



## SCREENING DECISION REPORT NIRB FILE NO.: 07EN038

June 11, 2007

Honourable Jim Prentice  
Minister of Indian & Northern Affairs Canada  
Ottawa, ON

Via E-mail: [Prentice.J@parl.gc.ca](mailto:Prentice.J@parl.gc.ca)

### **Re: Screening Decision for De Beers Canada Inc.'s Erichsen Lake Project Proposal**

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Dear Honourable Jim Prentice:

The primary objectives of the Nunavut Land Claims Agreement are set out in section 12.2.5 of the Land Claims Agreement. This section reads:

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 the residents of Canada outside the Nunavut Settlement Area.

Section 12.4.4 of the Nunavut Land Claim Agreement states:

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

- a) the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5;
- 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;
- c) the proposal is insufficiently developed to permit proper screening, and should be returned to the proponent for clarification; or
- d) the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.

### NIRB Assessment and Decision

After a thorough assessment of all material provided to the Board (please see Procedural History and Project Activities in **Appendix A**), in accordance with the principles identified within section 12.4.2 of the NLCA, the decision of the Board as per section 12.4.4 of the NLCA is:

**12.4.4 (a):** the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5

#### Recommended Terms and Conditions, pursuant to 12.4.4(a) of the NLCA

The Board is recommending the following or similar project-specific terms and conditions be imposed upon the Proponent through all relevant legislation:

#### General

1. De Beers Canada Inc (the Proponent) shall maintain a copy of the Project Terms and Conditions at the site of operation at all times.
2. The Proponent is required to submit NIRB, EC, GN-DOE, QIA and the NWB an up-to-date Spill Contingency Plan prior to the mobilization of fuel and prior to any drilling activities commencing.
3. The Proponent shall forward, to NIRB, copies of all permits obtained and required the project prior to the commencement of the project.
4. The Proponent shall submit an annual report with copies provided to the NIRB, INAC and the QIA by January 31 each year that the project is in operation. The report must contain, but not be limited to, the following information:
  - a. A summary of activities undertaken for the year, including the amount of drilling;
  - b. A work plan for the following year;
  - c. Wildlife encounters and actions/mitigation taken;
  - d. A summary of community consultations undertaken and the results;
  - e. The number of take-offs & landings from an airstrip with approved flight path with date and location;
  - f. The number of helicopter touch-downs on the land with date and location (provide unless confidential);
  - g. Site photos;
  - h. A summary of how the Proponent has complied with NIRB conditions contained within this Screening Decision, and the conditions associated with all authorizations for the project proposal.
5. The NIRB shall be notified of any changes in operating plans or conditions associated with this project prior to any such change.
6. The Proponent shall operate in accordance with all commitments stated in correspondence provided to NIRB (including information clarification emails dated May 14, 2007).

#### Water/Wastewater

7. Any sumps, privies, etc created for the disposal of grey water, drill cuttings and sewage shall be located above the high water mark of any water body and constructed in such a manner as to prevent the contents from entering any water body frequented by fish.
8. The sump must be large enough to hold all sewage from the camp and located correctly: downwind and downhill from the camp; downstream from the water source and away from water bodies.
9. Sumps should be inspected daily to ensure there is no erosion or run-off from the sump into the surrounding environment.
10. The Proponent shall ensure that all water intake hoses are equipped with a screen with an appropriate mesh size to ensure that there is no entrapment of fish.

#### Waste

11. The Proponent shall keep all garbage and debris in bags placed in a covered metal container or equivalent before disposal in a certificated facility.
12. The Waste Management Plan should consider and include:
  - Purchasing policies that focus on reduced packaging.
  - On-site diversion and segregation programs.
  - Recycling whenever possible.
13. The proponent is advised that the DOE monitors the movement of hazardous wastes from generators, carriers to receivers, through a tracking document (Waste Manifest). A Waste Manifest must accompany any transfer of such waste, and the proponent must register with the DOE. Contact Robert Eno at reno@gov.nu.ca or (867) 975-7748 if hazardous waste is generated during project activities.

### **Fuel and Chemical Storage**

14. The Proponent shall locate all fuel and other hazardous materials a minimum of thirty (30) metres above the high water mark of any water body and in such a manner as to prevent their release into the environment.
15. The Proponent is required to use secondary containment, such as self-supporting insta-berms, as natural depressions are not always the best solution for fuel storage and will depend on the grade of the surrounding landscape. Secondary containment should be of adequate size and volume to contain and hold fluids for the purpose of preventing spills. Furthermore, appropriate spill response equipment and clean-up materials must be on hand during any transfer of fuel or hazardous substances.
16. Decanting of snow or water from the berm area should proceed only if the appropriate chemical analysis has determined the contents meet the requirements of Section 36.3 of the *Fisheries Act*.
17. The Proponent shall store all chemicals in such a manner that they are inaccessible to wildlife.
18. The Proponent shall report all spills of fuel, or other deleterious materials immediately to the 24 hour Spill Line at (867) 920-8130.

### **Drilling**

19. The Proponent is required use biodegradable and non-toxic additives. The *Canadian Environmental Protection Act* lists CaCl as a toxic substance. The proponent shall therefore ensure that if CaCl is used as a drill additive, all sumps containing CaCl are properly constructed and located in such a manner as to ensure that the contents will not enter any water body.
20. Land based drilling should not occur within 30 m of the high water mark of any water body. Drilling wastes from land based drilling shall be disposed of properly such that the contents do not enter any water body
21. Any exposed drill casings should be removed or cut off at or below the surface of the ground.
22. Drilling additives or mud shall not be used in connection with holes drilled through lake ice unless they are re-circulated or contained such that they do not enter the water, or demonstrated to be non-toxic.
23. The proponent is advised that if artesian flow is encountered, the drill holes be immediately plugged and permanently sealed.
24. The proponent shall not store materials on the surface ice of lakes or streams, except that which is for immediate use.
25. Drill areas should be kept to a minimum and constructed to facilitate minimizing the environmental footprint of the project area. It also should be kept orderly and any garbage is to be removed daily from the area to an approved disposal site.

26. Spill kits should be located at each drill site and the drilling staff trained to respond in the event of a spill.

### **Wildlife**

27. The Proponent shall ensure that there is no damage to wildlife habitat in conducting this operation. Deliberate feeding of any wildlife is absolutely prohibited.
28. The Proponent shall ensure that aircraft/helicopters do not, unless for emergency, touch-down in areas where wildlife are present.
29. The Proponent must avoid raptor nesting sites and concentrations of nesting or molting waterfowl by aircraft/helicopter at all times.
30. The Proponent shall restrict aircraft/helicopter activity related to the project to a minimum altitude of 610m above ground level unless there is a specific requirement for low-level flying, which does not disturb wildlife.
31. The Proponent shall ensure that aircraft maintain a vertical distance of 1000 meters and a horizontal distance of 1500 meters from any observed groups (colonies) of migratory birds and take care not to disturb nesting raptors from 15 April to 1 September by approaching them closely while on foot.
32. The Proponent shall ensure that there is minimal disturbance to any nesting birds and wildlife in the area. Harassment of wildlife is prohibited. This includes persistently worrying or chasing animals, or disturbing large groups of animals.
33. The Proponent shall cease activities that may interfere with migration or calving of caribou until the caribou have passed or left the area. Diamond drilling operation shall not be conducted within 5 km of important caribou crossings.
34. The Proponent shall make all possible efforts to avoid human-wildlife encounters, as foxes, wolves and wolverine may occur in the project area.
35. The Proponent shall follow procedures outlined in the "Safety in Bear Country Manual", and should contact the Regional Biologist or the Wildlife manager for information and advice on measures which should be taken to minimize the possibility of conflicts/interactions with bears. Consideration should be given to setting up an electric fence around the camp.

### **Physical Environment**

36. The Proponent shall not move any equipment or vehicles unless the ground surface is in a state capable of fully supporting the equipment or vehicles without rutting or gouging. The Proponent shall suspend overland travel of equipment or vehicles if rutting occurs.

### **Archaeological**

37. The Proponent shall ensure that any archaeological or palaeontological sites encountered are not disturbed.
38. The Proponent should be aware of the law regarding disturbance of archaeological and palaeontological sites and the removal of artifacts found. If a site is found it should remain undisturbed and its location should be reported to the Government of Nunavut Department of Culture, Language, Elders and Youth. See attached **Appendix C**.

### **Restoration**

39. The Proponent shall remove all garbage, fuel and equipment upon abandonment.
40. The Proponent shall complete all clean-up and restoration of the lands used prior to the expiry date of the permit.

## Other

41. The Proponent should, to the extent possible, hire local people and to consult with local residents regarding their activities in the region.

### Other NIRB Concerns and Recommendations

It is recommended that:

#### Indian and Northern Affairs Canada (INAC)

INAC impose mitigation measures, conditions and monitoring requirements pursuant to the Federal Land Use Permit, which require the Proponent to respect the sensitivities and importance of the area. These mitigation measures, conditions and monitoring requirements should be in regard to the location and area; type, location, capacity and operation of facilities; use, storage, handling and disposal of chemical or toxic material; wildlife and fisheries habitat; and petroleum fuel storage.

INAC should also consider the importance of conducting regular Land Use Inspections, pursuant to the authority of the Federal Land Use Permit, while the project is in operation. The Land Use Inspections should be focused on ensuring the Proponent is in compliance with the conditions imposed through the Federal Land Use Permit.

#### Qikiqtani Inuit Association(QIA)

QIA impose strict mitigation measures and/or conditions upon the Proponent pursuant to the Inuit Owned Lands License in regard to fuel and chemical storage, drilling, water conditions, ground disturbance and wildlife on Inuit owned land.

### Regulatory Requirements

The Proponent is also advised that the following legislation may apply to the project:

1. Section 36(3) of the *Fisheries Act* (<http://laws.justice.gc.ca/en/showtdm/cs/F-14///en>) which states that no person shall deposit or permit the deposit of a deleterious substance in any type in water frequented by fish or in any place under any conditions where the deleterious substance may enter such a water body.
2. The *Migratory Birds Convention Act* and *Migratory Birds Regulations* which state that no person disturb or destroy the nests or eggs of migratory birds, and that no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds (<http://laws.justice.gc.ca/en/showtdm/cs/M-7.01>)
3. *The Species at Risk Act* (<http://laws.justice.gc.ca/en/showtdm/cs/S-15.3>). Attached in **Appendix B** is a list of Species at Risk in Nunavut. The Proponent should consult the Species at Risk Public Registry (<http://www.sararegistry.gc.ca/>) to identify any Species at Risk within the project location. Further, the Proponent shall develop monitoring plans for each relevant Species at Risk in accordance with any applicable status reports, recovery strategies, action plans, and management plans posted on the Species at Risk Public Registry and in consultation with the Government Organization with Primary Management Responsibility. Monitoring plans should record the locations and frequency of observing species of special concern and note any actions taken to avoid contact or cause disturbance to the species, its residence, or its critical habitat.

4. The *Nunavut Act* (<http://laws.justice.gc.ca/en/showtdm/cs/N-28.6>) which requires that no person alter or disturb any archaeological or palaeontological sites in Nunavut unless permission is first granted through the permitting process. If any archaeological or palaeontological sites are found they should remain undisturbed and their location should be reported to the Government of Nunavut Department of Culture, Language, Elders and Youth. The Proponent must comply with the proposed terms and conditions listed in the attached **Appendix C**.
5. The *Transportation of Dangerous Goods Regulations*, *Transportation of Dangerous Goods Act* (<http://www.tc.gc.ca/tdg/menu.htm>), and the *Environmental Protection Act* (<http://laws.justice.gc.ca/en/C-15.31/text.html>) which present the requirements for the handling, storing, managing and transportation of dangerous goods, including hazardous wastes, fuel and contaminated material. The Proponent must ensure that proper shipping documents accompany all movements of dangerous goods. The Proponent must register with GN-DOE by contacting Robert Eno at 867-975-7748 or [reno@gov.nu.ca](mailto:reno@gov.nu.ca).
6. Requirements of NWB. The Proponent shall be advised that the use of water or disposal of wastewater or waste as a result of the project proposal activities require a Nunavut Water Board license and the project cannot proceed until this is obtained.

#### **Validity of Land Claims Agreement**

##### Section 2.12.2

Where there is any inconsistency or conflict between any federal, territorial and local government laws, and the Agreement, the Agreement shall prevail to the extent of the inconsistency or conflict.

Dated June 11, 2007 at Cambridge Bay, NU.



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Albert Ehloak, A/Vice Chair

## APPENDIX A

### Procedural History and Project Activities

#### File History

On May 1, 2007 the Nunavut Impact Review Board (NIRB or Board) received a positive conformity determination from the Nunavut Planning Commission (NPC) for De Beers Canada Inc.'s (DeBeers) 'Erichsen Lake' project proposal from Indian and Northern Affairs Canada (INAC). NIRB assigned this project proposal file number, 07YN038. After a check for technical completeness it was determined that NIRB required additional information from the proponent (De Beers) prior to commencing the Part 4 Screening for the project proposal. On May 14, 2007, NIRB received the additional information from the proponent necessary to commence the Part 4 Screening.

This application was distributed to the Hamlet of Igloolik, Igloolik HTO, as well as interested Federal and Territorial Agencies. NIRB requested that interested Parties review the application and provide NIRB with comments by May 31, 2007.

On or before May 23, 2007, NIRB received comments from Environment Canada (EC) and Government of Nunavut, Department of Environment (GN-DOE).

#### Project Activities

The proposed major activities for the project involve the following components:

- Temporary camping;
- Permanent fuel storage;
- Use of aircraft (Twin Otter and Helicopter);
- land vehicle (Honda ATVs and Sandik Snowmobiles);
- Sewage or grey water disposal via sump and privy;
- Geoscientific sampling by diamond drilling; and
- Geoscientific sampling by soil sampling

## APPENDIX B

### SPECIES AT RISK IN NUNAVUT

This list includes species listed on one of the Schedules of SARA (*Species at Risk Act*) and under consideration for listing on Schedule 1 of SARA. These species have been designated as at risk by COSEWIC (Committee on the Status of Endangered Wildlife in Canada). This list may not include all species identified as at risk by the Territorial Government.

- Schedule 1 is the official legal list of Species at Risk for SARA. SARA applies to all species on Schedule 1. The term “listed” species refers to species on Schedule 1.
- Schedule 2 and 3 of SARA identify species that were designated at risk by the COSEWIC prior to October 1999 and must be reassessed using revised criteria before they can be considered for addition to Schedule 1.
- Some species identified at risk by COSEWIC are “pending” addition to Schedule 1 of SARA. These species are under consideration for addition to Schedule 1, subject to further consultation or assessment.

Schedules of SARA are amended on a regular basis so it is important to periodically check the SARA registry ([www.sararegistry.gc.ca](http://www.sararegistry.gc.ca)) to get the current status of a species.

Updated: January 3, 2007

Species at Risk	COSEWIC Designation	Schedule of SARA	Government Organization with Lead Management Responsibility <sup>1</sup>
Eskimo Curlew	Endangered	Schedule 1	EC
Ivory Gull	Endangered <sup>2</sup>	Schedule 1	EC
Peregrine Falcon (subspecies anatum)	Threatened	Schedule 1	Government of Nunavut
Ross's Gull	Threatened	Schedule 1	EC
Harlequin Duck (Eastern population)	Special Concern	Schedule 1	EC
Felt-leaf Willow	Special Concern	Schedule 1	Government of Nunavut
Peregrine Falcon (subspecies tundrius)	Special Concern	Schedule 3	Government of Nunavut
Short-eared Owl	Special Concern	Schedule 3	Government of Nunavut
Fourhorn Sculpin	Special Concern	Schedule 3	DFO
Peary Caribou	Endangered <sup>3</sup>	Pending	Government of Nunavut
Beluga Whale (Eastern Hudson Bay population)	Endangered	Pending	DFO
Beluga Whale (Cumberland Sound population)	Threatened	Pending	DFO
Beluga Whale	Special Concern	Pending	DFO



(Western Hudson Bay population)			
Beluga Whale (Eastern High Arctic – Baffin Bay population)	Special Concern	Pending	DFO
Bowhead Whale (Hudson Bay-Foxe Basin population)	Threatened <sup>4</sup>	Pending	DFO
Bowhead Whale (Davis Strait-Baffin Bay population)	Threatened <sup>4</sup>	Pending	DFO
Porsild's Bryum	Threatened	Pending	Government of Nunavut
Atlantic Walrus	Special Concern	Pending	DFO
Narwhal	Special Concern	Pending	DFO
Rusty Blackbird	Special Concern	Pending	Government of Nunavut
Barren-ground Caribou (Dolphin and Union population)	Special Concern <sup>3</sup>	Pending	Government of Nunavut
Grizzly Bear	Special Concern	Pending	Government of Nunavut
Polar Bear	Special Concern	Pending	Government of Nunavut
Wolverine (Western Population)	Special Concern	Pending	Government of Nunavut

<sup>1</sup> Environment Canada has a national role to play in the conservation and recovery of Species at Risk in Canada, as well as responsibility for management of birds described in the Migratory Birds Convention Act (MBCA). Day-to-day management of terrestrial species not covered in the MBCA is the responsibility of the Territorial Government. Populations that exist in National Parks are also managed under the authority of the Parks Canada Agency. EC = Environment Canada, DFO = Department of Fisheries and Oceans

<sup>2</sup> Designated as Endangered by COSEWIC in April 2006 and it is expected that the category of concern in SARA will also be changed from Special Concern to Endangered.

<sup>3</sup> Peary Caribou was split into three separate populations in 1991: Banks Island (Endangered), High Arctic (Endangered) and Low Arctic (Threatened) populations. The Low Arctic population also included the Barren-ground Caribou - Dolphin and Union population. In May 2004 all three population designations were de-activated, and the Peary Caribou, *Rangifer tarandus pearyi*, was assessed separately from the Barren-ground Caribou (Dolphin and Union population), *Rangifer tarandus groenlandicus*. The subspecies *pearyi* is composed of a portion of the former "Low Arctic population" and all of the former "High Arctic" and "Banks Island" populations, and it was designated Endangered in May 2004. Although SARA lists Peary Caribou on Schedule 2 as three separate populations, the most current designation is the COSEWIC designation of the subspecies *pearyi* as Endangered.

<sup>4</sup> The "Eastern and Western Arctic populations" of Bowhead Whale were given a single designation of Endangered in April 1980 by COSEWIC. These were split into two populations to allow separate designations in April 1986. The Eastern population was not re-evaluated in April 1986, but retained the Endangered status of the original "Eastern and Western Arctic populations". The Eastern Arctic population was further split into two populations (Hudson Bay-Foxe Basin population and Davis Strait-Baffin Bay population) in May 2005, and both these populations were designated as Threatened. Both these populations are under consideration for addition to Schedule 1. Although SARA lists the Eastern Arctic population as Endangered (Schedule 2), the most current designation is the COSEWIC designations of the Hudson Bay-Foxe Basin and Davis Strait-Baffin Bay populations as Threatened.

## Appendix C



### **BACKGROUND: Archaeology**

*As stated in Article 33 of the Nunavut Land Claims Agreement:*

The archaeological record of the Inuit of Nunavut is a record of Inuit use and occupancy of lands and resources through time. The evidence associated with their use and occupancy represents a cultural, historical and ethnographic heritage of Inuit society and, as such, Government recognizes that Inuit have a special relationship with such evidence, which shall be expressed in terms of special rights and responsibilities. [33.2.1]

The archaeological record of Nunavut is of spiritual, cultural, religious and educational importance to Inuit. Accordingly, the identification, protection and conservation of archaeological sites and specimens and the interpretation of the archaeological record is of primary importance to Inuit and their involvement is both desirable and necessary. [33.2.2]

In recognition of the cultural, spiritual and religious importance of certain areas in Nunavut to Inuit, Inuit have special rights and interests in these areas as defined by Article 33 of the Nunavut Land Claims Agreement. [33.2.5]

### **BACKGROUND: Palaeontology**

Under the Nunavut Act<sup>1</sup>, the federal Government can make regulations for the protection, care and preservation of palaeontological sites and specimens in Nunavut. Under the *Nunavut Archaeological and Palaeontological Sites Regulations*<sup>2</sup>, it is illegal to alter or disturb any palaeontological site in Nunavut unless permission is first granted through the permitting process.

## Definitions

As defined in the *Nunavut Archaeological and Palaeontological Sites Regulations*, the following definitions apply:

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<sup>1</sup> s. 51(1)

<sup>2</sup> P.C. 2001-1111 14 June, 2001

“archaeological site” means a place where an archaeological artifact is found.

“archaeological artifact” means any tangible evidence of human activity that is more than 50 years old and in respect of which an unbroken chain of possession or regular pattern of usage cannot be demonstrated, and includes a Denesuline archaeological specimen referred to in section 40.4.9 of the Nunavut Land Claims Agreement.

“palaeontological site” means a site where a fossil is found.

“fossil” includes:

- (a) natural casts
- (b) preserved tracks, coprolites and plant remains; and
- (c) the preserved shells and exoskeletons of invertebrates and the eggs, teeth and bones of vertebrates.

#### Terms and Conditions

- 1) The permittee shall not operate any vehicle over a known or suspected archaeological or palaeontological site.
- 2) The permittee shall not remove, disturb, or displace any archaeological artifact or site, or any fossil or palaeontological site.
- 3) The permittee shall immediately contact the Department of Culture, Language, Elders and Youth (867) 934-2046 or (867) 975-5500 or 1 (866) 934-2035 should an archaeological site or specimen, or a palaeontological site or fossil be encountered or disturbed by any land use activity.
- 4) The permittee shall immediately cease any activity that disturbs an archaeological or palaeontological site encountered during the course of a land use operation, until permitted to proceed with the authorization of the Department of Culture, Language, Elders and Youth, Government of Nunavut.
- 5) The permittee shall follow the direction of the Department of Culture, Language, Elders and Youth and DIAND in restoring disturbed archaeological or palaeontological sites to an acceptable condition.
- 6) The permittee shall provide all information requested by the Department of Culture, Language, Elders and Youth concerning all archaeological sites or artifacts and all palaeontological sites and fossils encountered in the course of any land use activity.
- 7) The permittee shall make best efforts to ensure that all persons working under authority of the permit are aware of these conditions concerning archaeological sites and artifacts, and palaeontological sites and fossils.
- 8) The permittee shall avoid the known archaeological and/or palaeontological sites listed in Attachment 1.

- 9) The permittee shall have an archaeologist or palaeontologist perform the following functions, as required by the Department of Culture, Language, Elders and Youth:
- a. survey
  - b. inventory and documentation of the archaeological or palaeontological resources of the land use area
  - c. assessment of potential for damage to archaeological or palaeontological sites
  - d. mitigation
  - e. marking boundaries of archaeological or palaeontological sites
  - f. site restoration

The Department of Culture, Language, Elders and Youth shall authorize by way of a Nunavut Archaeologist Permit or a Nunavut Palaeontologist Permit, all procedures subsumed under the above operations.