

January 10th Notes
Diavik EA Working Group

Participants

Ted Blondin	Dogrib Treaty 11 Council
Rachel Crapeau	Yellowknives Dene First Nation
David Kravitz	Yellowknives Dene First Nation
Charlie Catholique	Lutsel K'e Dene Band
Bob Turner	North Slave Metis Alliance
Stanley Anablak	Kitikmeot Inuit Association
George Makenzie	Dogrib Treaty 11 Council
Ernie Smith	Dogrib Treaty 11 Council
Angus Martin	Yellowknives Dene First Nation
Lawrence Goulet	Yellowknives Dene First Nation
Brett Hudson	GNWT-RWED
Chris Nichols	GN-DSD (by conference call)
Brenda Kuzyk	Diavik Diamond Mines Inc
Mary Tapsell	DIAND
Eric Yaxley	DIAND
David Livingstone	DIAND (afternoon only)
Matt Bender/Chris Pullen (note-takers)	
Hal Mills	GeoNorth (facilitator)

Welcome & Introductions

Hal Mills welcomed participants to the Working Group (WG) meeting and led a round of introductions. The discussions began by defining the process involved in establishing a Society and Board of an Environmental Monitoring Advisory Board (the Advisory Board) as set out in the Diavik Environmental Agreement (EA) and the Societies Act.

The WG selected Hal as Chair (for WG meetings only, not for the Advisory Board).

Review of Agenda

The proposed Agenda was reviewed and approved. The following comments were made.

1. What is to be the structure of the EMAB?
2. Who will compose the EMAB?

Discussion was deferred until the review of Article 4 of the EA.

Background, Purpose

Mary Tapsell. gave back ground to the development of the meeting.

- Referred to 18 1c. of the EA, where it is stated that DIAVIK has 60 days in which to get an Advisory Board in place. On December 20, 2000 the letter was received from Diavik stating the intention to proceed with the Project, thus DIAND moved to establish the Working Group. GeoNorth was hired to help with the coordination of the Working Group. Nomination letters are to be sent out to parties who have signed the EA to nominate members to the Board (Lutsel K'e and the KIA have not signed).
- The purpose of the Working Group is to develop and establish procedures to facilitate the operation of the Board once it gets established. The WG has no authority once it is established.
- DIAND has funds to help with the establishment of the Board and Eric Yaxley will be the main DIAND contact for the DIAVIK EA.
- Chris Nichols. wanted to clarify the point that the even though they are not signatories to the EA the Government of Nunavut does have a seat on the AB.

The Diavik Environmental Agreement

1. Brenda Kuzyk summarized the main points of the EA.
 - Emphasis was placed on the transitional nature of the present Agreement and provisions have been made to allow for renegotiation based on recommendations by the AB after a two year period.
 - Brenda K. and Mary T. provided further explanation of Article 15 of the EA regarding Security. Mary T indicated that DIAND has a record of allocation of all the Security for the project.
2. Key Differences from BHP Agreement: Overhead Presentation #1
 - Hal highlighted the Transitional Review process that is in place to address any adjustment to the EMAB as well as examine any developments towards the establishment of a regional Board that would incorporate all ABs already in existence (BHP, DDMI etc).
 - Bob Turner. indicated that there is provision for members who are on two AB's (BHP & DIAVIK) and there will be no conflict of interest.
 - Ted Blondin explained that there is not a provision for a TK or Scientific panel written into the DDMI EA because of potential duplication with other Panels already in existence. By the two year review the AB will have examined existing TK and Scientific panels to identify any potential for cooperation or move for the establishment of TK/Scientific panels specific to the EMAB. The DDMI EA is based on the idea of being Efficient, Effective, Flexible.
 - Rachel Crapeau. asked what the relationship was regarding the establishment of a TK panel and AB fiscal restraint.

- Hal suggested that fiscal restraint referred to how the AB would allocate money. The AB may decide to refer to TK panels already in place in order to avoid duplication and conserve funds. These decisions would be made at the two year review that could occur on or about Dec. 20, 2002.
- Rachel indicated that there are provisions in the AB for the negotiation of the review date.

The Environmental Monitoring Advisory Board Overhead Presentation#2

Introduced discussions on Article 4, Establishing EMAB.

1. Advisory Board.
 - Hal summarized slide
 - Article 4 outlines the legal requirement to have the EMAB established within 60 days of DDMI's notification in other words by the end of February 2001. If EMAB is legally registered under the *Societies Act*, the commitment will be realized and other requirements such as staffing, office space etc. could likely be worked out afterwards if needed. Preliminary discussions have already been initiated with the Registrar's Office to facilitate the application process and a preliminary set of Bylaws has been written.
 - DIAND has an initial 150K to facilitate the establishment of the AB. Once the AB is in place they will decide figures for items such as Honoraria, travel allowance etc. of Board members.
2. Mandate of Advisory Board
 - Hal summarized slide
 - No questions
3. Advisory Board Composition
 - Hal summarized slide.
 - Noted that first page of the EA states the parties who will be members of the EMAB. 1 each for a total of 8 with respect to the parties (noting that KIA and Lutsel K'e have not yet signed). If someone has not signed, it does not affect the quorum the Advisory Board can function with as many members as have been appointed. The Government of Nunavut may appoint one representative and there will be two Public representatives. The Parties and the Government of Nunavut may/shall appoint one alternate (4.5d vs. 4.6a) and either or both shall be residents of the NWT or NU. The Public shall not have and alternate member. Therefore the Board could be as many as 11 representatives and 9 alternates.
 - Stanley Anablak – Indicated that KIA had signed in April at a meeting in Gjoa Haven.
 - **ACTION: DIAND to obtain copy of KIA letter!**
4. Advisory Board Functioning
 - Hal summarized slide

- George Makenzie requested additional information regarding conflict of interest with existing Boards
 - Hal explained that unlike the other Agency, the concept of independence would not be emphasized to the same degree. Board members for example could speak in that capacity, regardless of other interest groups they may represent without having to declare a conflict. The AB shall establish procedural rules regarding conflict of interest once it is established.
5. Advisory Board Funding
- Hal summarized Slide
 - There was discussion on the annual audit of the EMAB (i.e. fiscal year vs. calendar year). DDMI is not overly concerned when money is allocated, but the AB should establish a set date. DDMI also does not require an accounting of the AB's expenditures; it is the responsibility of the AB how it will allocate the money. DDMI's books will simply indicate that X\$ were given to the EMAB.
 - The WG should designate a few people to develop a preliminary rough budget to present to the AB and DIAND has already taken the lead on this.
 - There was a motion to have more Aboriginal involvement in budget development and that a greater effort be made to relay information to the community members relating to the allocation of dollars. Overall, improve community communication over that which exists with BHP.
6. AB Administration and Support
- Hal summarized slide.
 - No questions
7. Co-operation, Transitional
- Hal summarized slide.
 - Impression during negotiations was to get something going quickly.

BREAK for lunch.

Incorporation of Society

Certificate of Incorporation

Founding Members

- Hal outlined the framework of the Society and the Board.
- Brenda indicated that there might be some confusion having the two levels of administration for the board.
- David Kravitz. expressed concern that the AB would not have any signing authority as they were not (necessarily) the Parties that signed the agreement in a two tiered system

- The consensus was that there is a need to define the structure of the Society. Suggestions were made that the Society should be the Board as opposed to a Society with a separate Board as outlined in the present set of draft Bylaws.

What followed was an examination of the Draft Bylaws submitted by Hal and a lengthy discussion regarding the structure of the EMAB. At issue were the pros and cons of a two tiered AB where the Board and the Society are separate versus a one-tiered AB where the Members of the Board are the Society.

Some Key Concerns/Points

- Accountability between the Board and the Parties
- Authority of the Board if it were separate from the Society
- If the Board were the Society how would they be accountable to the Parties?
- The EA spells out the establishment of the Board – Question of interpretation and the need for legal interpretation.
- Membership of the Society - open vs. closed.
- Community involvement with the AB and the role of Board Members.

It was decided that further discussion on the incorporation of the Society and its structure be deferred until the members of the WG had time to study the Draft Bylaws and the EA in greater detail.

- Hal indicated that if there are going to be legal reviews of the EA, time is of the essence in order to incorporate the AB within the 60 days.
- Rachel made a motion that the next meeting be scheduled for January 22, 2001. All Agreed
- Prior to the next meeting Hal will prepare versions A & B of the Bylaws to address the two visions of the AB structure, which will be distributed to the WG members prior to the next meeting.

Preliminary Discussion of Key Points

Prior to adjournment the following points were introduced for discussion in order to address additional issues that may be relevant to the WG.

Advisory Board Representatives, Alternatives

- Ted B. indicated that it is important to get a list of representatives prepared for each community and that those representatives should be members of the community at large as opposed to an outside council. This is to facilitate the flow of information between the Board and the communities in a fashion suitable to members of the communities.

Action on Remaining Discussion Points

It was agreed that the working group would not make recommendations to the Board on the following topics, but will provide information to the Board in order to facilitate the expediency of it's working capabilities and time constraints.

1. Panel of Traditional Knowledge Experts
2. Panel of Scientific Knowledge Experts
3. Honoraria for Representatives, Alternates, Panels
4. Liabilities for Advisory Board Representatives
5. Secretariat/Staffing Options
6. Office Space Options

Next Steps for the Working Group and Actions

1. Legal consultation to occur prior to the next meeting.
2. Within the week Hal will have versions A & B of the Bylaws prepared and distributed.
3. The Parties will communicate with Hal their recommendations for Bylaws.
4. The Parties will develop lists of members for the Society/Board.
5. Mary T. will take the lead in preparing a list of costs and potential expenditures that may be incurred by the Board for its operation.
 - Office Space
 - Office expenses
 - Travel
 - Translation
 - Policies and Procedures (Operational Bylaws)

Closing Remarks

Hal and Bob suggested that it should be considered whom the Media should talk to if they come looking for information. DIAND would handle media relations for the time being.

Next Meeting of the Working Group will be at 9:00 am on January 22, 2001 in Basement Boardroom of the Scotia Centre.

Meeting Adjourned