monitoring programs bearing on environmental quality.</li> <li>• Design of traditional knowledge and other studies, and, where appropriate, facilitate the management and implementation of these studies; and</li> <li>• Provide information to affected communities and the general public on matters bearing on environmental quality.</li> </ul>

**Emending the BHPB Environmental Agreement**

Review every five years from the day the EA was signed. Canada, the GNWT and BHP shall reconsider and review in Consultation with the Monitoring Agency the Terms of the EA if necessary and appropriate.

The agreement can also be amended at any time by agreement among Canada, the GNWT, BHPB, following consultation with the IEMA Agency provided that any such amendments to the substance of Articles I, II, IV, X, XI or XVI can only be made with the unanimous decision of the IEMA Agency. Otherwise, the changes can only be made following a public meeting and Consultation with the Aboriginal Peoples... s.XV(2)

**Statement of Purpose of the Environmental Agreement**

The Diavik and BHPB EAs have essentially the same purpose.

**Amending the Diavik Environmental Agreement**

Review after the fifth anniversary of the Effective Date of this Agreement and thereafter at five-year intervals, the Parties may conduct an assessment of this Agreement in Consultation with the Advisory Board.

The EA may be amended at any time by written agreement among the Parties.

The parties (signatories) agree to review and amend if necessary the Diavik EA when the Land Leases are fully executed and the Water Licence is issued to Diavik to address any conflicts or inconsistencies. S.17.2 and 17.12

**Statement of Purpose of the Environmental Agreement**

The Diavik EA statement of purpose includes the of BHPB's EA statement of purpose, plus is emphasizes, 1) making sure Diavik lives up to its commitments made during the environmental assessment, 2) possibility of additional monitoring if necessary, 3) coordinating government and Diavik efforts to get better results, and 4) helping all people to get involved in the monitoring board's work.

<b>BHPB Ekati Environmental Agreement and IEMA</b>	<b>Diavik Environmental Agreement and EMAB</b>
<p><b>Consistency with Purpose of the Environmental Agreement</b></p> <ul style="list-style-type: none"> <li>The BHPB and Diavik EAs have similar guiding principles.</li> </ul>	<p><b>Consistency with Purpose of the Environmental Agreement</b></p> <p>The Diavik EA guiding principles include all of the BHPB EA guiding principles, plus the following.</p> <ul style="list-style-type: none"> <li>Sustainable development.</li> <li>Design and implement environmental protection measures to minimize adverse effects on environmental quality to the extent technically and economically feasible.</li> <li>Promote capacity building for Aboriginal peoples respecting Project related environmental matters.</li> <li>Recognize the particular environmental values of the Lac de Gras region.</li> <li>Promote a cooperative approach among the parties respecting project related environmental matters.</li> </ul>
<p><b>Reporting Requirements of the Environmental Agreement</b></p> <p>The Diavik and BHPB reporting requirements are essentially the same.</p>	<p><b>Reporting Requirements of the Environmental Agreement</b></p> <p>BHPB's EA requires an annual public report of its activities and recommendations. Government and BHPB must provide written reasons when not accepting IEMA's recommendations.</p>

<b>BHPB Ekati Environmental Agreement and IEMA</b>	<b>Diavik Environmental Agreement and EMAB</b>
<p data-bbox="250 264 748 394"><b>Environmental Management Plans - Contents of Environmental Management Plans of the Environmental Agreement</b></p> <p data-bbox="250 396 764 485">BHPB's EA requires the submission of management plans for the construction and operating phases of the mine.</p> <p data-bbox="250 518 813 667">The BHPB EA does not prescribe what management plans BHPB is required to submit; however, existing regulatory instruments prescribe the management plans that are required.</p>	<p data-bbox="841 264 1403 359"><b>Environmental Management Plans - Contents of Environmental Management Plans of the Environmental Agreement</b></p> <p data-bbox="841 361 1398 449">Diavik's EA requires management plans for construction, operations, and closure phases of the mine.</p> <p data-bbox="841 489 1430 611">The Diavik EA prescribes the environmental management plans that shall be submitted, for the construction, operations, and closure phases of the project and includes the following:</p> <ul data-bbox="889 621 1430 1402" style="list-style-type: none"> <li>• Water Management Plan</li> <li>• Hazardous Materials Management Plan</li> <li>• Blasting/explosives management plan</li> <li>• Emergency response plan</li> <li>• Processed Kimberlite containment management plan</li> <li>• Country rock and till storage management plan</li> <li>• Dredged lakebed sediment management plan</li> <li>• Reclamation and abandonment plan(s)</li> <li>• Biotite schist management plan</li> <li>• Exploration environmental management plan</li> <li>• Fish habitat management plan</li> <li>• Construction areas and activity management plan</li> <li>• Operations area activity management plan.</li> <li>• The environmental management and reporting approach in the Diavik EA are similar in that Diavik commits to providing management plans.</li> <li>• For each phase of the project the EA then lists the various</li> </ul>

<b>BHPB Ekati Environmental Agreement and IEMA</b>	<b>Diavik Environmental Agreement and EMAB</b>
<p><b>Environmental Monitoring Programs of the Environmental Agreement</b> Both EA's prescribe the minimum acceptable monitoring effectiveness.</p>	<p><b>Environmental Monitoring Programs of the Environmental Agreement</b> Diavik's monitoring requirements include all of BHPB's plus the following.</p> <ul style="list-style-type: none"> <li>• Verify the accuracy and the effectiveness of measures taken to mitigate any adverse environmental effects of the project.</li> <li>• Determine the effectiveness of measures taken to mitigate any adverse environmental effects of the project.</li> <li>• Establish or confirm thresholds of early warning signs.</li> <li>• Trigger action by adaptive mitigation measures where appropriate.</li> <li>• Provide opportunities for the involvement or active participation of each of the Aboriginal Peoples in the implementation of the monitoring programs; and</li> <li>• Provide training opportunities for each of the Aboriginal Peoples.</li> </ul>
<p><b>Environmental Components of the Environmental Agreement</b> Diavik and BHPB consider the same environmental monitoring components.</p>	<p><b>Environmental Components of the Environmental Agreement</b> Diavik and BHPB consider the same environmental monitoring components.</p>
<p><b>Monitoring Data of the Environmental Agreement</b> Diavik and BHPB have virtually the same monitoring and data results sections.</p>	<p><b>Monitoring Data of the Environmental Agreement</b> Diavik and BHPB have virtually the same monitoring and data results sections.</p>
<p><b>Closure and Reclamation Plan of the Environmental Agreement</b> The closure and reclamation sections of the two EA's differ with Ekati's EA emphasizing regulation and periodic review. Ekati's closure and reclamation section sets out what should be reclaimed and reclamation plan submission requirements.</p>	<p><b>Closure and Reclamation Plan of the Environmental Agreement</b> The closure and reclamation sections of the two EA's differ, with Diavik's emphasizes security and enforcement provisions. However, through regulatory instruments such as the Water Licence BHPB and Diavik have virtually the same closure and reclamation plan requirements.</p>
<p><b>Ongoing Environmental Compliance of the Environmental Agreement</b> The IEMA includes conditions found in Land Use Permits and Water Licenses.</p>	<p><b>Ongoing Environmental Compliance of the Environmental Agreement</b> The Diavik EA requires confirmation of compliance and the following:</p> <ul style="list-style-type: none"> <li>• The Minister can on his/her own or at the</li> </ul>

<b>BHPB Ekati Environmental Agreement and IEMA</b>	<b>Diavik Environmental Agreement and EMAB</b>
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request of EMAB, have a qualified person conduct an investigation to confirm compliance.

**Archaeological Sites of the Environmental Agreement**

The Diavik and Ekati EAs archaeological sections are virtually the same.

**Archaeological Sites of the Environmental Agreement**

The Diavik and Ekati EAs archaeological sections are virtually the same except Diavik commits to conducting archaeological work to the highest standard of the day.

**Traditional Knowledge of the Environmental Agreement**

BHPB and Diavik EAs both require the integration and use of Traditional Knowledge in environmental management and monitoring. IEMA primarily through a phase II TK study.

**Traditional Knowledge of the Environmental Agreement**

The Diavik EA has provisions for Traditional Knowledge and Aboriginal involvement throughout the agreement.

**Aboriginal Community Involvement**

Both EAs require the involvement of Aboriginal people. Diavik's EA contains additional clauses that state Diavik shall use its best efforts to: (a) give priority to members of each of the Aboriginal Peoples in the provision of training and employment in relation to environmental monitoring in accordance with the provisions of the Socio-economic Monitoring Agreement; and (b) Provide technical training opportunities for youth of each of the Aboriginal Peoples.

**Security and Enforcement of the Environmental Agreement**

The difference between the two EAs is that Ekati's does not have a schedule of security payments and committed expenditures for reclamation work for each year of the mine's life.

**Security and Enforcement of the Environmental Agreement**

The noticeable difference between the two EAs is that Diavik's has a schedule of security payments and committed expenditures for reclamation work for each year of the mine's life.

**Resolution of Disputes of the Environmental Agreement**

BHPB and Diavik EAs have virtually the same dispute resolution mechanisms.

**Resolution of Disputes of the Environmental Agreement**

BHPB and Diavik EAs have virtually the same dispute resolution mechanisms except the Diavik EA does not include mediation before going to arbitration. The Diavik EA also sets out the Arbitrator's jurisdiction while the Ekati EA does not.

## **APPENDIX 3 PRESENTATIONS**