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Our File: 7392-7-A2-7

Your file - ~~Votre référence~~ **By Fax: 920-4761**

September 4, 2001

Our file - Notre référence

Joe Acorn  
Environmental Assessment Officer  
Mackenzie Valley Environmental Impact Review Board  
Box 938,  
Yellowknife, NT, X1A 2N7

Dear Joe:

**Re: Request for Clarification to DIAND on technical submission: . Cameron Hills area Oil and Gas Drilling Project EA.**

Attached is DIAND's response to the information request from the MVEIRB on the department's technical submission for the above project.

Please call Marie Adams, 669-2597, if you need further explanation.

Sincerely,

David Livingstone  
Director, Renewable Resources and Environment

cc. Vern Christensen  
Tom Isaac, Justice Canada

## **DIAND response to the MVEIRB request for clarification of the Department's technical submission - Cameron Hills Drilling Project - Environmental Assessment**

### **Background**

In December 2000, DIAND called a meeting of "Responsible Ministers" (DIAND, DFO, EC and GNWT) in order to clarify concerns from some parties as to whether there were linkages among other Paramount projects. This meeting was held in order to provide the MVEIRB with clear advice and supporting evidence if it appeared that such linkages existed. At the time, Paramount had announced that it was withdrawing some of its applications and cancelling certain operations. The RM s concluded, that in the absence of any evidence of linkages with other related projects, the Cameron Hills Drilling project could be assessed on its own.

### **Response**

(For clarity, the MVEIRB's wording is noted *in Bold Italics* followed by the response from DIAND).

#### **1. General Comments - 2<sup>nd</sup> Paragraph (of DIAND submission)**

*INAC states that the Review Board combined the environmental assessments of related projects in the Paramount Liard East EA "in order to assess their impacts in a holistic and comprehensive manner." This statement is incorrect. The Review Board did not issue reasons for its decision to combine these projects into a single EA.*

Section 121 of the MVRMA requires written reasons for any decision made under Part 5 of the Act. DIAND's submission for the Cameron Hills Drilling EA, noted that, "...it is unclear what criteria the Review Board is using to make a determination to combine related projects.." However, in the absence of such written reasons, with regard to the Paramount developments, it was assumed that the Board had good reason to combine these into single EA s.

Whether the reasoning of the Review Board was for efficiencies of process or for assessing impacts holistically is not the issue in this case. The point DIAND was trying to make was that the end result of a decision to combine related projects, is a more comprehensive review of potential impacts. This practice is consistent with standard environmental assessment principles that project effects should not be split where there are demonstrated linkages. This is especially important in the case of cumulative effects considerations.

#### **2. General Comments - 3<sup>rd</sup> Paragraph (Paraphrased).**

- *On what basis did DIAND choose to not exercise its authority under the MVRMA to refer the 2<sup>nd</sup> Paramount project to EA?*
- *It was encumbered (incumbent?) upon DIAND to inform the MVLWB that the Gathering System and Pipeline project should be included in the Drilling EA.*

DIAND's specific comments at a PS stage will mainly be related to its mandated areas of responsibility or expertise (which are mainly land and water issues). Thus, any reasons for referral by DIAND would also tend to fall within this mandate, although in some instances issues of public concern or land claim related concerns may determine the need for referral.

In both these developments, DIAND felt that the impacts were mitigable, that the licensing and permitting requirements (especially those of the NEB regarding flaring and associated impacts) should provide adequate protection of the environment. Comprehensive comments for mitigating both the land use and water-related impacts were provided in writing to the MVLWB from the Department (attached). Since it is the MVLWB and the MVEIRB which are respectively, the regulatory authority and the main instrument for environmental assessment under the MVRMA, overall determinations on EA referrals will ultimately rest with those two agencies based on comments from all parties regarding potential impacts.

The MVEIRB is responsible for conducting EA s, not DIAND. As such, it is not our intention to influence a specific outcome, but rather to provide specialist advice upon which the Review Board may make a defensible EA decision.

*This reasoning was the basis upon which DIAND chose not to exercise its authority under the MVRMA to refer the developments to EA. (See comment from Environment Canada under ‘linkages.’)*

It was incumbent upon DIAND to inform the MVLWB that the Gathering System and Pipeline project should be included in the Drilling EA *but only if in the Gathering System/Pipeline project was referred to EA.*

The recommendation to combine the two projects was made by letter dated May 30, 2001 to the MVLWB from our Water Resources Division. An excerpt follows:

“...we gather that the drilling/completion program and related infrastructure, crossings etc associated with this operation is currently undergoing an environmental assessment by the MVEIRB based on a referral by your Board. If another EA is recommended by any party, it is suggested that they be combined, to avoid confusion and piecemeal assessment...”

### **3. (Paraphrased)**

- ***Explain to whom the ‘linkages’ between the two Paramount projects were apparent.***
- ***What definition of ‘linkage’ was used? What specifically are the nature of these linkages between projects.***

While DIAND considered that the impacts of both these projects were mitigable under standard conditions of regulatory instruments, the referral to an EA stage is more comprehensive and included the consideration of the factors noted under section 117 of the MVRMA (cumulative impacts, the significance of such impacts, mitigation, alternatives, etc).

Both the DIAND submission to the MVLWB on the Gathering System/Pipeline Project and the Environment Canada IR of July 13, 2001 pointed out potential linkages between the two projects. Environment Canada stated:

“.....Environment Canada is involved in the review of another project proposed by Paramount in the same area known as the ‘Cameron Hills Gathering System and Facilities Project.’ It is obvious that these two projects are linked (*emphasis added*) When reviewing projects such as these, .....we feel we should have the entire project in front of us and there should be clarity in demonstrating that one project relies on the other.”

Therefore, the potential for linkage was apparent to many parties including the MVEIRB and other reviewers besides DIAND.

### ***With respect to the definition of ‘linkage’ and what these linkages are:***

In the absence of other guidelines, DIAND utilized the CEAA determinations in assessing Scope of Assessment, primarily the ‘principal accessory’ test and the definitions of ‘interdependence’, ‘linkage’ and ‘proximity.’ DIAND has been informed that these same guidelines are utilized by the MVEIRB staff in their assessment process. The CEAA guidelines state:

“**Interdependence**”: if the principal project could not proceed without the undertaking of another project the two may be considered to form a single project.

“**Linkage**.” If the decision to undertake the principal project makes the decision to undertake another project inevitable, the two may be considered to form a single project.”

“**Proximity**.” If the geographic study areas developed in relation to the scope of the assessment for the individual projects overlap, the two may be considered to form a single project.

Any decision regarding interdependence and linkages is somewhat judgmental and is dependent on a variety of factors, some of which may be subjective. In addition to the three factors above, another factor considered by DIAND in linking projects is the relative ‘permanence’ of infrastructure and facilities which support related projects.

The issuance of a land use permit is considered to be for a 'temporary use of land.' Thus, permanent structures are usually few. The construction of permanent roads, for instance, would lead a reviewer to believe that this is not a temporary use of the land.

In the case of the Cameron Hills developments, the construction of a pipeline and gathering system is dependent upon active wells. It is expected that some of drilling being undertaken by Paramount will result in active wells and that these wells will be tied in to the gathering system and eventually a pipeline. The Gathering System and the facilities would not exist if there were no producing wells. A pipeline is considered to be a rather permanent structure.

#### **4. General comments 4<sup>th</sup> Paragraph**

***“INAC states that the Review Board had two options for proceeding with this EA with INAC’s preferred option being combining the drilling project EA with the gathering system and pipeline EA. Provide Rationale for selecting a preferred option.”***

The rationale is outlined above and relates to the linkages between the two projects as well as the requirements of section 117 of the MVRMA which includes the consideration of potential cumulative impacts.

DIAND would have preferred that if this option were to have been exercised, that it had been done at an early stage in the process so as to minimize delays. The MVEIRB would have been notified of the gathering system and pipeline development in the spring of 2001. Both the developer and the MVLWB could have been appraised of the potential for referral. Section 126(2) of the MVRMA allows for a referral 'notwithstanding any determination on a preliminary screening..’

The second option of assessing the cumulative effects of both projects at minimum was necessary given the linkages and given the direction of the MVRMA in section 117(2)(a), which notes that cumulative effects should be considered in conducting an EA.

***5. “..given INAC’s role as the Federal Minister under the MVRMA, please explain the implications on the developer and on the acceptance of the Review Board of the EA by the Federal Minister if the Review Board does not proceed with either of the two options identified by INAC.”***

DIAND’s participation in the EA process in terms of technical and other submissions is as a “Responsible Minister” or expert advisor, or intervener depending on the nature of the submission. DIAND’s role as a ‘Federal Minister’ is clearly stated in the applicable sections of the Act which speaks to acceptance of the MVEIRB’s EA report and the process for handling the recommendations.

It is not the intent of DIAND to ‘fetter’ the Board in making its recommendations. If the Review Board decides not to exercise either option it is expected that the Board will do this with the appropriate weight of evidence behind its recommendation to choose another option and that those reasons for decision will be made public as required by the MVRMA. In future EAs the Review Board should consult with all other agencies (not just DIAND) which express opinions or concerns which may need clarification prior to the conclusion of an EA.

The direction from the MVEIRB staff to reviewers is to incorporate the Cameron Hills drilling project only within the cumulative assessment of the Gathering System/Pipeline Project EA. The MVEIRB has not given direction that the Gathering System/Pipeline Project should be considered in the cumulative effects assessment of the Drilling Project EA.

Nevertheless, DIAND believes that it should take all known existing developments into account in its determination of cumulative effects. The Department has obtained sufficient information from various sources in order to make a cumulative effects determination that the project can proceed without significant adverse effects.

## **6. Cumulative Effects (CE) Assessment - 1<sup>st</sup> Paragraph**

***INAC states that “information on other developments in the region is needed to assist with a determination of spatial boundaries for CE assessment.” Explain what information is required by INAC and the rationale for the requirement.***

We recognize that DIAND must submit an IR to obtain additional information from the developer. DIAND will be reviewing its internal processes in order to further assess the necessity of such IR s in the EA process.

As a rule, DIAND generally will submit IR s relevant to its mandated responsibilities such as land management or water-related issues. DIAND identified that limited information was provided by the developer on spatial and temporal boundaries. The Review Board then makes the determination if it wants supplementary information from the developer.

The Board’s own draft guidelines on cumulative effects assessment and the criteria for setting spatial boundaries include the consideration of the “size, nature and location of past, and future developments and activities in the area and the significance of their adverse environmental effects.” Since the MVRMA only speaks to ‘existing developments’ information on the Gathering System/Pipeline Project (and any other developments in the area) was needed in order to assess the potential for cumulative impacts.

***7. The MVEIRB suggests that for guidance on future submissions DIAND should refer to the submissions from the GNWT and Environment Canada and that submissions should provide a clear indication of INAC’s determination of significance.....etc.***

The Department will consider the these two submissions in terms of format and clarity and will try to incorporate changes in future submissions where possible. However in order to prevent misunderstandings, the MVEIRB could develop a template or guide for such submissions which all parties can adopt. In past EA s templates have been developed for technical submissions and we would be pleased to discuss the use of such with the Board.

***8. The Board also states that they would like to remind INAC that, while its opinion on impact significance is valued and given consideration by the Review Board, it is the responsibility of the Review Board to make the determination of significance according to section 128 of the MVRMA.***

This is the only context in which any significance determination was provided by DIAND. There is no intent to dilute the authority of the MVEIRB to make a significance determination. However, DIAND is asking for clarity in this issue as the preceding statement asking DIAND to “provide a clear indication of INAC’s determination of significance..” appears to be contradictory.

## **9. Overall Technical Determination - 1<sup>st</sup> Paragraph**

***DIAND is requested to provide the Land Information Management system (LIMS) data used in its assessment of cumulative effects and to avoid referencing evidence that is not placed on the public registry.***

DIAND will be pleased to provide the LIMS map and data set used in its process. In addition, attached is the Land Use Plotting map showing open and active land use permits, i.e. wood operators. DIAND supports the intent of this request, which is to provide as complete a base of information as possible for all parties.

We are, however, concerned that making it mandatory to place all referenced material on the public registry may be onerous in some instances. It is not feasible in some instances especially where maps are referenced, to reproduce all such material for the public registry. The LIMS data can be comprehensive and a summary may be all that is necessary. Alternatively where such information is readily accessible by the Review Board, it is suggested that the reference may be all that is necessary for the public registry. Is this request from the Review Board that all material referenced in such submissions is to be placed on the public registry in the nature of a rule or guideline from the MVEIRB to all parties?

## 10. Overall Technical Determination

***DIAND is asked to identify the impacts that have been identified by DIAND which were not identified by Paramount and also to describe the rationale and methods used by INAC to determine that these impacts are not likely to be significant.***

As noted earlier in this response, the main impacts which were considered by DIAND relate to the project components of Paramount's Gathering System/Pipeline Project. Other land use in the general area was also reviewed for potential impacts.

As suggested by the MVEIRB, the CEAA cumulative effects guide has been utilized to guide our cumulative effects assessment. The main VECs being considered by DIAND are related to land management or water-related issues. As such we are not considering in detail, impacts on VECs which are beyond our mandate such as wildlife, fisheries etc. DIAND also considered the CEAA guide on significance (referenced as Appendix A, in the MVEIRB's draft guide on assessment of cumulative effects). In light of relatively low level of development in the Cameron Hills region, DIAND has concluded that the impacts will not be significant.

Essential to DIAND's determination was also the EA report submitted by Paramount Resources to preliminary screeners of the Gathering System/Pipeline Project. This report outlined the project components which included all facilities and associated infrastructure such as an airstrip and camps etc. Rather than detailing all potential impacts of this new development by Paramount, It is felt that referencing this document will be sufficient for any party to extract information on those project components which may cause impact.

In addition to the report on Paramount's Gathering System/ Pipeline Project, DIAND also considered potential impacts from any other small scale developments in the area as identified through the LIMS data.