

***2nd Meeting of a Working Group to assist in establishment of the
Environmental Monitoring Advisory Board for the
Diavik Environmental Agreement***

***January 22nd, 9:00am-4:00pm
Scotia Centre, Lower Level Boardroom, Yellowknife, NWT***

Participants

Ted Blondin	Dogrib Treaty 11 Council
David Kravitz	Yellowknives Dene First Nation
Charlie Catholique	Lutsel K'e Dene Band
Bob Turner	North Slave Metis Alliance
Stanley Anablak	Kitikmeot Inuit Association
Brett Hudson	GNWT-RWED
Chris Nichols	GN-DSD
Brenda Kuzyk	Diavik Diamond Mines Inc
Mary Tapsell	Canada-DIAND
Eric Yaxley	Canada-DIAND
Matt Bender/Chris Pullen (note-takers)	
Hal Mills	GeoNorth (facilitator)

Agenda Item # 1- Welcome and Introductions

Facilitator Hal Mills welcomed participants to the second meeting of the EMAB Working Group and completed the introductions.

Review of Draft Agenda

No suggestions were made regarding the Agenda.

There was discussion on Advisory Board logistics (e.g. budgets, staff, office space). David Kravitz suggested that efforts be made to provide interim logistics to help simplify the process in the long run. Mary Tapsell questioned the role of Canada (DIAND) in determining various options for budgeting and staffing. In her view, this should be the responsibility of the Board. Brenda agreed with David and suggested that the Working Group focus on finding temporary provisions.

Review of January 10th Meeting Notes

No changes to the Meeting Notes were suggested. (not sure if participants had received notes)

Bylaws: Option 'A' vs Option 'B'

Hal referred to the letter of January 21st signed by the Northwest Territories Societies Registry. Noted that, in their view, Option B was the preferred option and did a better job synthesizing the Environmental Agreement. **Chris: Minutes should clearly note that, before the meeting, Option B stood out as preferred option.** Hal suggested that participants summarize their thoughts on the various options in person:

- David K: favours option B. Tends to comply with agreement and will be easier to work with. David also noted the importance of choosing the right people to sit on the Board.
- Ted B: Noted that he has been chosen as the Dogrib representative. Also noted that he had not received correspondence and in the future should be contacted by fax.
- Bob T: Getting the feeling that the process is being rushed, steamrolled through. Feels that the structure and bylaws of EMAB should be similar to those of the Independent Environmental Monitoring Agency (IEMA). Bob wondered why the IEMA model was not being supported (Hal responded saying that the Societies Registry staff had noted many deficiencies)

Discussion took place on the topics of board representation, independence, and conflict of interest.

- Stanley A: Waiting for comments from KIA legal representatives. Should have word by this afternoon.
- Brenda K: DDMI legal advisors have indicated a preference for Option B – with a few modifications. Brenda noted a view that option B is the most consistent with the Environmental Agreement and the Societies Act. Has with her a list of proposed modifications and offered share it with the working group at their convenience.
- Brett H: GNWT preference is Option B, as it is most consistent with intent of the Environmental Agreement.
- Chris N: Government of Nunavut concurs and supports the selection of Option B.
- Charlie C: Lutsel K'e Dene Band supports Option B. Unsure who from Lutsel K'e will sit on the Board, especially given the heavy workload of the Lands and Environment Committee.
- Mary T: Legal advisors for DIAND support Option B. Canada is willing to be flexible and is interested in the views of the Working Group. Mary noted the 60 day timeline as the underlying commitment to realizing the Board.
- Ted noted his involvement in the establishment of WKSS and the IEMA. He assured participants that he is very comfortable with the way EMAB is progressing. Suggested that the sooner these Boards are established, the sooner we can begin working out the details and following through with the mandate.

Coffee Break until 11:00 a.m.

Update from Chris Nichols. GN legal advisors have confirmed their preference for Option B.

Introduction of David Livingstone (DIAND)

Hal questioned the level of consensus for Option B, and requested suggestions on how to proceed. Suggested that the group eliminate Option A and work through Option B to determine its level of acceptability.

Agenda Item # 5- Fine-tuning of Selected Bylaws Option

Focus turned to the draft constitution. The following changes were noted:

- 2.1 strike words in brackets
- 2.2. add: “As may be amended from time to time”
- 2.3 Paramountcy clause.

Regarding the bylaw definitions, the following changes were noted:

- Chair means person ...ask Hal
- Directors, Environmental Agreement, Extraordinary resolution to amend constitution, member, instruments

Action: Get Brenda’s list of proposed changes to supplement notes.

Action: Chris Nicholls would like to receive a hard copy of these suggestions so he can compare them with the Environmental Agreement.

Hal: Explained the complications associated with taking too much time wordsmithing and rearranging the bylaws. Hal advocated the importance of discussing and reviewing key points.

Brenda: DDMI is simply trying to clarify the bylaws with reference to the environmental agreement. Most of the changes involved “talking about members” to “talking about directors”. The intent was to simplify and DDMI is not interested in advancing a new position.

Hal: Registrar’s society was in agreement with Option B – an important fact to recognize.

Bob raised a self-described ‘large concession’ of setting aside Option A and going with Option B – with possible changes.

Ted hinted that reviewing details such as these will likely set us back.

Brenda proceeded to hand-out the DDMI list of modifications to Option B
The main differences are semantic: Changing the word ‘members’ to ‘directors’.

Chris suggested that the group go through the list of definitions.

- David commented on the definition of ‘directors’.- He stated that the modifications have become extraordinarily complicated. Do we want to encourage other lawyers to interpret this work. With clear and simple language that we understand, the Board should be able to function effectively, as intended. Believes that the DDMI modifications are making a seemingly straightforward process overly complicated. Suggested while challenges are possible, he has never seen it happen.
- Brett Hudson agreed.
- David suggested that the group ‘walk through’ the GeoNorth version. He encouraged participants to comment on fundamentals rather than details. Once this is done, lawyers can have their turn. Now is not the time to lose ourselves in legal nuances.
- Suggestion from David that the words ‘member’ and ‘director’ can be used interchangeably.
- Hal: Any substantive comments on ‘Terms of admission’?
- Brenda agreed to set the legal interpretation aside if it creates confusion.

Lunch

Return from Lunch 1:15

Hal – Reviewed that the WG is looking through Draft of Option B and not other documents and reviewed the changes

Terms of Admissions

Bob – Can’t change opinion once a legal precedent has been set

Chris - opposite that what is in the agreement

Brenda – Suggested amendment that signatory be replaced automatically once the appointment has been made by the parties.

Eric Clarified that the wording is out of the Registrars Package on setting up a Society.

There was discussion on whether the EA should be submitted with the By Laws to increase transparency. This reverses and early decision.

Section 3 in the ByLaws

Strike the word “and”

Chris asked who the Letter gets sent to? Minister VS Regional Director General

Obligation of Members e, f, g, h should be moved to section 6

Some discussion whether the word expulsion should be added?

Hal removed the term because it was felt that it was not appropriate.

There was some discussion on how the Two Members from the Public should be appointed. – It was agreed that it is up to the parties not the WG

Change “any” to “the” or “respective in 3.b

Brenda K Asked how the Parties get involved in the business of the Board?

Hal Suggested the rewording for 3.b

Section 4

Brent – Question on 4.b – Secretary Treasurer – is there a provision to state whether the position is two or one person? The position of Secretary makes sure house keeping is done, does not necessarily do the work.

David K. Drop person out of each of the titles.

Some discussion on the management of the Board administration – Chair?

Section 5

No amendments

Section 6

Cut and paste material from Section 2 at the end of Section 6

Section 7

Meetings

David K – Provision for inviting the parties to the special meetings of the Board beyond the members of the Board. Suggested re wording.

David Livingston – state the meeting should be “Public”

Some felt that the “Public” could be too large. “Public” should be the Parties.

Bob T – The parties shall be invited to all meeting of the Board – AGM and Special Meetings.

There was a discussion about the role of the Parties at meetings and what meetings they should be invited too. They are observers and their presence should not affect the business of the board.

David Livingston suggested that the wording should suggest that the Parties be invited to the AGM and it is up to the board what other meeting they get invited to.

It is up to the board to indicate to the parties that they are observers.

Overall it was agreed that the meetings should be open, but it should be made clear that members of the parties that choose to come are under their own recognizance and they are only observers.

Hal suggested this point be a separate clause 7.c

Chris N – “who is responsible for stating whether there is consensus or whether something should go to majority vote – The Chair?”

It was suggested that any member of the board can indicate that they are not in agreement and that would bring in a vote.

The board will work out the rules governing meetings and voting.

Section 8

Borrowing Powers

No amendments

Section 9

Disposal of Funds

Section 10

Auditor

Who shall appoint an auditor until the AGM?

Amend section c. – See Hal’s notes – which becomes .a.

Section 11.

Seals and Signing Authority.

Section 12

Minutes

Add – Parties and the Gov't of Nunavut to each sentence.

Chris N – Asked whether just the funding agencies should have access to the books.
It was agreed to have open books

Section 13

Fiscal Year

The board can change the date by amending the Bylaws.

Calendar vs. DIAND fiscal.

Leave dates as they are in the bylaws and the Board can change the dates at the first meeting.

David K. suggested putting a clause that indicated that the first year be 2002. Otherwise there will be a short Audit.

Dave L. Indicated that the DIAND money be carried to this year and then DDMI can submit their money after March 31, 2001. What DIAND money is not spent can be carried over, but just this time

It was decided to leave the decision to the Board

Section 14

Distribution of Funds

Dave L. Asked about adding the Gov't of Nunavut to the clause in case they do add money.

Chris N. - that can be amended should that happen in the future.

How should the assets be distributed – up to the Board

Section 15

Arbitration

Refer to Article 16 of the EA for the rules of Arbitration. – Drop reference to Section 7 of the Bylaws

The Board can initiate Arbitration with DDMI through the minister. Section 15 just deals with the operation of the Board internally.

There was discussion about the dispute resolution and arbitration with regards to the Board. In other words the EA vs the ByLaws.

The consensus was removing the clause but there was question how the Registrars society will look upon the exclusion. Finally it was decided to leave it in with generic

See Hal's notes for wording.

Brenda asked about 'Notice Given' – should receipt be acknowledged

Brenda asked about Amendments – should it be spelled out or is it accounted for in the EA or the Societies act. – decision was to leave out the reiteration.

Amendments and Signing – Procedures

Hal - What should be done to get this done

GeoNorth will get the amendments done and distribute it for signatures.

David K. asked how Out of towners sign if it has to be the original.

If there are five originals then the faxes attached of the remainder should suffice.

The physical address of the organization has to be added not a Post Office Box.

Appointments of Advisory Board Representatives, Alternates

Ted B. has been appointed

KIA board appoints the rep and they are advertising for the position and should have the names by the 1 or 2 of February.

GN – the briefing note is in to the ministers office – it may be advertised but could be a direct appointment.

Yellowknives – not yet

NSMA – Bob Turner and one rep – letter has been sent already.

DDMI – letter coming forthwith – week of January 22 or January 29

GNWT – has made no decision as of yet.

Lutsel K' – no selection yet – will fax after discussion

Advisory Board Logistics

Bob T. asked if there will be another meeting of the WG?

Hal asked whether there should be another meeting scheduled.

It was agreed that another meeting will be an opportunity to discuss the logistics and review the final bylaws with signatures.

If the representatives have been appointed they should come to the meeting

Tuesday January 30, 2001.

DDMI can provide what reports are due.

Ted. B. asked about DDMI logistics so the working group can plan the schedule of the Board and the expediency things should happen.

Dave suggested that Hal and Eric round up the material that could be discussed at the next meeting.

Brenda suggested focus on what is needed to get the board operating in the next three months.

Next Steps for the Working Group

Closing Remarks