

WORKING WITH THE PEOPLE FOR THE ENVIRONMENT



Minutes – June 1-3, 2021

Yellowknife Boardroom and by Zoom /Teleconference

Present:

Charlie Catholique, *Chair* (in person)

Jack Kaniak, *Vice-Chair* (online)

Marc Whitford, *Director* (online)

Ngeta Kabiri, *Director* (online)

Gord Macdonald, *Director* (online)

Sarah Gillis, *Director* (Days 1 & 3, online)

Lutsel K'e Dene First Nation

Kitikmeot Inuit Association

North Slave Metis Alliance

GNWT

Diavik Diamond Mines

Yellowknives Dene First Nation

Absent:

Violet Camsell-Blondin, *Secretary Treasurer*

Tlicho Government

Staff:

John McCullum, *Executive Director*
(minutes) (in person)

Environmental Monitoring Advisory Board

Guests (all by Zoom/teleconference):

Tom Bradbury, Lands (Day 1)

Wasef Jamil, Arcadis (Day 2)

Abbie Stewart, MSES (Day 2)

Kofi Boa-Antwi, Diavik (Day 2)

Dan Coulton, Golder (Day 2)

Andrea Patenaude, GNWT (Day 2)

Anita Kolback, GNWT (Day 2)

Ed Gullberg, legal counsel (Day 3)

Megan Cooley, NSC (Day 3)

LeeAnn Malley, GNWT (Day 3)

Imran Maqsood, GNWT (Day 3)

Tuesday June 1, 2021

Meeting at 9:00 am at EMAB Boardroom and by Zoom and Teleconference

1. Call to Order

Chair opens meeting at 9:05 am



Moment of silence

2. Approval of Agenda

Chair reviews agenda

Motion: *to approve agenda as presented*

Moved: Marc Whitford

Seconded: Jack Kaniak

Motion carried

3. Conflict of interest

no conflicts declared

4. Minutes of previous meetings

Motion: *to approve March 9-10, 2021 minutes as presented*

Moved: Marc Whitford

Second: Jack Kaniak

Motion carried

Motion: *to approve March 24, 2021 conference call minutes as presented*

Moved: Ngeta Kabiri

Second: Gord Macdonald

Motion carried

ED reviews action items

- Letter of support for Frame Lake fish habitat enhancement project.
 - Chair was not at last meeting; would like to speak to Chief about this. Has Diavik consulted on this project with all communities?
 - Diavik member confirms they've been to all the communities
 - Chair wants to hear from communities before signing the letter; understood from Chief that Diavik has not consulted LKDFN yet.
 - Diavik member will check on this
- Post-closure monitoring qualifications policy
 - Diavik member says communities should contact Diavik directly about this. They are having individual conversations with each group. Qualifications vary for each job.



Action Item: ED to follow up with a letter to each Aboriginal Party to make sure they are aware to contact Diavik.

- This came up when a Board member identified the need to ensure community members are trained before monitoring starts, so they are qualified to start as soon as monitoring begins.
- Is Diavik talking to all communities?
- Diavik members says TG contacted Diavik about a specific program
- Communities should contact Gord with inquiries
- Diavik policy on surplus assets
 - Diavik member says this will be discussed with individual communities
 - This came up after the old South Camp was demolished and Board members indicated communities might have been interested in acquiring parts of it.
 - There is also the “Re-imagining closure” initiative with Diavik, De Beers and GNWT

Diavik member noted that Diavik doesn't communicate its policies, only its plans.

5. Finance

ED reviews EMAB variance reports to March 31, 2021 for old year, and to May 2021 for current year.

Q: what happened to the surplus as of March 31, 2020?

A: this is included in the surplus to March 31, 2021.

Q: what happens to surplus?

A: it will be returned to Diavik after the audit is complete. EMAB has requested some of the funds be rolled over to the 2021-22 fiscal year. This will be discussed later in this item.

Noted that EMAB should not budget zero dollars for items where the Board would like to undertake activities on the assumption that there will be a surplus somewhere else in the budget.

- In some cases these are placeholders in the budget where there is uncertainty, such as Task 2 of the mercury investigation.
- The budget is a planning tool, but expenses need to balance revenue, so can't budget more than we know is available. This is largely determined by the two-year budget negotiated with Diavik.
- The budget assumes that COVID restrictions will be lifted this year so EMAB will be able to do community updates.
- EMAB can apply to Diavik, or other agencies, for additional funds for specific projects.

Draft policy on using Involving and Supporting Communities funds

ED presents draft policy

Discussion:

- Good to have a presentation prepared by EMAB staff to highlight major activities

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- Proposal should describe what funds would be used for
- Clarify Board member costs for organizing
- Noted that sometimes questions come up that should be answered by a Diavik representative. These should be directed to Diavik.
- At the start of the presentation, note that it is about EMAB, not Diavik
- Staff from Diavik could participate
- Diavik member notes that sometimes they will get a list of questions to answer before the meeting, rather than attending
- Concern about limiting up-front payment to half of total
 - Expenses may be higher than this and some communities don't have funds to advance
 - Need to be flexible
 - Accountability will be through future funding ie. no further proposals until current funds are accounted for
 - Community shouldn't have to take on risk
 - EMAB staff to communicate with community and advance funds after satisfied meeting will work
- Any administrative fees should be included in the proposals

Action item: ED to revise policy to reflect discussion.

Request for roll-over of funds for AEMP review and ICRP review to 2021-22

ED notes Diavik rejected request. Recommendation is to challenge this.

- Diavik should provide more in-depth reasoning

Action Item: ED to draft a letter requesting a more detailed rationale for Diavik's rejection of the roll-over request for approval and signature by the Chair.

4. Minutes (cont.)

Diavik member reports on consultation with Lutsel K'e on Frame Lake Fish Rehabilitation project.

- SAO and IBC Coordinator suggested going through WLEC
- WLEC Coordinator requested materials and did not require a meeting. He was supportive and planned to ask for a letter of support from the WLEC

Discussion

- Noted that WLEC Coordinator has since left the position, along with SAO from that time.
- Diavik has done engagement with community but doesn't know where the community stands
- Lutsel K'e is not aware of any consultation on the Frame Lake proposal



Diavik requests that Lutsel K'e let it know what to do regarding engagement on this Lutsel K'e member says LKDFN will send a letter to Diavik with its position on the Frame Lake project.

6. Clarification of Diavik Response to EMAB comments on Mixing Zone Discussion Paper

ED presents item

Discussion

- Good to bring this to Board's attention
- Comments directed to WLWB, not Diavik; Diavik can say what it wants
- No need for EMAB to comment unless Diavik engagement with EMAB changes
- Concern Diavik wants to reduce or water down EMAB recommendations; cost? Difficulty for company?
- Diavik member says they have been very successful engaging Parties, understanding concerns and resolving questions.
 - Diavik gets the sense that EMAB wants to include its questions along with Diavik responses, to be sure the response gets on the record
 - Diavik wants to focus engagement on groups that want to resolve questions
- Suggest EMAB note what Diavik has said but not spend time on it. Address any issues when they arise
- Noted this statement is on the public record
- People who read the comment can decide for themselves how to interpret; no need to be concerned about EMAB's public image.

7. TK Monitoring for Closure

ED presents item background.

Discussion:

- Diavik member noted that TG is taking an active role in TK monitoring and wants to develop its own program. TK Panel might review it
- Diavik had proposed that EMAB could coordinate the TK monitoring plans that are developed.

Q: are any other Parties developing monitoring plans, or just TG?

A: Diavik expects this will happen with other communities.

- TG intervention to PK to Pits project included a part on how they want to be involved in closure monitoring
- Does EMAB have a role in developing TK monitoring plans?
- Diavik should be working with all communities on this, rather than EMAB



- May be a need for a consultant on TK Research to assist/advise with development of monitoring program
- EMAB should continue what we're doing: prepare for closure, ensure communities are involved

Q: how often does Diavik do water sampling

A: twice a year

- What role should EMAB play during closure and post-closure – continue with oversight
- The question here is what role should EMAB play in developing TK monitoring plans
- Healthy Country Planning is a model YKDFN is using to develop goals and objectives
 - Communities need to decide if they want to work individually, then come together, or come together first.
 - Model was used in planning for Giant Mine remediation and Dinàgà Wek'èhodi conservation area
 - Community workshops allow all voices to be heard
 - Training via ENR Conservation section – Kathy Racher
 - Involves elders and youth.

8. Inspector's Report

Tom Bradbury presented his inspection report

- Latest inspection May 26
- Some flow at site
- Generally everything looking good
 - Transfer areas cleaned up after winter road season ended
- Focus on freshet
 - Water ponded against PKC dam has been there longer than two weeks, so out of conformance with water licence conditions
 - Water can't be sent to the North Inlet because it contains unsettled PK, which is against the PKC Facility Plan
 - Water can't be sent to Pond 3; need to preserve capacity in case of increased flow volume
 - Water likely to be ponded for another month
 - Engineer is not concerned about ponding affecting dam
 - NW Decant sump (in area of pond) is pumped to NI
 - Fine PK is showing up in NI, against PKCF Plan and needs to be fixed
 - Water flowing through PKC spillway into Pond 3 on May 13; stopped by May 26
 - Pumping Pond 3 down
 - Planning to pump down PKC pond; possibly increase size of settling pond

Q: was it similar last spring



A: yes. the water licence places lots of restrictions on water management. Inspector would like to see these eased to avoid non-compliance

Q: was there more water than usual this year

A: there was lots of snow accumulation. Amount of water during freshet depends on how snow melts. It's easier to control if the melt is slow.

7. TK Monitoring for Closure (cont.)

Discussion continues

- YKDFN member would like to follow up with Chief and Council regarding EMAB's role. Not sure if it should be up to EMAB to define a method for TK monitoring. Outside EMAB's role.
- Diavik member asks if a coordinated approach is needed among communities? Do Parties want this? If yes, EMAB could do that

Q: Do Parties need to approach Diavik to discuss TK Monitoring for Closure?

A: TG are a bit ahead. Diavik will be going to communities soon.

Q: should EMAB members go back to leadership regarding approaching TK Monitoring for Closure in a collaborative way? EMAB could coordinate if the Parties want.

Propose that Board members go back to communities and check on this and that members ask TK member to talk about the process they are using to develop TK Monitoring for Closure with Diavik.

Meeting adjourned at 12:10 pm

Wednesday June 3, 2021

Meeting at 9:00 am at EMAB Boardroom and by Zoom and Teleconference

Meeting resumed at 9 am

Chair reviews agenda

9. Yellow Haze Sampling

Wasef Jamil from Arcadis and Kofi Boa-Antwi from Diavik joined the meeting.

ED introduces item

Wasef presented Arcadis' proposal for monitoring yellow haze.



Yellow haze is likely from combustion and is hard to predict so may not be worth setting up monitoring stations.

He is recommending using hand-held monitors: fairly cheap and very flexible. Staff could drive around with them when yellow haze forms.

Q: how many are needed?

A: likely just one

Q: could they be rented

A: manufacturer is not keen on rental. Purchase price is about \$2500. Rental would be \$100/day. He is recommending purchasing one.

Q: is there a likelihood that yellow haze is not NO₂?

A: likely combustion gases, which would include NO₂. Wouldn't show up in monitoring PM₁₀ and PM_{2.5}

- Noted that combustion will decrease as closure approaches, so is there a need to monitor it?
- Issue has come up several times. Can't just leave it; it's an environmental issue. LKDFN rep has seen it.
- It would be good to get an answer about what this is, and any effects. We could approach the mine and request they monitor it.
- Noted that trucks can give off toxic exhaust that can affect humans. Could also be affecting caribou.
- Would like to know what this yellow haze is. This issue keeps coming up.

Action Item: request Arcadis to prepare a yellow haze research program to propose to Diavik and approve by email motion.

10. Review of 2020 Wildlife Monitoring Report

Dan Coulton from Golder joins meeting

ED introduces item

Kofi will speak to WMMP, which replaced the version submitted in summer 2020;

Dan presents 2020 WMR

- Diavik has evidence of some areas being used by caribou that were previously included in the mine footprint, so removed these from disturbed category
- Group scans were up to 150 animals at a time
- Noted agreement at February '21 meeting to discontinue grizzly hair snagging
- Noted agreement at February '21 meeting to discontinue wolverine hair snagging

Kofi presents changes to WMMP

- Currently waiting for Ministerial approval of WMMP under Wildlife Act regulations

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- Three changes:
 - Removal of aerial surveys
 - Removal of grizzly hair snagging (based on Feb'21 workshop)
 - Removal of wolverine hair snagging (based on Feb'21 workshop)
 - Noted that IEMA recommended removal of caribou behavior monitoring at the Feb '21 workshop, but this needs further discussion
- Objectives have not changed
- VEC's have not changed
- Meets all legislative guidelines
 - Doesn't follow WMMP Guideline format; arranged by species

Discussion

- Issue raised about decisions based on Feb'21 workshop discussions. No minutes yet. Don't agree that decisions were made about hair snagging
- Diavik disagrees and understands these decisions were made
- Waste Transfer Area not discussed during presentation
- WTA is discussed in Section 8 of the WMMP – results consistent with previous years

Q: have Standard Operating Procedures been updated regarding wildlife deterrence from the pit as committed during the Processed Kimberlite to Mine Workings Water Licence Amendment Review?

A: Diavik will update these after the Minister makes a decision on the draft water licence

Q: when will minutes of the Feb'21 workshop be available; didn't hear agreement to remove grizzly and wolverine hair snagging.

A: Andrea hoping to complete them this month. Feels Diavik's interpretation is not far off. ENR doesn't envision more wolverine monitoring at this time and is not looking at initiating grizzly monitoring at this time. Question is open on caribou behaviour monitoring.

- Dan noted that IEMA also raised a question about the value of group caribou scans at the workshop. Might be an alternative way to monitor caribou interaction with mines using collar data.

Q: is there a legislated timeline for WMMP review?

A: ENR is undertaking a public review with a deadline of June 25. Guidelines don't directly address review timing. ENR will process the comments and convey them to Diavik for response/revision. Final version would then be submitted for approval

- So roughly end of August

Q: does Diavik report bird mortalities from the wind farm

A: did a study when wind farm was developed, which showed no mortalities. Study ended.

Q: when was the study?

A: possible 2014. Diavik will get back to EMAB on this



Q: so Diavik doesn't look for mortalities at the wind farm?

A: ECCC said monitoring could stop

Action Item: draft a letter to ENR regarding need for minutes of the February 2021 wildlife workshop.

Action Item: Diavik to provide information about original wind farm study and start/end dates.

BREAK

11. MSES Review of 2020 WMR

Abbie presented MSES' review and recommendations on the 2020 WMR.

- Disagrees with Diavik conclusion that there is no ZOI for caribou. Published articles show there is one.
- Need to work on ways to mitigate effects of mine on caribou movement
- Recommending grizzly bear hair snag monitoring should occur; need to decide how often
- Same for wolverine
- Mis-directed waste decreased

Discussion

Q: Concern about caribou decline; can we conclude that the mine had nothing to do with this?

A: any human activity will have some effect; effects are cumulative so no way to determine effect of any individual mine

- Helpful to have more information on this
- Suggest asking ENR to make a presentation on caribou status and effect of mines
- ENR has several reports on factors affecting the decline of caribou herds
 - Recent report shows how climate factors affect different herds in different ways
- Effect of mines on caribou was considered in Ekati Jay Project environmental assessment
- Cumulative effects of development is definitely a factor
- ENR can work on harvest management, predators, but can't manage climate change
- Lots of information in Bathurst Caribou Range Plan and background information

12. Status of Diavik WMMP & EMAB Comments

Abbie presented MSES' review of Diavik Wildlife Management and Monitoring Plan from 2020, and update in April 2021 – still reviewing 2021 WMMP

- Much of the plan recommends continuing with existing programs



- MSES would like to see some aerial surveys to validate trends as the mine
- Caribou behavior sampling – problem of few caribou near mines to sample
- Diavik removed caribou migration monitoring; MSES is OK with this
- Need to continue monitoring stability of grizzly bear and wolverine; need to decide how often, and set a trigger
- Asks if Board has any topics they would like to see focused on

Discussion

- How to measure effectiveness of mitigation
 - Stop mitigation and see what changes
 - Need to be specific about how to test the effectiveness of proposed mitigations
- Workshop on mitigation – mentioned at Feb'21 ENR Wildlife Workshop
 - Government, mines, EMAB & monitoring agencies, Affected communities
- Should EMAB submit comments on the 2020 WMR as in the past?
 - Need to take into account the ENR WMMP review?
- Follow Environmental Agreement process. At this time there is no approved WMMP under the Wildlife Act; draft is being reviewed.
- Noted ENR has been inconsistent in reviewing WMR.
- What will be the review process under the new WMMP?
 - For WMMP reports review process will be whatever is agreed
 - For current review of WMMP, stakeholders will submit comments, ENR will compile them and provide to Diavik, Diavik will revise the WMMP, and ENR will decide whether or not to approve the revised WMMP

Motion: to approve MSES comments on 2020 WMR as presented for submission to Diavik

Moved: Ngeta Kabiri

Second: Gord Macdonald

Motion carried. Jack Kaniak abstained.

13. WMP Letter – TK in Monitoring

Postponed to tomorrow to allow TG member to speak to this.

9. EAQMP (cont.)

Motion: Arcadis to prepare a yellow haze monitoring proposal for submission to Diavik by EMAB based on Arcadis' presentation earlier today

Moved: Marc Whitford

Second: Charlie Catholique

Motion carried.

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Meeting adjourned for the day at 11:55 am

Thursday June 3, 2021

Meeting at 9:00 am at EMAB Boardroom and by Zoom and Teleconference

Meeting called to order by Chair at 9:03am

Chair reviews today's agenda

14. Revised Conflict of Interest Policy

Ed Gullberg joins meeting

ED introduces item

Ed reviews revised policy

- No significant changes; more flexible
- Procedures section allows declaration of conflict at any time
- Allows Board to allow a member to participate if in conflict by majority vote

Legal concept is that a fiduciary has an obligation to beneficiaries. In the case of EMAB the Board members are both the fiduciaries and the beneficiaries

- Board has authority to relax COI requirements
- Did not include a financial criterion for a conflict

Questions

- Do Parties need to approve this?
- EA allows Board to set policy, including COI
- A fiduciary can't waive COI, but a beneficiary can. EA says the members are those people appointed to the Board

Q: for a member to be in conflict with respect to their Party, the conflict has to be different than for the other Parties?

A: Yes. For example a municipal councillor can vote on setting property tax because all the councillors are affected by property taxes. This is the community of interest.

- Diavik member feels the policy is still too restrictive
 - Gives Board the power to vote out Diavik rep on any matter
- Diavik has to be an integral part of the discussions; mine has a right to state its opinion
- There has to be some definition of conflict eg. Hiring a relative

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- EA does not require a member to act without conflict
 - They can act for the general interest of the Party
 - There must be some kind of shared interest among the members
 - Many EMAB decisions may affect Diavik more than other members
- Concern that the Board can decide to exclude Diavik
- May be a need to hear Diavik before excluding them
- COI law doesn't allow participation in a vote where the member is in conflict
 - The policy already goes beyond that
 - Note that the policy applies to all Board members, not just Diavik
- This policy allows Board to exclude Diavik from every discussion
- Policy should not fetter directors' ability to represent their Party's interests. It should not allow personal benefit, but should allow the Party to benefit.
- Example of Frame Lake project support letter
- Sometimes we feel like Diavik is controlling EMAB's discussions. There shouldn't be any COI in the Board
- Lawyer notes he could revise the policy to remove references to the employer
- It should be OK to advance the interest of the Party, not the employer.
- This would be a much narrower definition of COI than is usually used

Q: is the proposal to change the COI policy from interests of Party to interests of individual director?

- Noted that members must be arms-length and independent
- EA says Board must be arms-length and independent, not members
- Board can't be independent if members aren't independent
- Board decision is separate from actions of Parties
- Not clear what's being proposed here; need to follow law and respect wording of agreement. Need more time.
- Difficult topic – Diavik is a big company and members are sometimes not comfortable talking openly in front of the company rep. Is that a conflict?
- Conflict relates to a specific decision; it's up to the Board to decide what to do when a conflict occurs. Best practice is to leave the room so no accusation of intimidation
- Lawyer can provide options and implications of each

Action Item: Lawyer to provide options and implications for different approaches to COI

BREAK

Item 13 on WMP letter on TK in monitoring is tabled until next meeting to allow TG to participate in discussion



15. Mercury Investigation

Megan Cooley from NSC joins meeting.

ED introduces item

Megan presents report.

- Noted that 2017-19 AEMP Re-evaluation Report was just circulated. NSC should review this before deciding whether to re-analyze the 2018 mercury data.

Q: any differences in mercury levels in fish?

A: don't know until they do Phase 2. New analysis might come up with same conclusions as Diavik.

Q: could you summarize the current AEMP analysis?

A: that was not part of the review. In the past mercury data showed an increase, then a decrease

Q: what is the issue with baseline data

A: baseline was 6-8 fish combined into a composite sample. This method loses the ability to take fish size into account, which is very important. Very different methods were used after construction started.

Q: what data would NSC re-analyze

A: would run a trend analysis with various combinations of techniques and data. Might leave out some data

- Also use a different statistical approach

Q: what is the likelihood of being able to use all the data?

A: this would depend on the exploratory analyses. How does including or leaving out certain data affect conclusions

- Noted that Golder concluded it was not valid to merge datasets
- Data was handled differently in different reports

Q: Is the data from the scientific studies collected in different locations than the TK studies?

A: yes. Lake Trout move around a lot so likely not a big factor

Action Item: Agreed to make decision about whether to proceed with Task 2 by email motion after the review of the 2017-19 AEMP Re-evaluation report.

Noted that EMAB can contribute to the success of future monitoring by using the re-analysis to make recommendations to help future studies avoid data errors made in the past.

9. EAQMP (cont.)

LeeAnn Malley and Imran Maqsood from ENR joined the meeting



Discussion on EAQMP Investigation Timelines

- Concern about timeliness of investigation
- Noted reference to air quality policy and air quality guidelines – clarify
- Should refer to guideline, not policy. The guideline will have advice for monitoring
- The guideline is expected to include
 - Objectives;
 - Application;
 - Monitoring parameters;
 - Monitoring frequency;
 - monitoring, sample and analytical methods;
 - monitoring station selection considerations;
 - data quality objectives;
 - instrument maintenance and calibration;
 - analysis such as comparison to air quality standards, environmental assessment predictions, threshold values and adaptive management;
 - and reporting.

Q: will this apply to environmental air quality or OHS

A: environmental

Q: apply to closure and operations, or just closure?

A: any monitoring required by Environmental Agreement. If there is air quality monitoring during closure the guideline will apply

Q: why is this only for diamond mines

A: Environmental Agreements address air quality monitoring but there is some ambiguity. GNWT legal authority doesn't extend beyond these

Q: will guideline apply to other mines in future?

A: GNWT expects there will be continuity between the guidelines and the planned air quality framework. Should align with future air regulations

Imran introduces himself. He is the air quality programs manager with ENR. Prior to this he worked with the Saskatchewan Ministry of Environment on air programs

16. Update on PK to Pits Decision

ED presents item from kit.

No questions

17. Roundtable

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Kabiri: likely moving to Whitehorse for a couple of years but will continue with EMAB

Marc: no updates

Jack: would like to attend July 7-8 meeting in person.

Action Item: ED to investigate COVID rules for Jack to travel to YK for EMAB meeting

Sarah: no community concerns. YKDFN doing a cultural criteria water quality workshop for PK to Pits project. Diavik wants to get this done this summer.

- Will do some thinking on COI

Gord: no comments

Charlie: currently no WLEC Manager in Lutsel K'e

Motion: *to adjourn*

Moved: Marc Whitford
carried

Meeting adjourned at 11:30am