

Minister of Indian Affairs
and Northern Development

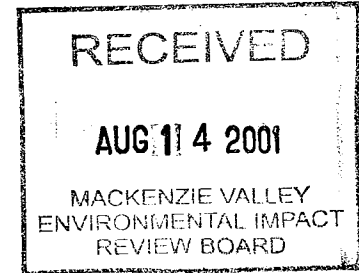


Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

~~988~~ 31 2001

Mr. Gordon Lennie
Chair
Mackenzie Valley Environmental Impact Review Board
PO Box 938
YELLOWKNIFE NT X1A 2N7



Dear Mr. Lennie:

On behalf of the responsible Ministers, with jurisdiction related to this development, I am writing to convey the decision on the *Report of Environmental Assessment on the Proposed Sable, Pigeon and Beartooth Kimberlite Pipe Development* (the EA Report), submitted by the Mackenzie Valley Environmental Impact Review Board (the Board) on February 7, 2001. This decision was taken after:

- considering the above-noted EA Report;
- considering letters to Indian and Northern Affairs Canada from responsible Ministers dated March 2, 2001, March 9, 2001 and March 15, 2001, respectively;
- considering your letter of May 22, 2001; and,
- undertaking consultations with the Board on the measures contained in the EA report, pursuant to subsection 130(1)(b)(ii), of the *Mackenzie Valley Resource Management Act* (Act).

Pursuant to subsection 130 (1)(b)(ii), of the Act, the responsible Ministers and I have agreed to adopt, with modifications, the recommendation of the Board under subsection 128 (1)(b)(ii), of the Act, as set out in the EA Report. The modifications to the recommendation of the Board, centre on the two measures that the Board identified as being necessary to prevent a likely significant adverse impact on the environment. The modified measures are set out in the enclosure. The responsible Ministers and I have, therefore, decided that approval of the proposed development be made subject to the two modified measures identified in the enclosure.

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Based on the consultations, it is clear that there has been some confusion with regard to what constitutes "measures" as described in section 128 of the Act, as opposed to "recommendations." I think it is important to clarify the terms here so that they are used correctly in the future. Section 128, sets out the Board's responsibilities on completion of an environmental assessment of a proposal for development, and establishes the context in which the Board may make a recommendation and identify measures. Section 128(b), states that where the development is likely in its opinion to have a significant adverse impact on the environment, the Board may "**recommend** that the approval of the project be made subject to the imposition of such **measures** as it considers necessary to prevent the significant adverse impact (emphasis added)." Measures must be linked to significant adverse impacts, and in the case of the EA Report, only two of the 62 measures did so. As discussed in the consultations, it would be appropriate to characterize the other 60 measures as "observations."

As addressed in my April 12, 2001, letter to you, it is not open to the responsible Ministers and I to adopt measures that do not mitigate an effect that would otherwise likely have a significant adverse impact. Unfortunately, the distinction among recommendations, measures, and observations was blurred in the EA Report. This is unlike the situation with the *Report of Environmental Assessment of the Ranger Oil Ltd., Canadian Forest Oil Ltd., and Chevron Canada Resources Ltd. Integrated P-66A/N-61/K-29 Gas Wells and Pipeline Tie-in Fort Liard, NWT*, wherein, the overall recommendation was linked to significance. However, to encourage the consideration during the regulatory process of the 60 observations in the EA report that are not linked to a significant adverse impact, I have instructed regional officials to forward the responsible Ministers' comments on the EA Report to the Mackenzie Valley Land and Water Board (MVLWB) and other regulators. I have also directed regional officials to consider these observations in the regulatory process. The Board may wish to consider advising the MVLWB as to the relative importance and priority it believes should be placed on the observations.

While the Board needs to carefully distinguish among recommendations, measures, and observations, it should also continue to bring forward those observations it feels would be helpful to regulators and other agencies. I take note of the Board's measure regarding the formula financing arrangement and understand that the Board would like to be kept apprised of progress on this matter.

I would encourage the Board, in future environmental assessments, to establish a more iterative process with the interested parties, so that issues which are not linked to a significant adverse impact may be resolved, where appropriate, within the EA process. The Board should also take steps to clarify its findings with the responsible Ministers and the proponent before the submission of its EA reports.

The Board should consider holding a workshop among the Board, its staff, government officials, and other interested parties to discuss in more detail the difficulties it encountered during this environmental assessment. Departmental officials would be pleased to work with you in organizing this workshop, and I would recommend that you contact Mr. Bob Overvold, Northwest Territories Regional Director General. Mr. Overvold may be reached at (867) 669-2501.

Finally, I wish to thank the Board members for discharging their duties under the Act. I fully appreciate the pressures that Board members face and the difficult decisions they must make. The work the Board does is extremely important, and I want to assure you that departmental officials are committed to ensuring that the Board has the best advice available.

I trust that my response is of assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Nault". The signature is fluid and cursive, with the first name "Robert" and last name "Nault" clearly distinguishable.

Robert D. Nault, P.C., M.P.

Encl.

c.c.: Mr. Steve Harbicht
Mr. Ron Allen
Mr. Robert McLeod
The Honourable Joseph L. Handley, M.L.A.
The Honourable Jake Ootes, M.L.A.
The Honourable Jane Groenewegen, M.L.A.

ENCLOSURE

RATIONALE AND MODIFICATIONS REGARDING MEASURES DETERMINED BY THE RESPONSIBLE MINISTERS FOR THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD (THE BOARD) EA REPORT:

Employment and local business opportunities

Measure # 47

This measure was modified as a result of consultation with the Board and in recognition of the need to define a planning schedule in advance of the eventual mine closure at EKATI.

“BHP Diamond Inc., and the Government of Northwest Territories (GNWT) (the parties) are to work co-operatively to develop a strategy for eventual mine closure to address the effects of the boom-bust cycle, particularly the re-deployment of the BHP workforce. The strategy must be completed five years prior to the planned closure of the mine. The parties shall negotiate between them a start date for the development of the strategy, contribution of resources, and a framework of the issues to be addressed in the strategy. The start date must allow adequate time to ensure, in the opinion of the GNWT, that the strategy is completed on time.”

Measure # 48

This measure was modified to reflect clarification obtained during consultations with the Board that the intent of the Board’s “recommendation #48” was to mitigate a significant adverse impact on the social and economic well-being of NWT residents from the development. The Board had not intended to suggest that the federal-territorial formula financing arrangement has a significant adverse effect.

“That the GNWT request, if necessary in its opinion, that the Government of Canada reconsider the Formula Financing Agreement in order to support, if necessary, expanding the GNWT’s role in the management and mitigation of effects associated with the development.”