



Giant Mine Environmental Assessment IR Response

Round One: Information Request - North Slave Métis Alliance #02

June 17, 2011

INFORMATION REQUEST RESPONSE

EA No: 0809-001

Information Request No: NSMA #02

Date Received

February 28, 2011

Linkage to Other IRs

Alternatives North IR #01, 03

YKDFN IR #24, 25

City of Yellowknife IR #03

Date of this Response

June 17, 2011

Request

Preamble:

It appears that the Minister of INAC occupies too many positions of decision making power with respect to this project. A case could easily be made for the appearance of bias, if not actual bias due to his or her role as proponent and Responsible Authority for the acceptance of the Report of Environmental Assessment, as well as inspector and regulator.

Question:

Please explain how conflict of interest will be prevented, and how the public will be convinced of the fairness of these proceedings and the authorization and enforcement actions to follow.

Reference to DAR

S.1.4 the Project Team

Reference to the EA Terms of Reference

S.3.2.2 Developer

S.3.6 Monitoring, Evaluation and Management





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Summary

The Giant Mine Remediation Project Team (Project Team) is tasked with developing and implementing an environmentally-sound and cost-effective remediation plan for Giant Mine that protects the environment and the health and safety of the public.

Indian and Northern Affairs Canada (INAC) has roles beyond that of the project proponent. For example, INAC controls, manages and administers Crown lands in the Mackenzie Valley. It is responsible for administration, inspection, and enforcement associated with renewable resources, non-renewable resources and related environmental legislation.

INAC inspectors are responsible for ensuring compliance with legislation, regulations and the terms and conditions of permits and licences issued by the Mackenzie Valley Land and Water Board (MVLWB) and others.

The *Mackenzie Valley Resource Management Act* (MVRMA) anticipates and allows INAC to have many roles during the EA and regulatory process, including that of proponent. These roles are structured to avoid conflict of interest, bias or apprehension of bias. INAC will document this process and will be neutral in its approach so as to not fetter the Minister's discretion. In addition, the Mackenzie Valley Environmental Impact Review Board (Review Board) and the Mackenzie Valley Land and Water Board (MVLWB) are impartial administrative decision-makers who make their decisions independent of the INAC Minister.

INAC is committed to engaging the public and interested parties to explain INAC's roles and responsibilities, and how INAC will ensure fairness, transparency and accountability.

The legislative regime also includes more than Indian and Northern Affairs Canada. A list of permits and subsequent applications appearing in the Developer's Assessment Report (DAR) Table 6.13.1 demonstrates that the regulatory regime is comprehensive, and that the Giant Mine Remediation Project (Remediation Project) is subject to terms and conditions, scrutiny and inspections under other federal and territorial legislation.

Response

The Project Team is tasked with developing and implementing an environmentally-sound and cost-effective remediation plan for Giant Mine that protects the environment and the health and safety of the public. With respect to Environmental Assessment (EA), EA0809-001, the Project Team is the project proponent for the Remediation Project.

INAC has other roles in addition to the role of proponent. The MVRMA anticipates and allows INAC to have different roles during the environmental assessment process. For example, in addition to proponent, roles contemplated by the MVRMA include the INAC Minister coordinating post-environmental assessment decision-making. The MVRMA also sets out boundaries to make sure the INAC Minister's actions are transparent. For example, as part of the environmental assessment decision-making process, the INAC Minister is the coordinator of the Regulatory Authorities (RAs) (GNWT and other federal departments





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involved in the review) and those RAs must reach consensus on whether a project is approved, denied or requires further review. The decision is then transmitted to the boards and they proceed with the regulatory phase including issuance of the permits/licences/authorizations required to conduct the activity. This is all done in an open and transparent manner.

INAC controls, manages and administers Crown lands in the Mackenzie Valley under the authority of the *Territorial Lands Act* (TLA) and the *Federal Real Property Act*. INAC is also responsible for the administration, inspection, and enforcement requirements associated with renewable resources, non-renewable resources and related environmental legislation, including the MVRMA and the *Northwest Territories Waters Act* (NWTWA), elements of which are relevant to the Remediation Project.

INAC inspectors are responsible for ensuring compliance with legislation, regulations and the terms and conditions of permits and licences issued by the MVLWB and INAC. These responsibilities are exercised by INAC inspectors under the MVRMA, NWTWA, TLA, *Territorial Quarry Regulations*, and the *Northwest Territories and Nunavut Mining Regulations*. Powers designated to the inspector include issuing orders, suspensions, and directions based on the inspector's opinion.

The Project Team has applied to the MVLWB for a Water Licence (MV2007L8-0031). This will be the main regulatory instrument for the Remediation Project. The Project Team will be accountable for the terms and conditions of the Water Licence and any other permits relating to the Remediation Project. In addition to the Water Licence, The Project Team will apply for: i) *Fisheries Act* authorization, ii) Asbestos Licence, and iii) Quarry Permit. A list of other relevant permits and authorizations can be found in the DAR at s.1.7.2. This list is not exhaustive, and is subject to amendment based on information brought forward in this EA process.

Based on the above, it is evident that INAC occupies many roles with respect to the Giant Mine Remediation Project. The relevant legislation has contemplated the potential for INAC to occupy more than one role in the EA and regulatory process. The Review Board and the MVLWB are impartial administrative decision-makers that are independent of the INAC Minister. Neither INAC nor the INAC Minister has direct control over the Boards' decision-making processes.

On an operational level, INAC employees are responsible for consulting with the INAC Minister on the Review Board's recommendations. This role is separated from the proponent role. INAC will document this process fully; and will be neutral in its approach so as not to fetter the INAC Minister's discretion. INAC will exercise its different roles in the Remediation Project in a manner that will meet the general principles of fairness, transparency and accountability.

These roles within INAC are structured to avoid conflict of interest, bias or apprehension of bias. This will be ensured by each branch of INAC fulfilling its legislative roles and acting in a transparent manner. As discussed in Chapter 13 of the DAR, The Project Team is committed to engaging the public and interested parties to explain INAC's roles and responsibilities, and how INAC will ensure fairness, transparency and accountability.





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The legislative regime includes more than Indian and Northern Affairs Canada and the Remediation Project is subject to terms and conditions, scrutiny and inspections under both federal and territorial legislation. This includes authorizations issued by MVLWB; Fisheries and Oceans Canada and Natural Resources Canada; and through Territorial legislation administered by the Chief Inspector of Mines, Workers' Safety and Compensation Commission and departments of Municipal and Community Affairs, Environment and Natural Resources, and Public Works and Services.

