

EMAB meeting, February 2-3, 2010, Yellowknife

Present:

Doug Crossley, Chair, Kitikmeot Inuit Association  
Florence Catholique, Vice Chair, Lutsel K'e Dene First Nation  
Lawrence Goulet, Yellowknives Dene First Nation  
Danielle DeFields, alternate, North Slave Metis Alliance

Regrets:

Erik Madsen, Diavik  
Floyd Adlem, Canada  
Gavin More, GNWT

Staff:

John McCullum, Executive Director  
Michele LeTourneau, Communications Coordinator (also minutes)

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Meeting started @ 9

Those present will have discussions but will defer decisions until there is quorum.

Gavin Fitch, legal counsel, will meet the Board in the afternoon. (He is in Yellowknife for IEMA.)

Opening prayer: Florence Catholique

### **Item 1: Approval of agenda and minutes**

Review of agenda.

Add to agenda: A discussion on quorum issue re: those Parties who don't have adequate representation.

Discussion on minutes, specifically the transcribed section of the discussion with Gord Macdonald on the budget dispute. Transcribing is not the usual method of keeping minutes.

There are three options to deal with that section:

- Florence Catholique requested to be on the record as saying that section should be kept the way it is, as it reflects the discussion. If Diavik has issues with this, they should watch what they say. In the early stages of EMAB there was a concern from Diavik that not everything should be written.

- Provide a summary. But Michele didn't feel that it was her responsibility to determine which issues were the ones to point out.
- Take it out completely and simply state that a discussion took place.

Issue deferred to when the board has quorum.

Email resolution process, re: the EA Review motion. Erik communicated by email that he feels these should be used sparingly – this was circulated to the Board.

Noted that regarding the specific resolutions in this meeting kit that there was urgency in dealing with these issues.

Action Item: Review of the email resolution policy at the next meeting.

## **Item 2: Budget Dispute Update**

Update on issue: Meeting between Diavik/INAC/EMAB

Info in binder:

- Current status of discussions with Diavik/INAC
- Any decisions required
- Status of February 1 contribution
- Legal advice

Review of the letter to the minister: Remove the first sentence.

Q: What is the role of INAC in a formal dispute resolution process?

A: No role – an arbitrator is assigned.

Q: Why isn't INAC initiating dispute resolution?

A: We don't understand INAC's reticence.

Discussion:

- EMAB should respond to the DIAND/GNWT/DDMI letter as suggested by lawyer
- The parties need to come together – can EMAB pay for that?
- At the Party level, they are thinking that the way to deal with this is in the Environmental Agreement. The Party (Lutsel K'e) thinks EMAB can initiate dispute resolution.
- A phone call from each Party leader to Trish saying this has to stop would help.
- Update Parties by letter: good idea. Getting the letter and reading it and understanding – that's a question.
- In Lutsel K'e a letter would have to go from the Chief to the WLEC in order to deal with the dispute

- Trying to get the five Aboriginal leaders in one spot at the same time will be difficult – maybe a teleconference?
- Also an opportunity to brief party leaders face-to-face or teleconference...
- Ok to have a meeting with a sub-set?
- Yes. The other three parties have met. These five need to discuss this.
- In the early days of EMAB Aboriginal Parties called a caucus during Board meetings for the five to meet.

Action item: respond to DIAND/GNWT/DDMI letter as per lawyer's advice

Action Item: Write and send an update letter to Aboriginal Parties re: budget disagreement. Suggest a conference call. Follow-up by phone.

Action Item: Letter to Diavik: Deducting another \$150,000 was provocative and unnecessary. Give the money right now.

Briefing from Communications Coordinator on media for budget dispute

Both CBC and News/North have contacted EMAB about the budget dispute and looking for updates. The Executive should make themselves available to answer questions, as well as any other Party that wants to speak

Suggestion that EMAB contact Party leaders for comment. Better for Parties to speak directly to media – it would be good to alert the leaders that they may be contacted by the media.

The executive will meet tomorrow morning at 8:30 to prepare for media arrival at 10.

Break at 10:00

Back at 10:20

### **Item 3: Wildlife Update**

Colleen English updates.

- The aerial surveys are cancelled for 2010.
- There are opportunities for TK programs for 2010. Diavik is figuring out how to do that. Diavik is interested in caribou in particular. Q: How can we go about this? Diavik has to get together with BHP first and should have a better idea of how to proceed by the end of February.
- DDMI will do the track survey in March and DNA work in April. They will do the DNA study every three years after. They have asked the HTO's for assistance carrying out the surveys.
- Because of resources and money ENR will not be doing a wolverine DNA study this year. Frequency – every three years. Once we get the data this year, we will compare it to last year, also compare it to Daring Lake from last year. 2013 would be the next year.
- Waterfowl and waste will continue as proposed in September.

- Grizzly bear – Meeting with BHP. Planning to proceed with testing the new methodology. First step, will deploy pyramids at the end of June in each of the plots where they were doing previous sampling. Will check them throughout July and August. The pyramids will stay out there permanently.
- Raptors – a lot of different ideas came up at the wildlife workshop at the workshop. They want to meet with BHP and ENR on this. They will use the same methods as in the past unless there is agreement to change them.
- The wildlife permit application was submitted at the end of March, early April. NSMA is the only one we are waiting on.

Q: when is EMAB doing community updates?

A: LKDFN – Feb 24-26; KIA – March; YKDFN – during EA Review workshop at end of March  
DDMI indicates it still plans to do joint updates.

Q: Are there wolves in the area?

A: There are from time to time. Dean Cluff did a lot of research. We feed our information to Dean on sighting and dens.

Discussion on TK in the WMP

LKDFN meeting with DDMI on Friday to discuss possible use of TK for monitoring

DDMI sat in on SLEMA meetings where they discussed their TK monitoring approach. They also talked to the GNWT TK person. They haven't approached any communities yet. They are looking at historical work, and what other mines are doing.

Q: The other two agencies are following up on joint letter on wildlife from all three agencies with another joint letter. Are we interested?

Action Item: ED to Review the joint wildlife follow-up letter and provide comments to the executive for decision-making.

#### **Item 4: TK monitoring update**

Information in binder.

Action Item : Resend TK proposal to Aboriginal Parties – and members. Note funding and deadlines.

Action Item: Write and send a letter of response to Diavik regarding their position on the TK proposal and cc the WRRB. Circulate draft to Board for comment.

LKDFN wants to get going with TK monitoring.

Suggested that a TK Panel be set up. This will be discussed further when there is a quorum.

**Item 6: Inspector's update.**

Jen Potten updates.

- Regarding underground, there is a lot of water. Dewatering is the biggest cost. That water goes to the North Inlet pipeline – and is used in the process plant.
- Once they are completely underground, there will be less use of Lac de Gras water (in 2011).
- Did not exceed their limits.
- North Inlet pipeline is not operating yet.
- In January at the paste plant Type 1 rock was being crushed and they were adding cement and treatment plant water.
- Closure and reclamation plan – there is not a lot of detail about how they will close. There is not much more info than in the 2006 version.
- There were no seepages noticed this winter.
- North inlet dam will be stabilized with thermosyphons
- Regarding the ice dam: if it's still seeping it will seep in perpetuity.
- Land use permits for CBM camp and Lac de Sauvage exploration camp. The exploration camp has been closed for two years. That permit has been closed. Clean-up has been completed. For the CBM camp they have to apply for a new land use permit. Originally it was through the MVLWB and now it's through the WLWB. They had received a two year extension – that has expired. There is also a one-year storage authorization. They have to keep everything above the high water mark but cannot use the site.

Regarding the ICRP – INAC will likely be asking for a technical session because there isn't much of a plan. Some decisions need to be made. Possible concern that use of Type 1 rock in paste backfill will decrease the amount available for closure. Some concern about the duration for post-closure monitoring.

**Item 7 – AEMP/AdMP status**

Kathy Racher updates.

See binder for information.

AEMP:

On sampling – it's too early to know if we need to change sampling locations or number of stations. This will be looked at during the three-year review next year.

- On mercury – larger fish have more mercury, and this may be the reason there seems to be more mercury in the trout taken in 2008. There will be a slimy Sculpin study this year. Next year we will study the cause of the mercury. It's not coming from the discharge; it's not in the sediment. The DFO study this past summer (AEMP) will look at whether the higher nutrient levels may be causing more mercury to be absorbed by fish. Diavik's efforts to date have been reasonable.
- On eutrophication – the EA predicts 20% of Lac de Gras will be affected by increased nutrients. So far it's at 14% and we're not even at the halfway mark of the mine life. Phosphorous is naturally occurring in the groundwater so gets pumped up from the pits in the mine water. It's a nutrient. Living things need phosphorous. DDMI has said it is looking at ways to improve phosphorus removal at the water treatment plant. The 20% amount is a prediction – the CSR doesn't say whether it will be significant if the affected part of the lake is larger than 20% so the WLWB is doing a study on what that might mean - bringing all the data together and giving it to Neil Hutchinson to find out is this an issue or not. Levels could go up with underground mining.
- We know that once the mine closes phosphorus levels will eventually return to the original levels. If the nutrients affect mercury uptake by fish this will be especially important.

#### AdMP

Over the last year there have been several iterations of the AdMP guidelines, following up on the comments from EMAB and others. It's a transparent conclusive way to respond to monitoring. It's a "response framework."

You have to know the level of significance. Significance threshold results in an action levels, such as low, medium and high. At a medium level the action might be to stop the trend; at a high level the trend might need to be reversed.

Should be a couple of months for an AdMP to be sent out. WLWB is working with Don Hart and Neil Hutchinson.

They will make the Response Framework consistent with DIAND's AEMP guidelines. The WLWB will circulate a draft for comment

Side note: Gord Macdonald promised Lutselk'e a workshop on phosphorous.

#### **Item 1: Approval of Agenda and Minutes**

##### ***Motion:***

***Approve agenda, with addition of the issue of Parties appointing members and alternates.***

***Moved: Floyd Adlem***

***Second: Florence Catholique***

***Carried.***

Approval of minutes: They are tabled and to be dealt with later.

**Item 2: Budget dispute update**

***Motion:***

***Approve, with changes, the letter to the Minister.***

***Moved: Florence Catholique***

***Second: Lawrence Goulet***

***Carried***

**Item 8: EA review status**

Shelagh Montgomery/consultant from SENES

- SENES did a similar review last year for IEMA.
- They are reviewing the EA and developing a line of questioning and interviewing various people. They will draft list a list of interviewees and email to John. Will try to include some youth and elders.
- Starting interviews next week.
- Workshop planned for March 30-31. Need EMAB to confirm this
- Draft agenda a week before the workshop.
- John passes out summary of scoping survey responses.

Q: Can individual surveys be circulated?

A: If someone wants the individual surveys they can go directly to the Parties.

**Item 5 : Capacity Fund update**

Information in binder

Side topic: Discussion on TK panel

- Could have a standing panel that would be a subcommittee for EMAB
- History of standing panel.
- The current Terms of Reference refers to a topic-specific panel.

- Not advocating for the same person for all topics – different people have different knowledge: water, wildlife fish etc.
- This is a complicated subject.
- SLEMA has a standing panel. There are two representatives from each Aboriginal group – one is classified water and fish and the other as land and animals.
- Consider having a male and female for each Aboriginal Party

EMAB meeting, February 3, 2010, Yellowknife

Present:

Doug Crossley, Chair, Kitikmeot Inuit Association  
Florence Catholique, Vice Chair, Lutsel K'e Dene First Nation  
Lawrence Goulet, Yellowknives Dene First Nation  
Danielle DeFields, alternate, North Slave Metis Alliance  
Floyd Adlem, Canada, Secretary Treasurer

Call-in:

Gord Macdonald, Diavik, alternate

Regrets:

Erik Madsen, Diavik  
Gavin More, GNWT

Staff:

John McCullum, Executive Director  
Michele LeTourneau, Communications Coordinator (also minutes)

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Meeting started at 9:10

### **Item 9: Reports**

#### **Item 9b: Financial statement**

John reviews financial statement with members.

Noted:

- We're on track.
- Over-expended on executive committee – due to budget disagreement.

***Motion***

***Approve financial statement.***

***Moved: Floyd Adlem***

***Second: Florence Catholique***

***Carried.***

**Item 9c: Insert into EMAB Operations Manual**

Review of draft documents – draft of new policy in binder.

Discussion of policy:

- Gord says that under normal circumstance, a motion is discussed and approved at meetings only.
- John notes that the discussions occur at the meeting giving direction for a draft document, a draft goes out for review and comment, and then email motion takes place. If Board members express concern then the Chair decides whether to hold a conference call or defer.
- Gord insists that process is to make the motion then discuss then vote.
- Noted that if we waited to discuss everything at a meeting we wouldn't get anything done.
- Onus is for directors to be here when there are meetings.

***Motion***

***Approve policy on travel from Dettah.***

***Moved: Florence Catholique***

***Second: Lawrence Goulet***

***Carried***

**Item 10: ICRP review update**

Randy Knapp from SENES; Deb Simmons from SENES by phone

Jen Potten observing

Information in binder. In general Randy feels the plan is reasonably well done and would meet his expectations given the stage of the mine's life. There are two major changes EMAB should keep in mind, both of which will decrease closure costs: these are the approach to the PKC and to waste rock cover. On waste rock they were going to flatten the slopes and cover with rock and till; now they plan to leave them steep and not have a till cover. Part of the justification is that there is no evidence of poor run-off, but you would not expect run-off at this stage because the piles are probably not saturated. They have a bit of a problem with availability of cover material because they won't be mining A21.

A couple of other issues: there is no revegetation plan; they haven't addressed the possible effects of climate change.

In general Diavik needs to defend its proposal better in the plan.

Discussion:

Randy Knapp's review is one step among many.

We don't know when the next review will take place. Draft plan refers to 2015 in a number of places.

Q: There are concept changes that are not defended. There are a lot of blanks but that's ok? When is having blanks not OK?

A: The next version can include the missing pieces. There are no issues with this one. EMAB can accept with conditions.

Pit walls will fall apart no matter what.

There are two things you can do with a pit: fill it with water or fill it with rock. Putting the rock back would be an astronomical cost.

John goes through his own assessment. Information in binder.

Discussion:

- There is the issue of community input on options which would have helped the whole process and improved the final product. EMAB is concerned about this.
- There is an opportunity to do this for the next version.
- Q: Is dust an issue outside the footprint? A: Would be shocked if that was an issue.
- The question is do we accept/accept with conditions/sent back for revision.
- We should request revisions to put the emphasis on priority areas.  
Deb Simmons presents her comments on DDMI's TK research plan
- Surprised document seems to be starting from scratch – should consider available information.
- Diavik should get outside expertise to develop and carry out the TK research plan
- TK work should start as early as possible
- There is a responsibility for Diavik to be accountable for the quality of the work and with the details they've provided it's not possible to have that sense.
- There's a western science plan but they are starting from scratch with TK – that is an imbalance.
- TK between Aboriginal groups is not the same We need to highlight that there has been no community consultation regarding TK/ICRP
- EMAB needs to comment to WLWB on lack of consultation and need for a better TK research plan

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Break for lunch 1200

Back at 1:15

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**Item 10: ICRP review update con't**

ED presents comments on ICRP: focused on CSR commitments, closure objectives and criteria, community engagement, TK research, and reclamation research plan

- We need to ask the question in the letter to the WLWB: When will the next review take place? The water licence provides for updates annually. However, this sort of thorough review may or may not take place.
- Noted that 2015 is quite a few years down the road.
- Criteria and objectives are not really clear. Commitments that are made should be linked. There is uncertainty as to what's going to be done – fulfilment or non-fulfilment of commitments due to a change to the plan need to be justified/defended.
- Florence: LKDFN needs an extension because of new staff.
- There is a lack of consultation. Diavik can't just hand over the information without discussion. They tried to slide it in at the camp in the summer and participants said that wasn't appropriate.
- Q: What about NWT reclamation guidelines? A: They guide the WLWB.
- Which parts need to be addressed now and which bits can be in the next iteration.
- Not sure EMAB should approve with conditions.
- In the letter we can note that there are required changes that are short term and required changes that are long term.

The WLWB are the ones who approve or don't approve the plan. Why should we be pulled into that? It's not appropriate for us to judge whether the document is adequate – but we provide them with our "conditions."

The plan shows a lot of work, it's well done, there's a sound basis.

There are so many gaps that EMAB doesn't feel it's appropriate to make a recommendation on approval of the plan.

EMAB should put comments in WLWB format.

Action Item: Draft EMAB's submission on the ICRP to the WLWB by Monday – put in table form. The board will have conference call Wednesday the 10<sup>th</sup>

Noted the WLWB may provide an extension, so the dates might change.

### **Item 12: Workplanning**

Priorities:

TK Panel and implementation of TK in monitoring

- Wildlife Cumulative Effects
- SOE reporting
- Others: Air quality Monitoring
- Reporting on Monitoring results

Action item: finalize Board calendar and prepare a draft budget and circulate both to Board for comment.

Discussion on the last minutes and the discussion on the budget dispute, and the issue of in camera discussions. An in camera discussion must be motioned prior to a discussion.

Action Item: Staff to summarize the discussion that took place between the Board and Gord Macdonald at the last meeting.

Action Item: Redraft the motion policy for next meeting.

Action Item: Giving seven days notice on conference calls is inoperable if it's on a pressing issue. ED to review and raise at next meeting.

Draft documents... draft documents should only be sent to board members.

Noted that this was discussed at the December meeting and agreed that draft documents would go to Board members, alternates and one other designate per Party.

#### Communications Update

Community updates – Lutselk'e – Feb 24-26; Kugluktuk – Mar 22-24; Dettah – Mar 30 (night of workshop); NSMA – soon but not scheduled yet.

#### Member/alternate presence at EMAB meetings.

Discussion on the importance of a GNWT and Tlicho Government representative at meetings. We didn't have a quorum yesterday so had to defer some decisions. The Party chooses their representative but EMAB should identify the quorum problem to them.

Action Item: Encourage GNWT and Tlicho Government participation by letter.

Should also send a letter to GN.

Reminder that there can be a member representing the public, appointed by Parties.

Internal Board EA review delayed until after the EA workshop.

#### Member reports

LKDFN:

- The new WLEC acting manager is Ray Griffith.
- Regarding the ICRP: for sure there will be a request for an extension.
- Would like to expand capacity building beyond looking at fish
- James Marlowe asked that it be noted that Gord Macdonald promised to carry out phosphorous workshop.

KIA:

Following the December meeting, Doug discussed the highlights with KIA staff and president: ICRP, EA workshop, intent to have community update. There have been many EMAB executive issues.

DDMI – written update in kit. Noted that A21 amendment is being reviewed by WLWB. DDMI wants to build the rock “groin” this summer, and then prove the technology.

Next meeting to be held in Behchoko March 3-4. Talk to Tlichu Government rep first.

Motion: adjourn

Moved: Florence Catholique

Carried

Meeting adjourned @

Closing prayer: Lawrence Goulet