

**CANADIAN ARCTIC RESOURCES COMMITTEE**

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**FAX COVER SHEET****TO:**Gordon Lennie, MVEIRB 920-4761Cyrie Azolini**FROM:** Kevin O'Reilly, Director of Research, CARC**DATE:**July 30, 2001**PAGES:**7

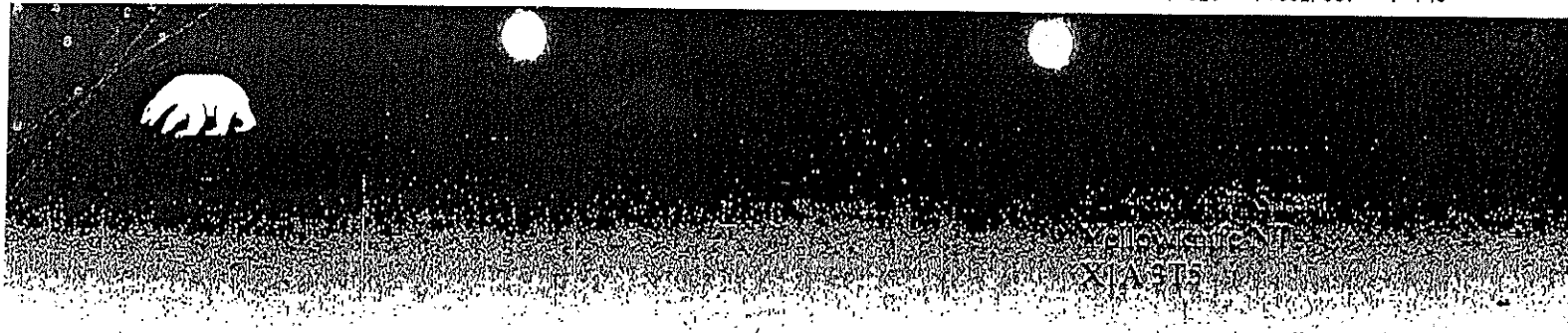
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**MESSAGE:**Re: De Beers Snop Lake EA

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July 30, 2001

Gordon Lennie  
Chairperson  
Mackenzie Valley Environmental Impact Review Board  
Box 938  
Yellowknife NT X1A 2N7

**Re: De Beers Snap Lake Diamond Project Environmental Assessment**

Dear Mr. Lennie

The Canadian Arctic Resources Committee (CARC) is requesting a ruling on three matters from your board with regard to the De Beers Snap Lake Diamond Project Environmental Assessment.

CARC has a 30-history of involvement in research, analysis and policy development in the North. We have had experience with environmental assessment and regulation of most of the major resource development projects across northern Canada dating back to the proposal for a Mackenzie Valley pipeline proposal in the 1970s. Most recently, CARC has participated in:

- the BHP Diamonds EARP Panel review;
- the NWT Water Board licencing of the Ekati mine;
- the negotiation of the BHP Environmental Agreement;
- the Diavik Comprehensive Study Report process including an application for judicial review;
- the NWT Water Board hearings on the Diavik Project; and
- the Mackenzie Valley Land and Water Board hearing on BHP's water licence amendment to add the Fox pipe to their Ekati operations.

CARC provided independent technical expertise to many of the above proceedings and added significantly to the rigour of these reviews. We also provided assistance to communities in their reviews of these projects through networking and information sharing, and by making technical experts that we retained available to communities. CARC has also conducted and published independent research on mineral policy and other resource development in the North.

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Firstly, we are seeking an extension to the August 3, 2001 deadline for submissions on the draft terms of reference and work plan. This document was not received at our office until July 6, 2001 by facsimile. Our office in Yellowknife is staffed by one full-time Research Director and a part-time assistant. We do not receive any funding to participate in this environmental assessment from the charitable foundations and donors that support our work. With all the other activities and duties of our Yellowknife office, it is difficult to properly deal with the environmental assessment of this project. We heard that several other participants have not had enough time to adequately review the draft at the meeting held by your staff on July 27, 2001. Given that changes have been made once to the work plan and further changes are now under way by your staff, it is difficult to know precisely what participants are now commenting on. **We hereby request a 30-day extension to the August 3, 2001 deadline.** In the event that you will not accept this request for an extension, our preliminary comments on the June 21, 2001 draft are attached.

Secondly, we have raised the issue of intervenor or participant funding with your staff and DIAND staff but have not had a positive response. DIAND staff at the July 29, 2001 responded to a direct request for funding by indicating that such funding was available to Aboriginal organizations under the Interim Resources Management Assistance program but there was no legal requirement to provide any funding to others and that there was none available. **We are requesting that your Board make a formal ruling on the provision of intervenor funding to non-Aboriginal organizations for this environmental assessment.**

While we fully understand that there is no legal requirement for intervenor funding, it is our view that a project of this magnitude would likely have been assessed through a Panel Review under the *EARP Guidelines Order* and possibly under the *Canadian Environmental Assessment Act*. We note that under amendments to the *Canadian Environmental Assessment Act* before the House of Commons, there will be a legal requirement to provide participant funding during Comprehensive Studies. Given our organizational capacity, the on-going environmental assessment of the Tahera project, the potential for a Mackenzie Valley Pipeline and other developments, CARC cannot devote the necessary time and resources to fully participate in this environmental assessment.

Thirdly, CARC has participated in good faith in the two meetings hosted by your staff on this environmental assessment on July 20 and 27, 2001. It is our understanding that your staff are not permitted to attend or participate in any discussion of the draft terms of reference for this environmental assessment. Given the magnitude of this project and its potential for significant adverse environmental effects, we do not believe that it is appropriate that public participation in scoping this environmental assessment should be based solely on written submissions. **We are requesting that your Board make a formal ruling on the necessity of conducting formal scoping meetings or hearings for this environmental assessment.**

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This will allow your board to directly hear the views of First Nations and the public concerning the scope of this project and the scope of the assessment. We do not believe that this need be a lengthy or time-consuming process but that it would be a wise investment of time to ensure that the environmental assessment gets off on the right foot.

Finally, your staff have verbally requested that we consider the application of the draft "Rules of Procedure for Environmental Assessment and environmental Impact Review Proceedings" dated March 21, 2001 for this environmental assessment. While we favour clarity and certainty, there are some fundamental issues with the draft such that we cannot support their use.

The draft rules would appear to create at least four classes of participants; directly affected parties, parties, intervenors and the public, with varying degrees of access to proceedings. This represents a significant departure from the practice in most environmental assessments or regulatory processes in the NWT. We do not believe that is necessary or desirable to create these distinctions amongst participants. In addition, several key steps outlined in the procedures for environmental assessment have already passed making it difficult to see how the entire package can now be applied. We will submit our full comments when formal consultation on a draft is undertaken by your Board.

We look forward to your response to these requests.

Sincerely,



Kevin O'Reilly  
Research Director

cc. Hon. Robert Nault, Minister of Indian Affairs and Northern Development  
Hon. Ethel Blondin-Andrew, MP Western Arctic  
Hon. Joe Handley, Minister of Resources, Wildlife and Economic Development  
Chief Archie Catholique, Lustel K'e First Nation  
Chiefs Rick Edjericon and Peter Liske, Yellowknives Dene First Nation  
Clem Paul, President, North Slave Metis Alliance  
Robin Johnstone, Senior Environmental Manager, De Beers

**COMMENTS ON THE DRAFT TERMS OF REFERENCE AND WORK PLAN  
FOR THE ENVIRONMENTAL ASSESSMENT  
OF THE DE BEERS SNAP LAKE DIAMOND PROJECT**

**2. Development Description**

pg. 2—This duplicates the “scope of the development” found on page 20. The development description should attempt to briefly describe the project in functional terms, that is, an underground diamond mining operation that relies on a winter road and airstrip for resupply.

**3. Roles and Responsibilities**

pg. 3, last sentence—It should be added here that the reports from the Board’s expert advisors will be placed immediately on the public registry.

**4. EA Process**

The timeline and milestones table here is very confusing. Several of the points have already passed or been superseded, while several steps are likely to occur concurrently. We would suggest limiting the milestones to the major steps with an indication of the amount of time each stage will take. We do not think it is appropriate to list the submission date of the EA Report by De Beers and any subsequent dates as they are largely at the discretion of the developer. It would be much better if each step was identified as “submission date + 30 days” or some similar format.

We were informed by your staff at the July 27, 2001 meeting that the Board would like to have this environmental assessment completed within 18 months. Based on our experience with other diamond mining project, this is a very ambitious timeline. In previous projects, developers have changed their project in the middle of the environmental assessment, submitted materials that required additional information or clarification, expert reviews have taken significant time and community schedules did not always accommodate consultations. We believe it is necessary to conduct a thorough and fair review rather than one that at its outset, is designed to meet some artificial deadline.

At the same meeting, we heard from representatives of the developer that they need to have all their approvals in place for the use of the 2002-2003 winter road. They also stated that an August 1, 2002 completion of the environmental assessment report would allow them to meet that schedule. It is doubtful that this is possible given the time that the DIAND Minister will require to respond to the report, any subsequent water licence hearings and issuance, the potential for environmental agreements or legally binding developer commitments, negotiation of impact and benefit agreements and other approvals. We do not believe that the Diavik process should be repeated where a developer placed incredible pressures on regulators and adopted recommendations were ignored.

We do not see the need to have same table appear on page 16 and 17.

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pg. 14, second sentence—Typographical error, “After the Review board’s consideration and approval of the final ToR, they are sent to De Beers and others as required.”

5. Draft Terms of Reference

pg. 19, 5.2.1 Public Consultation—There is nothing in this section that requires De Beers to prepare a public consultation plan for the Board’s and participants’ information. We believe that this would help the developer focus its efforts and give participants a formal opportunity to indicate how they would like to be consulted.

pg. 20, 5.2.2 Traditional Knowledge—the Board may wish to consider whether they will accord Traditional Knowledge “full and equal consideration” to that of western science as was the case with the BHP EARP Panel review.

pg. 20, Scope of the Development—We believe that there should be a requirement for the developer to disclose any partners in this project, their current permits and licences for exploration activities and their corporate track record. The guidelines issued by the BHP EARP Panel are quoted below and should be adopted for this environmental assessment.

s. 5.3 Relevant details on ownership of rights and interests in the Project, operational arrangements and corporate and management structures should be provided. The Proponent should describe its relevant experience over the last 10 years in mining operations in Canada and in other countries with similar regulatory and social policy regimes in regard to the following:

- (a) record of compliance with government policies and regulations pertaining to environmental protection and socio-economic issues, including details of any corrective measures or penalties imposed by government as a result of significant non-compliance;
- (b) mine safety, major accidents, spills and emergencies, including details of events and responses;
- (c) record in honouring commitments on environmental and socio-economic matters in the event of planned or premature mine closings or change of ownership;
- (d) relations with Aboriginal peoples;
- (e) operations in arctic and subarctic regions; and
- (f) record in incorporating environmental and socio-economic considerations into project construction, operation, closure and reclamation, including programs or techniques for avoiding or reducing negative effects and/or enhancing positive effects.

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pg. 20, 5.3.2 Accessory Development—De Beers' use of the current winter road, their spur off the winter road, and their proposed all-weather road to the esker to the south of the project should all be included. De Beers should also be requested to generally describe their on-going exploration efforts in this claims block and any adjoining ones that they may hold an interest in. De Beers should also be requested to explain the likelihood of their project expanding and any areas of medium to high development potential within their claims block. This was requested of BHP and was helpful in examining the cumulative effects from the project.

pg. 21, 5.4.3 Closure and Reclamation—De Beers should be requested to explain what their closure and reclamation approach will be and to what standards they will reclaim (i.e. stable land forms, revegetation, return to previous ecological productivity?). Any residual monitoring or care and maintenance should be discussed including waste rock seepage treatment.

Pg. 23, 5.5.1 Alternatives to Carrying out the Development—De Beers should be required to present and discuss any alternatives that were deemed not economically feasible. The economic analysis to determine feasibility should also be summarized and made available to the public.

pg. 25-26, 5.6.4 Water Quality and Quantity—De Beers should be asked to describe in detail the mineralogy of their deposit and waste rock and its potential for acid generation. Any tailings pond discharges and treatment processes should be fully described and discussed.

pg. 28, 5.9 Cumulative Impact—The projects to be included would only consist of those in the regulatory process on the day of issuance of the terms of reference. CARC believes that this should be expanded to projects that are foreseeable or likely to proceed and those that are reasonably foreseeable. This standard has been proposed by the Alberta Environment, the Alberta Energy Utilities Board and the Alberta Natural Resources Conservation Board (see Draft Informational Letter 99-X).

Finally, the board should consider whether it would be helpful to issue a Government Information Request at the same time the Terms of Reference are released. Knowledge of the ability of government to monitor, inspect and enforce follow-up programs would be helpful in designing such programs. The BHP EARP Panel guidelines might be helpful in drafting an appropriate information request.

Prepared by Kevin O'Reilly, Research Director, Canadian Arctic Resources Committee  
July 30, 2001

## **Louie Azzolini**

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**From:** Louie Azzolini  
**Sent:** Tuesday, July 31, 2001 10:45 AM  
**To:** Brett Hudson (E-mail); Bridgette Larocque; Buddy Williams (E-mail); CARC Kevin (E-mail); Chamber of mines ED (E-mail); CPAWS (E-mail); Dechi Laot'i First Nation (E-mail); Doug Soloway (E-mail); EAO2; Ecology North (E-mail); Health Canada 2 (E-mail); John Donihee (E-mail); John Ramsey (E-mail); Julie Dahl (E-mail); Lana Paulson (E-mail); LKDFN Wildlife Lands Environment Ctte (E-mail); Lutsel K'e Dene First Nation (E-mail); Mark Dahl (E-mail); Mark Lange DFO (E-mail); Mary Tampsell (E-mail); MVLWB Permit (E-mail) (E-mail); NSMA Bob Turner (E-mail); Paula Pacholek [Yel] (E-mail); Robin Johnstone (E-mail); Roland Semjanovs; Roland Semjanovs (E-mail); Stephen Harbicht (E-mail); Tamara Hamilton (E-mail); Tim Byers (E-mail); Vern Christensen; Wha Ti First Nation (E-mail); William (Bill) Carpenter (E-mail); WWF - Peter J. Ewins (E-mail); WWF Tony Y. (E-mail); YK Chamber of Commerce (E-mail)  
**Subject:** Letter acknowledging CARC's Request for Rulings and input on Draft ToR and Work Plan

By Fax (867) 873-3654  
MVEIRB File EA01-004

Kevin O'Reilly  
Research Director  
Canadian Arctic Resources Committee (CARC)  
#3 -4807 49th Street  
Yellowknife, NT X1A 3T5

Dear Mr. O'Reilly

RE: De Beers Snap Lake Environmental Assessment (De Beers EA) - Request for Rulings and Comments on Draft Terms of Reference and Work Plan for the Environmental Assessment

Thank you for your letter dated July 30, 2001. The Mackenzie Valley Environmental Impact Review Board ('Review Board' or 'Board') appreciates the important technical and "northern" expertise CARC can offer the Review Board in the De Beers EA. In addition, CARC's contribution in the two scoping sessions was important, as was the leadership demonstrated by your knowledge of the Board's quasi-judicial processes.

CARC's concerns regarding the Draft Rules of Procedure, Draft Terms of Reference and Draft Work Plan for the Environmental Assessment of the De Beers Snap Lake Project are acknowledged. They are now on the public registry and form part of the Review Board's record regarding any decision on its final work plan and Terms of Reference for the De Beers EA.

CARC's request for rulings is circulated to interested parties. The Review Board has tentatively scheduled its next meeting in mid-August and will rule on CARC's requests then.

Sincerely,

Luciano Azzolini  
Environmental Assessment Officer

Luciano Azzolini,  
Environmental Assessment Officer,