Nunavut Water Board File No. NWB1JER
Nunavut Impact Review Board File No. 00MN059

NUNAVUT WATER BOARD

AND

NUNAVUT IMPACT REVIEW BOARD

PRE-HEARING DECISION

Date of pre-hearings: 5, 6, 20 June 2001
Date of decision: 17 July 2001

IN THE MATTER OF Article 12 and 13 of the *Nunavut Land Claim Agreement*.

- and –

IN THE MATTER OF applications filed by Tahera Corporation on 11 September 2000 to the Nunavut Water Board and the subsequent forwarded application on 22 September 2000 to the Nunavut Impact Review Board for pre-hearing procedural issues with respect to the Jericho Diamond Project.

Cite as: Tahera Pre-Hearing Conference Decision

CONTENTS

I. SUMMARY

Tahera Corporation is proposing to construct and operate a diamond mine near Contwoyto Lake, Nunavut. The mine has an estimated 8-year lifespan and will employ 105 to 175 people. Tahera applied to the Nunavut Water Board (NWB) for a water licence in September 2000. The Nunavut Impact Review Board (NIRB) screened this application and determined that a public review by the NIRB was appropriate; the responsible federal Minister concurred with the NIRB determination. Tahera's application was distributed to the parties for comment and asked all parties to respond to ten procedural issues. The NWB and the NIRB collaborated in a pre-hearing conference for this application. Following the pre-hearings and subsequent communication, the parties' presented their positions on the ten issues.

In this pre-hearing decision, the two Boards (primarily the NIRB) decided that the existing guidelines (April 5, 2000) are adequate (Issue 1); that while Tahera's scoping information is generally satisfactory, the scoping Section 16 factors under the *Canadian Environmental Assessment Act* (CEAA) will also be taken into account (Issue 2); that some of the suggestions for new parties at the hearing are acceptable (Issue 3); that there will be joint hearing format (Issue 4); that the details of a site visit will be determined in the near future (Issue 5); that there will be formal and informal hearings in Cambridge Bay, and informal hearings in Gjoa Haven and Kugluktuk (Issue 6); that the Boards have determined both a time schedule for a November 15, 2001 hearing and additional information requirements (Issue 7 and 8); that the order for most presentations has been set (Issue 9); and that every party is responsible for their own translations (Issue 10).

II. BACKGROUND

This matter involves the Benachee Resources' application to construct and operate a diamond mine (the "Jericho Diamond Project" or "the Project") near Contwoyto Lake, Nunavut. This pre-hearing decision by the NWB and the NIRB ("the Boards") answers ten procedural issues concerning this application.

Benachee Resources Inc., a wholly owned subsidiary of Tahera Corporation[1] (hereinafter "Tahera"), is proposing an open pit diamond mine. The location of the Project is approximately 350 km southwest of Cambridge Bay, 420 kilometres (km) northeast of Yellowknife, and 170 km northeast of the Ekati and Diavik diamond mines.

The proposed mine site is situated in a tundra environment. The area has low terrain relief characterized by numerous lakes and intermittent streams amidst boulder fields, eskers and bedrock outcrops. The Project lies within a region of continuous permafrost. Vegetation includes a mixture of dwarf shrubs, grasses, mosses and lichens, and the predominant cover is heath tundra and lichen-rock communities on boulders and ridges.

The Project's location has (coincident with the Willingham Hills) features with strong influence on the wildlife populations within the area. Caribou, fox, wolf, wolverine, grizzly bear and raptors, including small mammals, may be present. The lakes within this area support stable, slow-growing communities of fish typical of oligotrophic systems.[2] Fish recorded include Arctic char, Arctic grayling, burbot and lake trout.

The Jericho Diamond Project has an estimated 8-year lifespan and will employ between 105 and 175 people at the mine site. The mine pit will cover an area of approximately 16 hectares and up to 190 hectares will be directly disturbed by the Project. The ore mining (for kimberlite) is scheduled at 300,000-330,000 tonnes per year, with a removal rate of 100,000 tonnes in the pre-production period. The ore will be removed every 8 months (April-November) and processed at an *in situ* plant operating year around. Diamond

---

1 Formerly Lytton Minerals Limited.

2 Oligotrophic lakes are deep clear lakes with low nutrient supplies. They contain little organic matter and have a high dissolved-oxygen level. (US Environmental Protection Agency *Glossary of Environmental Terms* 1988).

sorting will also be performed on site. Access and transportation is by airplane (airstrip and lake) and by winter road (the Yellowknife-Lupin Mine road[3]).

On 11 September 2000 the NWB received an application for a water licence from Tahera. The NWB forwarded Tahera's application for the water licence on 22 September 2000 to the NIRB and requested that the NIRB screen this application.[4] The NIRB distributed the application on 5 October 2000 and asked that any comments and recommendations be submitted by 27 October 2000. The NIRB received nineteen replies from government, boards and other organizations located in Nunavut and elsewhere.

In January 2001, the NIRB received a revised project proposal and a draft environmental impact statement (EIS) from Tahera. Based on the comments received and information available, the NIRB sent a letter[5] to the Minister of the Department of Indian Affairs and Northern Development (DIAND) with a section 12.4.4(b)[6] decision under the NLCA. The NIRB's letter contained the following issues or concerns that need to be addressed:

1. Impacts on caribou and predators.
2. Protection of ground and surface water, fish and fish habitat.
3. How will the proponent optimize the socio-economic benefits to the Inuit?
4. Cumulative effects of this project and others focusing on the transportation impacts into and out of the project area.
5. Monitoring program for ecosystemic and socio-economic impacts in the region; and
6. Steps which [Tahera] will take to restore ecosystemic integrity to the project area once the mine is closed.

---

[3] The Jericho mine site is approximately 29 kilometres from the Lupin Mine.

[4] A screening pursuant to s. 12.4.1. of the NLCA which states:

> Upon receipt of a project proposal, NIRB shall screen the proposal to determine whether it has significant impact potential, and therefore whether it requires review under Part 5 or 6.

[5] NIRB letter dated 7 February 2001 to Minister of the DIAND.

[6] 12.4.4 Upon receipt of a project proposal, NIRB shall screen the proposal and indicate to the Minister in writing that:

> . . .
> (b) the proposal requires review under Part 5 or 6; NIRB shall identify particular issues or concerns which should be considered in such a review.

On 14 March 2001, the Minister of the DIAND responded that a Part 5 review (meaning the NIRB, not federal[7]) is the more appropriate and, pursuant to section 12.5.1,[8] asked that the NIRB consider the following in its review:

> … I must request that the NIRB review be broad enough to meet the requirements of the federal responsible authorities, including the taking into account the factors outlined under section 16(1)[9] of the CEAA. To avoid unnecessary duplication and delay in final project approvals, the requirements of the CEAA must be satisfied. . . .
>
> … I will support efforts to streamline the review process and would welcome receiving a work plan detailing how the NIRB intends to coordinate its review with the NWB. The work plan must ensure […] more generally, that the regulatory process can build on the results of the environmental assessment. …
>
> … the NIRB must also take into account the well being of Canadian residents outside of the Nunavut Settlement area. As such, I recommend that you discuss the proponent's planned use of the Echo Bay [i.e., the Yellowknife-Lupin Mine] winter road with the Mackenzie Valley Environmental Impact Review Board prior to commencement of your review.

On 30 March 2001, the NIRB and the NWB issued a joint letter with respect to a proposed pre-hearing of Tahera's application and public hearing procedures. This joint letter requested that all parties:

---

[7] A Part 5 review under the NLCA is by the NIRB, whereas a Part 6 review is by a federal body.

[8] 12.5.1 In sending a proposal for review, the Minister may identify particular issues or concerns which NIRB shall consider in such a review. This shall not limit NIRB from reviewing any matter within its mandate.

[9] 16.(1) Every screening or comprehensive study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors:
(a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
(b) the significance of the effects referred to in paragraph (a);
(c) comments from the public that are received in accordance with this Act and the regulations;
(d) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project; and
(e) any other matter relevant to the screening, comprehensive study, mediation or assessment by a review panel, such as the need for the project and alternatives to the project, that the responsible authority or, except in the case of a screening, the Minister after consulting with the responsible authority, may require to be considered.

Footnote continued on following page

1. Assess the draft EIS;
2. Read the Minister of DIAND's decision letter and consider what procedures are required for the Part 5 review;
3. Attend the pre-hearing meetings in early June to comment on the draft EIS and to comment on procedural matters; and,
4. Provide any comments by 6 April 2001.

Five organizations responded with comments. From these comments, the NIRB and the NWB issued a second joint letter, dated 8 May 2001, to finalize the pre-hearing meetings and to ask that written submissions be received by 22 May 2001. Eight submissions were received. The NIRB and the NWB then held pre-hearing meetings in several communities, including technical sessions, so that all parties could:

1. Comment on the draft EIS; and
2. Comment on the ten procedural questions.

The Boards then allowed further written submissions on the question of the EIS guidelines. These submissions were also in response to the Paul F. Wilkinson & Associates' (Wilkinson) report dated 15 June 2001. The deadline for these written submissions was 22 June 2001. Seven organizations responded with comments. The DIAND[10], the KIA[11], Environment Canada[12], Transport Canada[13] and Health Canada[14] submitted comments on the draft guidelines but chose not to make a comment on the 15 June 2001 Paul F. Wilkinson & Associates' report. Tahera[15] provided comments to both the draft guidelines and the 15 June 2001 Paul F. Wilkinson & Associates' report. The NTI[16] stated that both the guidelines and the 15 June 2001 Paul F. Wilkinson & Associates' report were complete and adequate.

---

[10] Letter from the DIAND to the NIRB dated 22 June 2001
[11] Letter from the KIA to the NIRB dated 22 June 2001
[12] Letter from Environment Canada to the NIRB dated 22 June 2001
[13] Letter from Transport Canada to the NIRB dated 22 June 2001
[14] Letter from Health Canada to the NIRB dated 22 June 2001
[15] Letter from Tahera to the NIRB dated 22 June 2001
[16] Letter from the NTI to the NIRB dated 25 June 2001

This pre-hearing decision answers the following ten procedural issues.

III. PRE-HEARING ISSUES

1. Should the NIRB require Tahera to be subject to the Guidelines or additional EIS material?

2. What issues should be dealt with at the hearing?

3. Are there parties that should be added or dropped, given Minister Nault's comments regarding the Mackenzie Valley, plus in particular, the need to encourage local participation?

4. Should the actual hearings be conducted by both NIRB and NWB?

5. Should there be a site visit? By whom and where?

6. Should the actual hearing be split into two formats, i.e., a "technical" hearing and a very informal "community" hearing?

7. What should be the date, time and place of the main hearing?

8. When should the documents be filed before the Public Hearing?

9. What should be the order of presentations at the Public Hearing?

10. Who translates which documents and how long will this take?

IV. SUMMARY OF THE PARTIES' POSITIONS

1. SHOULD THE NIRB REQUIRE TAHERA TO BE SUBJECT TO THE GUIDELINES OR ADDITIONAL EIS MATERIAL?

Tahera's position is that their draft EIS document meets both with the Guidelines (April 5, 2000) and with section 12.5.2. of the NLCA.[17] Regarding the four federal

[17] 12.5.2 When a project proposal has been referred to NIRB by the Minister for review, NIRB shall, upon soliciting any advice it considers appropriate, issue guidelines to the proponent for the preparation of an impact statement. It is the responsibility of the proponent to prepare an impact statement in accordance with any guidelines established by NIRB. Where the original project proposal submitted by the proponent for screening contains the information required for an impact statement, NIRB may accept the original project proposal

Footnote continued on following page

departments, the DIAND and Fisheries and Oceans (DFO) favour new guidelines, while Environment Canada (EC) did not respond and Natural Resources Canada (NRCAN) questions how much of the existing guidelines should be incorporated in new guidelines. The Government of Nunavut's Department of Sustainable Development (DSD) concurred with the DIAND/DFO, i.e., new guidelines would be required.

The Kitikmeot Inuit Association (KIA) see the existing guidelines being acceptable, while the Canadian Arctic Resources Committee (CARC) want the guidelines to include (i) the future cost of the winter road (especially with the Lupin mine closing); (ii) the extent of the exploration, (iii) economic analysis of alternatives, (iv) precise water management and geo-chemical studies and (v) more consideration of cumulative effects, especially for socio-economic. There was no response to this question from the MVEIRB[18] or the Yellowknives Dene First Nation (YK Dene).

The Nunavut Tungavik Inc. (NTI) provided the following comment[19] on the Guidelines question:

1. The guidelines are comprehensive and more than adequate for the Jericho diamond project, particularly in view of the sources from which the guidelines were drawn.

---

instead of requiring the preparation of an impact statement. Where appropriate, an impact statement shall contain information with respect to the following:

(a) project description, including the purpose and need for the project;
(b) anticipated ecosystemic and socio-economic impacts of the project;
(c) anticipated effects of the environment on the project;
(d) steps which the proponent proposes to take including any contingency plans, to avoid and mitigate adverse impacts;
(e) steps which the proponent proposes to take to optimize benefits of the project, with specific consideration being given to expressed community and regional preferences as to benefits;
(f) steps which the proponent proposes to take to compensate interests adversely affected by the project;
(g) the monitoring program that the proponent proposes to establish with respect to ecosystemic and socio-economic impacts;
(h) the interests in lands and waters which the proponent has secured, or seeks to secure;
(i) options for implementing the proposal; and
(j) any other matters that NIRB considers relevant.

[18] The MVEIRB did not respond to the ten issues.

[19] Letter from NTI (S.B. Lopatka) to NIRB (R. Chaudhary) dated 23 June 2001.

2. Wilkinson's report is thorough and complete in its evaluation of the Tahera Draft EIS, concerning compliance to the established guidelines.
3. Wilkinson's report provides Tahera with good direction concerning the areas that they should address, in completing a final EIS, to be discussed at the Public Hearing.

2. WHAT ISSUES SHOULD BE DEALT WITH AT THE HEARING?

Tahera is prepared to deal with all of the issues addressed at the pre-hearing. The DIAND, the DFO and the DSD suggest the added need for scoping, especially for issues that warrant the need for more information. The DIAND did not single out any issue and mentioned the common issues (for a diamond mine) of water quality, fish and wildlife, air quality, permafrost, abandonment and restoration, waste management, heritage sites, traditional land use, socio-economic issues, and worker health and safety.

The NRCAN cited the issues of waste, water, air, caribou, fish and wildlife, while the NTI cited socio-economic issues regarding a possible larger project in the future. The KIA mentioned that it is not possible at this time to identify those issues which should be subjected to greater scrutiny at a hearing until Tahera submits a revised EIS. The YK Dene mentioned the winter road, particularly air and water quality and noise, and the impact on caribou from their perspective. The CARC noted intervenor funding and procedural issues for the Pre-hearing conference.

3. ARE THERE PARTIES THAT SHOULD BE ADDED OR DROPPED, GIVEN MINISTER NAULT'S COMMENTS REGARDING THE MACKENZIE VALLEY, PLUS IN PARTICULAR, THE NEED TO ENCOURAGE LOCAL PARTICIPATION?

Tahera, the DIAND, the DSD, the NTI and the YK Dene mentioned the MVEIRB as a party, with the DSD adding the MVEIRB's role should be restricted to the winter road only. The DIAND added as potential parties the non-governmental environmental organizations (ENGOs), the Chamber of Mines and the community of Gjoa Haven. The NRCAN listed Ecology North, the Canadian Parks and Wilderness Society and the World Wildlife Fund,

while the CARC has a distribution list of ENGOs and recommends the Dene. The KIA suggests the following Elders be added as parties for the proceedings:[20]

- Bobby Algona
- Franklin Kaodluak
- Jessie Kapolak
- Lena Kamoayok
- Moses Koihok
- Peter Avalak Sr.
- Joseph Niptanatiak

4. SHOULD THE ACTUAL HEARINGS BE CONDUCTED BY BOTH NIRB AND NWB?

Tahera favours a joint Board hearing as being the most efficient, but defers this decision to the Boards. The DIAND wants the NIRB phase separated from, and conducted before, the regulatory (i.e., the NWB) phase. The NRCAN sees a one-day hearing for the NWB, and the DSD concurs with the DIAND's separate hearings and sees the environmental assessment (EA) phase as a building block for the regulatory phase.[21] However, in addition to wanting an orderly, fair, effective and complete hearing, the DSD suggests that a NWB representative attend the EA phase to gather information for the subsequent regulatory phase. The NTI recommends that the NIRB take the lead at any hearing with the NWB's cooperation and assistance. The KIA recommends leaving this decision to the NIRB's discretion. The CARC recommends the NWB have a position on the NIRB panel, which again suggests some form of a joint hearing.

5. SHOULD THERE BE A SITE VISIT? BY WHOM AND WHERE?

Tahera does not take a position but they will cooperate with any planned site visit. The DIAND favours a site visit (this summer being ideal), adding that parties who think a

---

[20] Letter from the KIA's legal counsel to the NIRB dated 13 June 2001.

[21] DSD letter (no date) to the NIRB.

visit would help them in their interventions should have the opportunity to see the site. A coordinated visit with all interested parties is preferred to avoid disruption at the mine site. The NRCAN also favours a site visit, as does the KIA and the DSD who would like a summer visit. The CARC prefers a site visit in the summer and for the government, co-management groups and other intervenors to be included.

6. SHOULD THE ACTUAL HEARING BE SPLIT INTO TWO FORMAT, I.E., A "TECHNICAL" HEARING AND A VERY INFORMAL "COMMUNITY" HEARING?

The parties' response[22] to this question is unanimous: the hearing should be split into technical (i.e., formal) and community (i.e., informal) venues. Both the DIAND, the NRCAN, the DSD and the CARC mentioned the need for public participation, and the NRCAN added that the priority at the formal venue should be technical in nature.

7. WHAT SHOULD BE THE DATE, TIME AND PLACE OF THE MAIN HEARING?

Tahera prefers the hearing to be done as soon as possible, with the deadline being the winter road opening in November 2001.[23] The DIAND suggests that community participation be solicited and worked out with the NIRB to achieve the fullest participation, and that hearings in the fall are best. The NRCAN mentioned, based on public interest and availability, the communities of Cambridge Bay, Kugluktuk and Gjoa Haven. The DSD favours having the communities decide this question, while the KIA agreed with the venues proposed by the Boards and suggested that the hearings take place 8 weeks following the filing of a revised EIS. The CARC agrees with the NRCAN's choice of communities, and recommends the possible addition of Umingmatktok and Bathurst Inlet.[24]

---

22 The parties being Tahera, DIAND, NRCAN, DFO, DSD, NTI, KIA and CARC.

23 In Tahera's Executive Summary (dated 5 September 2000) some of the proposed milestones included final EIS submission: 2 January 2001, project approval: 30 June 2001, project permits: 31 July 2001, and mobilization: January-March 2002.

24 CARC letter dated 4 June 2001 to the Boards.

Footnote continued on following page

8. WHEN SHOULD THE DOCUMENTS BE FILED BEFORE THE PUBLIC HEARING?

The CARC suggests 2 weeks for this filing, while Tahera 4 weeks, the NRCAN 6 weeks, the NTI 8 weeks and the KIA 8 weeks. The DIAND provided, which is identical to the times proposed by the DSD,[25] the following schedule in their presentation:

Scope set, guidelines finalized	Week 1
Conformity Analysis (on draft EIS)	Week 6
Additional Material provided by Tahera (incl. Final EIS)	Week 10
Technical Interventions submitted	Week 16
Public Hearing	Week 19-20

The DIAND seems, then, to be proposing 5 weeks for conformity analysis, followed by 4 weeks to allow Tahera to resubmit the revised and final EIS, with another 6 weeks to receive comments on the revised EIS and 3-4 weeks afterwards for hearing preparation.

9. WHAT SHOULD BE THE ORDER OF PRESENTATIONS AT THE PUBLIC HEARING?

Tahera said that it should present first and have the opportunity to reply at the end. The DIAND, the NRCAN and the DSD suggest by issues and that proponents usually go first with there being equal status to all interveners. The NTI agreed with the order provided by the Boards. The KIA recommends that the order follow the sequence of the submissions being received, and the CARC suggests by Inuit organization, government, other intervenors and the general public.

---

[25] DSD letter (no date) to the NIRB.

10. WHO TRANSLATES WHICH DOCUMENTS AND HOW LONG WILL THIS TAKE?

Both Tahera and the NTI favour that everyone be responsible for their own translations. The DIAND suggests that they will do the executive summary of technical interventions in Innuinaqtun and, if the NIRB thinks necessary, in Inuktitut. The NRCAN and the DFO concur with the DIAND's suggestion, and the NRCAN added that there needs to be discussions on the timelines for translation. The DSD said they will do their own translations and to provide support. The KIA suggests that Tahera be responsible for translating the Executive summary of the EIS, and the CARC favours that both Tahera and government provide translations in English, Innuinaqtun and Inuktitut. For all other interventions, the CARC suggests that the Boards' translate and that this cost be recoverable from Tahera. The CARC also suggests that the timelines be established by the translators.

V. THE BOARDS' ANALYSIS AND DECISION

1. SHOULD THE NIRB REQUIRE TAHERA TO BE SUBJECT TO THE GUIDELINES OR ADDITIONAL EIS MATERIAL?

For a Part 5 NLCA review, section 12.5.2 of the NLCA must be fulfilled. It states:

> When a project proposal has been referred to NIRB by the Minister for review, NIRB shall, upon soliciting any advice it considers appropriate, issue guidelines to the proponent for the preparation of an impact statement. It is the responsibility of the proponent to prepare an impact statement in accordance with any guidelines established by NIRB. Where the original project proposal submitted by the proponent for screening contains the information required for an impact statement, NIRB may accept the original project proposal instead of requiring the preparation of an impact statement. […]

As such, this provision requires the NIRB to issue guidelines when a project has been referred to the NIRB by the Minister for review. In this guidelines issuance the NIRB shall solicit any advice it considers appropriate.

This provision also stipulates that the proponent prepare an EIS in accordance with the issued guidelines, and for that EIS, whether in its original proposal or in a subsequent EIS, to contain the criteria (a) to (j) under s. 12.5.2.[26] Upon receiving the proponent's EIS, another requirement is for the accepted EIS to accord with the issued guidelines and the criteria (a) to (j) under s. 12.5.2.

For the purposes of the Jericho Mine Project, the NIRB had issued guidelines (April 5, 2000) for Tahera and solicited advice on the guidelines. Tahera both prepared and submitted a draft EIS using the guidelines (April 5, 2000). Upon receiving and reviewing Tahera's draft EIS, and following our review of the pre-hearing conference submissions, the NIRB has determined that Tahera's draft EIS has met with the requirements of the guidelines (April 5, 2000) and the criteria (a) to (j) under s. 12.5.2.

In reaching this determination with respect to the guidelines, the NIRB had Wilkinson perform a conformity analysis on Tahera's EIS; this analysis was completed on 5 April 2000. The conformity analysis assessed whether Tahera's EIS addressed all of the requirements of the guidelines. In Wilkinson's opinion, "[w]e do not believe that the Proponent will need to conduct further field work in order to produce an EIS that is complete…". The NIRB accepts Wilkinson's conformity analysis and Wilkinson's more recent analysis and explanation during the PHC submissions.

While the information provided by Tahera in their draft EIS has met the threshold of the guidelines (April 5, 2000) and s. 12.5.2 of the NLCA, and can thus be sent to the scrutiny of a public hearing, the draft EIS is not *yet* accepted by the NIRB as the final EIS. Details on the further requirements for the final EIS are provided below (see Issue 8).

---

[26] See footnote 10 for (a) to (j).

In soliciting advice on the April 5, 2000 guidelines, parties raised questions on the document's adequacy.[27] In particular, whether or not this document is adequate for the size of project proposed by Tahera. In response, the Boards' note that Wilkinson, who drafted the guidelines, used other mining projects, like the Ekati and Diavik diamond mines and Voisey's Bay, as bases for this document.[28] Wilkinson pointed out that these mining projects are much larger than the proposed Jericho Diamond Project and, as such, make the guidelines (April 5, 2000), in its opinion, sufficiently comprehensive for Tahera's Project. The Boards' concur with Wilkinson on this point. Accordingly, the Boards have determined that no further guidelines, beyond the existing guidelines (April 5, 2000), are required for the Jericho Diamond Project. However, the additional requirements for the final EIS are provided below (see Issue 8).

2. WHAT ISSUES SHOULD BE DEALT WITH AT THE HEARING?

Regarding the scope of the Project, the Boards are generally satisfied with the scope and spatial scale provided by Tahera. However, the Boards must ensure that, in addition to the NLCA requirements, the Minister of the DIAND's requirements for a Part 5 review are undertaken. One of the Minister's requirements is the CEAA where he stated:

> … I must request that the NIRB review be broad enough to meet the requirements of the federal responsible authorities, including the taking into account the factors outlined under section 16(1) of the CEAA. …

Section 16(1) of the CEAA reads:

> 16(1) Every […] assessment […] shall include a consideration of the following factors:
>
> (a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;

---

[27] For example, the DIAND.

[28] Wilkinson letter of 15 June 2001 to NIRB.

> (b) the significance of the effects referred to in paragraph (a);
> (c) comments from the public […];
> (d) measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project; and
> (e) any other matter relevant to the […] assessment by a review panel, such as the need for the project and alternatives to the project […].

The Boards' note that while the criteria found section 16(1) is mandatory for every level of assessment, the criteria found in section 16(2) is also mandatory for an assessment by a review panel. Section 16(2) of the CEAA reads:

> (2) In addition to the factors set out in subsection (1), every […] assessment by a review panel shall include a consideration of the following factors:
> (a) the purpose of the project;
> (b) alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;
> (c) the need for, and the requirements of, any follow-up program in respect of the project; and
> (d) the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the sent and those of the future.

Based, then, on section (16)(1) and (2) of the CEAA,[29] every assessment by a review panel must take all of these factors into consideration. The Boards' note from a court decision[30]

---

[29] The MVEIRB has virtually the same factors or criteria as s. 16(1) and (2) of the CEAA. The MVEIRB's criteria under s. 117 of the *Mackenzie Valley Resource Management Act* states:

> 117. (1) Every environmental assessment of a proposal for a development shall include a determination by the Review Board of the scope of the development, subject to any guidelines made under section 120.
> (2) Every environmental assessment and environmental impact review of a proposal for a development shall include a consideration of
> (a) the impact of the development on the environment, including the impact of malfunctions or accidents that may occur in connection with the development and any cumulative impact that is likely to result from the development in combination with other developments;
> (b) the significance of any such impact;
> (c) any comments submitted by members of the public in accordance with the regulations or the rules of practice and procedure of the Review Board;
> (d) where the development is likely to have a significant adverse impact on the environment, the imposition of mitigative or remedial measures; and
> (e) any other matter, such as the need for the development and any available alternatives to it, that the Review Board or any responsible minister, after consulting the Review Board, determines to be relevant.
> (3) An environmental impact review of a proposal for a development shall also include a consideration of

Footnote continued on following page

that the CEAA does not require for these factors to be examined sequentially; in other words, the order of when these factors are examined is discretionary.

With respect to scope of the project, parties raised questions on this matter.[31] While the term "scope" is not found in Article 12 and 13 of the NLCA, scoping is a routine practice in EA. The Boards' observe that the CEAA does not define the terms "scope" or "scoping"[32] or the process of scoping a project.[33]

(a) the purpose of the development;
(b) alternative means, if any, of carrying out the development that are technically and economically feasible, and the impact on the environment of such alternative means;
(c) the need for any follow-up program and the requirements of such a program; and
(d) the capacity of any renewable resources that are likely to be significantly affected by the development to meet existing and future needs.

[30] *Alberta Wilderness Assn*. v. *Express Pipelines Ltd.* [1996] F.C.J. No. 1016 DRS 96-16546. The Court determined that nothing in the CEAA supports a view that s. 16(1) requires a sequential examination of the factors enumerated therein.

[31] For example, the DIAND.

[32] The term "scoping" is defined in the Canadian Environmental Assessment Agency's *Procedures for an assessment by a review panel* (November 1997) as "[a]n exercise of identifying the environmental and related issues that will be examined in an environmental assessment." The Agency's publications are useful for understanding the CEAA process, but are not legally binding.

[33] The CEAA has scope of project in s. 15 which reads:

15. (1) The scope of the project in relation to which an environmental assessment is to be conducted shall be determined by
(a) the responsible authority; or
(b) where the project is referred to a mediator or a review panel, the Minister, after consulting with the responsible authority.
(2) […]
(3) Where a project is in relation to a physical work, an environmental assessment shall be conducted in respect of every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work that is proposed by the proponent or that is, in the opinion of
(a) the responsible authority, or
(b) where the project is referred to a mediator or a review panel, the Minister, after consulting with the responsible authority, likely to be carried out in relation to that physical work.

The CEAA in s. 16(3) also deals with scope:

16(3) The scope of the factors to be taken into consideration pursuant to paragraphs (1)(a), (b) and (d) and (2)(b), (c) and (d) [of s. 16] shall be determined
(a) by the responsible authority; or

Footnote continued on following page

The scope of this project has undergone judicial consideration.[34] One court examined the process of scoping which involved several issues: the scope of the project itself; the scope of the EA; the scope of the factors considered; and the scoping of interested parties.[35] However, based on judicial consideration,[36] there appears to be limited direction available for a tribunal on scope. Some direction may include (i) that the scope of the EA may be increased beyond what is proposed in order to take into account the environmental effects of the project that the trier believes are likely to be carried out during the project's life cycle;[37] (ii) that the "independent utility test" is too narrow for scoping purposes;[38] and (iii) that the

---

(b) where a project is referred to a mediator or a review panel, by the Minister, after consulting the responsible authority, when fixing the terms of reference of the mediation or review panel.

[34] For example, see *Friends of the Oldman River Society* v. *Canada (Minister of Transport)* [1992] 1 S.C.R. 3; *Citizens' Mining Council of Newfoundland & Labrador Inc.* v. *Canada (Minister of the Environment)* (1999), 163 F.T.R. 36 (T.D.); *Manitoba's Future Forest Alliance* v. *Canada (Minister of the Environment)* (1999), 170 F.T..R.161 (T.D.); *Friends of the West Country Assn.* v. *Canada (Minister of Fisheries & Oceans)* [2000] 2 F.C. 263 (C.A.); *Lavoie* v. *Canada (Minister of Environment)* [2000] F.C.J. No. 1238 (T.D.).

[35] *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)* [2001] F.C.J. No. 18 Docket A-642-99. The Federal Court of Appeal relied on R. Northey's *1995 Annotated Canadian Environmental Assessment Act* which defined these issues as:

1. A first issue is the scope of the project. These considerations include the relationship of the project to other projects (s. 15(2)) and the scope of the project under assessment (s. 15(1)) [of the CEAA – see footnote 26].
2. A second issue is the scope of the environmental assessment. Under subsection 16(1), a responsible authority may include the following factors …[see this decision for the factors]
3. A third issue is the scope of the factors considered. This topic would involve consideration of the types of environmental effects studied, the geographic boundaries of the assessment study and the time frame of the effects under assessment.
4. A fourth issue is scoping interested parties. Such parties may include specialist federal departments, other federal authorities, other governments, non-governmental and other private organizations, and members of the public.

[36] The judicial consideration here is statutory interpretation of the CEAA (or the EARPGO) and its regulations.

[37] *Manitoba's Future Forest Alliance* v. *Canada (Minister of the Environment)* [1999] F.C.J. No. 903 Court File No. T-434-98. Federal Court of Canada - Trial Division. This finding was for s. 15(3) of the CEAA.

[38] See *Friends of the West Country Assn.* v. *Canada (Minister of Fisheries and Oceans)* [1999] F.C.J. No. 1515 Court File No. A-550-98. Federal Court of Appeal. This case examined subsections 15(1), 15(3), 16(1) and 16(3) of the CEAA.

The "independent utility test" is from a US case (*Thomas* v. *Peterson* 753f (2d) 754 (9th Circuit 1985)). Justice Rothstein in *Friends* understood this test to mean that "…where an individual project has no independent utility but is inextricably intertwined with other projects, the agency charged with considering

Footnote continued on following page

scope of a project is limited to undertakings directly related to the proposed physical work, such as its construction and operation, and ancillary or subsidiary undertakings.[39]

While the Minister of the DIAND only specified section 16(1) for a Part 5 review, the NIRB will take both section 16(1) and (2) into account as follows. First, the NIRB's ecosystemic[40] mandate (in section 12.2.5[41] of the NLCA) inherently allows it to assess cumulative effects[42] (as per section 16(1)(a) of the CEAA). The NLCA mandate is broad enough to encompass ecological systems, conservation and sustainability.[43] For ecological systems or processes, placing value on an ecosystem's services is something that we believe needs to be integrated in environmental impact assessment (EIA).[44] A recent guidance document[45] examining ecological processes in EIA offered the following:

---

the environmental impacts must consider all projects". The test was rejected as not being helpful for interpreting subsection 15(3) of the CEAA.

39 *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)* [2001] F.C.J. No. 18 Docket A-642-99. This finding was for the scope of a project under s. 15 of the CEAA.

40 In s. 12.1.1 of the NLCA, "ecosystemic" means relating to the complex of a natural community of living organisms and its environment functioning as an ecological unit in nature.

41 12.2.5 In carrying out its functions, the primary objectives of NIRB shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB shall take into account the well-being of residents of Canada outside the Nunavut Settlement Area.

42 On cumulative effects regarding compensation matters for loss or damage, the NWB must take s. 20.3.3 of the NLCA into account which includes (in (d)) the cumulative effect of the change in quality, quantity or flow of water in combination with existing water uses.

43 The NLCA in s. 5.1.5 states the principles of conservation as:
(a) the maintenance of the natural balance of ecological systems within the Nunavut Settlement Area;
(b) the protection of wildlife habitat;
(c) the maintenance of vital, healthy, wildlife populations capable of sustaining harvesting needs […]; and
(d) the restoration and revitalization of depleted populations of wildlife and wildlife habitat. [Emphasis added]

44 R.L. Fischman "The EPA's NEPA duties and ecosystem services" Stanford Environmental Law Journal Vol. 20: 497 at 499 (May 2001). This author commented that failure to include the services provided by nature (i.e., as a functioning and productive system), and doing nothing until transformed by development, can leave that ecological system vulnerable to damage. This thinking has been captured by others, such as A. Leopold's view of land as a energy circuit whereby (i) land is not merely soil; (ii) native plants and animals keep the circuit open, while others may or may not; and (iii) man-made changes are different then

Footnote continued on following page

> [C]lean air and clean water depend not only on the control of hazardous discharges, but on the maintenance of ecosystem services that assimilate wastes. […]
>
> … Ecosystems provide not only valuable products and essential services, but also opportunities for recreation and aesthetic enjoyment. Examples of ecosystem services include purifying air and water, providing flood control, building fertile soils, and producing food, fiber, and other natural resources for human consumption.

Second, when comparing section 12.4.2[46] of the NLCA with section 16 of the CEAA, the NIRB as per the NLCA examines similar factors (i.e., environmental effects of a project and its significance, public comments, and technological measures). Third, when comparing section 12.5.2 of the NLCA to section 16 of the CEAA, the NLCA appears to also have *key* factors not listed in the CEAA's factors (e.g., monitoring, compensation). Finally, under s.

---

evolutionary changes, and have effects more comprehensive than is intended or foreseen (from "The Land Ethic" in *A Sand County Almanac*).

[45] Environmental Protection Agency *Considering ecological processes in environmental impact assessments* (July 1999). This document states there are ten ecological processes that effectively capture ecosystem functioning and should be evaluated for adverse effects:

1. Habitats Critical to Ecological Processes
2. Pattern and Connectivity of Habitat Patches
3. Natural Disturbance Regime
4. Structural Complexity
5 Hydrologic Patterns
6. Nutrient Cycling
7. Purification Services
8. Biotic Interactions
9. Population Dynamics
10. Genetic Diversity

[46] 12.4.2 …NIRB shall be guided by the following principles:

(a) NIRB generally shall determine that such a review is required when, in its judgement,
  (i) the project may have significant adverse effects on the ecosystem, wildlife habitat or Inuit harvesting activities,
  (ii) the project may have significant adverse socio-economic effects on northerners,
  (iii) the project will cause significant public concern, or
  (iv) the project involves technological innovations for which the effects are unknown;

(b) NIRB generally shall determine that such a review is not required when, in its judgement, the project is unlikely to arouse significant public concern and
  (i) the adverse ecosystemic and socio-economic effects are not likely to be significant, or
  (ii) the project is of a type where the potential adverse effects are highly predictable and mitigable with known technology; and

(c) in determining whether a review is required or not NIRB shall give greater weight to the provisions of Sub-section 12.4.2(a).

12.5.2(j) of the NLCA, the NIRB may request information not otherwise found in the NLCA. This clause allows the NIRB to address any other factor deemed relevant. The Boards intend to fill these gaps by focusing much of its impact assessment decisions on traditional knowledge. For this reason we are requiring the participation of Elders (see Issue 3 below) and we are using informal community-based hearings in Kugluktuk and Gjoa Haven.

Regarding intervenor funding, the Boards' note the following provision from the NLCA:

> 10.9.1 The Agreement shall in no way prejudice the ability of Inuit to benefit from any programs of intervenor funding that may be in place from time to time.

The Boards' also note that intervener or participant funding for reviews is provided for under the CEAA legislation by its Agency:

> 58 (1.1) For the purposes of this Act, the Minister shall establish a participant funding program to facilitate the participation of the public in […] assessments by review panels.
>
> *Procedures For An Assessment By A Review Panel* [47]
>
> 2.3.1 For each project subject to […] assessment by a review panel, the Agency shall establish and administer a participant funding program to facilitate the participation of the public. […]
>
> 2.3.2 Funding during the early phases of the review may assist the public to:
> a) review a draft project-specific guidelines document issued by the Agency; and
> b) prepare for and attend any planned scoping meetings held to identify issues that should be included in the guidelines.
>
> 2.3.3 Participants will also be entitled to apply for money to assist them in reviewing the [EIS], and to prepare for and participate in public hearings. […]
>
> *Participant Funding Program* [48]

---

[47] A guideline issued pursuant to s. 58(1)(a) of the CEAA (November 1997).

[48] Guide for Assessments by Review Panels (December, 2000). Prepared by the CEAA Operational Policy Working Group.

> Any legal entity (such as an incorporated public interest organization, an individual, or an individual acting on behalf of an organization) may be eligible for funding providing it meets the following criteria:
> - Applicants must demonstrate an interest in the project's potential environmental effects (which can include potential related effects on health, social, economic or cultural conditions).
> - Applicants must show that a representation of their interest will contribute to the panel's investigation of the potential environmental effects of the proposed project. […]

The Boards' recognize that, while the Inuit have a guaranteed right under the NLCA to benefit from intervenor funding, this funding is available, based on criteria, to any legal entity and at various stages of a review under the CEAA. The Minister's letter (above) to the NIRB requested the requirements of the CEAA be satisfied and that the well being of Canadian residents outside of the Nunavut Settlement area be taken into account; however, nothing was mentioned in the Minister's letter on participant funding. The Boards' are supportive of participant funding being made available, and will advise the Nunavut Implementation Panel that this type of funding should be made possible for CARC and for Elders.

3. ARE THERE PARTIES THAT SHOULD BE ADDED OR DROPPED, GIVEN MINISTER NAULT'S COMMENTS REGARDING THE MACKENZIE VALLEY, PLUS IN PARTICULAR, THE NEED TO ENCOURAGE LOCAL PARTICIPATION?

The Boards' agree with the KIA's proposed list of the Elders for the proceedings:

- Bobby Algona
- Franklin Kaodluak
- Jessie Kapolak
- Lena Kamoayok
- Moses Koihok
- Peter Avalak Sr.
- Joseph Niptanatiak

The Boards will also ask Doris Kindnektak from Brown Sound to participate. The Boards' agree with the Minister's suggestion of the MVEIRB as a party, especially to deal with cumulative impacts on caribou by the winter road. Unfortunately the MVEIRB did not attend the pre-hearings. Nevertheless, the Boards will ask the MVEIRB, if it wishes, to participate by written submission on the caribou and the transboundary road issue.

Regarding the ENGOs, the Boards are satisfied that the CARC should be a party as they have demonstrated interest and concern in the project in their letter to the NIRB/NWB dated 4 June 2001. The Boards would also like the NWT/Nunavut Chamber of Mines (and the Chambers of Commerce) to provide information on economics and/or social or business interests in mining that affect the residents of Nunavut during the full life cycle of the mine, including its closure. Any other parties that would like to request intervener status must submit a written request to do so to the Boards by 15 November 2001.

4. SHOULD THE ACTUAL HEARINGS BE CONDUCTED BY BOTH NIRB AND NWB?

The NIRB and the NWB intend, as per the Minister's directions and our pre-hearing decision format, to cooperate and to harmonize where possible and where the mandates overlap. As such, the NIRB and the NWB will both be present during the hearings, and the NWB will chair one day on water licence issues at the formal hearing venue in Cambridge Bay.

The Boards see the many benefits of harmonization. First, the NLCA in s. 13.6.1 requires the NIRB and the NWB (and the NPC, which is not relevant here) to cooperate and co-ordinate.[49] Second, the NLCA uses the term "ecosystemic" which speaks to the environment functioning as an ecological unit in nature. This thinking does not separate the environment into components, like land from water, but allows water to be addressed by both Boards.[50] Third, the Minister of DIAND recommended a streamlining of these processes.

---

[49] 13.6.1 The NPC, NIRB and the NWB shall co-operate and co-ordinate their efforts in the review, screening and processing of water applications to ensure they are dealt with in a timely fashion.

[50] In s. 10.6.1 of the NLCA there is provision for a consolidation of Boards' functions by federal statute. No consolidation has taken place. If enacted, the statute shall not diminish or impair the combined powers of the Boards, or increase the powers of Government. In s. 10.6.1(v), the statute shall preserve the water use approval functions, except that these functions need not be discrete from development impact review functions.

Fourth, there will be savings in time, travel and other costs by the proponent and the parties in making one presentation, rather than making separate presentations at separate hearings. Finally, both Boards will use the final EIS and we urge Tahera to complete as much technical/regulatory water information for the final EIS in advance of the joint hearings. It must be added that it is always in the purview and right of the NWB to set up a written or other hearing process, following the Minister's decision on the joint hearings (which is primarily impact assessment), to solicit any additional water licencing information that would be needed and was not previously available through the diligence of the company or the parties—or was not known until the Minister made his EIA decision following the panel review.

While the DIAND suggests separate hearings to entirely split the impact assessment component (i.e., the NIRB's function) from the regulatory component (i.e., NWB's function), the Boards disagree with this suggestion. In reality, both Boards perform an "assessment" although, pursuant to the NLCA, each have different requirements. Holding a joint panel hearing with the NWB chairing the water portion will not alter or collapse the specific NLCA requirements for each Board. These requirements must be met. Similarly, the timing, terms and conditions, and other factors are in each Board's hands for its final authorization. The Boards' respect that while the federal departments also coordinate their efforts for hearings, these departments still have, at the end of the day, like the NIRB and the NWB, different mandates they must meet. The issue of hearing formats is discussed below (see Issue 6).

5. SHOULD THERE BE A SITE VISIT? BY WHOM AND WHERE?

At this time each Board reserves the right to conduct a site visit before freeze-up of this year. The details of a site visit will be discussed and worked out between the two Boards. These details will include suggested dates (to be determined with Tahera) for a visit and the potential number of participants.

6. SHOULD THE ACTUAL HEARING BE SPLIT INTO TWO FORMAT, I.E., A "TECHNICAL" HEARING AND A VERY INFORMAL "COMMUNITY" HEARING?

The Boards will hold separate hearings to deal with both technical and non-technical (i.e., community) information. For Cambridge Bay, there will be a half-day community hearing and a technical hearing (the technical hearing should be 2.5 days in length including 1 day for the NWB portion. For Gjoa Haven and Kugluktuk, there will only be community hearings; however, the Boards expect one government representative at these hearings to help answer any technical question(s) that might arise. Clearly, the focus of the Boards' attention in Gjoa Haven and Kugluktuk will be on local, traditional knowledge and receiving presentations from Elders.

7. WHAT SHOULD BE THE DATE, TIME AND PLACE OF THE MAIN HEARING?

See Issue 6 on the matter of place and Issue 8 on the matter of time and date.

8. WHEN SHOULD THE DOCUMENTS BE FILED BEFORE THE PUBLIC HEARING?

Regarding the timing of document filing and other dates, the Boards' generally accept the proposed schedule by the DIAND. The Boards also acknowledge the time periods for an assessment by a review panel conducted under the Canadian Environmental Assessment Agency's guidelines.[51]

The Boards will use the DIAND schedule and will set 15 November 2001 as the hearings date. Based, then, on this schedule the milestones for the hearings are as follows:

---

[51] *Procedures for an assessment by a review panel* (November 1997). These time periods include:
- Time for the public to review draft guidelines -- 45 days (minimum)
- Time for the public to review EIS -- 60 days (minimum)
- Notice for information assessment meetings -- 45 days (minimum)
- Time for review panel to determine if additional information required following completion of 60-90 day public review of EIS -- 30 days (maximum)
- Notice for hearings -- 45 days (minimum)

1 August 2001	**Receipt of final EIS from Tahera and <u>distribution to all parties for comment</u>**
↓ (6 weeks/45 days) ↓	
15 September 2001	**Deadline for receiving comments for all parties on final EIS**
↓ (2 weeks/14 days) ↓	
1 October 2001	**i) Boards' review public comments and provide any deficiency to Tahera** **ii) Public hearing announcement (for 15 November 2001 hearings)**
↓ (3 weeks/21 days) ↓	
21 October 2001	**Tahera distributes supplemental EIS to address outstanding deficiencies**
↓ (2 weeks/14 days) ↓	
8 November 2001	**Deadline for receiving all final written submissions (with translations)**
↓ (1-week/7 days) ↓	
15 November 2001	**Hearings commence**

<u>It must be noted that the above time periods are ideals</u>, and the Boards may make exceptions to allow for holidays, missed deadlines, weather and other delay factors. Regarding the final EIS, the Boards' requirements for Tahera are:

1. The proponent must use the proposed general structure for the final EIS as indicated by the contents of Wilkinson's letter of 19 June 2001. The criteria outlined in this letter must be included in this structure. These criteria are listed in Appendix A of this decision.

2. The proponent must address and comply with the findings of conformity/deficiency review provided by Wilkinson's follow-up letter of 15 June 2001. This review is in Appendix B of this decision.

3. The proponent must ensure that any issue/factors raised in this decision are addressed in the final EIS.

4. The final EIS must be no larger than 150 text pages. This size restriction is in accordance with the NIRB's rules.[52]

5. The final EIS must be presented in a readable, non-technical and easy format. The Boards' suggest where technical/complex data must be presented that the final EIS contain references to any separate document containing these technical/complex data.

6. The final EIS must be submitted electronically in addition to the paper copies requested by each Board.

9. WHAT SHOULD BE THE ORDER OF PRESENTATIONS AT THE PUBLIC HEARING?

The Boards' priority at the hearing is that everyone has a fair and adequate opportunity to make their presentation; the order of these presentations is a lesser priority. However, the Boards will ask that Tahera make the first and the final (reply) presentations. After Tahera's first presentation, the Inuit organizations should present next followed by the federal departments' presentations beginning with the DIAND. After the DIAND's presentation, the remaining order of federal government presentations will be as per the pre-hearing conference. Presentations from the Government of Nunavut and its departments will follow, and any presentation from the communities will be next.

After the Inuit organizations, federal, territorial and municipal governments have made their presentations, other parties will make their presentations; however, the Boards have not yet determined an order for the other parties' presentations. The Boards will make this determination based on the number and the availability of the other parties. Regarding Tahera's final presentation, it is intended to allow the proponent to address any questions or issues raised by preceding parties' presentations.

---

[52] In Appendix F of the Draft Rules of Practice, "environmental impact statements shall be kept concise and shall be no longer than 150 pages, numbered, and double-spaced."

10. WHO TRANSLATES WHICH DOCUMENTS AND HOW LONG WILL THIS TAKE?

The Boards have decided that every party is responsible for making their own translations in both Innuinaqtun and Inuktitut. The time schedule for any translation is determined by that party making the translation and must comply to the schedule set out in this pre-hearing decision.

Jointly signed this 17th day of July 2001.

Original Signed by

K. Tologanak
A/Chairperson for the Pre-Hearing Conferences
NIRB
(Article 12 Matters)

Original Signed by

T. Kudloo
Chairperson
NWB
(Article 13 Matters)

APPENDIX A

Proposed General Structure of Final EIS

1. Title Page
2. Executive Summary
3. Popular Summary
4. Table of Contents, Including List of Tables, List of Figures, List of Maps, and List of Acronyms
5. Concordance Table
6. Proponent
7. Sustainable Development and Precautionary Principle
8. Baseline Data Collection
9. Traditional Knowledge
10. Public Consultation
11. Regional Context
12. Regulatory Regime
13. Land Tenure
14. Project Justification
15. Alternatives
16. Project Description
17. Spatial Boundaries
18. Temporal Boundaries
19. Description of Physical Environment
20. Description of Biological Environment
21. Description of Socio-Economic Environment
22. Impact Assessment Methodology
23. Impact Assessment
24. Cumulative Effects Assessment
25. Summary of Impacts
26. Environmental Management and Mitigation
27. Residual Effects
28. Monitoring and Follow-Up
29. Auditing and Continual Improvement
30. Closure and Reclamation
31. Diamond Valuation
32. Value-Adding Opportunities
33. Outstanding Issues
34. List of Consultants
35. List of Organizations and Individuals to Whom Copies of the Project Proposal Were Sent
36. Glossary
37. Literature Cited
38. Appendices

APPENDIX B

List of General Findings of Conformity/Deficiency Review

Varia

1. Numbering of sections sometimes illogical, e.g., V2, S2: 10.2 is followed by section 10.5, V3, S2: 5.3 incorporates subsections numbered 5.2.3-5.2.11. The sections of V4, S2 should be numbered.

2. There are several inconsistencies in figures cited, e.g., 197.14 ha^2 versus 221.8 ha^2 for surface disturbance/habitat destruction, 222 ha versus 222 ha^2, 30 m^3/day versus 30 m^3/h.

3. Parts of V5, S2: Appendix A are illegible.

Concordance Table

4. Concordance table lacks necessary level of detail.

Proponent

5. Lack of discussion of how environmental policy applies to businesses for which Proponent has responsibility and to contractors.

6. Lack of discussion of Proponent's past experience in exploration or mining, with particular reference to its record of compliance with governmental policies and regulations, safety, and major accidents and responses.

7. Lack of discussion of obligations or requirements that Proponent must meet to post a bond or other form of financial security to ensure payment of compensation in the event of accidents that directly or indirectly result in major damage by the Project to the environment, as well as to cover the cost of planned or premature closure, whether temporary or permanent.

Traditional Knowledge

8. Proponent provides bibliography of reports containing Traditional Knowledge and states that relevant information is used in Draft EIS as appropriate, but does not indicate where Traditional Knowledge is provided in Draft EIS. Proponent should properly reference information used.

9. Treatment of Traditional Knowledge in baseline data collection, impact prediction, significance assessment, and the development of mitigation and monitoring programmes practically non-existent.

10. Lack of discussion of how Proponent integrated Traditional Knowledge and western-based science, including the manner in which it reconciled any apparent discrepancies between the two.

11. Proponent's understanding that systematic attempts at gathering Traditional Knowledge are not desired by communities not documented/justified.

12. Lack of information on content of WKSS and Thorpe studies.

Regional Context

13. Lack of discussion of current and future land-use plans of the West Kitikmeot Region and Nunavut as a whole.

Regulatory Regime

14. In a few instances, Proponent does not specify the guidelines to which it refers, e.g., V1, S1: 3.3 refers to "mine safety guidelines."

Land Tenure

15. Proponent does not delineate the legal boundaries of all the areas that it would control through lease or other tenure arrangements.

Project Need

16. Lack of justification of the Project in terms of the economy of the Kitikmeot Region, its economic viability and potential, and its importance to the world diamond supply.

Project Description

17. Lack of information on regional mineral associations.

18. Lack of discussion of how geotechnical factors were considered in the design and selection of structures to contain processed kimberlite.

19. Lack of discussion of selection criteria for borrow pits and their justification.

20. Lack of discussion of volumes and chemical composition of effluent from sewage treatment and disposal.

21. Proponent does not provide energy balance for the Project, including strategies for optimization and conservation.

22. Lack of information on training programmes to maximize involvement of Nunavummiut.

Future Development

23. No consideration of associated impacts of exploration and development of additional kimberlite pipes at the Jericho site. No indication of additional quantities that might be mined, or foreseeable expansions of Project infrastructure.

Technology

24. Lack of discussion of state-of-the-art technologies and their reliability. No reference to a programme to monitor developments in technology.

Description of Physical Environment

25. Lack of discussion of potential for ground instability.

Description of Biological Environment

26. Lack of discussion of health of plant communities, wildlife, and birds.

27. Lack of discussion of migratory routes of bird species and the corresponding sensitive periods when the routes cross habitats affected by the Project.

Description of Socio-Economic Environment

28. Lack of discussion of the value of the traditional economy in terms of local consumption and cultural and physical well-being.

29. Proponent should state clearly whether the views of the affected population on the findings of the 1996 Heritage Study were solicited and, if so, whether they affect the recommendations.

30. Proponent should clearly indicate if all of the potential borrow sources north of the site and the land along the Lupin-Jericho road were investigated for heritage resources, as per the recommendations of the 1996 Heritage Study.

31. Information on land and resource use is very general. Proponent should describe attempts made to obtain information on harvesting activities, particularly the types and quantities of wildlife harvested and the seasonality and geographic distribution of harvesting activities.

32. Proponent should attempt to disaggregate socio-economic data by gender, or explain why it cannot do so or believes that doing so is not relevant.

Impact Assessment Methodology

33. Proponent does not adequately explain and justify the methods used for assessing the significance of impacts.

34. Proponent often does not adequately distinguish between direct, indirect, short-term, and long-term impacts.

35. When assessing the significance of impacts, the Proponent rarely describes explicitly the impacts in terms of such criteria as their magnitude, geographic extent, timing, duration, frequency, reversibility, probability of occurrence, effect on ecosystem functioning and integrity, the capacity of resources to meet present and future needs, and the value attached to the impacted Valued Ecosystem Component by the communities.

36. Although V2, S3: 3.2 outlines criteria to assess significance, the ensuing discussion of potential impacts rarely refers specifically and consistently to such criteria.

37. Significance of accidents/malfunctions generally not assessed.

38. Although the discussion of potential impacts on wildlife and residual impacts on fish refers to explicit criteria for significance assessment, the following problems were noted:
- Significance of potential impacts on wildlife assessed only in terms of geographic extent, duration, and changes in population or habitat size, and not always consistently.
- Significance of residual impacts on fish assessed in terms of magnitude, geographic extent, duration, frequency, reversibility, ecological context, and level of confidence/certainty (although V2, S3: 16.2.8 states that a significant residual effect is one that affects a fish community in sufficient magnitude, duration, or frequency, which creates confusion). Not all residual impacts on fish, however, are rated consistently in terms of all the criteria discussed.

39. The only criterion used to assess the significance of socio-economic impacts is population growth, and it is not justified. Moreover, the significance of impacts on community well-being is not assessed.

40. Potential impacts on wildlife not assessed consistently in relation to each VEC.

41. In the discussion of environmental effects of terrain disturbance, loss of vegetation, and loss of wildlife habitat, the list of project interactions with terrain and wildlife habitat in V2, S3: 15.6.2 is not the same as the list of interactions in V2, S4: p.42.

42. Lack of discussion of impacts of exploration and temporary closure.

43. Significance of potential impacts associated with reclamation activities not assessed.

44. Summary table of impacts does not indicate significance of impacts.

Impacts of Project Components and Activities

45. Lack of discussion of potential impacts of PKCA on wildlife.

46. Lack of information on volumes of seepage from waste rock, ore, and overburden storage.

47. Proponent discusses disposal of solid waste and sewage, but not potential impacts.

48. Lack of discussion of disposal of hazardous materials.

Impacts on Socio-Economic Environment

49. Assessment of impacts on traditional land use rests on very little data.

50. Proponent suggests only counselling as a mitigation measure for such potential impacts as family break-ups and substance abuse, and does not provide any information on how counselling would be made available.

51. No discussion of potential negative impacts of temporary or final closure on workers and communities.

52. Breakdown of potential revenues between NWT and Nunavut not provided.

Cumulative Effects Assessment

53. Lack of information on cumulative use of winter road in NWT and Nunavut by all projects in the region.

54. Incomplete discussion of cumulative socio-economic effects.

55. Lack of discussion of level of certainty of predictions.

Management and Mitigation

56. Lack of discussion of management plans for potential impacts on socio-economic environment.

58. Lack of discussion of costs and feasibility of proposed mitigation measures, who would be responsible for their implementation, and timetable for implementation.

59. Absence of an integrated Human Resources Plan.

60. No discussion of work schedules adapted to traditional activities.

61. No description of a programme to invest a specified portion of the wealth created by the Project in the natural and human capital of the region, e.g., an economic diversification or development trust fund.

Residual Impacts

62. Proponent does not distinguish clearly between potential impacts on wildlife and residual impacts on wildlife.

63. Proponent does not address residual impacts on the socio-economic environment.

64. Proponent does not use the same criteria to assess potential impacts and residual impacts on fish.

65. When assessing residual impacts, the Proponent does not consistently assess the reliability of planned mitigation measures.

Monitoring and Follow-up

66. Lack of information on proposed socio-economic monitoring committee and community liaison committee.

67. Proposed Auditing and Continual Improvement System covered under umbrella statement that the Proponent will generally follow ISO 14001 guidelines. Lack of detail.

Diamond Valuation

68. Lack of discussion of possibility of diamond sorting and valuation being performed by Nunavummiut.